CHAPTER 4

Towards Reviving Legal Professionalism and the Need for Ethical Leadership

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1 Introduction

The career and achievements of Hassan Bubacar Jallow provide a template for what the public role and responsibility of the legal practitioner ought to be in modern day Africa. Certainly there is a need for sound legal education and training; however, this must be combined with a commitment to public service whether in Government, academia or civil society, as well as unflinching devotion to defend the legal values and promote and protect legal professionalism. The role of legal science and modern African legal educational institutions in comprehensively addressing the continent’s emerging problem of the decline in legal professionalism and ethical leadership is of vital importance. This is particularly so given the call for universal respect for human rights, fundamental freedoms and human dignity both from African civil society and the international community. While these ideals have been taught in legal professional courses over the decades since independence, the pervasive view of corrupt African judiciaries, the use of judges and lawyers as instruments of political repression and violation of human rights, question the effectiveness of, if not the very essence of legal science and practice.

This essay seeks to argue that one possible explanation for the current state of affairs in some African judiciaries, is the lack of adherence to norms of legal professionalism and good ethical behaviour. These twin principles are not only sine qua non to the administration of justice, but are also vital to the successful discharge of a broader public service role for lawyers, whether as state officials or in civil society. Similarly, ethical values are important to core activities such as teaching, research and scholarship within academic institutions.

In the following pages, I will discuss the role of ethics and professionalism in the discharge of lawyers’ functions and how these values should form a core part of legal training in law faculties across the continent. In doing so, I will seek to highlight the role that Hassan Bubacar Jallow has played in the establishment of the Law Faculty at the University of The Gambia and the development of the legal profession in his home country.
Legal Education and the Legal Profession in The Gambia

Despite attaining political independence from Britain on 18 February 1965, the Gambia maintained many important links with its former colonial master. One such link has been the application of the English common law system and various statutes of general application that were in force in England on 1 November 1888, as part of the Laws of The Gambia, together with customary law and aspects of Muslim Islamic law to govern certain personal matters including marriage, divorce and inheritance. In addition, from independence in 1965 to adoption of the Second Republican Constitution in 1997, the Privy Council in London served as the highest court of appeal for the Gambia.

For most of its post-independence history, the Gambia has maintained these links not only with Britain, as the former colonial power, but also with other countries in West Africa who shared with it, the common-law legal tradition. The most important manifestation of this was that the country continued to recruit Judges and Magistrates from sister countries such as Ghana, Nigeria and Sierra Leone to serve in its courts. To many observers, the composition of The Gambia’s appellate courts since independence, with judges drawn from these various West African jurisdictions, closely mirrored the erstwhile West African Court of Appeal that heard civil and criminal appeals from The Gambia, Ghana, Nigeria and Sierra Leone in the late 1960s and early 1970s. For the Gambia, the recruitment of foreign judges was due to the limited number of qualified Gambian lawyers who were willing to accept judicial appointment or other careers in the public service, whether as state counsel, magistrates or judges. However, the representation of these various nationalities at various levels of judicial service in the country also had the effect of enriching the local jurisprudence with insights from the judges’ home countries.

As already discussed elsewhere in this volume, Hassan Bubacar Jallow served as Attorney-General and Minister of Justice in The Gambia from 1984–1994, a period during which he advocated for and led many initiatives to promote legal education, increase indigenous capacity in law, and develop the legal profession in the country. These initiatives seemed to have been borne out of a firm belief that by increasing opportunities for Gambians to receive legal training at home, there would develop a critical mass of qualified Gambians who could assume functions in the public sector legal and judicial services.

In this regard, during his tenure as Attorney-General, Hassan advocated for a shift in Government policy by which legal training was included among the list of priority areas for Government-sponsored training. By this policy, The Gambia Government awarded scholarships to qualified young Gambians to study law at Universities in West Africa, especially Sierra Leone and Nigeria.