

**THE ROLE OF CULTURE IN TEACHING ABOUT OTHER LEGAL  
SYSTEMS –  
BY DR. TAHIR MAMMAN (THE DIRECTOR GENERAL OF THE NIGERIAN LAW  
SCHOOL) AT IALS GENERAL ASSEMBLY 2008**

Nigeria is a country that has a mixed legal system where the Common Law, Islamic Law and Customary Law cohabit,<sup>2</sup> albeit not in a happy equal partnership. British colonial rule brought in its train and imposed as a Senior and predominant partner the Common Law, equity and statutes applicable at a particular date in England, on extant Customary Law and Islamic Law to which it also ascribed the status of a Customary Law on Islamic Law in spite of its permanent, broad based and all encompassing character.<sup>3</sup>

Correspondingly, the judicature is structured to implement and apply these systems of Law, separately especially in the case of Islamic Law.

Each system of Law in Nigeria, as elsewhere in many ways represents the legal culture of a segment of the population, which have an expectation of a respect by others for its culture in all ramifications.

Faculties of Law and training institutions in Nigeria have over the years developed a mechanism for addressing the peculiar legal needs of the society essentially using two methods.

First, is through a prescribed national law curriculum that is broad to include the typical Common Law courses, and some courses on Customary and Islamic Law. All students are required to take these courses irrespective of their culture or religious background and usually offered at the second and third year stage of the four or five year long programme. The curriculum attempts to give a broad outline of the general features of Customary Law and except where specific situations have arisen in judicial processes, the existence or otherwise of a Customary Law is treated as a fact to be proved before the courts.<sup>4</sup>

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1. I wish to acknowledge the contributions made by Okorie P.C, Efevwerhan D.I and Mrs. Beatrice Shuwa – all lecturers in the Nigerian Law School
  2. World Legal Systems developed by the Faculty of Law, University of Ottawa – <http://www.droitcivil.uottawa.ca/world-legalsystems/eng.tab/edu/php>
  3. See *Onibudo vs Akibu* (1982)7sc 60; *Katibi v. Kalani* (1977) 11-12 SC65
  4. Obilade, A. O. (1990) *The Nigerian Legal System*. Spectrum, Publishers, Ibadan - Nigeria.

The main principle for the approach is to generate broad awareness among lawyers of the existence, and character of various legal culture in the country and in effect make them culturally sensitive in the practice of law.

Despite the efforts above outlined, there is a general feeling of bias against the local legal culture in favour of the imposed English statutes and rules of equity and Common Law. In effect the processes of producing culturally correct Lawyers have not achieved the desired effect.<sup>5</sup> Consequently, the faculties still face the challenge of developing innovative approaches to teaching law such as to empower legal practitioners to respectfully deal with the cultures of other people in the course of Legal practice.

A further challenge arises from globalization and the international character of trade, e-commerce; diverse and complex arena of Law on human rights, international criminal law, labour law, environmental and humanitarian law, whose boundaries go beyond national frontiers.<sup>6</sup>

There is also this further feeling by the developing world especially the Africa sub-region of being alienated in bilateral and multilateral co-operations, and collaborations, even in the intellectual activities such as exchange of scholars, students and research interest where there is considerable decline in interest in matters affecting the region.

This inevitably means less interest in understanding the legal system and legal culture of the region and tendency to continue to judge its laws from the perspective of other foreign legal cultures.

A good start at considering this challenge would be in part a mix of the menu proposed by Sue Bryant and Jean Koh Peters;<sup>7</sup> and Zamora.<sup>8</sup>

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5. Niki Tobi "The Legal Profession and the quest for genuine national integration and development:Essays in Honour of Chief Afe Babalola (SAN) (2000); Tonwe, S. O. & Edu, O.K; (2007) CUSTOMARY LAW IN NIGERIA – Renaissance Law Publishers.

6. LOUIS PERRET "Educating Lawyers for TRANSNATIONAL CHALLENGE: TRANSNATIONAL CURRICULUM FOR TOMORROW'S LAWYERS (A CANADIAN PERSPECTIVE)] at the Association of AMERICAN LAW SCHOOLS CONFERENCE ON "EDUCATION LAWYERS TO TRANSINATIONAL CHALLENGE" HAWAII, MAY 26 – 29, 2004.

7. Sue Bryant and Jean Koh Peters "FIVE HABITAT FOR CROSS- CULTURAL LAWYERING" presented at 1999 CUNY Conference on "Enriching Legal Education for the 21<sup>st</sup> Century: Integrating Immigrant's Perspectives Throughout the Curriculum and Connecting with Immigrants Communities.

8. Steven Zamora, "The Cultural Context of International Legal Cooperation" <http://www.aacs.org/2000international/English/cultural.htm>

These essentially would require improving on the current level of international Comparative Law and courses on legal history, and making some courses in this regard required courses and spread across most levels.

Secondly, externship for students abroad and opportunities for Postgraduate programmes abroad. The drawback on this would be for students from countries whose institutions are unable to offer reciprocal arrangements, especially those from African institutions by reason of lack of resources or bias from potential partners.

Third, hiring of foreign faculty or internationalization of local staff. Availability of resources will also be a handicap to hiring of foreign staff as with interaction of local staff with international colleagues. But specializing in particular foreign legal cultures shouldn't encounter such difficulty since it would be seen as an aspect of promotion of education in general.

However, the problems of budgetary constraints may be ameliorated through subsidy and grants by international organizations set up in part to reduce development gaps amongst nations by complementing the contributions of national institutions.

In the final analysis, in developing a broad curriculum, collaboration and support so as to generate "culturally correct" Lawyers, the paradigm has to be clearly defined. This paradigm among others should aim to make the law teacher or legal professional to identify assumptions which often times are used to fill in or supplant facts or draw erroneous conclusions. This paradigm will enable the lawyer assess situations or practice law based on facts, circumstances and culture of those he represents, rather than his. That is, to develop legal culture that makes the lawyer perceive "as normal things that at first seem bizarre or strange".<sup>9</sup>

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9. R. Carroll, CULTURAL MISUNDERSTANDINGS, University of Chicago Press, Chicago 1988, Page 2.

For instance, under Yoruba local succession laws, where a deceased dies intestate, succession to his property may be through “*idi igi*” or “*ori ojori*”. In the first case, the property is shared among wives of the deceased with each wife taking along with the children but in the second formula, the property is divided directly to the children. In the event of a dispute as to which sharing method to adopt, the head of the family makes a final decision.

In a dispute, involving the two methods, the trial judge held “*idi igi*” repugnant to natural justice, but was reversed on appeal by the Privy Council in England.<sup>10</sup>

Discussions on the efficacy of various legal cultures are indeed most useful for the promotion and generation of awareness of the relative value of legal solutions. Differences among legal cultures are expressions of self identity of societies which can only be understood by being respected.

Teachers of law have a special responsibility to nurture this line of orientation and develop mechanisms and platforms for dealing with the issues.

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Dawodu v. Danmole (1958) 3 FSC 46.