

PRIVATE PROSECUTION  
IN

**Nigeria:**

Recent Developments  
and Some Proposals



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### Introduction

In most modern legal systems the prosecution of offences is conducted by government employees or appointed individuals on behalf of the state. Nevertheless, it is generally recognised that individuals should also have the right to prosecute offences. In Nigeria, this right is enshrined in the Criminal Procedure Code (CPC) which provides that any person who has knowledge of the commission of an offence may institute proceedings against the offender. This right is subject to certain conditions, including that the offence must be one which is triable by a court of law and that the person instituting proceedings must have knowledge of the facts of the case. The right of private prosecution is a fundamental principle of justice, and it is essential that it should be preserved in any legal system. In Nigeria, the right of private prosecution is a relatively new concept, and it is important to examine its recent developments and to propose ways in which it can be improved.

This paper traces the development of private prosecution in Nigeria from its origins in the common law to its current position in the Nigerian legal system. It examines the challenges faced by private prosecutors in Nigeria and proposes ways in which these challenges can be overcome. The paper also discusses the importance of private prosecution in the Nigerian legal system and the need to preserve this right for all citizens. The paper is divided into three main parts: the first part discusses the origins of private prosecution in the common law; the second part discusses the current position of private prosecution in Nigeria; and the third part discusses the challenges faced by private prosecutors in Nigeria and proposes ways in which these challenges can be overcome.

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### *I*ntroduction

In most modern legal systems the prosecution of offences is conducted by government employed or appointed officials on behalf of the state. Nevertheless, it is generally recognised that private individuals also have an important, if somewhat diminished, role to play in this process. Recent legislation introduced into one of the 21 states of Nigeria has, however, partially abolished the right of private prosecution except in relation to the offence of perjury. This, and the additional controversy surrounding one man's attempts to prosecute two government security agents for the murder of his friend, has generated a surge of interest in a topic which has for the most part been largely ignored.

This paper traces from a historical perspective the role of the private prosecutor in the criminal justice system both in England, which bequeathed Nigeria its present day legal system, and in Nigerian traditional society. An attempt is then made to examine the powers and obligations of the private prosecutor in Nigeria today, to assess the importance of that role in modern times and to identify and suggest the checks and balances that are needed to preserve the right of the citizen to seek judicial redress by private prosecution when otherwise justice would be denied.

Private prosecution in the sense used in this paper, refers to prosecution initiated by any person who is not a public official, conducted either by the complainant himself or by a private legal practitioner engaged by him. It does not refer to the situation whereby a prosecution, although instituted by the state, is conducted by a private legal practitioner with the fiat of the Attorney-General.<sup>1</sup>

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1. By virtue of the powers of control over criminal proceedings vested in the Attorney-General by the Nigerian Constitution, that official may instruct a private legal practitioner to conduct such proceedings on his behalf, *Director of Public Prosecutions v. Akoz* (1962) 1 All N.L.R.235.