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CONFERENCE PAPERS**

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8th–16th MARCH 1982

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His Excellency Alhaji Adamu Atta, Governor of Kwara State

ADDRESS OF WELCOME BY HIS EXCELLENCY,
ALHAJI ADAMU ATTA, GOVERNOR OF KWARA STATE

Mr. President,

The Chief Justice of Nigeria,

Your Lordships,

Ladies and Gentlemen,

It is a great pleasure for me to welcome Mr. President and your Lordships to Ilorin on this very important occasion of the All Nigeria Judges' Conference. I understand that this is the first time this Conference has been held outside Lagos. For this Kwara State feels very highly honoured to be the first State in the country to host this Conference of the most distinguished men and women of the Higher Bench of this great country.

At this juncture, I want to specially thank Mr. President for finding time, in spite of your various and crowded official engagements, to come and open this epoch-making conference; and for the great respect which you, Mr. President have for the Judiciary of this country which was recently and manifestly stated by you during a dinner party which you gave in honour of judges and members of the Federal Judicial Services Commission on February 19, 1982

I have the greatest respect, trust and confidence in our Judiciary and respect for the rights of all Nigerians under the constitution.

Indeed, the Nigerian Judiciary has carved an excellent niche for itself by the integrity, ability, probity and dedication of its Judges. There is no gainsaying the fact that over the years our country's Judiciary has helped to stabilise our society and has made positive contributions towards the nation's peaceful continuity and progress. As you, Mr. President, have again recently and truly stated:

We are extremely lucky in being able to evolve, over the 20 years of our independence, a Judiciary that is truly indepen-

ADDRESS OF WELCOME

dent, a Judiciary that is honest and a Judiciary that has set standards for the rest of Africa to follow.

Your Lordships, you will no doubt agree with me that there can be no other greater tribute and acknowledgment of faith in the country's Judiciary than this given by our President himself.

In the international scene, it is pertinent to happily observe that it is only a couple of days ago that an illustrious son of Nigeria, his Excellency, Judge Taslin Olawalu Elias, who is also a product of our Judiciary and a former Chief Justice of Nigeria, was unanimously elected the President of the International Court of Justice in the Hague. This, in my humble view, is another very great tribute to Nigeria and its Judiciary.

Mr. President, Your Lordships, a conference such as this is usually a useful forum for cross fertilisation of ideas. I therefore hope that this conference will bring positive results that will further facilitate the smooth administration of justice in this country.

Finally, Mr. President, as you will leave us later in the day for the onward journey to Borno State for other engagements, I wish you and members of your entourage safe journey to Borno and back to Lagos.

Thank you.



The Honourable Justice A. Fatayi-Williams, C.F.R., Chief Justice of Nigeria

ADDRESS BY THE HONOURABLE JUSTICE
A. FATAYI-WILLIAMS, C.F.R.,
CHIEF JUSTICE OF NIGERIA

Alhaji Shehu Shagari,
President of the Federal
Republic of Nigeria

Your Excellency
Alhaji Adamu Atta,
Governor of Kwara State.

My Lords

The Hon. Attorney-General of the Federation

Hon. Commissioners and Members of the Kwara State House of
Assembly

Your Royal Highnesses

Distinguished Ladies and Gentlemen,

Institutionally, the judicial process was, in a sense, the heart of any political system. Even in the most simply organised societies, the role of the leader in settling disputes was, perhaps, the most important and most frequently performed. However, as the organisation of society became more complex, the leader took on other responsibilities in addition to his role as a judge.

Eventually, with increased complexity and the acquisition of sufficient economic resources, a specialised institution, the Judiciary, emerged to settle disputes. Regardless of what form the judicial system took, its basic role was and is still the same—enabling society to control or minimise conflicts. When public acceptance of the judicial system declines and each person assumed the role of the judge once again, the stability and legitimacy of the political system would vanish.

There is, therefore, no doubt that respect for law and judicial decisions is the life line of any political order.

On October 1, 1979, our country embarked on a new voyage of discovery. It is a voyage in what has been described, sometimes because of its complexity, as an uncharted sea. After two-and-a-half years as judicial voyagers, we, the judges, feel the time has come to examine our routes, our compasses, our sense of direction, and our decision making process, in order to determine whether we are fulfilling the role assigned to us by the framers of the Constitution. This, Mr. President, is the sole purpose of this Conference where the participants are chosen from among the most experienced of Nigerian justices and judges.

Judges make or interpret constitutional law as they make or interpret other kinds of law, on the basis of facts proved and assumed. They are likely to do a better job when their assumptions rest on evidence rather than hunch. Recognition of this proposition does, I think, offer hope for escaping some of the dilemmas posed by the current debate, mostly academic but sometimes cosmetic in the country over the judiciary's role in our constitutional development.

Whatever a judge's background or persuasion, he can or ought to decide a particular constitutional issue only by appraising the factual basis for the governmental action which is being disputed. Thus, the various constitutional litigations in Nigeria today demand fact analysis of the most particularised kind, with, if I may say so, the most careful identification of the interests or rights that deserve constitutional protection, both for the purpose of deciding cases and for the purpose of explaining them in the decisions.

The need for detailed constitutional interpretation arises out of the rapidity and multiplicity of contemporary social, technological, political and economic changes that require the Nigerian courts to uncover and delineate, in a short period, the many new rights and interests which are worthy of constitutional or legal protection.

It is not an exaggeration, Mr. President, to say that the survival of our present presidential system of government, with its many checks and balances, not to mention its clearly defined non justiciable provisions, depends on the continued success of the Judiciary in performing this constitutional function.

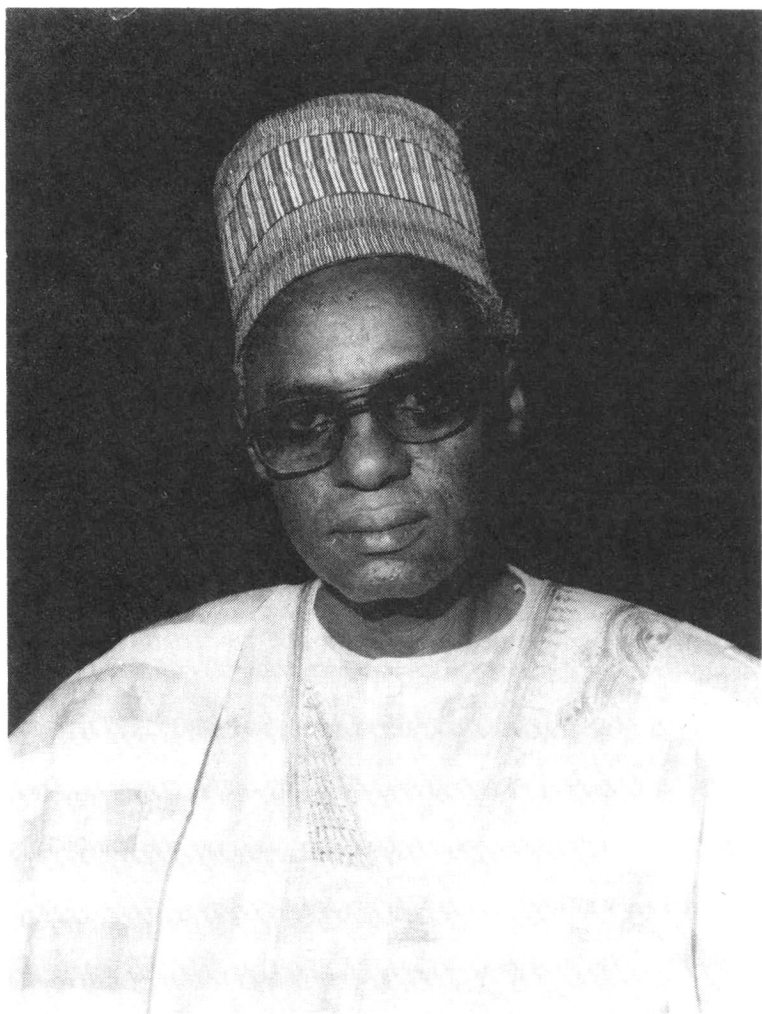
If the discussions, exchange of views and cross fertilisation of ideas which enable us, as Judges, in this crucial Judicial Conference of 1982 to identify all that is needed in order to play our role creditably, the holding of this Conference would not have been in vain.

ADDRESS BY THE HON. CHIEF JUSTICE

On behalf of the Judiciary, I have great pleasure in inviting you, Mr. President, to be gracious enough to address us and also to formally declare this all important Conference open.

A. FATAYI-WILLIAMS,
Chief Justice of Nigeria,
Supreme Court, Lagos

March 8, 1982



Alhaji Shehu Shagari, President of the Federal Republic of Nigeria

OPENING ADDRESS BY THE PRESIDENT OF THE
FEDERAL REPUBLIC OF NIGERIA,
ALHAJI SHEHU SHAGARI

My Lord the Chief Justice of Nigeria, and Chairman of the All Nigeria Judges' Conference,

Your Excellency,

Your Lordships,

Honourable Ministers,

Honourable Commissioners,

Hon. Members of the State Assembly,

Your Highnesses,

Distinguished Ladies and Gentlemen,

It gives me great pleasure to address the All Nigeria Judges' Conference this morning. I am particularly pleased to note that this Conference has now become an established extra-judicial feature of our Judiciary. It is very commendable. I congratulate you all on this foresight and hope that this forum will continue to serve as a time and place of critical self-appraisal, exchange of ideas and reflection.

This year's Conference is the first in the series to be held since we adopted the new Constitution and the Presidential system of government in 1979. It is on record that this Conference was last held in 1978 when the political programme of the last administration to return the country to civil and democratically elected government was near fulfilment.

In the 1978 Conference, your lordships addressed your minds principally to the roles the Judiciary should play in the new system of government being evolved. To this end, your lordships collectively and severally submitted memoranda to the Constitution Drafting Committee and had the honour of providing one of

your colleagues to serve as the chairman of that historic Committee. The constitution which was produced at the end of the Committee's work is, in my opinion, a masterpiece and a credit to all those who took part in that exercise. The nation owes them a debt of gratitude.

The constitution which this great country adopted in 1979 provides for a democratically elected government consisting of the Legislature, the Judiciary and the Executive. Each arm of government is separate and independent. But the Constitution itself is the basis for the actions and decisions of all the three arms of government. While the Legislature can make laws that are permissible under the Constitution, similarly, the exercise of executive action must be justifiable under the same Constitution. This is the essence of the rule of law which is also the foundation of our Constitution. I should like to re-assure you that this Administration remains committed to the observance and practice of the rule of law.

Your duty is to interpret the laws and the Constitution in matters over which you have jurisdiction. This country is one and indivisible corporate entity and our laws and their application must serve that end. In other words, although justice must be delivered according to law and the conscience of the Bench, it is also my belief that your decisions must at the same time serve to secure the sovereign and democratic existence of the Republic. Posterity will judge you by how well you have performed this duty to the people.

It must be borne in mind that the collective will of the people constitutes the supreme law. Laws, therefore, must aim at serving and protecting the interests and legitimate aspirations of the people. We are fortunate in Nigeria because our Constitution has taken the interests of all of our people into full consideration. It has provided three bodies of law which together constitute the Nigerian law. These are the common law, the Islamic law and the customary law. I am delighted to observe that in all three fields we have qualified and experienced men and women. These three arms of our law should continue to exist and develop side by side.

I am not unmindful of some of the staffing, infrastructural and other difficulties encountered by the Judiciary in the exercise of its functions. However, the Federal Government will, in conjunction with State governments, endeavour to ensure that necessary facilities and conditions are provided for the effective performance of your onerous duties.

The Judiciary in this country enjoys independence from the possible meddling of the other two arms of government. The Constitution guarantees a tenure of office and security for our

judges so that they can dispense justice without fear or favour. This means that the rich and the poor, the powerful and the weak are all treated equally by your lordships. And your decisions are never taken for granted regardless of the parties to the case before you. This independence, to my mind, is responsible for the trust and confidence which Nigerians have reposed not only in the Judiciary but in the Constitution.

I have heard it said that in some parts of the world, a judge is described as "a lawyer who knew the President or Governor personally." This is a description which I am happy to say is not applicable to our Judiciary. For one thing, we have always had an intermediating Judicial Service Commission (of one sort or the other apart from its temporary disappearance under the 1963 Republican Constitution), and for another, I do believe that the lawyer and the judge have but one thing in common: their knowledge of the law. They do, however, differ in one vitally important area: the lawyer pleads and prosecutes. He is therefore partisan. The judge is impartial and quite a different person from the man who once was a lawyer.

In the appointment of Federal judges, laid down constitutional provisions have been faithfully and strictly adhered to. No political considerations have played any part in the appointment of Federal judges since the inception of this Administration.

My confidence, indeed my faith, in the independence of our Judiciary and the impartiality of our judges has been demonstrated beyond question. They have been appointed to head various commissions of inquiry which have made far-reaching recommendations on matters of national interest and importance. In this way they have played a very significant role in helping this nation to resolve issues which would otherwise have been intractable.

On a previous occasion I told the world that our Judiciary is comparable to the best. I believe this is a view that all Nigerians share with me. It is my conviction that you will do everything in your power to remain faithful to your oath of office, to your good conscience and to the constitution of our country. In this way our Judiciary will retain the lofty heights it has attained and continue to enjoy the confidence of the Nigerian populace.

Your lordships, ladies and gentlemen, permit me to make some observations which, in my opinion, will help this conference to chart its course of judicial development in the next few years.

I would like to emphasise the need for uniformity in court processes in this country. The rules of civil process and criminal procedure in use in the Federation are divergent and in some cases outmoded. While making recommendations for unifying and

up-dating the rules, care should be taken to ensure that justice is cheap and speedy to the average litigant.

Secondly, there should be many learned journals, reports, reviews and chronicles which your lordships should encourage to be produced for the general information and enlightenment of the members of the legal profession as well as laymen. It is important to enlighten the public about our laws and government. It is when people whom we govern know what we do and how we do them that they can appreciate the role we are playing in the shaping of their destiny and how much confidence they should repose in us. Awareness and enlightenment will greatly help the governed in making the right decision for their survival and happiness under a democratic system of government such as ours.

It is not desirable that the courts continue to be plagued by the same age-old problems of mounting backlog of cases. It is a well-known legal maxim that justice delayed is justice denied. It is for this reason that I strongly urge that, during your deliberations, your lordships devise practical solutions that will reduce, if not eliminate, such impediments and other defects in the administration of justice. The improvements that you would devise should make the dispensation of justice not only expeditious but affordable. As a first step in this direction, I commend for your lordships' consideration the creation of specialised divisions of the various High Courts to deal with specialised jurisdictions. I do hope also that the Judiciary will urgently give attention to evolving a more simple but workable system of rules and procedures.

I have looked at the programme of activities of this Conference and I find it quite comprehensive. The topics listed for discussion are not only inspiring but show the awareness on the part of the Judiciary of the perennial problems that beset the administration of justice in our country.

One of the topics to be discussed is the "Fundamental Rights Provisions of the Constitution." All Nigerians will be extremely delighted to learn from the most authoritative source that their Fundamental Rights as enshrined in the Constitution are not only primordial but inalienable. They will indeed also be wiser when they realise that their own rights terminate where their neighbour's rights begin.

The Constitution remains the supreme working document of all the three arms of government. The discussions of Your Lordships on the "Problems of Interpretation and Application of the Provisions of the Constitution," will not only generate public interest but also provide an invaluable guide to those of us who need to be in touch with the provisions of the Constitution in the