All Africa Conference on Law, Justice and Development: Speech by Lord Woolf, Lord Chief Justice of England and Wales: Abuja, Nigeria

I am delighted to be making my first visit to Nigeria. I am grateful to all those who have made it possible, including Chief Justice Uwais of Nigeria, the World Bank and the United Kingdom High Commission.

I regret that I am about to repay the warmth of your welcome by grievously interfering with your digestion. However, as they say, there is no such thing as a free lunch. The price that I have to pay is modest, the price you have to pay is high. The only recommendation I can offer to make your experience tolerable, is to bear in mind that a previous holder of my office, when asked what he regarded as the highest pinnacle of judicial distinction, responded "having an advocate address you for an hour without his appreciating that you have not heard a word that he has said".

I am delighted that Nigeria, together with many other countries in Africa, is regaining its judicial virility. I read with pleasure, an article in *This Day* which stated, "a lot [has] changed for the better for the judiciary in 2002. During the year under review, the Supreme Court, the highest temple of justice in the land, delivered judgments and interpreted our statutes in ways and manners that departed radically from what used to be its 'lame duck' status". The article in the paper concluded by saying, "for presiding over the court that made remarkable contributions to governments; for giving the Nigerian judiciary a new a positive image; for speaking up when it mattered most; and for freeing our judiciary from its infamous shackles, Mohammed Lawal Uwais is our man of the year". This is an accolade any Chief Justice would be proud to receive. I understand this is a deserved recognition of the process of reform, which is taking place here in Nigeria under the Chief Justice's leadership together with that of your distinguished Federal Attorney General, Mr Agabi.

Africa is far from being alone in seeking to reform its justice system. The new democracies in Eastern Europe are engaged in reforms, so is China, so are India and Pakistan. This is also true of the UK. It is true of the countries of the European Union, it is true of North America and it is true of Australasia. Remarkable convergence between the great legal systems of the world is taking place.

The English legal system's source can be traced back to France. It can be traced back to the last time that my country was conquered; I refer to William the Conqueror who came from Normandy in 1066.

Lord Campbell, who in 1850 wrote his two-volume work on the lives of the Chief Justices of England, starts in 1066 with the Chief Justice or the Chief Justiciar, who came to England from France with William the Conqueror.

At that time, the justice system was the means by which the invader sought to enforce order in the country for the benefit of the ruler. Nowadays, around the globe there is a new recognition of the importance of the rule of law. It is appreciated that a free and independent justice system is the key to sustainable economic growth. As President Wolfensohn explained in his address, the justice system must no longer be the servant of either of the two other arms of government: the legislature and the executive. The judiciary has an independent role in society; a role that is just as important for the well being of society as an effective executive and an effective legislature. It has become an accepted truth around the world that an effective judicial system is critical to the proper working of society. It is for this reason that in the old democracies, in middle age democracies and in the new democracies changes are taking place which are intended to transform or have already transformed their legal systems.

I was given the task of identifying what was wrong with our civil legal system and then overseeing its reform. I am now involved in the even more difficult task of overseeing a similar process in relation to the criminal justice system. I am fast appreciating that, while the reform of civil justice is difficult, the reform of criminal justice is much more difficult. Many of the present Chief Justices are engaged in reforming both, so it occurred to me that it might assist you if I talked about how we went about reforming our civil justice system.

Our problems may not be identical to your problems, but I believe that we are all trying to achieve the same objectives. We want to fulfil the aspirations of our citizens for access to a system of justice so that it can meet their needs. My report on civil justice started by saying; "A system of civil justice is essential to the maintenance of a civilised society. The law itself provides the basic structure within which commerce and industry operates. It safeguards the rights of individuals, regulates their dealings with others and enforces the duties of governments." As I embarked on the task which I was given in relation to civil justice, it soon became apparent that it was essential to identify the fundamental principles which should be met by a civil justice system in order to achieve access to justice. Those principles are very simple and very obvious: i) the system should be just; ii) it should be fair; iii) its cost should be proportionate to the nature of issues involved; iv) it should deal with cases with reasonable speed; v) it should be understandable to those who use it; vi) it should be responsive to the needs of those who use it; vii) it should provide as much certainty to those who wish to use the system as the nature of the legislation allows and viii) it should be effective and adequately resourced and organised so as to give effect to the previous principles.

At the time I was writing my report, we had not made (as Nigeria has done) human rights part of our domestic law under its Constitution. We have done so now and what I said in 1995 has been overtaken by that important reform. If I were to write that report today, I would start by referring to the courts' role, not only in relation to enforcing the duties of the government, but also in relation to human rights. Human rights and democracy are indissolubly linked. You cannot have proper respect for human rights except in a democracy and human rights are the values observed by any mature democracy. To provide your citizens with human rights but not provide them with the means of enforcing them, is to make a mockery of those rights.

There are, however, inherent within a democracy, tensions, the force of which varies almost as constantly as the weather varies in England. It is the task of the judiciary to reconcile the tensions that will inevitably exist. A true democracy surrenders a degree of autonomy to the judiciary so that the courts can protect human rights.

The task of the judiciary is not simple. It is multi-faceted, but I soon came to the conclusion that, if we were in England to have a civil justice system in which we could take satisfaction, fundamental changes had to be made.

In giving a judgment in the House of Lords in 1981, one of our most well known judges, Lord Diplock, drew attention to the constitutional role of our civil justice system and the constitutional right of individuals to have access to it.

He said every civilised system of government requires that the state should make available to all the citizens a means for the just and peaceful settlement of disputes between them as to their legal rights. The means providing the courts of justice to which every citizen has a constitutional right of access.

Reforming a mature system of justice, such as ours in England, involves confronting an entrenched culture. We found that reform involves giving our judges a new and different role. This applies, not only to the most senior judges, but also to every judge in our system. It involves recognising that the role of the judges goes beyond resolving disputes between the parties who come before them; they need to be proactive and ensure that justice is done, not just in a particular case, but in litigation in general. A civil justice system must not only be able to decide cases; it must provide effective machinery for resolving disputes. The best method for resolving disputes very much depends upon the nature of the dispute. A court is not always the best forum in which to resolve a dispute. The judiciary need to be aware of the alternative methods of achieving resolution and the courts should be able to direct those involved in the right direction to solve their problems. In the UK it can be an informal neighbourhood mediation service, it can be an ombudsman service, it can be arbitration or it can be the courts. We have to recognise that customary remedies can be more effective than the traditional courts.

Fundamental to the changes that we introduced to our system were the new Civil Procedure Rules. These are very different from the old rules of the Supreme Court which are well known to lawyers in Africa. The new rules state, right at the start, that they are a new procedural code, "with the overriding objective of

enabling the court to deal with cases justly". The first rule goes on to describe what is involved in dealing with cases justly by identifying simple principles. The principles cannot be repeated too often since I believe they go to the heart of a civil justice system. They are: (i) ensuring that the parties are on an equal footing; (ii) saving expense; (iii) dealing with cases in a way which are proportionate; a) to the amount of money involved; b) to the importance of the case; c) to the complexity of the issues; d) to the financial position of each party; iv) ensuring that cases are dealt with expeditiously and fairly; and v) allotting to a case an appropriate share of the courts resources while taking into account the need to allot resources to other cases.

This first rule, which is known as the overriding objective of our new Rules, makes two more very important statements. One is that the court (and that means the judge) must seek to give effect to the overriding objective when he exercises any power given to it by the rules or interprets any rules. The second is that the parties, and that includes their lawyers, are required to help the court to further this overriding objective. This statement makes achieving justice a partnership obligation. It involves not only the judges, but the judges and their lawyers working together to achieve justice. I was very pleased to read that your Attorney General, Mr Agabi, recently said, "The role of transforming the justice system in Nigeria cannot be that of government alone. There is a need for government to actively involve and engage civil society, including the legal profession, legal service organisations and the private sector, in all phases of policy design, programme implementation and evaluation."

I most heartily agree. Real reform will only be achieved if all stakeholders have a sense of ownership of the programme.

You can make rules, but they are not worth the paper they are written on unless they have the support both of those who have the responsibility of administering them and those who have the responsibility of giving effect to them. In England we obtained that support. We did so principally for the following reasons:

i. The judiciary, the practitioners and the public accepted that our civil justice system was not serving the public as it should because it was too slow. This was not as a result of backlogs, but because the system was operating at a speed chosen for the convenience of the legal practitioners rather than the litigants.
ii. The system was disproportionately expensive; the costs of resolving a dispute often being far in excess of the amount at issue. As a result, only the very rich and the very poor (thanks to Legal Aid) could afford to litigate. The great majority of the public could not afford to do so.

I am sure you can recognise those problems. So could judges from almost every country around the globe. Our solution was as obvious as the problems. First, we needed to produce rules, in simple English, that everyone could understand. The rules identified what a civil justice system should be seeking to do. We set about changing the system so that it could be judicially managed. Every case is now assigned to one of three different tracks:

iii. The *small claims track*, providing very quick, very cheap, informal and possibly 'rough' justice. The parties can conduct small claims themselves. The proceedings involve spending the minimum of time in court, cases are disposed of within 2 to 3 months. The small claims track has been a huge success and is the growth area of our litigation.
iv. We have created a *fast track* for the bulk of actions. It has an almost fixed timetable from beginning to end. As a result everybody knows the timescale within which they have to prepare the case and the judge is able to insist on the timetable being kept. The procedure does away with unnecessary complexity. Whenever possible the parties agree expert reports, witness statements are exchanged and a judge monitors the progress of the case, only intervening if it is necessary to do so.
v. Then there is what we call the *multi track* for the remaining cases. Here a tailor made procedure is adopted. In managing the case, the judge seeks to reduce the area of dispute. It is recognised that in most cases it is in the interests of the litigants to resolve disputes by agreement if possible. So whereas before, once the parties were involved in litigation, the dispute often became more entrenched, now, wherever possible, the parties are brought together and the areas of dispute reduced.

Although this all seems very obvious, it was an immense challenge and one that could only be met by training. We set about to train every judge and encouraged the profession to do the same for every lawyer. We had no corps of judicial trainers, so we initially explained what the new system involved to our very best judges. These judges were then given the task of training a number of their colleagues who, in turn, trained other colleagues and so on through the system. We did not have to train the judges as to what the rules said; they were lawyers and could read them for themselves. What we had to do was to explain the new culture and convince our colleagues as to why it was better than the old culture. Above all, we had to convince them that each judge has a personal responsibility for managing the cases in their court. The remarkable thing was the enthusiasm among the judiciary for taking on this new responsibility and their acceptance of training. The reason for the support is, I believe, that the judiciary soon came to realise that the new role was much more satisfying than merely sitting back in a large chair and being an impartial arbitrator.

The new rules give the judiciary much greater discretion. Any judge who is worthy of the role responds to responsibility, even where it involves a great deal more effort on his or her part.

The other dramatic reform to the British legal system arose because of our making the European Convention of Human Rights part of our domestic law. This again changed the role of the judiciary. We had already developed a sophisticated system of judicial review, but this was based on the old Wednesbury approach. As you know, applying a code of human rights involves a very different approach. The judiciary now has a new responsibility to hold the proper balance between, on the one hand, the rights of the individual and, on the other, the responsibilities of the government and the legislature. The change was highly controversial. No one could reasonably object to the public being given human rights. What the opponents to the change feared was that unelected judges would be brought into confrontation with the government and the legislature in a way which had never happened in the past. The critics also feared a flood of litigation. Well, it is still early days but the fears have not been realised. Why? Because, again, every judge was trained in the manner I described earlier. The judges are carrying out their new responsibilities extraordinarily well. Whether cases come before our lowest courts or our highest courts, the judges, by the reasons they set out in their judgments, demonstrate that they are striving to find the correct balance; the balance that justice requires between the rights of the individual and the rights of the State.

We are now turning our attention to criminal law. Here, there are also very large problems. One of the difficulties is persuading governments of whatever complexion to allow those who know most about the system to sort out the system themselves. The criminal justice system is continuously bombarded by legislation. As I speak to you, a new criminal justice bill is making its way through Parliament. It is designed to make the system better, but there is a risk that it is making the system ever more complex and, therefore, more difficult to manage. I understand the reasons for this. Politicians know of the public's concerns about crime and they want to be seen to be reacting to those concerns. I am afraid my experience is that, all too often, the interventions do not achieve what is intended. There are, however, encouraging developments within the new legislation that I strongly support. I am confident that ultimately we will 'get our act together' in relation to crime as well.

My confidence arises out of one feature of our system of justice which we have inherited. That is a judiciary which is, firstly, independent and, at the same time, free from corruption and imbued with a deep sense of social responsibility.

I often ask myself why are we so fortunate to have this immense advantage when so many other countries are faced by huge difficulties because of corruption and judges failing to meet their responsibilities. I do not know what the whole answer is, but part of it at least is the fact that our judiciary take huge pride in the role they perform. They find their work immensely satisfying. They regard themselves as part of an elite judicial family. A family which has, and expects, very high standards of conduct of its colleagues. Peer pressure on members of the judicial family by their colleagues cannot be ignored. There is a real desire among the family to support each other.

To enhance this we have built up a tradition of our more senior judges travelling the country. This is not only to try the most difficult cases. It is also to provide leadership to colleagues in the parts of the country

they visit. We recognise we have a precious inheritance that we must preserve. Therefore, although the judiciary are appointed by the government, we take immense care to help to ensure selection of the very best candidates. At all costs we want to ensure that the role of the judge is respected in the community. The job of a judge must remain one in which you can take pride.

I hope what I have had to say is of some value to those in Africa who, I know, are trying to achieve reform of their legal systems. I appreciate that the challenge you face is immensely more difficult than the challenge we faced and are still facing. However, when I was trying to devise my recommendations for reform in England, I travelled to many countries to find out what they were doing. Without exception I found those visits highly instructive. I also found an immense fund of goodwill for what I was seeking to achieve. It is trite to say that we live in a global community. However, I detect that, throughout the legal world and, in particular, the judicial world, there is a growing recognition that it is by international cooperation that we will find the way forward. Commonwealth law conferences have been a great source of information as to the best practice. Our system is common law based, but this does not mean we must restrict our attention, when looking for solutions, to common law sources. We have a lot to learn from the civil law systems as well. In Africa, you have examples of both. You also have your customary and religious tradition. What I have learnt is that we have to pool our knowledge. That is why conferences, such as this, are so important. That is why I am very pleased that the World Bank is giving support to this conference. I am also very pleased that my country is making a contribution to what you are seeking to do here in Nigeria through its Access to Justice programme. It is important for the whole of Africa that Nigeria should succeed in its programme of reform and play its rightful role, as a leader, in the justice system of this continent.

I very much hope that a consequence of my visit will be to strengthen the links between the legal system of England and that of Nigeria and the links between the English judiciary and the judiciary of Nigeria. Nowadays, opportunities to visit different jurisdictions are much greater than in the past. For example, we have just had a delegation of Pakistani judges to England whose visit was an immense success. At the beginning of this year, I took part in an Indo-British Legal Forum in Delhi which was equally successful. We would welcome much closer links with the Nigerian judiciary. I therefore, on behalf of the UK, extend an invitation to the Chief Justice to arrange for a visit of a judicial party from Nigeria to the United Kingdom as soon as this would be practicable. We would welcome the opportunity of returning the hospitality I have received on this visit which is, alas, all too short.