BOOK REVIEWS


Together, these three books provide an interesting and informative coverage of criminal law and the criminal justice system in Nigeria. This review will consider each book individually and then make some general comments.

By virtue of the scope of its title, the authors of *Criminal Law and Procedure in Nigeria* set themselves a formidable task. The enthusiastic endorsement of the book by the Chief Justice of Nigeria in his Foreword in which he describes it as “a complete analysis of the criminal justice system in Nigeria” and “strongly recommends” it to law students, legal practitioners, judges, gives the work a terrific build-up. With respect, there is little in the book to merit such accolades. As regards criminal law, the book seeks to cover the major (and many minor) offences contained in the Criminal Code. However, the virtually impossible task of dealing adequately with each and every aspect of the subject in little more than two hundred pages means that the authors have inevitably had to make some choices as to what to include and what to exclude, what to give detailed attention to and what to merely mention in passing. The result is a very uneven mix and some very surprising choices of emphasis. Thus key issues such as causation and mens rea are confined to just a handful of pages and in both quality and quantity this is quite inadequate for a book specifically aimed, according to the Preface, at law students.

One unusual, and again unsatisfactory, aspect of the book is the decision of the authors to include some fifteen fairly lengthy extracts from judgments. The rationale for doing so, and the choice of cases themselves is nowhere explained and it is hard to see what these add to the value of the book. For example, 24 pages are devoted to the reproduction of the decisions of two Nigerian cases under the somewhat vague heading of “An offence must be committed” (pp. 17–41), and even then no comment is made as to the relevance of the cases. Even if the intention is to provide students with some cases to which they would otherwise not have access, some of the choices are strange: for example the decision of the House of Lords in *Attorney General for Northern Ireland v. Gallagher* is hardly a leading case on intoxication. The effect is to leave the reader wondering whether the authors were unable to decide whether to write a textbook or produce a cases and material book and have reached an unhappy compromise. Even more crucially, the inclusion of the cases may well have impacted negatively on the depth of the discussion in key issues of the book.

There are also some oddities with the ordering of material. Thus Part 3, entitled “Homicide”, also discusses robbery (which is described somewhat quaintly as “a heinous offence and it is very despicable and should be deprecated” at p. 134) and obtaining by false pretences. Similarly, rape appears in Part 4, which is entitled “Stealing and like offences”.

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Section III of the book on Criminal Procedure covers just 59 pages and is, in truth, little more than a repetition of aspects of the Criminal Procedure Code and Evidence Act. It therefore has little additional value for the reader and the wonder is why it was thought necessary to include the material at all.

Overall, the book can best be seen as a useful introduction to the subject for law students.

The *Nigerian Law of Evidence* on the other hand is a much more substantial work, albeit of similar length to that of Yakubu and Oyewo. It provides the reader with a detailed and readable account of the law on this complex subject that is of use to both law students and practitioners. One minor criticism is the balance of the book. To devote nearly a quarter of the entire text to two chapters covering Presumptions and Estoppel is perhaps something of an overkill, although the considerable case-law on these areas may explain the reason for doing so.

Overall, the book lives up to the view expressed by Justice A. Idako in his Foreword that it “will be of value to students and teachers of law, legal practitioners and those who are on the bench”.

The *Administration of Justice in Nigeria* contains 13 essays in honour of Hon. Justice Mohammed Lawal Uwais. Not all the essays are devoted to criminal justice: in fact several have little to do with the theme of the “Administration of Justice” at all. In addition, the length and quality of the contributions also varies markedly. Yet those on criminal justice are well worth reading and, indeed, cover some of the very ground that one would have expected to have been dealt with in Yakubu and Oyewo. For example, in his contribution “Crime and criminal laws in Nigeria” Owoade provides a thoughtful analysis of the development of criminal law in the country, and especially the contribution of the courts to this process. Overall, the volume provides an interesting and stimulating read.

The general comments about the books flows from the opening sentences of Aderemi in his contribution on “The role of a judge in the administration of justice in Nigeria”. He states:

“The title of the book *Administration of Justice in Nigeria* cannot but be very appropriate at this period of our national development. It provides an opportunity for re-examination of how justice is administered in our country, paves [the] way for improvement and thus prepares all those connected with the law for the challenges ahead.”

Yet preparing “all those connected with the law for the challenges ahead” is palpably absent from the first two books. The fact is that they seem to have been written in a kind of “time warp”, for if one looks back to the earlier works on Nigerian criminal law and evidence by Okonkwo and Naish, for instance, there is little difference in either the approach to the subjects or the topics covered. Yet the criminal law and the law of evidence have developed considerably in recent years. For example, neither book mentions the impact of technology on their respective subject areas. It is surely erroneous not to consider the adequacy of the present provisions in the Criminal Code in relation to forgery and frauds perpetrated through the use of computers. Similarly, Adah’s account of Documentary Evidence is largely applicable to a different era when bankers really did have ledgers being filled in by numerous clerks and when comparing a copy with the “original entry” was actually necessary. Similarly the significant impact of the 1999 Constitution of Nigeria on criminal law, evidence and procedure is virtually ignored. Law students, practitioners and judges of the
twenty-first century require authors to produce texts that reflect such developments and thus help prepare them “for the challenges ahead”.

Finally, it is always a pleasure to review books that have been so splendidly produced by local publishers, as is the case here.

T. L. Chenda


Few judges become well-known, let alone popular, public personalities. But then, few judges have the opportunity and motivation to play a formative role beyond the court-room, by leading their nations through major constitutional changes over several decades. This book tells the important story of one who did: the subtitle, “Francis Nyalali and the road to judicial independence in Africa”, appears only on the paper cover—perhaps an afterthought, when the book was already printed—but aptly summarizes the subject-matter.

Nyalali, Chief Justice of Tanzania for 23 years, 1977–2000 (Julius Nyerere was President for the same length of time, 1962–85), was the longest-serving “CJ” in the Commonwealth. (The average service for some other African Chief Justices is calculated as 3.6 years). He could look back upon an exceptional career of public service in which he was instrumental in transforming the work of the judiciary and the life of the nation, including replacing the one-party state by a multi-party system.

This is not a biography. Key points in Nyalali’s life are briefly noted as background to his personal and professional achievements, which are examined in the context of problems facing “the rule of law”, the administration of justice and, especially, the independence of the judges in Tanzania and in other comparable African states. The tone is one of respectful appreciation.

Nyalali’s personal story is remarkable. The Sukuma herd-boy who registered himself at primary school at the age of 11, progressed to Tabora School in the 1950s (the launch-pad for many future Tanzanian leaders, including judges) and was inspired by a visit by Nyerere, then founding TANU. After studying history at Makerere University College (no legal education in East Africa then), where he was elected President of the Students’ Guild, he went to Lincoln’s Inn, where he was called to the Bar in 1965.

The following year he was appointed Resident Magistrate in Musoma—a difficult district, not least as the President’s home area. Aware of local dissatisfaction with the judiciary, Nyalali sought remedies, “inspired by a personal interest in organizational problem solving”. He took justice to the people, taking his court on circuit, and won the trust of the community so that his proposed transfer to Kigoma was cancelled after local elders petitioned the President to block it.

Nyalali continued his innovatory approach in Tabora but regarded his next transfer, to teach on the training programme for primary court magistrates at Mzumba, as a sign of disfavour; yet it gave him further opportunities for influential innovation and also, through teaching in Kiswahili, to develop his

* A shorter version of this review first appeared in Tanzanian Affairs, issued by the British-Tanzania Society, January–April 2002, No. 71, pp. 39–43.
fluence in the Swahili legal vocabulary. He was soon moved again—to Bukoba, to deal with a growing backlog of cases by further innovations, including evening courts.

From 1971 to 1974 at Nyerere’s request Nyalali was seconded from the judiciary to preside over the Permanent Labour Tribunal, in the troubled industrial situation of workers’ strikes following the adoption of the *Mwongozo Guidelines*. He gained experience in promoting settlements by negotiation and mediation, recognizing the need for workers to be respected, including such practical steps as offering them tea in refurbished premises.

In 1974 Nyalali reached the senior judiciary, as High Court judge in Arusha. But all was not well with the judiciary (not only in Tanzania): its morale and legitimacy had declined, challenged in various ways by legislative and executive authority and provoking widespread public dissatisfaction with the courts. Indeed, Widner asserts that the rule of law had collapsed. The Judicial System Review Commission was set up, which reported in 1977.

Nyalali had decided to leave the bench to take up a new post in Geneva with the International Labour Organization when he was mysteriously summoned by Nyerere and offered the choice of an alternative appointment: Chief Justice. It must have been a difficult decision for him. He was only 42 years old, with relatively limited judicial experience, and was only eleventh in seniority in the High Court; would ten more experienced judges resent his leap-frogging? It was a difficult time for the judiciary and the collapse of the East African Community had removed the regional court of appeal, which had served Tanzania for decades. His wife and children were set on Geneva and the salary there would be incomparably higher. But Nyalali recalled his student days, when he aspired to serve his country. His choice was clear.

These and later landmarks of Nyalali’s life are dispersed through the book and frame its complex structure. Each episode provides a peg for an in-depth analysis of a relevant issue which concerned him. Most of these were issues of judicial policy, albeit with great significance for the wider public. Nyalali felt he had to build support, first within the judiciary and then with political leaders in the executive and legislature. He persuaded Nyerere to improve the judges’ terms of service but “it took him some time to learn his way around the one-party state”. His sense of history led him to restore to view in the High Court building the discarded portraits of colonial judges.

After coping with various challenges to judicial independence, the economic crisis of the early 1980s and the government’s severe response, including the (retrospective) Economic Sabotage Act, prompted Nyalali to speak with President Nyerere. Invitations followed to address first the Central Committee and then the whole National Executive Committee of the ruling party. These were crucial addresses to powerful, unsympathetic and even hostile audiences. His tactful but uncompromising speeches, explaining the judicial role and pointing out illegalities in government policies, were turning-points in the relations between politicians and judges. The new Act was amended and the Economic Crimes Court brought within the High Court. Later Nyalali was to deliver many influential speeches and conference papers.

Widner summarizes the debate which surrounded the adoption of the Bill of Rights in Tanzania in 1984, in which Nyalali was prominent. Addressing the
University Law Faculty, he gave a clear, though cautious and coded, call for a generous judicial application of the new rights. But his greatest challenge came in 1991 when President Mwinyi asked him to chair a commission on political change to a multi-party system. Nyalali knew that such a system would help to maintain judicial independence; but would he compromise that very independence by leading the review of such a highly-charged political issue? His acceptance, and his formative influence on “the Nyalali Report”, was decisive, although the public prominence it gave caused him embarrassment when, before the 1995 elections, he had to rebuff invitations to stand as a candidate for the presidency.

Into this personal story, Widner, an American political scientist, weaves comprehensive and perceptive discussions of many basic problems, apart from political interference, which have beset African judges: lack of training for judges, magistrates and court staff; lack of resources—not only weather-proof courtrooms and libraries but even paper; the colonial legacy of “deep legal pluralism”, requiring the harmonization of common law and statutes with customary and Islamic laws—Nyalali recognized that this was necessary to promote public appreciation of, and support for, the courts; the related need to promote gender equality; massive delays in both civil and criminal trials, and especially the inhumanity and costliness of lengthy imprisonment of many defendants awaiting trial while police, prosecutors and politicians resisted wider implementation of the right to bail; the development of “alternative dispute resolution” by way of negotiation and mediation; the persistent problem of corruption, in societies which paid judges poorly and lower-grade magistrates a mere pittance; problems of witchcraft and vigilantism; the promotion of “legal literacy”—public knowledge and understanding of the legal system (Nyalali invited religious leaders to participate in “Law Day” ceremonies, opening the legal year).

Nyalali was particularly successful in two dimensions. Within Tanzania he developed internal support, previously weak, for the judiciary. But he also found and tapped foreign sources which have provided ground-breaking and sympathetic assistance: Ireland, which has provided judicial training courses, and the United States, in particular the Superior Court of the District of Columbia, which responded vigorously to his initial approach, from which valuable judicial exchange visits, other practical help and deep friendship have followed. Nyalali admired John Marshall, fourth Chief Justice of the USA, whose response to political pressures early in the nineteenth century established judicial independence and offered instructive parallels.

American support helped Nyalali to realize a personal project—the Lushoto Institute for Judicial Administration, which he opened in 1996 to serve the courts of the region. This initiative symbolized Nyalali’s wish to revive regional interaction between judges and lawyers: national judiciaries had grown isolated from each other and by promoting closer contacts he sought to encourage a distinctively African or regional jurisprudence and to develop a shared body of wisdom about court administration in the local context. He cited the judicial response to the new South African Constitution as exemplifying the scope for a synthesis between worldwide principles and values and those indigenous to Africa.

Widner’s book is a mine of information, based on extensive and varied research: many interviews with Nyalali and other judges and lawyers in several
countries and study of his many speeches and papers (30 are listed in the Bibliography, the majority not published in printed form); many other published sources, most of them relatively recent, are briefly and uncritically, even deferentially, cited (and listed in a very extensive Bibliography); personal observations, for example, at judicial conferences, and opinion surveys are also used.

The structure of this long book causes some repetition, with too much detail of some legal issues for general readers but insufficient specificity and precision to satisfy lawyers (especially a failure to cite law reports of many cases discussed). Widner refers over-expansively to “the region”—“eastern and southern Africa”—but this is really a book about Tanzania. She gives several detailed references to Uganda and a few to Botswana and Kenya (including unnecessarily lengthy accounts of the celebrated Dow and Otieno cases) but only general references to other countries, with some misleading over-generalizations (e.g. that they all have English “common law”, understating the distinctive role of Roman–Dutch law, only briefly mentioned, in the majority of them). Occasional errors indicate misconceptions (e.g. the Arusha Declaration 1967 did not order “an end to trade and foreign investment” (p. 102); Lord Woolf is not Lord Chancellor (p. 261) and Dr. Aguda is a distinguished Nigerian, not Ghanaian, judge (p. 162)).

“Shared values’ that are distinctively African” is feebly inadequate as even a rough translation of “Ubuntu” (p. 398).

Nyalali would be the first to acknowledge, more directly than Widner does, the support which he received from his fellow judges, most of whom have also served Tanzania with distinction and commitment. (As Chief Justice he was influential—too influential, he complained—in selecting judges; he introduced wide-ranging consultation to fill vacancies, which continued even after constitutional amendment enhanced the authority of the Judicial Service Commission). Your reviewer admits his partiality, having had the privilege of sharing in teaching many of these dedicated judges as young students in the early days of the Faculty of Law in Dar es Salaam, which has just celebrated its fortieth anniversary.

There is no account of the formation of the Court of Appeal of Tanzania, over which Nyalali presided, or of the Conference which he organized to review its work on its tenth anniversary in 1989 (the proceedings were published). There is no systematic examination of Nyalali’s main writings—the many judgments which he delivered in the course of his long judicial service; only a few of his best-known judgments are briefly considered at relevant points. However, Widner recognizes that his opportunities to contribute to developing the new jurisprudence which he advocated were limited by circumstances (including the pressure of administrative and other commitments and the fact that, unlike Chief Justices in some other states, he presided over the Court of Appeal, which heard few constitutional appeals).

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