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**AMALGAMATION
CENTENNIAL
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CENTENNIAL EPOCH

Memories and Legacies

of the

Nigerian State

Edited by

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Contents

Preface	vii
Contributors	xi
Foreword	xxi

A — The Colloquium: Who is This Nigeria?

1	<i>Who is this Nigeria? —H. Danmole, B. Oderinde / M. Anetekhai / S. Aina / P. Akhimien / K. Onafalujo</i>	27
----------	--	----

.....

2	<i>Ethnic Grouping and Political Development: 1914 Amalgamation and its Aftermath: A Historical Appraisal —H. A. Sanni / B. O. Animashaun</i>	37
----------	---	----

.....

B — Education and National Development

3	<i>A Political Economy of Transformations in Nigeria Education —A. O. K. Noah</i>	53
----------	---	----

.....

4	<i>Educational Reforms and National Development —S. Aina / B. Akinpelu</i>	71
----------	--	----

.....

5	<i>Rebuilding the Nigerian Image: A Strategic Approach—P. E. Akhimien</i>	93
6	<i>Postcolonial Education and Arabic Literary Studies in Nigeria: Horizons for Application—M. S. Animashaun</i>	105
C – Info-Tech, Economy, External Relations		
7	<i>Road Map to Technological Development in Nigeria: The Place of Science Education—B. T. Danmole.</i>	125
8	<i>Computer Technology and Quality Education in Nigeria —M. O. Yusuf</i>	145
9	<i>Information and Communication Technology and the Efficacy of Nigeria's Freedom of Information Act: A Call for Curricular Review—B. O. Akinpelu</i>	161
10	<i>Reinvigorating Academic Culture in Higher Institutions in Nigeria—S. A. Dosunmu</i>	177
11	<i>A Critical Appraisal of the F.O.I. Act 2011 as an Incentive for Good Governance—Okezie v. C.B.N. as a Case Study—J. Akolade</i>	193
12	<i>The Dynamics of Nigeria's Foreign Policy and External Economic Relations—A. Adeniji</i>	209
13	<i>Banking Reforms: Realities of our Times —A. O. Gbadebo</i>	237
14	<i>Nigerian Media and the War Against Corruption—L. Tella</i>	263

15	<i>Transformative Leadership: Possibilities and Future of the Nigerian State—W. O. Elias</i>	287
16	<i>Insurance Culture and Stemming the Corruption Rot —K. A. Onafalajo</i>	301
17	<i>Impacts of Manpower Planning Policy on Macroeconomic Indicators in Corporate Governance—K. A. Ige</i>	321
D – Ethno-Religious Coexistence		
18	<i>Ethno-Religious Rivalries and the Continued Existence of the Nigerian Nation—N. Yusuf / Z. Abdulbaqy</i>	343
19	<i>The Role of Traditional Institutions in Land and Boundary Disputes and Conflict Settlement in Nigeria—J. O. Fatile</i>	374
20	<i>Relevance of Traditional Rulers in Modern-Day Administration—B. Fajonyomi</i>	393
E – Politics		
21	<i>Heightening Political Awareness, Legal Education and Judicial Independence for Sustainable Democracy —G. A. Olagunju</i>	415
22	<i>Leadership and Corporate Governance in Nigeria: A Critical Appraisal—K. A. Olatunji</i>	435

F – Security

- 23 *Securing the Nigerian State for Development*
—N. Alliyu 453
.....
- 24 *Rebranding the Police for Political Stability:
Major Considerations*—B. J. Adele 473
.....
- 25 *Technology and the Efficacy of Law Enforcement in
Nigeria's Transport System: An Overview*—V. Akinpelu 491
.....

G – Agricultural Productivity

- 26 *Agricultural Productivity and Economic Buoyancy*
—E. A. Oyedunmade 509
.....
- 27 *Developing Fish Farming for Economic Growth*
—S. L. Akintola / E. O. Lawson / M. A. Anetekhai 523
.....

H – Public Policy, Music, Medicine, Sports

- 28 *Music and National Development: Engendering Understanding and
Peaceful Coexistence in a Multiethnic Nation*—B. Adebisi 551
.....
- 29 *Making Breast Cancer a National Health Priority*
—A. Adisa 567
.....
- 30 *The Centrality of Sports in Economic Progress and
National Unity*—C. Fasan 585
.....

21

Heightening Political Awareness, Legal Education and Judicial Independence for Sustainable Democracy

Gbadebo A. Olagunju

JUDICIAL INDEPENDENCE IS THE COMPLETE LIBERTY OF INDIVIDUAL judges to hear and decide the cases that come before them, free from interference of any kind. Its independence will be a cornerstone of the Nigerian legal system. The principle will be upheld as a fundamental constitutional right. An independent judiciary has long been recognized as the foundation upon which true democracy rests, because it allows judges to make impartial decisions, without fear of dire consequences. This is important because public trust in the judiciary depends upon societal confidence in the impartiality of individual decisions.¹

Introduction

“Every nation has the government it deserves.”² This was a common 19th-century saying often credited to Joseph de Maistre, a French lawyer, diplomat, writer and philosopher.³ The saying became popularized in the United States in the 20th century by Alexis de Tocqueville thus: “In a democracy, the people get the government they deserve,”⁴ without much credit to de Maistre. The purport of this statement is to the effect that the people are responsible for the kind of leadership they get, since the power of choosing their leaders through the electoral process in a democratic setting lies with them. If the power is exercised judiciously and wisely, they get good leaders and consequently good government; but if otherwise they get bad leaders and bad government and hence become victims of their choice.

It is from the above premise that we discuss the issue of heightening political awareness, legal education and political independence for sustainable democracy in Nigeria. We take heightened political awareness here to mean increase in the awareness and the consciousness of the people toward their political responsibility in the Nigerian polity. If this is the case, how can legal education and the independence of the judiciary be used to sustain this awareness for a stable, sustainable, long-lasting democracy and good governance within the nation, which will benefit the masses?

This work will be discussed in two major parts, namely: Legal education in Nigeria, and the judiciary and judicial independence in Nigeria. The work will conclude with suggestions and recommendations on how these two can pave way for a sustainable democracy in our country.

Legal Education in Nigeria

In order to fully grasp the meaning of this topic, it is important for us to understand the history of legal education in Nigeria. For this reason let us go into a bit of historical discourse concerning legal education.

a. History of legal education

In 1861, Lagos was formally ceded to the British Crown under a treaty of cession. The following year, the colony was annexed as a settlement under the British administration and a court was established there. By 1863, the administration introduced English law into the Colony of Lagos, with effect from March 4, 1863.⁵ In the same year, the first Supreme Court, conferred with both criminal and civil jurisdictions, was established for the Colony, thus began the journey of the introduction of the British-type legal system into Nigerian society.⁶ The implication of this was that the system had to be serviced by legal practitioners who must appear for their clients before the courts, since these were purely formal courts requiring special procedures for presentation of arguments and claims. The reality on ground, however, was that there was no structure in place for the training of legal personnel to meet this task; thus, as noted by a learned writer, this role had to be filled by persons not trained in law but who only acquired some knowledge of the law in the course of working as court clerks or clerks in some law offices.⁷

This situation went on until 1876, when the first attempt at regulating the profession was made by a Supreme Court ordinance passed that year. Under the ordinance, the Chief Justice was empowered to approve, admit and enrol to practice as barristers.

ters and solicitors in the Court such persons as shall be admitted as legal practitioners in the United Kingdom. Three broad categories of persons who can practice law in Nigeria were also laid down by the ordinance as follows:

1. Persons who were entitled to practice law in Great Britain as barristers or solicitors.⁸
2. Persons who had been articled for five years in the office of a practicing barrister or solicitor residing within the jurisdiction of the Court and who had passed examination on the principles of law prescribed by the Chief Justice.⁹
3. Persons of good character who had acquired some working knowledge of English law. These could only be admitted for a renewable period of six months.¹⁰

To therefore practice law in Nigeria, you must be British-trained and be accustomed to British law and legal system without due regard to the peculiar Nigerian local environment and needs. This continued till even after Independence in 1960 and it had a lot of disadvantages, as rightly noted by a learned scholar:

The year 1962 marked a watershed in the history of the legal profession in Nigeria. Before that year, there was no local facility for legal education in the country. Consequently, legal practitioners . . . consisted of those who had received the requisite training in England and had been called to the English Bar. On their return to Nigeria, they were enrolled as legal practitioners. One major disadvantage with that system was the fact that although Nigeria had gained political independence from British colonization on October 1, 1960, alien Westminster legal education was imported wholesale . . . without due regard to the obviously differing

social, cultural, economic, and educational circumstances, among others.¹¹

Another learned scholar argues elsewhere that the non-establishment of a formal training school for lawyers in Nigeria was a deliberate British policy to ensure perpetuation of colonialism, especially with the perceived threats lawyers (as elites) could pose to such a system of governance. According to him:

I daresay that the non-establishment of such training institution in Nigeria then was a deliberate policy of the British to ensure a perpetration of colonialism and subjugation of the local populace.¹²

These same sentiments were earlier expressed by Yash Ghai in 1987:

The British colonial authorities had a deep-seated fear of lawyers. The Indian nationalist movement had been led by lawyers, and the British, anxious to forestall a similar challenge in Africa, discouraged the training of African lawyers. When institutions of higher education came to be established in Africa after the Second World War, law was conspicuously absent from the subjects offered. The primary method of entry into the legal profession was through qualification in England as a solicitor or barrister, but the colonial authorities refused to provide scholarships for law. In East African countries, which were based to a significant extent on the "plantation economy" model (with the immigrants favored in major sectors of the economy), this meant that few Africans trained as lawyers. In West Africa, where economic development was based on African peasant production, there was private money for higher education, some of which went into training lawyers. In 1960, for example, there was only one African lawyer in Tanganyika

(as it was then known); only 10 out of 300 qualified lawyers in Kenya were African, while in Uganda the figures were 20 out of 150. In West Africa there were 1300 African lawyers.¹³

This was the situation until April, 1959 when the government set up a committee on the future of Nigerian legal profession headed by Mr. E. I. G. Unsworth (a Briton), then Attorney-General, with the terms of reference to:

... consider and make recommendations for the future of the legal profession in Nigeria, with particular regard to legal education and admission to practice; the right of audience before the courts and the making of reciprocal arrangements in this connection with other countries; the setting up of a General Council of the Nigerian Bar; the powers and functions of such a Council; the institution of a Code of Conduct; the disciplinary control of the members of the profession; and the principles to be applied in determining whether a member of the Bar should be prohibited from practicing in Nigeria.

The committee's report was published in October 1959 and it recommended, *inter alia*, as follows:

- a. Legal education should be provided locally and adapted to the needs of Nigerians;
- b. faculties of law should be established at the University College Ibadan and in other universities to award degrees in law;
- c. a law school should be established in Lagos to provide practical training for law graduates; and
- d. a university degree in law should be an essential requirement for legal practice in Nigeria.¹⁴

The above recommendations gave birth to two laws needed to establish the training and practice of lawyers in Nigeria, as follows:

- a. The Legal Education Act 1962¹⁵; and
- b. The Legal Practitioners Act 1962.¹⁶

Also, in consequence of the recommendations, faculties of law were established in the following universities:

- i. University of Nigeria, Nsukka, 1961;
- ii. University of Lagos, Akoka, 1961;
- iii. University of Ife (now Obafemi Awolowo University), Ile-Ife, 1962; and
- iv. Ahmadu Bello University, Zaria, 1962.

These then became the pioneer faculties of law in Nigeria, vested with the responsibility to train the first set of indigenous lawyers with local content in the curriculum. Today the numbers of law faculties have increased to over thirty with most states having their own universities and a faculty. With the deregulation of the education sector, private law universities have also sprung up, some with faculties of law. In Edo, for example, there are two of such faculties at Igbinedion University, Okada, and Benson Idahosa University, Benin City.

The Legal Education Act 1962 also gave birth to a body called the Council of Legal Education, charged with the general responsibility for "the legal education of persons seeking to become members of the profession" in Nigeria. In order to fulfill this responsibility, the Council established the Nigerian Law School in Lagos in 1962 to run a one-year course of practical training in practice and procedure relating to law. The school took off

in 1963 with 9 students. The number rose to 225 in 1973. Today, the school has well over 4,000 law graduates from all over Nigerian universities in its enrolment annually. It was this enrolment upsurge that necessitated the decentralization of the Law School. Today there are four campuses of the school spread all over the country: Abuja (headquarters), Enugu, Kano, Lagos, and lately, Bayelsa.

In spite of the decentralization, it is worthy of note that the main objective of setting up the school (the provision of practical legal training) remains unchanged. Eri rightly observes with the comment thusly:

The training at the Law School was and is still meant to devote quality time and attention to practical application of the law on the field as opposed to theoretical exposition of the law as learned in the classrooms. Toward achieving this result therefore, emphasis is placed on those subjects not taught in the universities and which subjects are *sine qua non* to legal practice.¹⁷

b. Entrance to the Bar

After having completed the four- (direct entry) or five-year (O'level) course in the university, a student is awarded the Bachelor of Laws (LL.B.) degree. Now referred to as a law graduate (not a lawyer yet), this degree qualifies the holder to apply to the Law School to undergo the one-year course of practical training aforementioned. At the end of the training, the candidate sits for the bar final examinations. On the successful completion of the examination, the student is called to the Bar, issued a certificate of Call to Bar¹⁸ and enrolled as a solicitor and advocate of the

Supreme Court at a grand ceremony anchored by the Bod Benchers in Nigeria.¹⁹ It is at this stage that the person can be said to have obtained legal education and deemed to be called to the Bar. The certificate entitles him to practice law in any court in Nigeria.

The Judiciary and Judicial Independence in Nigeria

The judiciary is an arm of the legal profession. It is indeed an offshoot of the Bar. It is sometimes also referred to as the Bench. Without the Bar, therefore, there can be no Bench. It is from the Bar that members of the Bench, or the judiciary, are drawn. Therefore, there must be, first and foremost, a Bar in existence before the Bench or the judiciary is formed in the legal system of any country. On this we will once again like to revert to retired Justice Eri, when he rightly observes:

I call the Bench my secondary constituency because the Bar is indeed my first and primary constituency. You would all agree with me that the Bench is an offshoot of the legal profession. Members of the Bench are first and foremost members of the legal profession. They are products of legal education. The Bench is the younger brother of the Bar.²⁰

It is from the above premise that we discuss the judiciary in Nigeria.

a. Role of the judiciary in governance

The judiciary as the third arm of government is regarded as the bastion of justice and the last hope of the common man. History is replete with instances when it was the judiciary that saved the situation in the face of obvious anarchy, chaos and breakdown

of law and order. This is why at every turn in the history of nations, it is only fearless men of integrity that should be put in the judiciary. A rotten judiciary will immediately be destructive to the nation. If the judiciary is corrupt, the nation will be corrupt. Not only that, injustice will permeate the land. Soon and very soon anarchy will set in.

Where a judge cannot deliver judgment based on the facts before him, but goes ahead to rely on sentiments or extraneous issues as a result of external influences, either from the other two arms of government or from any quarter whatsoever, then the rule of law is under threat in that country and the rule of force is bound to set in sooner or later. Therefore, the entrenchment of good governance, the bedrock of sustainable democracy, depends largely on good, upright and incorruptible judiciary. The dictum of Niki Tobi, the erudite Supreme Court Justice, firmly supports this view when he declares thus in *Eriobuna v. Obiorah*²¹:

A judge, by the nature of his position and professional calling, is expected to be straightforward, upright, diligent, consistent and open in whatever he does in court and in other places of human endeavor that he happens to find himself. This is because his character as a judge is public property. He is the cynosure of the entire adjudication in the court, and like Caesar's wife of ancient Rome, he is expected to live above board and above suspicion, if the judicial process should not experience any reverse or suffer detriment. A judge should know that by the nature of his judicial functions, he is persistently and consistently on trial for any improper conduct immediately before, during and immediate after the trial of a case.²²

A judiciary that can demonstrate these attributes must, to a large

extent, be free and independent. And this takes us to our next discussion.

b. Is the Nigerian judiciary independent?

We start this segment with the words of a former two-time Nigerian leader, both as a military head of state and as a civilian president, thus:

The rule of law stands as a vital underpinning for our society. By upholding the rule of law, our judiciary acts in the interests of all Nigerians, securing their personal safety and freedoms and safeguarding the integrity of the nation. At the head of our judiciary stands the Chief Justice of the Federation. To discharge these heavy responsibilities, he and his judges must be—and are fully—independent of the executive. No one is more conscious of this than I am. He and his judges will know that my administration strives to respect their independence and to comply with their judgments whenever this is called for. I can assure the Chief Justice of the Federation and the Chief Judges of the states that I will do everything I can to support their endeavors to raise the quality of the justice afforded to our fellow citizens.²³

The above is the picture of the Nigerian judiciary, at least since the country returned to a new democratic dispensation in 1999 after long years of military rule. To ensure this independence, the 1999 Constitution defines and delineates the functions of the three arms of government. Section 6 of that document states, *inter alia*, as follows:

1. The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.

2. The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.

Also, chapter 2 talks glowingly about justice and independence of the judiciary as veritable tools for sustainable democracy. For example, section 14 in that chapter provides, *inter alia*:

1. The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.

While section 17 provides:

1. The state social order is founded on ideals of freedom, equality and justice.
2. In furtherance of the social order—
 - (a) every citizen shall have equality of rights, obligations and opportunities before the law;
 - (b) ...;
 - (c) ...;
 - (d) ...; and
 - (e) the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.

The whole of chapter 7 makes provision for the judiciary. It lays down the structure of the courts: mode of appointment of judges, from the Supreme Court down to the high courts; the composition of the courts; jurisdiction over cases; right of appeal in cases; qualification for appointment, and so on.

Since this is not an exercise in constitutional appraisal, it is not the intention here to discuss the provisions of chapter 7, how-

ever there is a pertinent question which is often asked by protagonists of judicial independence, and this is that, insofar as the chapter makes provision for the appointment of judges by the executive arm of government, can these appointees be independent in the true sense of the word?

It is this writer's view that, notwithstanding the mode of appointment of judges, since the functions of the judiciary are clearly spelt out and defined in the Constitution itself, the independence of the judiciary is already guaranteed and remains sacrosanct. Besides, it is not the executive that makes the appointment *per se*. Such appointment is made upon the recommendation of the National Judicial Council (a constitutional independent body for that purpose),²⁴ and it is then subject to confirmation by the Senate in the case of federal courts,²⁵ or the state house of assembly, in the case of state courts.²⁶

A learned writer and no doubt one of the very brilliant minds in the profession argues, however, that the much-talked-about independence may appear on paper only, especially in the case of state courts where the executive seems to interfere with dispensation of justice in their domain and this may not augur well for our democracy. This, he notes, is absent in federal courts. According to him:

On paper, the Nigerian judiciary appears independent, but in actual practice it is otherwise, particularly at the state High Courts level. Without any fear of contradiction, federal judges are not known to be under any direct dictation as to how to deliver some judgments, as against what happens in some states. In the early days of the Nigerian judiciary, even up to the Second Republic, Chief Judges . . . would personally take up complex and constitutional matters involving their Governors and deliver judgments, not

minding whose ox was gored. Alas, the story has changed nowadays and some Chief Judges are scared of taking cases involving their governments and Governors, and would rather prefer to assign those cases to newly appointed judges. This is not fair to the system and we have to go back to the drawing board. It is also not part of the functions of the Chief Judges to identify themselves as part of the Executive members of their states, and care must be taken by some of our Chief Judges not to donate the judiciary as annexures/extensions to some Government Houses. There is no way a judge can be impartial and objective in a democracy if he is tied to the apronstrings of the Executive.²⁷

This is not a wholesale condemnation of the state judiciary, however. Indeed there are still many fearless and respectable judges out there in the state ready to uphold the principles of justice, no matter whose ox is gored.

c. An independent judiciary paves way for just and fearless dispensation of justice

Two cases will suffice to illustrate this point. One is that of *Ojukwu. v. Governor of Lagos State*,²⁸ during the military era. In that case, the plaintiff had been forcefully ejected and dispossessed of his property at Queen's Drive, Ikoyi, by the state government. The court did not mince words in admonishing the government, describing its acts as amounting to "executive lawlessness," and then went on to give judgment against them. RMS

Another was the case of *Shugaba Abdurrahman Darman v. Minister of Internal Affairs*,²⁹ in Borno, during the Second Republic. Shugaba was wrongfully deported on allegations that he was not ^a Nigerian. He challenged the deportation, and the court not only overruled the order but seriously condemned the act as a

violation of his fundamental rights as enshrined and guaranteed in the then (1979) Constitution. He was also awarded damages.

This is what should obtain in a system where the judiciary is truly independent and one would hope that this tradition will continue today under the 1999 Constitution. Both judgments were against the executive arm of government.

Conclusion

We have so far traced the history of legal education in Nigeria and the establishment of the legal profession in the country. This took us to the judiciary, an offshoot of the Bar. We also looked at an independent judiciary as *sine qua non* to a sustainable democracy.

A work of this nature will not be complete without making a few suggestions and recommendations with a view to improve what we already have on ground. First, state executives must be very wary in interfering with judicial process in their states either through subtle influence or intimidation. This can only be achieved, however, if the head of the judiciary in the state (the Chief Judge) is cognizant of the fact that the judicial power of the state is vested in him and other judges under him. He must therefore, at all times, be ready to protect his colleagues. What however obtains most of the time, are situations where we find some Chief Judges dining and wining with the executive at the expense of their own institution and in the process they sell out their fellow colleagues at the Bench. As ^{noted by} notes Olanipekun, what is the motive of assigning a controversial case to a new wig at the Bench if not to unduly expose the wig to jeopardy?

Secondly, the working conditions of judicial officers must continually be improved. Happily, today the remuneration of judges in Nigeria can compete favourably with most of their

counterparts elsewhere. It should not stop at this, however; the environment (courtrooms and its adjuncts) should be made very conducive not just for the judges but also litigants as well.

Over the years, emphasis had always been laid on remuneration of judges, not minding those who also work with them to ensure that the wheel of justice does not grind to a halt. This work will therefore also like to suggest that all those working in the judicial arm, judges or judicial staff, be adequately remunerated and provided good working tools and environment. We should also ensure that adequate training is given to these persons regularly to update them. A well-trained, functionally efficient, well remunerated and happy court registrar or court clerk is likely going to be of more value to the judge than an unhappy one.

Thirdly, for a complete independence of the judiciary toward a sustainable democracy, the judiciary itself must be its own watchdog. There should be no cover-up for compromising, corruptible and dishonest judges. In this, the National Judicial Council must constantly live up to expectations by promptly investigating all allegations of impropriety against any judge, no matter how trivial.

Finally, the Nigerian people themselves must ensure that their hard-won freedom as enshrined in the 1999 Constitution, which guarantees that the three arms of government are separated and independent of each other, is not taken away by anybody, overtly or covertly.

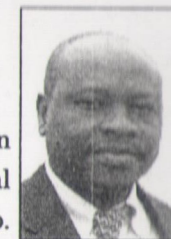
"Eternal vigilance," as they say, is "the price of liberty."

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- 9 Supreme Court Ordinance 1876, S. 73.
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- 11 Mitee, L. E. 2009. *Introduction to Nigerian Legal System (2008)*. See also Umaru Eri, *Legal Education in Nigeria from 1960 to date: Problems and Prospects*. Abuja: National Judicial Institute. 8.
- 12 Eri, 7.
- 13 Ghai, Y. 1987. *Law, Development and African Scholarship*, 50 M.L.R., 750 at 751. See also Twining, W. 1966. Legal education within East Africa. In *East Africa Law Today*. London: British Institute of International and Comparative Law. 116-117; Ghai, Y. 1981. Law and lawyers in Kenya and Tanzania: some political economy considerations. In Dias et al., *Lawyers in the Third World: Comparative and Developmental Perspectives*. Uppsala. 148-149
- 14 See *Unsworth Committee Report 1959*. Lagos: Federal Government Press. See also Okonkwo, C. O. A historical overview of legal education in Nigeria. In Ayua, I. A. and Guobadia, D. A., eds. 2000. *Law, Justice and the Nigerian Society, Essays in Honor of*

Justice Muhammed Bello. Lagos: Nigerian Institute of Advanced Legal Studies, and also *Report of the Committee on Legal Education for Students from Africa* CMND 1255 (1961) for more detailed discussions.

- 15 This Act was meant to regulate practical legal education in Nigeria. It was repealed by the Legal Education (Consolidation, etc.) Act 1976. This has also been amended by the Legal Education (Consolidation, etc.) (Amendment) Act 1992.
- 16 This was meant to regulate the legal profession and the practice of law in Nigeria. It was repealed by the Legal Practitioners Act 1975, which has also been amended several times.
- 17 Eri, 23.
- 18 This is professionally called the Barrister at Law (B.L.) certificate.
- 19 This body is vested with the responsibility for the formal call to the Bar of persons seeking to become legal practitioners in Nigeria. See S. 3 Legal Practitioners Act 1975. It should be noted that, apart from passing the exams, a student is expected to be a "fit and proper person" to enter the profession; therefore he must satisfy the Body of Benchers that he is of "good character." See S. 4 Legal Practitioners Act 1975.
- 20 Eri, 27.
- 21 (1999) 8 *N.W.L.R.* (Pt. 616) 622.
- 22 *Ibid.*, at 630.
- 23 Obasanjo, O. 2002. President and Commander-in-Chief, Dec. 2001, Foreword to *Report on State Integrity Meeting in Lagos: Strengthening Judicial Integrity and Capacity in Nigeria*. Petter Langseth, ed. Oct. 5.
- 24 See Third Schedule, Part I (I).
- 25 See Sections 231, 238, 250, 256, and 266 of the Constitution.
- 26 See Sections 271, 276 and 281 of the Constitution.
- 27 Olanipekun.
- 28 (1986) 3 *N.W.L.R.* (Pt. 26) and also 2 *N.W.L.R.* (Pt. 18), 621.
- 29 (1981) 2 *N.C.L.R.* 459. See also (1982) 3 *N.C.L.R.*



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