

Recent Developments in 21st Century Global Legal Practice: Emerging Markets, Prospects, Challenges and Solutions for African Lawyers

OLUWAFEMI EMMANUEL OLOWONONI, OGECHUKWU JENNIFER IKWUANUSI
Nigerian Law School Headquarters, Abuja, Nigeria.

Abstract. In recent developments, there have been threatening ground breaking achievements to the practice of law. There is the influx of different types of technologies, cyborgs and other types of artificial intelligence playing in the legal arena alongside lawyers. There is the growth of non-traditional means of dispute resolution by means of Alternative Dispute Resolution (ADR) and Online Disputes Resolution (ODR) of recent taking the lead in resolution of disputes. Networking and borderless legal practice has been at its peak with the introduction of diverse social media platforms that enables interconnectivity beyond the national boundaries and enabling cross-border relationships between clients and their lawyers and law firms amongst themselves. Also, international dealings such as commercial transactions are constantly on the increase with the deployment of various electronic media that enables same and legal process outsourcing. Aside all these, is institutional challenge arising from corporate institutions whose activities and mandates directly or indirectly affect the legal profession. Needless to say that the demands of the 21st century have indeed presented challenges to legal practice owing to tougher economic conditions that have affected clients and their businesses with boomeranging effects on legal practice.

Against this background, this paper examines these recent developments, emerging markets, opportunities, the demands of the emerging markets and the institutional challenges that have become a clog in the wheel of progress of legal practice in Africa. The paper makes

recommendations on the innovations and adjustments institutions can make towards hitch-free legal practice in Nigeria. The paper contributes to literature by examining the recent developments threatening the prospect of legal practice. It underpins the argument for the need to shift focus from the traditional legal practices to emerging fields. In doing this, the paper contends certain restrictions in the Nigeria legal profession and suggests reforms.

1. Introduction

Globally, the practice of law is a dynamic one as it grows and evolves alongside the society. Legal practice in Africa is no different. The 21st century legal practice areas have also broadened greatly. The legal profession is sacrosanct for the peaceful administration and co-existence of members of societies. Resultantly, the law must grow along with the society; otherwise we have a system that is at abeyance with the law. Indeed, the law is the bedrock of the society and where the legal system is sick, the society will certainly suffer for it.

In recent times, there have been tremendous developments in Nigeria and the world at large. There are emerging fields and global issues that raise concerns and encouragement such as the utilization of renewable energy as against non-renewable, the growing impact of climate change on the environment, impacts of global markets, international laws on the regulation of development and use of nuclear weapons, the emergence of crypto currency, intellectual

property issues occasioned by the duplicity of electronic print platforms by way of blogs, websites, frauds, the multi billion dollars sports industry, ever increasing entertainment and media law, cyber law, medi-tech, research and publications are only a few of the emerging areas of legal practice.

Lawyers are however expected to rise beyond all these and meet the society's needs. If lawyers must meet up with these new demands; then the hitches, difficulties and challenges especially those arising from institutions that stand on the way to achieving this purpose must be dealt with decisively

The 21st century has brought with it new areas of legal practice alongside dynamic ways of practicing law. Today, there is a tremendous departure from traditional legal practice. Hence, we have filing and service of court processes, scheduling with the judges, and even having court sittings all through the internet. There are numerous precedents available online at the click of a button, many robots that can answer your questions on legal issues 80% correctly as against the 60% correct answers given by humans. Clients come to you almost only for what the law will not allow them do by themselves. Similarly, certain legal processes have been simplified in order to encourage more client participation. Furthermore, the courts and litigants now look more favourably on Alternative Dispute Resolution (ADR) as against the lawyer dominated litigation system.

These developments have birthed new areas in legal practice, hence a veritable market for practitioners in the 21st Century. Unfortunately, some of the institutional framework in existence have not woken up to the reality of these developments and are as a result rendering great disservice to legal practice. Some other regulatory institutions have taken some steps in a bid to meet up with some of the recent developments, and while some of these steps are applauded, they could be improved upon to ensure a win-win situation.

This research is divided into four parts: The first part considers some of the recent developments and how these have affected legal practice; the

second part considers the alternative options and new areas of legal practice that has emerged; the third part examines the challenges in practicing in these emerging areas with special emphasis on institutional challenges; while the fourth part considers solutions to these challenges.

2. Recent Developments in Legal Practice in the 21st Century

The 21st century has brought with it a lot of formidable trends. We live in an era where traditional litigation is no more the order of the day. In more advanced countries, the Alternative Dispute Resolution is preferred to litigation owing to the party-autonomy it gives, however, ample room is still given to litigation which remains the front burner means of resolving disputes. The reason for this is obvious, the litigation system obtainable in such jurisdictions are not clogged by the truck load of challenges that ours is saddled with. There are no recording of cases in long hand, a large number of appeals do not reach the apex court of the land, frivolous applications by counsel calculated only to delay proceedings are disallowed outrightly, and there are sufficient man-power, willingness and where withal to expeditiously decide cases. As a result, people resort to ADR in such climes not to avoid the excessive delay in litigation but because of its suitability for their unique purpose. The Nigerian situation is not the same. Litigation to the average business man is a last alternative. The ample time, resources and uncertainty it generates has increasingly made it a less attractive option and ADR, a more viable option. Of course, ADR mechanisms are not within the exclusive preserve of lawyers, this simply means less lawyers go home smiling to the bank as practitioners from other areas can always be approached by clients to facilitate the resolution of their dispute.

Clients are willing to offer the least amount possible for much more services. Lawyers are required to be knowledgeable in vast areas which are ordinarily unconnected with law. Stiff competition is growing amongst colleagues as clients' demands continue to grow and will often prefer a practitioner whose services will be used in "killing two birds". It is notorious that the

need for typists in law firms is fast dwindling as a lawyer who is not computer savvy can safely be said to be a misfit for the 21st century legal practice. The mischief this also takes care of is that costs are kept at the barest minimum after all, the smart practitioner must keep his client satisfied. While paperwork is still a reality, law practice has changed drastically in the past 20 years, mainly because of computer technology.

With all of these, practitioners in the field still have to grapple with the increasing number of legal practitioners churned out by the Law School annually as the Universities keep turning out more graduates yearly. As if that were not enough, professionals from other disciplines have also joined the race. For instance, the Corporate Affairs Commission in executing the Presidential Mandate issued by the Vice President of the Federal Republic of Nigeria to promote the ease of doing business in Nigeria has thrown the door to incorporation of companies to interested investors and the first directors of the proposed company may approach the Commission directly to register the company without engaging lawyer. Hitherto, only accountants, chartered secretaries and administrators and lawyers could register companies under Part A of CAMA.

3. Institutional Challenges

It is worthy of note that whereas the evidence law and indeed the entire legal system in England has undergone radical amendments and reforms to bring them in line with the challenging circumstances and modern trends, it is only a few months ago that we thought fit to amend our Evidence Act in order to bring ourselves in line with global trends. Unfortunately, our effort is superficial and does not go far enough. We do not have elaborate cyber laws. Cyber law, of which the law relating to electronic evidence is an offshoot, has emerged as a new discipline and we have few if any groundbreaking litigation on the issue. It is to foreign law and foreign case law studies that we must look for guidance as our law develops in this field.

The issue of delay in the adjudication of matters in court is usually under-estimated. At this pace, a time will come, (and we hope it does not come) when only criminal matters will be the matters in court rooms. Needless to say that such a day will be truly woeful as many judges, court staff will lose their jobs as a consequence of the reduced income courts will consequently generate. It is needless to say what will happen to legal practice if this day arrives. The National Judicial Commission, Nigerian Bar Association, Legal Practitioners Disciplinary Committee must realize the impending consequence of failing to nip this menace at the bud. Thus far, judges blame practitioners for the delay as practitioners bring up countless frivolous applications geared towards delaying the matter in court; practitioners on the other hand lay the blame on the judges for late sittings, non-sitting and unfounded delays in delivering rulings. If we must continue the blame game, we must also blame the draftsman of the Constitution who has allowed virtually all decisions of courts appealable up to the Supreme Court. This is far from ideal. The law reports are replete with cases that judgments have just been given for despite being initiated many years ago. The uphill task of resolving disputes is admittedly a tedious one. Dubious practices by lawyers to stall proceedings in court should be met by stiff sanctions. We must at this point applaud the growing practice of some courts in awarding punitive costs against counsel who file frivolous actions in court in a bid to impress their clients. Respectfully, we submit also that Judges who are in the habit of sitting very late, rising rather too early, delaying ruling unnecessarily should have these habits mentioned to the Chairman of the National Judicial Commission or State Judicial Commission (as the case maybe). Hence the executive arm do all it can to all stakeholders should make concerted efforts to make this dispute resolution

4. Emerging Markets in Business of Law Services

In the words of D.D Dodo SAN, the Legal Service market has not been spared the influence of globalization. Economies have become more global, the demand for cross-border legal services has grown significantly and efforts are

being made by stakeholders to remove the barriers to cross-border legal practice.

Never has there been a time that the demand for lawyers is as high as it is today. With the growth in commercial transactions, government policies, foreign participation in business, growth in population, inter connectivity occasioned by ICT resources that have united the world as one global village, legal issues arise every second. Sadly, there are thousands of unemployed lawyers in Nigeria. With the Nigerian population estimated to be over 160,000,000 with trained lawyers both dead and alive not exceeding 120,000, making approximately 1,400 Nigerians to a lawyer, one would think that the legal profession must be a very lucrative one in Nigeria. This is very far from true. To make matters worse, only a very minute proportion of the lawyers in Nigeria have assessed the global legal market. Just like in our commercial sector, we have been in the habit of importing rather than exporting; this explains the very disturbing statistical data issued by Law Pavilion that 80% of legal services required in Africa comes from outside Africa.

At the 2015 Nigerian Bar Association Conference held in Abuja, young lawyers were advised to embrace new areas of law such as Telecommunications law, ADR, Intellectual Property law, Cyber law against the more traditional tracks. This paper canvasses that to forge a better front in the global legal market and in order to make headway in the numerous trends that have developed in recent times, first things must be done first; we must put our house in order. While we are not oblivious of the very green pasture on the other side, however, it is our firm view that if the institutions that ought to carry these systems are not functional, then embracing these global trends will be an exercise in futility since we would always fall back to our own. Our institutions must work as they should. With dysfunctional institutions, we will certainly have a dysfunctional legal system and which would obviously result in a dysfunctional practice of law. A lot has been said about how Nigerian lawyers should go global and how they should be abreast of global legal issues, but as they say, "charity must begin at home". These global trends cannot be

practiced in vacuum. They must, as of necessity arise from somewhere. In a situation where matters in court drag for years, parties are substituted as a result of the death of the individuals that initiated the matter, vital witness die or lose factual details of occurrences that should have formed part of their testimony in court, owing to countless adjournments is a dire situation.

The era of practicing law in one jurisdiction is fast becoming a thing of the past. With the tremendous growth of international trade, interstate deals, bilateral and multilateral treaties, legal practice is increasingly becoming global and smart practitioners are upping their game with international best practices as with the advent of internet, telecommunication systems, clients are no longer limited to lawyers in their climes nor are they limited to the need for legal services within their jurisdiction.

First, Legal practitioner has exclusive right to representation of litigants in proceedings and signing of processes relating to proceedings in Courts. Practice of law in large firm specialization as in –house counsel has some advantages including the high salaries, travelling with accolade, career progression and mentoring. However, it is observed also some limitations such as long hours of input leaving no room for personal development, competitive nature and the uncertainty underlining the employment as a result of absence of contract of service and any meaningful schemes. The arrangement in medium law firms is as same in large firm. In Small firm, there is early contact with clients, room for independent practice, the correct approach to pupillage, massive gain of confidence among others but there is also the challenges of little or no salary and incentives generally, likelihood of complacency, leading to a drop in morale. It is submitted that the practice of law should be organised as a business with managerial skills carefully deployed. There is the argument as to whether advocacy prowess is a gift, inborn or a skill or an art that may be learnt over a period of time. This suggests that advocacy skill may be improved by paying attention to voice, maintaining eye contact, self-

confidence, comportment, imagination, illumination

Second, there is also the option of general commercial, corporate practices and general Corporate Affairs fillings. Corporate law practices range from company formation, securing of permits, license and approval from corporate bodies, facilitating foreign investment and capital inflow movement, merger, takeover, acquisitions, capital market solicitors, shares and secured credits transactions, asset schemes and investment management. Corporate Registration, Packaging and obtaining permits and approvals, Corporate Affairs fillings, Post Incorporation Matters as Alteration, Increase in Shares and Conversion, Merger, Takeover, Winding up, Legal Searches and CTCs etc, Debentures and Charge Documentation

Third, a lawyer may choose to specialise in Real estate, Conveyancing and property practices: a budding lawyer in this regard can also take advantage of intellectual property law, oil and gas, minerals law and copyrights. By the combined effects of Sections 22(d) Legal Practitioners Act (LPA) and Land Instruments Registration Law 1959 as Section 2 and 4 provides that no person other than a Legal Practitioner shall either directly or indirectly for or in expectation of any fee, gain or reward, draw or prepare any instrument except will. The law further provides for Penalty of fine of n100. This work observes and submits that the fine provided under the law as penalty is too small to serve as deterrence to fraudsters. Property law practice extends to Mortgage –Backed Securities, Asset-Backed Securities, Estate Development & Secularization Intellectual Property, Registration of patent, trade mark, copyright etc

Furthermore, there is the option of Probate practices. The Legal Practitioners Act provides that only a legal practitioner can prepare documents for probate or letters of Administration. Section 22(d) Legal Practitioners Act provides that only a legal practitioner can prepare documents for probate or letters of Administration. Probate practices also include Family Law Practices, Adoption

and Child Rights, NGO on Child Rights and Domestic Violence, Guardianship, Executorship and Trusteeship

Furthermore, there is the prospect of enjoying judicial appointments and political appointment such as AG federation and the 36 states, Registrar General of Corporate Affairs Commission, Director General of Nigerian Law School, Director General of Securities and Exchange Commission, Nigerian Copyright Commission, Nigerian Communication Commission, Institute of Advanced Legal Studies. It is submitted that a lawyer in politics should embrace the culture of professionals in politics and not professional politician.

There is also the option of employment as in-house solicitor and company secretary, Employment as in-house solicitor and Company Secretary in small and medium and multinational companies such as MTN, GLOBACOM, TEXACO, MOBIL, NICON etc Legal department and Compliance, Human Resource Management, Corporate Governance, Negotiation, Drafting, Vetting and Legal Representatives.

There is also academics and legal research in the Faculties of law, Nigerian Law School and Institute of Advanced Legal Studies and others institutions such as Polytechnics, Colleges of Education and other professional examination bodies such as ICAN, ICSN etc Law Reform Commission, Police College etc

There is also the option of joining the Ministry of Justice, and become a state counsel in any of drafting, DPP, commercial law, international law, negotiation, law reform departments. African lawyer may also specialize in the practice of arbitration and other ADRs such as Arbitration, Mediation, Negotiation, Private judging, Early Neutral Evaluation, Conciliation and others. The era of sole litigation in resolution of disputes is gone. However, it is not enough to become an arbitrators, lawyers can participate either as an arbitrator, arbitral institutions, registrar, secretary, Institutional body providing ancillary services to arbitral sittings and panelists. Law firm may also be a

trainer and a training Institutes, providing outsourcing, linkage and Interconnectivity.

There is the legal research and publication aspect of legal practice such as Legal publishing, law reporting, court and media reporting, law reporting editor, author, publishing of texts and legal journals. Legal researching births legal advice on various new areas of law such as medi-law, forensic medicine, infotech, sport law, renewable energy, aviation, corporate governance, merger and acquisition, etc. Lawyers may also specialize in promoting Non-Governmental Organisations (NGOs). The rigour of legal training and the sense of activism, equity, justice, fairness, good corporate governance imbibed in the training give an edge to lawyers in running those organizations. This paper in particular recommends NGO as a field of law for those coming into the profession at old age and for those who truly desire to render selfless services to humanities. Finally it is option for those with the spirit of social crusader. NGO works on defence of Human Right, Gender and Child Right, Constitutional and Good Governance Advocate, Family /Religious Right, Health Awareness to mention a few. It is equally recommended that legal practitioners in this field endeavour to register under the extant laws and put in place a model of good corporate governance.

There is also the option of building a legal career in General civil and public service career in legal related institutions and corporate bodies such as Nigerian Deposit Insurance Corporation, Corporate Affairs Commission CAC, Federal Inland Revenue Service, Securities and Exchange Commission, Economic and Financial Crimes Commission, Independent Corrupts Practices Commission, Nigerian National Petroleum Corporation, Nigerian Drug and Law Enforcement Agency, Nigeria Police Force, Nigerian Navy, Nigerian Army, Nigerian Navy, Nigeria Pension Management Commission, National Insurance Corporation of Nigeria, NIPC, FIRS, INEC, NNPC, Federal Road Safety Commission, NPF, NA, NAF, NAVY, Asset Management Corporation of Nigeria, Nigerian Copyrights Commission, Forensic Law, Terrorism, cyber-crime law, sabotage law.

There is another emerging field of legal practice gradually becoming solidified. It is a combination of accounting, forensic, taxation and fraud examinations. It is an amalgamation of Taxation, Revenue Law and Criminal law. This field expands to issues of Forensic and Fraud Examinations, Revenue Law, Privatization, Commercialization, Private – public partnership, Unbundling of government enterprises, auditing and accounting. It is our suggestion that a specialty in this field may require knowledge of accounting, taxation, revenue and law. Becoming a member of Institute of Chartered Taxation, Accountant and Fraud Examiner will certainly give an edge and credence to such practice.

Then on the other hand, Sport and Entertainment is an industry and a big business accounting for more than five percent of world trade. In the European Union, some over five million jobs directly and indirectly related to football alone have been created. In Africa, there seems to be no accurate data but it is however not doubtful that a good proportion of the youth are gainfully employed in trade relating to football both in the continent of Africa and outside the continent. In the European Union, it accounts for more than 2% of their combined Gross National Product. It has even been said that a country that wins the World Football Cup will have her GNP increased by four percent. Sport is recognized further as a big business even by World Trade Organization (WTO)

The modern practice of sports law either as a sports agent or sports lawyer dated back to early 60s by the notable pioneer lawyer Boston attorney in person of Bob Woolf. He was said to have first appeared for Red Sox Pitcher Earl Wilson after the latter was involved in an auto accident in 1962. Six years later, Woolf left his criminal practice and devoted his time entirely to representing professional athletes. Before his death in November, 1993, his office had negotiated over 2000 professional athletic contracts estimated at over one billion dollars. Sports lawyer in summary performs the functions of legal representative, counseling, advising and assisting in contract negotiation, drafting, execution and enforcement, dispute

resolution, immigration and procurement of permits, merchandising and licensing, financial scheduling and tax analysis etc.

5. Conclusion and Recommendations

This seeming reluctance of those in charge of education curriculum to embrace new developments has spilled over to legal education. Continuing Legal Education has blossomed greatly in the United States. It is indispensable machinery for upgrading the standard of legal practice.

It is strongly recommended that a new and vigorous effort should be made by the Council of Legal Education to resuscitate and develop a viable programme of continuing Legal Education. The dynamism of the Legal profession, ever growing modern economics and versatility of the law as earlier noted demands continuous legal education for robust and comprehensive knowledge of new areas of law.

The option available for our universities is to introduce some new and recent areas of law such as entertainment, sports law, e-governance etc. as part of undergraduate course work and train budding lawyers on these frontiers in the legal profession. Secondly we may also fashion out a law certificate programme or a Post Graduate Master of new areas of law for lawyers that may intend to specialize in those fields.

With the recent trend of globalization of legal practice, business of legal practice and the emerging global market order, the ultimate call of this paper is specialization. Specialization is a term often used to denote a substantial concentration of activity within a particular field of practice. With globalization, modernization and the emerging global market order, in order to be relevant in the emerging international development, we humbly submit that there are urgent needs for lawyers to urgently discover areas of their strongest interest and trail blaze and or expand the frontier.

This paper recommends also global best practice of obtaining clients in the industry which include personal contact, electronic medium as the world has become a global village.

Membership of certain associations and or professional groups could bring an edge to the quest for clients in the sports industry. Take for instance, membership of American Bar Association Forum on Entertainment and Sports Industries, National Sports Law Institute, registration and certification by the relevant players' unions.

A young lawyer may also consider the option of joining law firms that specialize in commercial or entertainment law practice.

Success and good publicity also broaden avenues for lawyers. God's favour, Integrity and strict adherence to professional ethic, diligence, availability and expertise fostered by satisfied clients will in no distant time distinguish legal practitioner apart for excellence and unlimited breakthrough.

Networking and partnership; attend conferences/Trainings/seminars and workshops etc NBA Annual Conference; Sectional Bar Conference and International Bar Conference (IBA)

This paper recommends pupillage. This is because pupillage affords the lawyer an opportunity to acquire the necessary practice skills. The legal profession is a technical field and every new entrant is expected to learn the intricate rudiments of the profession. Pupillage and mentoring in the legal profession provides shoulder to see further in life.

We also recommend that every lawyer must pursue professional accomplishments such as Appointment as Member of Regulatory Bodies in the Legal Profession such as Council of Legal Education, Body of Benchers, General Council of Bar, Legal Practitioners Privileges Committee, Corporate Affairs Commission, Human Right Commission, Council of Institute of Advanced Legal Studies etc Appointment such as Notary Public of the Federal Republic of Nigeria; Appointment/Election in the National or Local Bar Council and various Committees; Appointment as Justice of Peace; Appointment as Senior Advocate of Nigeria; Appointment as Benchers and Life Benchers.

We also recommend that budding to take professional trainings and examinations such Institutes of Chartered Arbitrators, Institutes of Secretaries, Professional Managers, Chartered Institutes of Taxation, Fraud Examiners, Bankers, Sport agents and financial experts. We recommend lawyers to undertake master, post graduate diploma, certificate, and doctorate degree programme and acquire knowledge of law in specialized field.

The Bar is not just a trade or business. It is a vocation. It is not merely another avenue for making money. The Bar is first an honourable profession and that barristers belong to a professional community of a very rare type. Anyone taking part in the administration of justice is engaged on a task of considerable importance to the welfare of the community. The legal profession has thus a much higher purpose and a far nobler objective.

It is important to trail blaze in the Information Technology world for successful career in the legal profession. Presently, the field of human capacity development, communication and integration; accounting systems and information storage; researching and e-commerce are all digitally controlled. The impact of information technology is far reaching in the 21st century. To be a key player in the globalised legal practice, a lawyer must have and be able to deploy the relevance of computer, laptop, I-pad, tablet, phone, scanning machine, fax machine for career enhancement. Social Media such FACEBOOK, WHATUPS, BLACKBERRY, LINKENDIM, EMAIL (organisation email), WEBSITE and MESSENGER is a fertile ground for borderless legal practice.

Develop entrepreneurship spirit in the practice of law. Business of Practice entails good accounting records, robust relationship with clients and human resources management. There must be a law office strategically located to give optimum service to the clients. Proper accounts to be opened and maintained.

Every professional must understand the importance of dressing. You are addressed as you are dressed. Your dressing makes the first

impression and first impression they say last long. There is no second chance in some cases. Don't let people mistake you for a tout, beggar, prostitute, fraudster and masquerade all because of your dressing. Dressing modesty, smartness, royalty, with proper colour combination and colour sense. A lawyer must dress to match the occasion. For instance, there are different wears for different occasions such as cock tail party, dinner, lunch with clients, professional regulation dresses.

It is also our suggestion that the compositions of some of the professional bodies are too large. In this regards, we suggest that the membership, roles, relevance, composition of Council of Legal Education and Body of Benchers be reviewed to stop the overlapping in roles.

In view of the decline in the quality of lawyers, we suggest 50% as pass mark and not more than (4) attempts subsequently. In the alternative, the current threshold may be maintained but with the introduction of qualifying examination as a weeding test for admission into the Nigerian Law School. In the alternative, a first degree in Art, Humanities, Social Sciences, Management and even Natural Sciences be made a condition for a candidate seeking for admission to study law in Nigeria.

We recommend pupillage of three years after call for those that intend to open a law firm only. Law office licensing is a welcome development in order to maintain standard, ethics and monitoring. A law firm to be licensed must have a partner with three years' post call experience, evidence of membership of NBA Branch, payment of Bar Practicing Fees, sponsorship by two reputable law firms within the branch and evidence of completion of pupillage.

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