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Law & Justice Sector Agenda; a Case for Nigeria

Dear colleagues, today's occasion affords us another opportunity to articulate some issues that have continued to threaten the continued existence of the law and justice sector in Nigeria. These issues have continued to erode the significance of legal practice and I am afraid that if these issues are not urgently addressed, we may find ourselves in the helpless situation where we may not be able to guarantee the future of our profession. The confidence of the public in the sector may also be affected. The solution therefore is for us to take deliberate steps in order to rescue the system form this imminent danger.

I have attempted to set out some of these issues and I will proceed to treat them in no particular order of importance.

Conference on Law & Justice Sector.

From a review of the law and justice sector, it is difficult to trace any deliberate national policy or strategic future developmental plan to the sector; long term, short term or medium term. It would therefore suggest that the current state of the sector is a product of series of professional accidents or mistakes or a combination of both. More worrisome is the fact that the only strategic effort at developing the legal profession in Nigeria was the inauguration of the Unsworth Committee on the Future of the Nigerian Legal Profession. That was in 1959. The recommendation of the committee brought about the establishment of the Nigerian Law School and the enactment of the Legal Practitioners Act. In fact, the present structure of training of legal practitioners in Nigeria today owes its existence to the historic work of that committee.

The question that comes to mind is this; Can this be the future of the legal profession in Nigeria as contemplated by the Unsworth committee in 1959? From the summary of its recommendations, I am convinced that what obtains in the sector today is clearly at variance with the intention of the committee. Where we are today (with due respect) is the outcome of the lack of a developmental plan which has continued to elude the sector for over five decades. As a fervent believer in reforms, I do not think we should continue to fold our arms. Our current situation can be remedied. Although there may have been attempts by various component States to reform the justice sector of those individual States, it has now become necessary that we draw up a sector-wide and a nationwide Law and Justice Sector Agenda.

We must now therefore demand a National Stakeholders' Conference (comprising of the bar, bench, police, prison and other agencies of government) as a single unit of governmental development to plan the future of our profession and indeed the entire law and justice sector. The request for the conference should be addressed to the office of the Attorney General of the Federation. As the leader of the bar, the office of the Attorney General of the Federation must be directly involved in the organization and co-ordination of such a conference. The conference which will be delegate- based should be mandated to draw up a 5 year National Law and Justice Sector Agenda for Nigeria. The objective of the agenda will be to identify the sector development needs and collectively design a means of meeting those needs. It will also be targeted at strategically articulating a shared vision and mission for all agencies operating in the sector. This all-encompassing agenda will be aimed at advancing the future of the legal profession, the judiciary, administration of criminal justice, enforcement of civil rights and obligations, resolution of commercial disputes; all recipe for a lawful, orderly and economically stable society.

Similar steps have been taken by other countries in setting a developmental goal in their law and justice sector. In Samoa, a five year Law & Justice Sector Plan was developed with the objective of informing the programs of the key agencies in the Law and Justice Sector. It is also aimed at ensuring that the sector contributes effectively to achieving the goals and objectives of the National Strategy for the Development of Samoa, relating to law and justice in Samoa[1].

In an attempt to streamline the judicial system in the country and make it responsive to the present day requirements of the society, the government of Pakistan in 2009 inaugurated a committee to prepare and implement a judicial policy for all courts, tribunals and quasi-judicial institutions in Pakistan[2]. The committee's terms of reference included improving capacity and performance of the administration of justice, setting performance standards for judicial officers and persons associated with performance of judicial and quasi-judicial functions and publication of annual or periodic reports of the Supreme Court, Federal Sharia Court, High Courts, Courts subordinate to High Court, Administrative Courts and Tribunals.[3]

[1] Samoa Law & Justice Sector Plan 2008-2012.
[2] National Judicial Policy 2009. Published by: Secretariat, Law & Justice Commission of Pakistan, Supreme Court Building, Islamabad.
[3] See page 7 of the Pakistan National Judicial Policy 2009

The thrust of the National Judicial Policy of Pakistan is to consolidate and strengthen the independence of judiciary, thereby enabling the judicial organ to exercise institutional and administrative independence. To that end, important decisions were made including the determination that the Chief Justices of High Courts should decline appointments as acting governor of the provinces and recall of all judges working in executive departments of the federal/provincial governments. The committee also deliberated on the filing of false and frivolous cases and recommended that courts should impose compensatory costs under the relevant statute[4].

Our present circumstances may however not necessarily be the same with the examples given above. It is in view of this and as stated above that we need to carry out a quick evaluation of the entire sector in order to determine the future developmental needs of the sector. This would guide the framing of a developmental agenda.

Constitutional Reforms (As it affects the Law and Justice Sector)

An essential aspect of any sector reform agenda is constitutional and law reform. Am assessment of the constitution reveals that certain provisions of the constitution have gradually become an obstacle to the advancement of the law and justice sector. In view of this , there is need for a constitutional reform as it affects the law and justice sector.

Constitution and Size of Courts

By the Constitution of the Federal Republic of Nigeria 1999, in order to exercise its jurisdiction, the Supreme Court must consist of not less than five justices of the Court[5]. Similar provisions relate to the Court of Appeal whereby the Court is deemed to be properly constituted only when it consists of not less than 3 justices of that court[6]. The implication of these provisions is that these courts cannot entertain any matter (including routine applications such as an application for substituted service) unless this constitutional quorum is achieved. In practical terms, cases have suffered avoidable delays in these courts owing to these provisions.

While I hold the general view that the requirement for the said quorum should be varied and not applicable in all situations, it is also specifically suggested that issues relating to the constitution or empanelling of courts including the size[7] should be regulated by statutes and not the Constitution. Although the constitution prescribes the minimum number judges thereby allowing statute to determine an increase as may be required, it is suggested that all provisions relating to the size of the court should be removed from the constitution.

This is the case in some other federations like the United States where the constitution and size of the Supreme Court is prescribed by statute and not by the Constitution[8]. This will afford the sector the flexibility of amending the statute as and when the need arises. The same suggestion should be extended to the conferment of jurisdiction on Courts.[9] It should be dealt with by statute and not the Constitution.

Right of Appeal

Another Constitutional provision that I consider calls for re-consideration relates to the Right of Appeal especially from the Court of Appeal to the Supreme Court.[10] Right to appeal to the Supreme Court should be conditional i.e with the permission of court save for exceptional cases; e.g decisions in criminal proceedings in which any person has been sentenced to death. Again, in the United States, appeals to the Supreme Court is based on a grant of a Permission To Appeal ("PTA"). Under the U.S system, although the right of appeal exists, the Supreme Court determines which appeals it wants to entertain. This is usually based on the issues on appeal. For example, in 2008-2009 Term, the U.S Supreme Court received 7,738 requests for appeal. Of these requests, 87 cases were argued and 83 were disposed of in 74 signed opinions. This is compared to 75 cases argued and 72 disposed of in 67 signed opinions in the 2007 Term[11].

A system such as this will naturally provide a solution to the congestion in our Supreme Court and reduce the life cycle of litigation as most matters will terminate at the Court of Appeal. Only appeals that raise novel questions of law (commercial, civil criminal or constitutional) will be entertained. With this independence, our Supreme Court will be discharged of the burden of having to entertain frivolous appeals and indeed routine applications.

4 See para. 19 in Part II of the Pakistan National Judicial Policy 2009.
5 Section 234 CFRN 1999
6 Section 247 of CFRN 1999
7 Section 230 (2) (b) and Section 237 (2) (b) of CFRN 1999
8 See the U.S Judiciary Act 1869(also known as the Judges Circuit Act)
9 See Section 251 (1) of CFRN 1999
10 Section 233 (2) of CFRN 1999
11 End of Year Report for 2009 prepared by Justice John G. Roberts, Chief Justice of United States

Attorney General of the Federation and State Attorneys General.

The Constitution of the Federal Republic of Nigeria provides for the appointment of an Attorney General of the Federation who shall be the Chief Law Officer of the Federation[12]. The constitutional requirement for qualification to hold or perform the functions of the Office of the Attorney General of the Federation is qualification to practice as a legal practitioner in Nigeria for at least ten years[13]. There are similar provisions with respect to the Attorney General for each State[14].

The office of the Attorney General (Federation and State) is one of the most important offices in any constitutional arrangement. The functions of the office are of great constitutional importance as s/he is not just the legal representative of the State but also the guardian of public interest. The functions extend to the protection of the rights of the public in all matters; hence the office is one of great responsibility. In the exercise of those powers, s/he is completely independent of the president, governor or any other executive officer. This important power was guarded by common law and has been carefully preserved by the constitution.

The prosecutorial and public nature of those functions is clearly incompatible with ministerial assignments which are not as defined and are usually aimed at implementing government policies. Because the president or the governor may at his sole discretion assign any responsibility to a minister or a commissioner;[15] it is therefore not inconceivable that such ministerial assignment may conflict with the overriding public interest and confidence reposed in the office of the Attorney General.

It is on that premise that it is suggested that the office of the Attorney General be separated from that of the minister or commissioner for justice. Relevant provisions of the Constitution should therefore be amended accordingly. Similarly, the nature of the office of the Attorney General demands a person not only qualified to practice as a legal practitioner but someone who is in active legal practice.[16]

Further to the foregoing, it has also been observed that aside from the constitutional requirement for qualification for appointment as Attorney General, some other factors (albeit unwritten) have now gradually been considered. Notable amongst these criteria is membership of the inner bar. With due respect to colleagues of this rank, I do not think this should be a requirement.

As noted above, the Attorney General of the Federation/ State is the Chief Law Officer of the Federation/State. By virtue of the office, he is the leader of the bar. He is ably positioned to take decisions in the interest of the bar. He is the face and the image of the legal profession; akin to primus inter pares. In his capacity as such, his disposition to the profession becomes very critical. And in view of the importance of the traditions of the bar to the general outlook of the profession, an occupant of the Office of the Attorney General must convincingly and in sufficient terms possess the ability to preserve, advance and ensure the preservation and advancement of the traditions of the bar. This is notwithstanding membership of the inner bar. These qualities you will agree with me are essential if we must continue to sustain the reverence of that office as well as the legal profession.

Exclusive Jurisdiction of Courts

Section 251 (1) of the Constitution sets out certain matters over which the Federal High Court has exclusive jurisdiction. Without restating the reason for the establishment of the Federal High Court, the court was the first specialized court in Nigeria. Since its creation in 1973, it has continued to develop not only in size but also with respect to matters over which it has exclusive jurisdiction.

Just about a decade after its existence, it became clear that it has indeed come to effect a change in our litigation landscape. The decisions of the courts in the **JAMMAL STEEL STRUCTURES case , BRONIK MOTORS VS. WEMA BANK[17], AMERICAN INTERNATIONAL INSURANCE COMPANY vs. CEEKAY TRADERS LIMITED[18] and SAVANNAH BANK NIGERIA LIMITED VS. PAN ATLANTIC TRANSPORT AGENCIES LIMITED[19]** were all testimonies of the incursion into the hitherto existing jurisdictional regime.

12 Section 150 (1) of CFRN 1999
13 Section 150 (2)
14 Section 195 (1) and (2) of CFRN 1999
15 See Section148 (1) and 193(1) of CFRN 1999
16 Sections 150 (2) and 195 (2) of CFRN 1999
17 (1983)6 S.C 272. The basis of the decision in this case was the unlimited nature of the jurisdiction of the High Court.
18 (1981) 5 S.C 82
19 (1987)1 NWLR P. 57 212

The party/subject matter argument also led to another specie of problems. What takes precedence for the purposes of determining the exclusive jurisdiction in accordance with Section 251 (1) of the Constitution is it party or subject matter? The concept of exclusive jurisdiction (particularly in the case of the Federal High Court) was developed with a view to ensuring that cases relating to the revenue of the federal government were expeditiously determined[20]. The expansion of its exclusive jurisdiction seems to have eroded the purpose of the court. Parties now take advantage of the rather ambiguous decisions arising from jurisdictional objections[21] in delaying the progress of matters in court. Consequently, matters are caught in the web of all manners of requests for a review at the appellate courts. It is therefore surprising to note that in the face of the problems created by the "exclusive jurisdiction" regime of the Federal High Court, the demand for courts with exclusive jurisdiction is on the rise[22]. In fact, only recently, the National Industrial Court was vested with exclusive jurisdiction with respect to labour and industrial matters. It is therefore suggested that the whole concept of "exclusive jurisdiction" be re-evaluated for the purpose of proposing necessary constitutional reforms in that regard.

Appointment of Judges

The Constitution of the Federal Republic 1999 provides for the appointment of judges of the High Court of a State. This is to be made by the Governor on the recommendation of the National Judicial Council (" NJC")[23]. The recommendation of the NJC is from among the list submitted to the NJC by the State Judicial Service Commission[24](" JSC"). The Constitution further sets out the composition of the State Judicial Service Commission[25]. Sub- Paragraph (f) specifically stipulates the appointment of two legal practitioners as members of the JSC. From the foregoing, it is clear that the first major step in the recruitment process rests with the JSC. The JSC generates the list of people to be considered for recommendation by NJC. It is on this basis that it is suggested that the legal practitioners to be so appointed as members of the JSC should be such that have sufficient knowledge of the legal community in order for same to be applied in the consideration of the list to be submitted to the NJC. This then shifts the bulk of the work onto the Attorney General. I say this because usually, it is the Attorney General who makes nomination to the Governor for appointment as members of JSC. Attorneys General should therefore ensure that in making nominations to the Governor for membership of JSC, practical professional experience and knowledge of the legal community is considered. This I believe will guarantee some degree of scrutiny in the recruitment process. It will also ensure that the right candidates are nominated for consideration for appointment as judicial officers. Consequently, we will create the platform for the appointment of candidates with the right passion for the job and not persons without any adjudicatory tendencies.

General Council of the Bar

The General Council of the Bar ("the bar council") is established by the Legal Practitioners Act The bar council is charged with the general management of the affairs of the Nigerian Bar Association ("NBA")[26]. In the exercise of this oversight functions, the General Council is properly positioned to superintend over matters relating to the legal profession; tradition, etiquette, decorum etc.

It is however unfortunate that the affairs of legal practitioners have been managed without a bar council in place. This has been the case at least in the last four years. However, apart from the mandatory statutory provision for its constitution, I am of the view that some disturbing issues which now require urgent attention would have been addressed had a General Council been in existence. An example of those issues is the current uncertainty in the manner of addressing a female judicial officer; is it "my lord" or "my lady". Ours is a profession that prides itself in convention, hence the manner by which a judge (female) should be addressed is too important to be left at the pleasure of counsel. The consequent inconsistency has the tendency of relegating the traditions of the bar which is the foundation of the profession.

[20] Section 7 Federal Revenue Act, 1973
[21] See NEPA vs. EDEGBERO, JACK vs. UNIVERSITY OF AGRICULTURE MARKURDI and MINISTRY OF WORKS vs. TOMAS NIGERIA LIMITED
[22] EFCC and the Securities and Exchange Commission are both requesting for specialized courts with exclusive jurisdiction.
[23] Section 271 (2) of CFRN 1999.
[24] Para. 21 (c) Part I of the Third Schedule to the Constitution. Para. 5 Part II of the Third Schedule to the Constitution.
[25] Para. 5 Part II of the Third Schedule to the Constitution.
[26] Section 1 (1)of the LPA

Another issue that would have been addressed by the General Council relates to etiquette. These are practices and unlike ethics, they are mostly uncodified. Because they are rules of behavior, they are more vulnerable to breaches especially in the absence of any fear of sanction.

It is therefore suggested that the General Council of the Bar be constituted as soon as possible. Upon constitution, the bar council should as a matter of priority embark on such advocacy as may be considered necessary to re-awaken the etiquettes of the profession amongst legal practitioners.

As a young practitioner, I remember that counsel whose matters are called before the last cause on the list do not leave the court room. As a mark of respect for the court, they wait until the last matter on the court's list is called and dispensed with. A recent experience however reveals that this "last man" rule is gradually eroding and in some cases completely unknown to many legal practitioners.

Another worrisome conduct is the unilateral "modification" to lawyers' outfit. Notorious amongst this is the growing trend of wearing a hat or other manners of head-wear. This is common amongst male lawyers. Should this practice continue, it may become difficult for an unsuspecting law student or young lawyer to appreciate that apart from the lawyers' wig, no other head-wear forms part of a lawyers' outfit. It is in view of this that it should be the responsibility of the bar council to ensure consistency in the general conduct of lawyers including their appearance. This the bar council can achieve by issuing periodic rules on etiquette or direct local branches of the NBA to do so.

With respect to the discipline of legal practitioners, the Act established the Legal Practitioners Disciplinary Committee ('the Committee")[27]. It also prescribes the composition of the committee and sets out the penalties for unprofessional conduct[28]. The Rules of Professional Conduct for Legal Practitioners also vest enforcement of the rules in the Committee[29]. It would therefore seem that the Committee has "exclusive jurisdiction" with respect to the determination of matters where a legal practitioner is alleged to have misbehaved in his capacity as such anywhere in Nigeria. I am however of the opinion that the national posture of the Committee may lead to counter-productive outcomes. Foremost of these is the tendency to prolong the consideration of petitions particularly in view of the size of the Nigerian legal community and the allegations that are bound to emanate thereof. The suggestion therefore is that the Committee be " deregulated". The localization may be on a geo-political one basis. An immediate result of this will be the bridging of the complaint/resolution gap that currently exists as not all petitions will be determined in Abuja. With 49 members and a quorum requirement of five members, staffing should not be a problem[30].

Law Reporting

One of the essential tools of legal practice are law reports. They serve many purposes; teaching, practice and research. They are therefore useful to law teachers, the bar and the bench. An efficient law reporting regime is certainly a determinant of the effectiveness of the doctrine of precedent based on stare decicis. In the same vein, poor law reporting will lead to bad teaching, poor practice and weak court decisions.

The business of law reporting therefore requires proper supervision. This should not be taken as a campaign for a monopoly or downsizing on the publishers of law reports. But however liberal we want to keep it, I do not think it should be left unregulated. As I speak, (and I stand corrected) I am not aware of any regulatory authority for law reporting in Nigeria. Current trend is the sourcing of judgment from various courts and acquisition of a printing press without more. I consider this dangerous to the entire legal and justice sector for if the drive to make profit is a catalyst for sub-standard products, I do not think law reporting can escape it. Law reporting is vital organ to the efficiency of any legal system hence, the effect of a poor law reporting regime on any legal system is unimaginable. It is in view of this that it is suggested that an independent law reporting body be established. The body should be saddled with the responsibility of ensuring that the commercial ends of law reporting do not outweigh its legal and professional value.

[27] Section 10 of LPA
[28] Section 11 of LPA
[29] Rule 52
[30] Section 10 (2) (a) – (c) of LPA and Para. 1 of Second Schedule to LPA.27

Ethics of the Profession

The last issue that I have considered worthy of mention if we must guarantee the future of the legal profession is our ethics. The dignity of the legal profession derives from its age long tradition and culture. These have culminated into the ethics that now guide the conduct of legal practitioners. The ethics are of multiple regulatory branches; lawyer/client relationship, professional misconduct/discipline, duties to the court and court room decorum. Although the list is not exhaustive, proper codification of the rules can be found in the Rules of Professional Conduct for Legal Practitioners ("RPC"). With 57 rules, the RPC seeks to provide general guidance to nearly every aspect of legal practice (within and out of court).

Like most valuable attributes, legal practitioners should be exposed to these traditions at the earliest stage of legal training. The responsibility is not just that of the Nigerian Law School, every lawyer owes a duty to the profession to imbibe, respect, uphold and transfer these traditions to new entrants into the profession at every given opportunity. That is what the profession stands for.

The reason for all that I have been saying is the increasing rate of erosion of these traditions. I am therefore afraid that if careful steps are not taken to stem this regrettable tide, the profession may gradually lose all that it stands for; its tradition. The dwindling pace of the tradition of the profession may have been due to an omission, restoring it certainly requires a deliberate plan. Most of the work rest on the shoulders of the NBA but the bar council too must play its role. It is also the duty of every lawyer to be a part of this campaign. The society may have its problems with the law and the legal profession, the culture and traditions of the legal profession should not be left to suffer.

All of the foregoing are some of the issues that I consider as impediments in the path of the growth of the legal and judicial sector Nigeria. As I have stated in the beginning, they need to be addressed timeously in the interest of the sector. Personally, I am convinced that with proper planning and removal of constitutional road blocks, the Nigerian legal and justice sector will be properly positioned for the benefit of all.

I thank you for your attention.

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