

**LIBERALIZATION OF LEGAL SERVICES: PERSPECTIVE OF
NIGERIAN LEGAL PRACTITIONERS AND LAW FIRMS**

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INTRODUCTION

The exceptional advancement in technology and attendant globalization of the 21st century has made lawyers more accessible and available, forever altering the rhythm of law practice and allowing Firms and clients to impose extraordinary demands on lawyers.¹ Lawyers now have to contend with technological advancements that threaten to render obsolete, the ways and methods that they are used to. There has been a manifest increase in the pace of legal practice and client expectations, which is forcing lawyers in every clime to adapt or face extinction. To be able to roar and speed like steamship in the globalization ocean, legal practitioners in Nigeria must be willing to expand the frontiers of legal practice to meet the demands of global legal practice. Sadly, only a minute percentage of Nigerian legal practitioners have been able to achieve this.

It is beyond peradventure that the aspiration of the bodies that regulate legal practice in Nigeria as well as the stakeholders in the legal profession is that legal practice in Nigeria is able to compete with and if possible, surpass that of the developed countries of the world. Since 1962, when the two foremost enactments regulating legal practice in Nigeria, namely, the Legal Education Act, 1962² and the Legal Practitioners Act, 1962³ became operational, legal

¹ Sally Kane, '8 Ways to Jump Start a Legal Career' <<http://legalcareers.about.com/od/jobsearch/tp/Jump-Start-Your-Legal-Career.htm>> accessed on 01 May, 2015

² CAP L11 Laws of the Federation of Nigeria (LFN), 2004

³ Cap L10 LFN, 2004

practice has thrived in Nigeria, but still falls short of the expected standard in certain areas,⁴ one of which is the liberalization of legal services.

The thrust of this paper is therefore, to present the perspective of Nigerian practitioners and law Firms on issues surrounding liberalization of legal practice. In so doing, this paper begins with a short discourse on the evolution of legal practice in Nigeria. It then explains the emerging trends in liberalization of legal services. It equally highlights the challenges affecting liberalization legal services in Nigeria and proffers solutions to these problems. Ultimately, this paper concludes that getting rid of the obstacles on the road to liberalization of services in Nigeria is a must, if our practice is to remain relevant in an ever changing legal world.

THE EVOLUTION OF LEGAL PRACTICE IN NIGERIA⁵

The legal profession has an ancient history and universal penchant. It has always been one of the most respected and loved professions. However, modern legal practice, where a lawyer earns his living by fees paid for legal services, became clearly visible in the late Roman Empire. The practice later spread to Europe, including England.⁶ The first brush Nigeria had with Legal Practice was in 1862, when the British colonial administration introduced a system of courts like that of the British system in order to create an organized legal profession which would gradually familiarize the country with English

⁴ JOE-KYARI GADZAMA, 'Modernizing Legal Practice in Nigeria', lecture delivered at the 2013 State of the Legal Profession Lecture of the Nigerian Institute of Advanced Legal Studies, Abuja <<http://www.punchng.com/feature/the-law-you/modernising-legal-practice-in-nigeria>> accessed on 091 May, 2017

⁵ See generally Adewoye, O *The Legal Profession in Nigeria 1865-1977* (Lagos: Longman, 1977), Doherty O *Legal Practice and Management in Nigeria* (London: Cavendish Publishing Limited, 1998) and Imhanobe S *Lawyer's Deskbook* (Abuja: Temple Legal Consult, 2010)

⁶ Aare Afe Babalola SAN, 'Challenges of Nigerian Bar Association in 21st Century', <<http://thenationonlineng.net/new/challenges-of-nigerian-bar-association-in-21st-century/>> accessed on 08 May, 2017

laws and procedure. Hence, authors tend to set out the history of Legal Profession in Nigeria in three different stages: 1876-1914, 1914-1962 and 1962 to date.⁷

Between 1876 and 1914, legal practice was carried out in Nigeria by three categories of lawyers, namely, professionally qualified attorneys, those who served Articles and local attorneys. Those who have been called to Bar or admitted as solicitors in England, Scotland and Ireland were automatically enrolled in the Supreme Court of Nigeria as legal practitioners in Nigeria.⁸ To qualify to practice as a Barrister in England at that time, a person must pass the Part I and Part II of the Bar Examination, join one of the four Inns of Court, and keep terms by dining in his Inn. But to qualify to practice as Solicitor, a person must enroll as a student with the Law Society, serve a period of pupillage – article for a minimum of four years with a practicing Solicitor and pass Parts I and II of the Law Society qualifying examination.⁹ Williams Nash Hamilton was the first lawyer to be enrolled to practice law in Nigeria in 1886, but the man who is generally believed and accepted to be the first Nigerian lawyer is Christopher Sapara Williams, who was enrolled at the Supreme Court in 1888.¹⁰

The second category of lawyers that practiced during this period were those who served Articles. By the provisions of Section 73 of the Supreme Court Ordinance, the Chief Justice may admit as a Solicitor of the Supreme Court,

⁷ Joe-Kyari Gadzama, 'The Legal Profession in Nigeria After 50 Years Of Legal Education: A Critical Appraisal'

<<http://www.google.com.ng/url?sa=t&rct=j&q=history%20of%20legal%20profession%20in%20nigeria>>

⁸ The Nigerian Law School, 'Electronic Handbook On Professional Ethics and Allied Matters', p. 4

⁹ Joe-Kyari Gadzama, 'Modernizing Legal Practice in Nigeria', lecture delivered at the 2013 State of the Legal Profession Lecture of the Nigerian Institute of Advanced Legal Studies, Abuja <<http://www.punchng.com/feature/the-law-you/modernising-legal-practice-in-nigeria>> accessed on 01 May, 2015

¹⁰ ham Njoku, 'History of the Legal Profession in Nigeria' <<http://nm.onlinenigeria.com/templates/?a=5216#ixzz3ZRZtmaW7>> accessed on 01 May, 2015

any person who has served 5 years continuously in the office of a practicing barrister or solicitor residing within jurisdiction of the court and who has passed such examination on the principles and practice of law before such persons as the Chief Justice may from time to time appoint.¹¹

The third category of lawyers that practiced during this period were the local attorneys. The Supreme Court Ordinance 1876 also vested on the Chief Justice of Nigeria, discretionary power to grant temporary licence to admit fit and proper persons to practice as local attorneys. To qualify for such licence, the applicant must sit for an examination to test his general education and knowledge, as well as the principles and practice of law. He must also be shown to be of good moral character, attested to by a judge or two District Commissioners. The licence to practice was usually for six months and renewable subject to good moral character.¹² Only a few local attorneys were appointed under this provision. Subsequently, appointment of local attorneys were stopped in response to the protest of professionally qualified lawyers. The last applicant was reputed to be one J. Osho Davies whose application was refused by the then Chief Justice. Appeal by him to the full court was dismissed in April 1913 on the ground that the Chief Justice's discretion in that respect was properly exercised.¹³

One notable challenge of legal practice in Nigeria during this period was the absence of legally qualified private legal practitioners to render services to the business community and the community at large. However, the year 1913 was remarkable because it was a turning point in the history of the legal profession

¹¹ The Nigerian Law School, 'Electronic Handbook On Professional Ethics and Allied Matters', p. 4

¹² Joe-Kyari Gadzama, 'The Legal Profession in Nigeria After 50 Years Of Legal Education: A Critical Appraisal'

¹³ The Nigerian Law School, 'Electronic Handbook On Professional Ethics and Allied Matters', p. 4

and practice in Nigeria. Those who trained overseas as Barristers and Solicitors joined the profession as legal practitioners.¹⁴

In the second phase of the history of Legal Profession in Nigeria, 1914-1962, the Supreme Court Ordinance of 1876 was replaced with the Supreme Court Ordinance 1914.¹⁵ During this period, all of the people enrolled to practice law in Nigeria were trained in the United Kingdom, such that a call to the English or Scottish Bar qualified a Nigerian to be enrolled and practiced law in Nigeria. This was made possible by virtue of Order Xvi Rule 1 of the Supreme Court (Civil Procedure) Rules 1 and 6 made pursuant to the Supreme Court Ordinance 1876, which empowered the Chief Justice to approve, admit and enroll as a barrister and solicitor, any person who is entitled to practice as a barrister in England or Scotland.¹⁶ Those who qualified as barristers or solicitors in Britain were in three classes as follows: Barristers, Graduate Barristers and Solicitors.¹⁷

The major challenge of legal practice in Nigeria during this period was that the legal training in the UK did not take into account the Nigerian legal System especially our customary law and the strong influence of Islamic law.¹⁸ Other problems of English trained lawyers practicing in Nigeria stemmed from the fact that in English, a lawyer is trained as a barrister or a solicitor and after qualification he only practices there as such. But in Nigeria, on being called to the Bar and enrolled at the Supreme Court, he practiced as both barrister and

¹⁴ Joe-Kyari Gadzama, 'Modernizing Legal Practice in Nigeria'

¹⁵ The Nigerian Law School, 'Electronic Handbook On Professional Ethics and Allied Matters', p. 5-6

¹⁶ Chinwendu Okoroma, 'How to qualify as a lawyer in Nigeria' <<http://toscanyacademy.com/blog/nigeria-education/qualify-lawyer-nigeria>> accessed on 09 May, 2017

¹⁷ The Nigerian Law School, 'Electronic Handbook On Professional Ethics and Allied Matters', p. 5-6

¹⁸ Joe-Kyari Gadzama, 'The Legal Profession in Nigeria After 50 Years Of Legal Education: A Critical Appraisal'

solicitor. Likewise, an England trained lawyer studied English textbooks and law reports as opposed to that of Nigeria. For instance, in constitutional law, he studied the unitary system of government, while Nigeria is a Federation. Also, almost all practitioners in Nigeria were trained as barristers in England, and most did not have a university degree and did not take the post-call practical course, nor were they attached to chambers for the mandatory period of one year. Until 1967, there was no mandatory course of lectures which an aspiring barrister must take. What was mandatory was dinners.¹⁹

Accordingly, in 1959 the Unsworth Committee was set up by the Federal Government of Nigeria and this was subsequently followed with the passing of the Legal Education Act, 1962, by which the Council of Legal Education was set up. However, the call for establishment of a Faculty of Law at the University College, Ibadan was not accepted by the government. However, in 1961, the University of Nigeria, Nsukka established the first Faculty of Law. This signifies the beginning of the third phase, 1962 to date.²⁰

In the third phase of the history of Legal Profession in Nigeria, from 1962 to date, Legal practitioners in Nigeria consists of persons entitled to practice as a barrister and solicitor either generally or for the purpose of any particular office or proceedings under the LPA.²¹ A person is entitled to practice generally only if his name is on the roll of Legal Practitioners kept by the Chief Registrar of the Supreme Court of Nigeria.²² Students with a law degree from an approved university are admitted into the Law School, where they are trained as legal practitioners. These students are required to pass the Bar Part II Examinations,

¹⁹ The Nigerian Law School, 'Electronic Handbook On Professional Ethics and Allied Matters', p. 6

²⁰ Joe-Kyari Gadzama, 'Modernizing Legal Practice in Nigeria'

²¹ See Section 24 of the Legal Practitioners Act Cap. L11 Vol. 8 LFN, 2004

²² See Section 2(1) of the Legal Practitioners Act

while students who are admitted into the school with degrees obtained outside Nigeria are required to pass in addition the Bar Part 1 examination.²³

To be entitled to be formally called to the Nigerian Bar, a person must have completed the professional training at the Nigerian Law School.²⁴ The issuance of a qualifying Certificate, stating that a person is qualified to be called to the Bar is the responsibility of the Council of Legal Education.²⁵ The Body of Benchers then issues such persons a certificate authorizing them to practice law in Nigeria. This certificate can be withdrawn by the same Body for reasons usually related to gross misconduct and fraud. Any person called to the Bar is qualified to practice as Barrister and Solicitor of the Supreme Court of Nigeria and have the right of appearance in any Court in Nigeria among other privileges (signing of conveyance documents, statutory declaration of compliance at the Corporate Affairs Commission etc). He also becomes a member of the Nigerian Bar Association and is bound by the rules of that Body as well as the Rules of Professional Conduct which serves as a check on the Professional conduct of lawyers, whether they are in court or not.²⁶

Growth of Legal Profession in Nigeria

Since the advent of the Nigerian Law School, the legal profession in Nigeria has witnessed substantial growth and development. At first, the Law School consisted of just one campus in Lagos but over the years, particularly under the present administration, there has been a significant increase in the number of campuses to wit: (Lagos, Abuja, Enugu, Kano, Yenegoa and Yola). Likewise, there are presently over 30 Law Faculties within various universities in Nigeria

²³ Joe-Kyari Gadzama, 'Modernizing Legal Practice in Nigeria'

²⁴ See Section 4 of the Legal Practitioners Act

²⁵ See Section 5 of the Legal Education Act

²⁶ Joe-Kyari Gadzama, 'Modernizing Legal Practice in Nigeria'

where students are prepared for the Nigerian Law School.²⁷ In addition, the number of persons being called to the Nigerian Bar is considered very high compared to what it used to be. Now the number of new lawyers at each Call is in the region of 4,000 every year.²⁸

Apart from the above mentioned progress made at every phase of the development of the legal profession in Nigeria, other innovations were made in a bid to ensure that legal practice in Nigeria is more competitive, advance and up to date when viewed against what obtains in other countries of the world. For instance, Legal practitioners of not less than 10 years standing, and who have achieved distinction in the legal profession may be conferred with of the Rank of Senior Advocate of Nigeria (SAN) by the Legal Practitioners Privileges Committee.²⁹ In July, 1990, the guidelines for the conferment of the Rank of SAN as set out by the Chief Justice provides that all former Queen's counsel who apply will be conferred with the title.³⁰ However, changes have since been made following the guidelines released in 2007. Notable among them is that under the 2007 guidelines, former Queen's Counsel are no longer automatically eligible for the conferment.³¹

From the foregoing, it is evident that the legal profession in Nigeria has endured its ups and downs. Quite a number of innovations have been made in a bid to ensure that legal practice in Nigeria remains competitive and up to date when viewed against what obtains in other countries of the world. However, it

²⁷ Ibid.

²⁸ Fatima Kwaku, 'What is Wrong with the Rules of Professional Conduct for Legal Practitioners?' paper presented at the NBA Academic Forum Working Session of the NBA Annual General Conference in Calaba, Cross River State on 28 August, 2013

²⁹ See Section 5 of the Legal Practitioners Act

³⁰ The Nigerian Law School, 'Electronic Handbook On Professional Ethics and Allied Matters', p. 23-24

³¹ Aare Afe Babalola SAN, 'Challenges of Nigerian Bar Association in 21st Century'

is quite unfortunate that legal practice in Nigeria is slow in keeping pace with global trends and it now lags behind the leading countries of the world in several areas.

EMERGING TRENDS IN LIBERALIZATION OF LEGAL SERVICES

One aspect of the major aims of globalization is to create a globalized economy, in which neither distance or national borders impede economic transactions. This would be a world where the costs of transport and communication would be zero and the barriers created by differing national jurisdictions had vanished. One of the world's leading economic institutions, the World Trade Organization (WTO), is in the forefront of championing the cause of globalization. It is an international organization responsible for global rules governing trade among nations.³² The WTO is a forum for on-going multilateral trade negotiations aimed at **liberalizing** world trade and administration of resulting trade agreements.³³

The primary focus of the WTO is to ensure that trade liberalization and trade agreements are reached based upon a consensus of participating members and ratified domestically by each member. Trade liberalization essentially focuses on removing impediments involved in the provision and procurement of goods and services thereby fortuitously affecting and consequently increasing the wealth of the respective countries. Services currently account for over 60 percent of global production and employment. Many services, which have long been considered genuine domestic activities, have increasingly become

³²Desmond Guobadia, 'Globalisation of Legal Services - What Should Nigeria Do?' <www.nigerianlawguru.com/articles/> accessed on 09 August, 2017

³³The World Trade Organisation: Article Posted on www.wto.org

internationally mobile. This trend appears likely to continue, owing to the introduction of new transmission technologies.³⁴

The primary consideration of the WTO in liberalizing trade is to induce the economic prosperity of member states. It seeks to achieve this by accession of member states to its multifarious agreements, but our primary concern is the General Agreement on Trade in Services (GATS), which came into force in January 1995. The GATS is a multi-lateral treaty based agreement inspired essentially, by the following objectives: creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalization.³⁵

Countries that signed GATS committed themselves to periodic negotiations to progressively eliminate barriers to international trade in services without requiring further approval from other member states. It compels members to enter in to negotiation of specific commitments “directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access.”³⁶ This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.³⁷

GATS is structurally complex and is largely based on the existence of the 4 modes of supply, namely: cross border supply, consumption abroad, commercial presence and movement of natural persons. It provides two distinct

³⁴Desmond Guobadia, ‘Globalisation of Legal Services - What Should Nigeria Do?’

³⁵Ibid

³⁶ See Article 19 of the General Agreement on Trade in Services (GATS)

³⁷ Desmond Guobadia, ‘Globalisation of Legal Services - What Should Nigeria Do?’

legal parameters, that is, market access and national treatment to be used in determining the conditions of market entry and participation.³⁸ Legal services are classified as part of professional services, which in turn are under the business services sector covered by GATS.³⁹

As economies become more global, the demand for global cross-border legal services has grown significantly. Increasingly governments are pursuing trade agendas designed to break down barriers to cross-border trade, including the legal profession.⁴⁰ For instance, the United States, in addition to its the general obligations under the GATS, included legal services in its schedule of commitments under the GATS; not all WTO countries included legal services in their schedules. Such schedules set forth specific additional obligations made by a WTO country with respect to specific service sectors.⁴¹

The U.S. schedule sets forth its obligations in terms of limitations and qualifications under the laws and/or rules governing the practice of law by foreign lawyers and foreign law firms in each of the States, the District of Columbia, the U.S. territories, and before certain federal agencies. Indeed, several members have sought concessions from the United States regarding legal services. Such changes could affect the laws and rules governing foreign lawyers and foreign law firms in each of the 50-plus jurisdictions in the United States and the federal agencies. Such laws and rules comprise the bar admission of lawyers who are admitted to practice in a foreign jurisdiction or who are foreign nationals and the eligibility of foreign legal consultants and foreign firms to provide legal services in the United States. Rules regarding

³⁸ See Annex 1B of GATS

³⁹ 'Legal Services in the World Trade Organization (WTO) and U.S. Effect' <<https://www.everycrsreport.com/reports/RS22949.html>> accessed on 09 August, 2017

⁴⁰ International Bar Association, 'IBA Global Regulation and Trade in Legal Services Report 2014' (October, 2014)

⁴¹ 'Legal Services in the World Trade Organization (WTO) and U.S. Effect'

foreign legal consultants may address the applicability to such consultants of ethics rules and disciplinary procedures for attorneys.⁴²

The International Bar Association (IBA) the global voice of the legal profession, has taken a leading role in providing guidance on the responsible delivery of cross-border legal services. *The IBA Global Regulation and Trade in Legal Services Report 2014* is part of that initiative. The report is the result of an ambitious task undertaken by the IBA International Trade in Legal Services Committee to compile data on regulation of domestic and cross-border legal practice in over 90 countries, or over 160 jurisdictions. The result is a rich and detailed body of information. For the first time, the IBA has collected, in one report, valuable information on the rules governing local practice in each jurisdiction, the rules governing cross-border legal practice and the actual position in relation to cross-border legal practice. In addition to the report, the IBA has an interactive website from which the data presented may be conveniently accessed. The website is accessible at www.ibanet.org. It is the IBA's intention to continue work on the database, adding more countries and updating information as it comes to hand.⁴³

With the spurt of world economic integration, it has become more difficult for lawyers and Law firms to advise clients on international transactions covering a variety of business transactions, including mergers and acquisitions with foreign companies and contractual arrangements for franchises, dealerships and product sales. Reason being that the multi jurisdictional nature of transactions requiring multi-jurisdictional advice, and this underpins the

⁴²Ibid

⁴³See the IBA Global Regulation and Trade in Legal Services Report 2014

evolution that has occurred in legal practice. Accordingly, multinational companies would rather deal with international law firms with multi-jurisdictional presence than domestic law firms. Such international law firms are in a position to operate through two or four modes of service supply, specifically commercial presence and presence of natural persons.⁴⁴

It has however, been argued, that the situation would not augur well for the development of the legal profession, given the lopsided imbalance that would be created following the entry of the better established international Law firms.⁴⁵

LIBERALIZATION OF LEGAL SERVICES IN NIGERIA

Although Nigeria is a member of the WTO and it engages in other bilateral and multilateral treaty arrangements with other countries, it has made no commitments to liberalize legal practice, hence currently, no special treaties exist in respect of legal services with other legal jurisdiction.⁴⁶ The reason for this largely stems from the fact that legal profession is a profession that is resistant to change. Traditionally, the legal profession depends on precedents, looking backward to see the way things were done in the past to solve the present problem. It was almost unthinkable in the past to moot the idea of altering the ways and manners lawyers deliver their services.⁴⁷

Besides, the legal profession in Nigeria is a regulated one and the LPA provides for the circumstances in which a person can practice law in Nigeria. Section

⁴⁴Desmond Guobadia, 'Globalisation of Legal Services - What Should Nigeria Do?'

⁴⁵Ibid

⁴⁶Chinwendu Okoroma, 'How to qualify as a lawyer in Nigeria'

⁴⁷Ibrahim Akangbe, A. S. Ishola and I. O. Solahudeen, 'Virtual Law Practice in Nigeria: Ethical Challenges and Prospects'

24 of the LPA defines a ‘legal practitioner’ as a person who is entitled to practice as a barrister and solicitor in Nigeria, either generally or for the purpose of any particular office or proceedings. Furthermore, Section 2(1)(a) and (b) of the LPA provides that a person is only entitled to practice as a barrister and solicitor if his/her name is on the roll of legal practitioners kept by the Supreme Court of Nigeria, or he/she is authorized to practice as a barrister by a warrant of the Chief Justice of Nigeria for the purposes of a particular proceeding. The above provisions of the LPA were upheld by the Supreme Court of Nigeria in the celebrated case of Okafor v. Nweke,⁴⁸ where the Court pronounced that:

“For a person to be qualified to practice as a legal practitioner he must have his name in the roll, otherwise he cannot engage in any form of legal practice in Nigeria.”⁴⁹

Foreign qualified lawyers wishing to re-qualify to practice law in Nigeria must successfully complete the six months Bar Part 1 course and the one-year Bar Part 2 course at the Nigeria Law School. Upon successful completion of the professional training offered by the Nigerian Law School, foreign qualified lawyers are entitled to be formally called to the Nigerian bar and issued a certificate of Call to the Bar authorizing them to practice law in Nigeria.⁵⁰ However, the laws in Nigeria limit eligibility for requalification to holders of qualifications from common law jurisdictions. Thus, foreign lawyers from Civil Law Jurisdictions or the European Union cannot re-qualify to practice law in Nigeria.⁵¹

⁴⁸ [2007] 10 NWLR (Pt. 1043) 521

⁴⁹ Chinwendu Okoroma, ‘How to qualify as a lawyer in Nigeria’

⁵⁰ See Section 4 of the LPA

⁵¹ Chinwendu Okoroma, ‘How to qualify as a lawyer in Nigeria’

Any person who is entitled to practice law in any country whose legal system is similar to that of Nigeria can make an application to the Chief Justice of Nigeria for the issuance of a warrant to practice as a barrister in Nigeria for the purpose of the proceedings described in the application.⁵²The Chief Justice shall consider the application and determine whether it is expedient to permit such a person to practice as a barrister for the purpose of such proceedings. Where the application is granted, the Chief Justice may issue a warrant under his hands authorizing that person to practice as a barrister for the purpose of those proceedings and of any appeal in connection with those proceedings. The person issued such warrant is required to pay some statutory fees to the Registrar of the Supreme Court.⁵³

The concept of foreign legal consultant is equally not recognized in Nigeria. Anyone offering legal practice in Nigeria must be qualified and enrolled as a local practitioner. Likewise, a foreign lawyer or law firm cannot employ a Nigerian lawyer as a means of practicing in Nigeria. A domestic lawyer cannot enter into partnership with a foreign lawyer for purposes of establishing a practice or presence in Nigeria. A foreign lawyer or law firm can however engage a Nigerian lawyer to provide services as local counsel in respect of specific legal works. But, there are no restrictions on arbitration and mediation on a fly-in, fly-out basis.⁵⁴

As legal professionals position themselves to survive the peaks and troughs of an ailing economy, a number of distinct trends have emerged in the legal industry. Most of these trends help law firms and organizations become more efficient, productive and competitive in a global market. Other trends result

⁵²See Section 2 (2) of the LPA

⁵³ Chinwendu Okoroma, 'How to qualify as a lawyer in Nigeria'

⁵⁴International Bar Association, 'IBA Global Regulation and Trade in Legal Services Report 2014'

from changing demographics, attitudes and work styles.⁵⁵ One of such trends is the liberalization of legal practice.

CHALLENGES OF LIBERALIZATION OF LEGAL PRACTICE IN NIGERIA

Regrettably, the legal profession in Nigeria has historically been plagued with a myriad of problems which have crippled its rejuvenation. Some of these challenges have been with us for quite some time, they however, seem to have become more daunting in the 21st century and have prevented Nigerian lawyers from maximizing the numerous potentials of law practice on the global level.

- **Cross-border Practice:** One fundamental effect of liberalization of legal practice is that lawyers are without borders, hence, there is bound to be incursion of foreign lawyers into legal practice in Nigeria. Lawyers in Nigeria will therefore, have to compete with foreign lawyers, especially in commercial practice, arbitration, and international legal documentation and this avoid negatively affect the earning of Nigerian lawyers. The low level of technological advancement in Nigeria puts Nigerian lawyers at a disadvantage. Foreign lawyers are often the beneficiaries of out-sourcing and even where Nigerian lawyers are used, they are paid pittance. In the highly competitive legal market that exists today, Nigerian lawyers need to be proactive, as they navigate their careers in a vast legal environment. Furthermore, the pace of law practice today is faster and more stressful than ever before. Technology has made lawyers more accessible and available around the clock, forever altering the rhythm of law practice and allowing Firms and clients to impose extraordinary demands on lawyers.

⁵⁵ Chinwendu Okoroma, 'How to qualify as a lawyer in Nigeria'

Even as the physical and emotional burdens of these demands have yet to be fully understood, the current pace leaves little time for reflective thinking.⁵⁶

- **Economic downturn:** Economic downturn to adopt everyday usage, is a situation where prosperity and buoyancy have fled from economic interaction. It is a situation where there is insufficient money to meet the day to day obligations of individuals, group, corporations and nations. It forces factories to close, prices of real property to crash with attendant loss of jobs. It promotes unemployment and under employment. The ability of the employer to pay just wages is severely negatively affected. In recent years, Nigeria has witnessed persistent economic downturn with adverse effect on all aspects of human endeavour, legal practice is no exception. Unemployment which was unheard of among lawyers 20 years ago is now a reality staring all of us in the face. The frontier of legal practice is dwindling,⁵⁷ as clients decide what services⁵⁷ are needed and at what cost. They will continue to demand efficiency and responsiveness from their lawyers and at less cost. The legal profession is facing unprecedented economic pressures which dovetail with other challenges.⁵⁸ Liberalisation of legal practice in Nigeria has the potential of compounding these problems.
- **Forming mega practices:** Today, global Mega-Firms predominate the legal landscape. Nigerian lawyers are faced with the problems associated with forming large scale practices and merger of law firms, which is the

⁵⁶ Sally Kane, '8 Ways to Jump Start a Legal Career' <<http://legalcareers.about.com/od/jobsearch/tp/Jump-Start-Your-Legal-Career.htm>> accessed on 01 May, 2015

⁵⁷ Oredola JCA, 'Corruption; The Dwindling Economy and the Disappearing Frontiers of Legal Practice', 4th Annual Conference of the Nigerian Bar Association Section on Legal Practice held at Monty Suites Calabar, on 10 November, 2010

⁵⁸ 'The New Normal: The Challenges Facing the Legal Profession' available at <http://www.reinhartlaw.com/Services/BusLaw/CorpGovern/Documents/art1111%20TE.pdf> accessed on 2nd May, 2015

in-thing in other climes. For instance, the finance that may be sufficient to keep sole practitioners and small firms law office open and thriving will be grossly inadequate for sustaining a mega law firm. With liberalization of legal practice in Nigeria, there is bound to be incursion of the mega law offices into legal practice in Nigeria. Hence, lawyers in Nigeria will have to contend not only with economic downturn, but also with mega law Firms.

- **Getting good briefs:** Unfortunately, the tendency of legal practitioners to restrict themselves to narrow confines of a particular aspect of legal practice is the limitations of majority of lawyers in Nigeria.⁵⁹ Most people believe that once a person qualifies as a lawyer, he or she must engage in litigation and go to court. The view is not correct. In the globalised legal world of the 21st century, legal practice has become so overcrowded that it is now difficult to get good briefs, which are needed for the sustenance of good legal practice. As a result, it had become more difficult for lawyers carve a niche or create a professional identity. The inability of young lawyers to carve a niche or create a professional identity is a major challenge because in legal practice, second place is not much better than last place. To gain the maximum advantage, young lawyers must carve a niche or create a professional identity for themselves.⁶⁰
- **Obsolete laws:** Our laws are not a match for the challenges of the 21st century. For instance, astounding revolution has taken place in the way adversarial courts allow the voice of the witness to be heard over the last twenty years. Across the globe, lawyers have developed more creative

⁵⁹ Ukala SAN, 'Legal Practice in Nigeria: Venturing beyond Usual Borders' Welcome Address delivered at the 5th Annual Conference of the Nigerian Bar Association Section on Legal Practice held at Rock View Hotel, Abuja. on 15 November, 2011

⁶⁰ Trey Ryder 'Marketing Secrets of Superstar Lawyers' <<http://practice.findlaw.com/law-marketing/marketing-secrets-of-superstar-lawyers.html>> accessed on 02 May, 2015

ways in witness preparation and witness evidence, to wit: methods of proof, how to approach a witness' evidence and how to effectively and ethically prepare their witnesses in this changing world.⁶¹ Whereas in Nigeria, these dramatic changes cannot be accommodated under the existing laws. The 1945 Evidence Act was only recently amended in 2011 to accommodate electronically generated evidence, when other jurisdictions have covered that ground a long time ago. Likewise, the RPC is presently tailored more in line with the practice of private lawyers in litigation, leaving out to a large extent, the solicitors and lawyers in politics and in government. It fails to address some prevalent concepts of legal practice in the 21st century. Hence, the proposed Rules of Professional Conduct for Legal Practitioners 2012 seeks to remedy this situation by including the new concepts of “out-sourcing” and “Pro-bono services”, which were hitherto not provided for. Other aspects such as the standards of ethical behaviour required of Senior Advocates of Nigeria and the express regulation of government Lawyers were also included.⁶²

- **Emergence of ICT:** In terms of ICT, the first challenge is acquisition of knowledge about ICT. The second challenge is to get the money to acquire an ICT compliant practice. Initially, a small office with a desk and a few legal pads and pens was all you needed to open a practice. Later, telephones and typewriters became necessities, then laptops and desktops replaced typewriters, text messages and e-mails have replaced letters while credit cards are gradually replacing cash.⁶³ As the stunning array of technology available to the modern lawyer continues to drive up the costs

⁶¹ Penny Cooper, 'The Changing World of Witness Preparation and Witness Evidence: Adapting our traditional approaches to witnesses' Keynote Address delivered at the 5th Annual Conference of the Nigerian Bar Association Section on Legal Practice held at Rock View Hotel, Abuja. on 15 November, 2011

⁶² Fatima Kwaku, 'What is wrong with the Rules of Professional Conduct for Legal Practitioners?'

⁶³ JOE-KYARI GADZAMA, 'Modernizing Legal Practice in Nigeria'

of being a competent practitioner, capital (the money needed to start, maintain, and expand a successful practice) and where to get it are things that hinder many lawyers from starting a practice, or hoping to keep one open and going.

- **Advancement in technology:** Advances in technology are occurring exponentially. These advances increase the pace of practice and client expectations, forcing lawyers to adapt or face extinction. Understanding and implementing new technologies are difficult and time-consuming for lawyers. Clients are often ahead of lawyers in implementing new technologies, and they have increased access to legal information, much of it readily available on the Internet. However, technology also is the “great leveller,” allowing innovative solo and small-firm practitioners to compete with larger firms. As observed by the ABA eLawyering Task Force (of the ABA Law Practice Management Section), “We now must be ready to practice in a way that allows our clients a new method of access to legal services by using the technology and communications tools around us.” Every law firm is affected by technological changes. Attorneys must devote time and resources to identifying ways to use new technologies to add value to client work, reduce overhead costs, and improve their ability to compete for legal services.
- **Legal Education:** Although learning the law is relatively straight forward, it is much harder to cultivate the other qualities and skills that lead to success.⁶⁴ Legal education and practice as they exist today are not what they were some decades back and even now as we speak; no one knows what the situation will look like in the next 10 years. This is

⁶⁴Paula Nailon, ‘Advice for Young Lawyers about Career Development’ <<http://apps.americanbar.org/lpm/lpt/articles/mgt03051.html>> accessed on 01 May, 2015

because the ever evolving and forever changing world we live in has gradually shrunk in every aspect, including legal practice. For instance, laptops and desktops have replaced typewriters and secretaries are no longer in hot demand because lawyers now do the typing. Text messages and e-mails have replaced letters, while credit cards are gradually replacing cash. The world is gradually marching towards a paperless society, where contracts can now be executed on line with super imposed signatures. The question therefore is this: “How equipped must the lawyer be to cope? And how does a Nigerian trained lawyer fit into all these?” The advanced countries have therefore, adjusted accordingly, but this has not been the case in Nigeria. There is an apparent disinclination of those in charge of the Legal Education curriculum to embrace new developments and this has spilled over to lawyers who have also refused to embrace the 21st century⁶⁵

- **Specialization:** Many of our Firms are unable to compete internationally because they are ill-equipped and lack the requisite specialization. In foreign countries, specialization is a common feature. Most Firms abroad have specific lawyers for specific legal issues, while there are even instances in which an entire Law Firm consists of lawyers who are experts in a particular field of law. Consequently, the Firm is known for its expertise in that particular area alone and corners that particular part of the market to itself. But in Nigeria, the saying “*jack of all trades, master of none*” adequately describes a substantial number of Nigerian lawyers. While this style of practice enables a lawyer to broaden his horizon, it leaves him averagely grounded in each area, like a butterfly that floats

⁶⁵ Joe-Kyari Gadzama, ‘The Legal Profession in Nigeria After 50 Years Of Legal Education: A Critical Appraisal’

from one flower to another without really settling down. This is even more pronounced if he fails to carve out a niche for himself. Most foreign companies to prefer that their transactions be handled by foreign Law Firms that possess the requisite expertise in that particular field. It is thus not surprising, that they hire foreign law Firms to represent them in disputes abroad simply because there are few Nigerian lawyers who are well versed in the subject matter of some of these disputes. (or even qualified to practice in these countries) ⁶⁶

Conclusion and Recommendations

The world is ever evolving and permanently in flux. It has gradually shrunk in every aspect including legal practice and the advanced countries have therefore adjusted accordingly. This has not been the case in Nigeria. Even though Nigeria has produced lawyers who can stand toe to toe with their counterparts from developed countries, one major downside is that we have refused to accept some of the current realities in the legal profession, one of which is liberalization of legal services. With the current globalization of legal service delivery, it has become inevitable for the legal profession to adapt to the present state of affairs, if legal practice in Nigeria is to conform to modern times.

Unfortunately, the legal profession in Nigeria has historically been plagued with a myriad of problems which has crippled its rejuvenation. Some of these challenges include: cross-border practice, economic downturn, forming mega practices, getting good briefs, obsolete laws: emergence of ICT, advancement in technology, legal education and specialization.

⁶⁶Ibid.

With the myriad of challenges identified above, some pertinent questions that come to mind include: where would Nigerian legal practice be in the next decade? Are we going to be far better off? Will we get rid of the shackles holding us back?⁶⁷By and large, liberalization of legal practice in Nigeria will only lead to a brighter future. All we need to do is to put up our thinking caps and get rid of the obstacles on the road to liberalization, which is a must, if our practice is to remain relevant in the ever changing world.

It is in the light of the above that I make the following recommendations for the survival of legal practice in Nigeria in this Liberalization era:

- Legal practitioners should entrench the culture of forming partnerships and merger of practice to compete favourably. Sole proprietorship is becoming outdated. It cannot be doubted that the pulling of resources both human and material will advance the method welfare and well-being of the members. When partnerships are formed, the members not only contribute their legal know-how, they also bring to bear on the work of the firm their specialization, their contents and good will. Cost will be shared and this will reduce the financial burden a sole practitioner will bear. Partnership will also encourage consultation by larger firms and corporations. At any rate, legal profession all over the world is undeniably heading towards mega law FIRMS and if you want to be serious players in the legal market of this global village, we must of necessity and self-survival, toll the path of partnership.
- Observance of the rules of professional ethics should be sacrosanct. One of the major causes of the sad decline in ethics of the profession is the

⁶⁷ JOE-KYARI GADZAMA, 'Modernizing Legal Practice in Nigeria'

absence/lack of enforcement of our Rules of Professional Conduct.⁶⁸ It is important for all stakeholders in the legal profession to realise that the rules of professional ethics must be complied with for sustainable growth and development of the legal profession in Nigeria. The Rules should be reviewed from time to time to meet new challenges.

- To remain competent, lawyers have to stay in touch with the profession. All Nigerian Lawyers in legal practice or employment should be made to comply with the Nigerian Bar Association's Mandatory Continuing Legal Education (MCLE)⁶⁹ Programme. It requires lawyers to take Mandatory Continuing Legal Education (MCLE) courses in order to qualify to practice law within our jurisdiction. In many countries, like the United Kingdom, the United States and Canada, Continuing Legal Education participation is required of attorneys to maintain their license to practice law. Continuing Legal Education requirements exist in many other jurisdictions. Nigerian Lawyers should be subjected to such conditions as well. That way, we can be sure that legal practitioners in Nigeria are not out of touch with developments in the profession.
- Lawyers should, be encouraged to explore the available alternatives to private law practice. As a qualified lawyer, one does not necessarily have to engage in private practice. The tasks of reformation and, by necessary implication, development call for lawyers who can effectively serve in the specialised roles of judges, government lawyers, law teachers, bankers and politicians. The fact remains that wherever they are, they are the most respected and successful because of their deep learning and training in handling human affairs. Presently, most

⁶⁸ Fatima Kwaku, 'What is wrong with the Rules of Professional Conduct for Legal Practitioners?'

⁶⁹ Continuing legal education (CLE; also known as MCLE (mandatory or minimum continuing legal education)) is a professional education of lawyers that takes place after their initial admission to the bar. It is to ensure that lawyers remain professionally competent throughout their lives.

successful politicians, administrators, bankers, bureaucrats, businessmen all over the world are lawyers. In fact, history has shown us that great world leaders like Abraham Lincoln, Bill Clinton, Tony Blair, Benazir Blutto Barrak Obama, to mention just a few were/are lawyers. In Nigeria, some of the Governors widely acclaimed to have achieved better performance in office are Lawyers.⁷⁰

- Technology in legal practice has come to stay. It makes legal practice much more convenient. The typical modern law Firm has done away with typewriters and has state of the art computers, it has stand-by generators and inverters, it is connected to the internet 24 hours a day and can access information at the touch of a button. Unfortunately, in Nigeria, legal practice is still “paper based”. By that, I mean that few of our lawyers are computer-literate. Very few offices are connected to the internet and research is done manually. Lawyers are therefore advised to accept technology for what it is; a faster and more efficient means of doing legal practice. It is technology that will propel legal practice in Nigeria to its position among the best in the world.

I thank you for this opportunity to exchange ideas with you. My prayer is that the legal profession and our great country will be the better for it.

⁷⁰ Aare Afe Babalola SAN, ‘Challenges of Nigerian Bar Association in 21st Century’