## Contents

	Acknowledgments	ix
	Foreword	хi
	PROFESSOR ABIMBOLA OLOWOFOYEKU	
	oduction: transitional justice, judicial accountability the rule of law	1
1	The case for judicial accountability in transitions	7
	Introduction 7	
	State powers and the judiciary 8	
	The judiciary in authoritarian contexts 12	
	Judicial accountability and rule of law 13	
	The case for accountability of the judiciary in transitions 14  Judicial independence 17	
	Judicial immunity 22	
	The judiciary as victim 23	
	Judging the judges? 25	
	Conclusion 27	
2	Truth, transition, and accountability of the judiciary	33
	Introduction 33	
	The judiciary and accountability for the past – the truth commission as an unlikely forum 34	
	Transition, truth and accountability in Nigeria 40 The context 40	
	Wither accountability of the judiciary? 42	

Nigeria's transition 44  Conclusion 45	
Political change and judicial reform: an international and comparative perspective	50
Introduction 50  Judicial reform – the international context 51  A comparative perspective 55  Central and Eastern Europe: political change, courts and constitutionalism 56  Institutional transformation sans accountability? The case of Nigeria's National Judicial Council 61  Conclusion 64	
Judicial accountability in political transitions: the Nigerian context	68
Introduction 68 The transition judiciary: a legal premise for accountability 69 The accountability gap 72 Legal-jurisprudential dimension 74 Legitimizing military rule 74 Imperatives of popular sovereignty 77 Socio-political dimension 79 Corrupt and compromised 79 Public apathy for due process of law 80 Unacknowledged victims? 82 Conclusion 84	
Rights, the judiciary and constitutionalism in transitions	90
Introduction 90  Judicial review in the Nigerian court system 92  Backwards with plain-fact jurisprudence: the Oputa Panel case 93  The facts, the decision 93  Between executive failure and judicial complacency 94  Again, the rule of law dilemma 96  The judiciary, transition and the transformative agenda 97	
	Nigeria's transition 44 Conclusion 45  Political change and judicial reform: an international and comparative perspective  Introduction 50 Judicial reform – the international context 51 A comparative perspective 55 Central and Eastern Europe: political change, courts and constitutionalism 56 Institutional transformation sans accountability? The case of Nigeria's National Judicial Council 61 Conclusion 64  Judicial accountability in political transitions: the Nigerian context  Introduction 68 The transition judiciary: a legal premise for accountability 69 The accountability 69 The accountability gap 72 Legal-jurisprudential dimension 74 Legitimizing military rule 74 Imperatives of popular sovereignty 77 Socio-political dimension 79 Corrupt and compromised 79 Public apathy for due process of law 80 Unacknowledged victims? 82 Conclusion 84  Rights, the judiciary and constitutionalism in transitions  Introduction 90 Judicial review in the Nigerian court system 92 Backwards with plain-fact jurisprudence: the Oputa Panel case 93 The facts, the decision 93 Between executive failure and judicial complacency 94 Again, the rule of law dilemma 96

Safety in a cocoon: ignoring international human rights law Privileging domestic law over international law 102 Policy considerations and transitional justice claims 103 Two decisions and the purposive approach: hopes for transformation? 107 The PDP case: when death is not to die 107 A Lacuna, a Formidable Minority and a Slim Majority 107 Breaking away from tradition 109 The ICPC case: Federalism v Commonweal 110 From the doldrums of infamy 110 'Policy united' all the way 113 Validity of purposive jurisprudence in Nigeria's transition 115 Displacing formalism in transitional contexts 115 Deepening the rule of law in transitional contexts 116 Beyond provincialism 118 Peace, order and good governance to the rescue 118 Discordant tunes 119 Ambivalence or new directions? 119 Conclusion 121	
Transition and the judicialization of politics: dialectics of a phenomenon	128
Introduction 128  Judicialization of politics, democracy and the rule of law 130  Judicialization of politics and the counter-majoritarian argument 131  Judicialization of politics: an analytical framework 136  Comparative perspectives 140  A still-born constitutional court: legacy of a failed transition and judiciary 144  Court-packing versus judicial independence 145  Conclusion 149	
Courts to the rescue? The judicialization of politics in Nigeria	155

Introduction 155 Democratic transition and judicialization of politics in Nigeria 156

6

7

The judiciary in institutional reconstruction 157
The Ladoja case: the Godfather versus the people 160
The socio-political background 160
Neither impeachment nor removal 160
Courts and the political question 161
Checkmating judicial impunity 163
The Obi Tenure case - speaking law to power 165
Towards a new constitutionalism 166
Timely intervention and checkmating electoral impunity 167
Ladoja (No. 2) - between sympathy and the law 169
No to tenure-elongation - the court is plain 169
The judge in the court of the people 170
Turning the tables? Politicization of the judiciary in
Nigeria 173
Conclusion 177

Conclusion	183
Bibliography	188
Index	201