

THE ROLE OF LAWYERS IN DIASPORA IN SHAPING QUALIFICATION
AS A LEGAL PRACTITIONER IN NIGERIA AND CONTINUING
LEGAL EDUCATION

By

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INTRODUCTION

A Nigeria Lawyer in diaspora is a legal practitioner whose domicile is outside the shores of Nigeria. He might have been called to the Nigerian Bar or not; but he is a qualified legal practitioner (Solicitor or Barrister or both) where he is based.

The Nigerian Lawyer in diaspora is usually well trained, highly skilled and competent. It can also be assumed that he is patriotic and keen to plough back his expertise as much as possible, especially if conducive atmosphere exists back home.

Nigerian Legal Education is moulded after the British Legal Education; and stemming from the Unsworth Commission's report and recommendations in 1962, legal education is acquired in two stages – (i) at the University; and (ii) at the Nigerian Law School. There are now thirty six (36) accredited Law Faculties in Nigeria.¹ Products of these institutions on graduation proceed to the Nigerian Law School for the Bar vocational training programme, which spans a period of twelve calendar months, inclusive of examinations and externship programme. A successful candidate at the Bar Final examinations is issued a qualifying certificate by the Council of Legal Education, stating that he is qualified to be called to the Bar.² He is thereafter considered (pursuant to his application), by the Body of Benchers for call to the Bar if: (a) he is a citizen of Nigeria; (b) he produces a qualifying certificate to the Benchers; and (c) he satisfies the Benchers that he is of good character.³

LAW PRACTICE TODAY

In recent years, the legal profession has been criticized from within and even outside the rank of lawyers for (i) the quality service provided; and (ii) running foul of professional ethics by its members. The Nigerian Bar Association had noted with regret that the justice sector is literally in a state of emergency, with too many lawyers ill-equipped to fulfill the professional requirements of clients and the nation:

¹By virtue of Accreditation exercises conducted by the Council of Legal Education. Note also the accreditation of Law Faculties by the National Universities Commission.

² See Section 5(1) of the Legal Education (Consolidation etc) Act, Cap. L10, LFN 2004.

³ See Section 4(1) of the Legal Practitioners Act, Cap. L11 LFN 2004.

It made proposals to make legal practice more relevant and productive, including the forwarding of Bills to the National Assembly in 2012 for Justice Sector Reform. The Bills are to amend the Legal Practitioners Act, the Legal Education Act; and a third one tagged the Legal Services Bill, proposed to entrench far reaching changes in line with international best practices on how law should be practiced in Nigeria.

A lot of the blame for waning standard has been attributed to the training of lawyers at the two levels earlier mentioned. Needless to say, the Nigerian Law School - being at the apex has always invariably, but unfairly borne the brunt of the criticism. There is a danger in allowing the noted flaws to persist, because it will adversely affect the participation of Nigerian Lawyers in globalised legal services; including cross-border practice.

Of note is the General Agreement on Trade in Services (GATS), which has been in force since 1995. The GATS which deals with services, is a multilateral treaty based agreement, inspired by the same objectives as its counterpart in merchandise trade - the General Agreement on Tariffs and Trade (GATT). The main difference between the two being that GATT dealt with trade and merchandise, while GATS relates to services. In essence, countries that ratify GATS would commit themselves to periodic negotiations to progressively eliminate barriers to international trade in services without requiring further approval from other member States. Indeed, Article 19 of the agreement compels members to enter into negotiations 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.

The agreement is made up of binding rules for trade in all commercial services, with the aim of promoting growth by removing barriers and attracting foreign investment by opening regulated services to international competition. Its benefits have however not gone without critical appraisal, especially in its impact on developing nations.

Indeed, the possibility of adverse consequences of globalization has made the need for capacity building for Nigerian Lawyers very compelling. Citing caution, Jumoke Akinjide noted that:

“Foreign Firms bear a low risk of failure of the liberalization process. If Nigeria liberalises legal services and a foreign law firm, say Olswang, having opened shop in Nigeria decides for any reason that it no longer wishes to have a Nigerian presence, it can simply disengage local staff, pack up and leave for greener pastures. The foreign law firms’ goals are purely financial. The primary question for them is: does it make commercial sense to have a Nigerian office?”

Providing service to its international clients is secondary and dependent on the first question being answered in the affirmative. We therefore need to re-align our profession in order to achieve the desired goal of low risk in relation to the survival of the local commercial Bar and high reward to be earned by re-tooling the Nigerian Bar to successfully compete and profit from the liberalization process".⁴

Even in the terrain of liberalization of legal services, the need to proceed cautiously, bearing in mind the importance of our national interest is imperative. But that should not impede the need to be prepared to ensure that our national Bar is well equipped to compete favourably, if not equally with lawyers from other jurisdictions taking advantage of globalization.

Without doubt, the incursion of globalization has made it mandatory that legal training must embrace subjects, that will ensure that our lawyers are trained to be functionally relevant beyond our borders. Capacity building is therefore imperative for those charged with the responsibility of training lawyers at every level.

Some progress has been made by the introduction of new and globally relevant subjects of training in the Universities and at the Nigerian Law School. There are still a lot of grounds to cover however. Our pace of breaking-in needs to be quickened. The truth is that, the world is moving fast and we must keep in pace.

In addition to knowledge in the known specialized fields, a lawyer should know how to function in a globally diverse environment in relationships with clients, regulators and even lawyers in foreign jurisdictions. He must also be a person of high integrity, since this forms the basis of every interaction.

NIGERIAN LAWYERS ABROAD AND PRE-QUALIFICATION LEGAL TRAINING

I have already defined a Nigerian lawyer in diaspora as a legal practitioner whose domicile is outside the shores of Nigeria. He is generally well trained competent and efficient. There is the added advantage of being well positioned to learn about and experience the workings of novel spheres of law and practice.

In recent years, some home based Nigerian Lawyers have found it expedient to develop themselves, by acquiring expertise in such areas as (i) international finance and commerce, (ii) mining and mineral exploration, (iii) equipment leasing

⁴ "Globalisation And Nigerian Legal Practice", by Olajumoke Akinjide, Series: 35, Akinjide & Co Barrister, Solicitors, NCR Building, Lagos (2009) page 5.

and (iv) privatization via mergers, acquisition etc. This quest for knowledge was in realization that provision of legal services in many areas has acquired international flavour; and it is either you stay in line and keep in pace or stagnate at the rear. Needless to say, even these modest strides would perhaps not have been embarked upon had there not been the drive for global liberalization of legal services. Most of the new skills acquired by those lawyers are not part of the curriculum of training for lawyers in Nigeria, and there are now more voices within the profession calling for their inclusion. It is my view that we need to move in this direction very quickly to bridge the gap; and this is an important area of relevance for our diaspora lawyers.

The Council of Legal Education (CLE) is well positioned to serve as link with the thirty six currently accredited Faculties of Law in Nigeria. The British Nigeria Law Forum (BNLF) can partner with the CLE and the Law Faculties to introduce these skills and even advise (in the case of those already offering some of the courses), on the more relevant perspectives to explore. I strongly believe that this will enhance the skills of our lawyers of the future for the world in which they will practice.

The curriculum at the Nigerian Law School is loaded for the time frame of study. Without delving into the controversy of its adequacy or otherwise, I am convinced that in addition to what students at the School might have acquired by way of knowledge at the undergraduate level, it is apt to expose them to the essentials of practice where legal services have inexorably acquired international dimensions. They will need to acquire mature skills in addition to learning. Of note is the study of finance, which should give them the knowledge to read, interpret and evaluate financial statements. We should aim at producing lawyers with knowledge to work in a globally diverse environment based on relationships with clients, lawyers from other jurisdictions, regulators and even business executives.

Furthermore, lawyers in diaspora, who are academics should be linked to their colleagues in the Universities and the Nigerian Law School. This should create a conducive environment for guidance to students (especially at the Law School), on new areas of law to consider for further studies post qualification. This type of interaction has the added advantage of establishing an on-going mentoring relationship with these students until they are settled into legal practice.

In addition, being in contact with academics back home should create an enabling atmosphere for their understanding of prevailing conditions and making suggestions for solutions to the challenges of legal education in Nigeria.

In the use of technology, it is hoped that the interaction will further enhance the competencies that technological advancement offer. The aim should be to enhance proficiency in the use of latest advancements in the digital world, from merely seeing computers as tools for word processing, to the super highway of digitalization.

NIGERIAN LAWYERS ABROAD AND CONTINUING LEGAL EDUCATION

The Council of Legal Education had since inception, been saddled with the responsibility for providing continuing legal education in addition to its primary responsibility of legal education of persons seeking to become members of the legal profession.⁵ This function (i.e. continuing legal education) has unfortunately not been met for sometime now, for manifold reasons. The current position is that continuing legal education has been made mandatory since 2007 and Lawyers in diaspora should be partners in this endeavour.⁶

The Nigerian Bar Association (NBA) has made commendable efforts in organizing programmes for its members under the canopy of continuing legal education. But there is still a long way to go in ensuring a specific structure for the programme on regular basis.

For now it is not clear if the concept of mandatory continuing legal education has been unanimously embraced by all lawyers. It is also correct to state that for the programme to succeed, a lot more needs to be done in securing capable and experienced facilitators; as well as fashioning out relevant seminars covering neglected areas of capacity building such as communication skills and on critical and analytical thinking.

Lawyers in diaspora, I believe, are well positioned (going by what obtains in jurisdictions where they practice), to partner with the Council of Legal Education, the NBA and Nigerian Institute of Advanced Legal Studies (NIALS), to structure a functional continuing legal education profile that will benefit the generality of lawyers in Nigeria. In addition, our lawyers in diaspora can assist in enhancing the home-based lawyers' understanding of general legal practice developments in their jurisdictions and vice-versa.

CONCLUSION

Nigerian lawyers in diaspora are well positioned to partner with relevant agencies back home in ensuring the enhancement of the quality of training of

⁵ See Section 3 of Legal Education (Consolidation etc) Act, Cap. L10, LFN 2004.

⁶ See Rule 11 (1) of the Rules of Professional Conduct 2007.

lawyers, at the pre-qualification and post qualification levels. Of note are the envisaged benefits of their participation in continuing legal education, where they can function as co-facilitators at programmes on emerging areas of law as practiced in their jurisdictions of domicile.

If they can take up the challenge and be constructively engaged as suggested, our continuing legal education back home, should be on the path to the intended, well structured and expanded programme, which will be available to all lawyers wherever they may set up practice in Nigeria.

It is my hope that this proposed collaboration will be embraced by the generality of our lawyers abroad. Without doubt, there are glaring challenges that they will encounter in the implementation of this proposal. It is the will to contribute to the development and quality of legal education and practice that should be the propelling force. The profession has come a long way, since the first Nigerian Lawyer was enrolled in 1880 and in this year of the 50th anniversary of the establishment of Nigerian Law School, the only path to tread is that of progress.