



The Relevance of the Judiciary in the Polity—In Historical Perspective

by
A.G. KARIBI-WHYTE



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– IN HISTORICAL PERSPECTIVE**

by

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INTRODUCTION

I REGARD it a great honour to be invited by the Director-General to deliver the celebration lecture of this famous Institution for this year 1987. By this gesture I am now counted among the renowned scholars usually invited to do so since the official opening of the Institute eight years ago. I am indeed flattered. I recall with humility and trace my association with your Institute to the period of its conception. I have accordingly whenever possible, actively participated in some of your seminars and workshops, not as a member of the academic side of the legal profession, but as a member of the judiciary whose whet appetite for learning the law has not been blunted by the depressing workload in the courts. I therefore thank you very much for the opportunity.

You have limited my choice of topic to a legal subject of current matters both to the academic community as well as to the country at large. Considered generally, many current topics fall within the scope suggested. I think I am right in assuming that any aspect of the recently concluded debate on the political future of this country is both relevant and topical. It is also reasonable to assume that any topic touching on the judiciary will be securely within the scope of the limitation imposed on my choice of a topic. The topic I have chosen for this lecture therefore is "The Relevance of the Judiciary in the Polity — In historical Perspective". This topic touches and concerns the role of the judiciary in the State and especially its impact over the years on national aspirations in several aspects of political and social activities. The past is now history and we look to the future with hope; the present for another history. History it is said repeats itself. But our history of political development is what we sincerely do not wish a repetition. Our assessment of the part played by the Judiciary in this exercise is the subject matter of this exercise. I crave for forgiveness and indulgence where in my confusion I wonder into unfamiliar areas. The reason is that I consider the effort an integer of the experience of our forefathers and the imposed civilisation we now enjoy with relish in infantile innocence.

GENERAL OBSERVATIONS

Nigeria became a sovereign State more than twenty-six years ago. This was on the 1st October, 1960.¹ The Constitution of the country has changed thrice since then. The first change which did not effect a major alteration in the context was in 1963 when Nigeria became a

1. Nigeria Independence Act, 1960 (8 & 9 Eliz. 2 c. 55)

Republic². The second change was as a result of the ousting of the civilian government by a Military coup d'état on the 15th of December, 1966³. Relevant sections of the Constitution were suspended and a Decree was issued to provide support for the legality of the Military Government. The Military Government subsequently after eleven years effected the replacement of the existing constitution with another, which came into effect on the 1st October, 1979⁵. This constitution ushered in a civilian government which lasted only for three years and seven months when the Government was ousted by another coup on the 31st December, 1983. In its usual pattern, the Military Government merely suspended sections of the constitution and other provisions which gave legality to their assumption of the government of the country⁶.

The Judiciary has always been recognised as a participant in all the constitutions, primitive, colonial or modern. Its collaborators are the legislative and executive. The Judiciary is a department of the Government which deals with the settlement of disputes between members of the State and the Government, or between artificial and other persons or the Government.

The debate concerning the future constitution of the country has been predicated on the assumption that the suspended 1979 constitution has failed and found to be unsuitable for the circumstances of this country and a new constitution ought to be fashioned. The considerations of the type of government include a return to the traditional pattern of government, government by the wealthy, or to plutocracy and a recognition of the reality of the present situation by providing for a permanent participation of the Military Government affectionately described as diarchy. It is however comforting *pro tempore* to observe that there is a clear recognition of the Military Government as a constant and indispensable factor in the governance of the country. The severe strictures on the assessment of its participation in the performance so far, notwithstanding.

GENERAL JURISPRUDENTIAL BACKGROUND (ETHNIC AND CULTURAL CONSIDERATIONS)

The geographical area constituting modern Nigeria has been populated by persons of two distinct physical characteristics – namely, the Negro and Hamite. To a certain extent, but has not entirely, the organisation of the heterogeneous communities in the country can be determined by this grouping. However, it is only necessary

2. See Constitution of the Federation 1963, Act No. 20 of 1963

3. See Constitution (Suspension & Modification) Decree No. 1 of 1966

4. See Sections 1, 2, 3 of Decree No. 1 of 1966

5. See Nigeria Constitution Decree No. 25 of 1978

6. See Constitution (Suspension and Modification) Decree No. 1 of 1984, section

our purpose, for the time being, to consider even if very summarily, the original political organisation of the indigenous communities as those with organised political institutions, such as chiefs, courts etc.⁷ and those which lack such organisation⁸, the first group developed highly centralised pyramidal political structures, in the form of a cohesive established administrative structure and economic systems featuring occupational specialisation and advanced agriculture⁹. In addition they developed an established judicial organisation with courts and an appellate structure culminating in the sovereign. In this category are the Hausa Fulani with Nupe, Ilorin, which controlled nearly three quarters of the Northern Region, the Kanuri of Bornu, the Jukun, of the Benue Valley, the Igalla and Idowa. Also in this classification are the Yoruba, and Edos and their offshoot of the Itshekiri, Urhobo, Ika, Onitsha who claim to have descended from Benin.

It has always been asserted by writers that the people of East of the Niger in the area now known as the four Eastern States as a whole had no organised political system, that their political organisation remained segmentary and were therefore regarded as communities without organised political system capable of discharging the functions of a modern local government. It is however admitted that around 1500 A.D., a number of city-states developed along the coast and the principal trade routes and had so grown at the time of European penetration. The historical fact made that entire assumption suspect. There is sufficient evidence to reject the conclusion that the city-states along the coast which were represented by the Efiks and the Ijaws had no organised political system. The evidence available is that the people lived in communities organised under a hierarchy of chiefs, with a king as the overall ruler and enjoyed a regular system of administration of justice^{1 2}.

(ii) JURISPRUDENTIAL DEFINITION OF TERMS

It must be understood that every society however rudimentary developed its institutions in response to the social and political interaction of its members and for the solution of its political, social and economic problems. The absence of a particular institution formulated in one society and its presence in another is not conclusive that there is no comparable arrangement for the solution of similar problems in

7. Chiefly societies – see Elias T.O. *The Nature of African Customary Law* (1956) p. 13; Arikpo, Okoi, *The Development of Modern Nigerian* (1967) pp. 22-24.

8. Acephalous societies

9. Okoi Arikpo, *The Development of Modern Nigeria* (1967) pp. 22-24

10. *Ibid*

11. Hailey, Lord, *Native Administration in the British African Territories* (Part III) (1951) p. 155. Mesk, C.K. *Law and Authority in a Nigerian Tribe* p. 332.

12. See Dike, K.O. *Trade & Politics in the Niger Delta* (1963); Jones G.I. *The Trading States of the Oil River* (1965) chapter 1.