

**THE FUTURE OF THE LEGAL PROFESSION AND THE REGULATION OF
LEGAL PRACTICE AND PRACTITIONERS
THE NBA LPRRC PROJECT**

by
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**BEING A PRESENTATION MADE AT THE NBA
2019 AGC ON 28th AUGUST 2019 AT EKO
HOTEL & SUITES, LAGOS**

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OUTLINE

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CONTEXT

By the grace of
God the future
of the legal
profession in
Nigeria looks
bright

Hon Justice Tanko Mohammed
CJN declaring NBA 2019 AGC
open



FIRST NATION 2010 SCC 55, [2010] 5
SCR 103 at para 10 Supreme Court of
Canada

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The NBA Reform Strategy- Necessity for Reforms

Year	Annual Admission (Nigerian Bar)	Total Admission (Nigerian Bar)
2010	4,292	81,594
2011	2,999	84,593
2012	8,485	93,078
2013	5,057	98,135
2014	3,099	101,234
2015	6,790	108,024
2016	6,332	114,356
2017	5,650	120,006

Fig: Annual and Total Nigerian Bar Admission Rates (2010-2017) Source: Supreme Court of Nigeria

3. Unprecedented Admission Rates into the Nigerian Bar:

- *The Council of Legal Education through the Nigerian Law School, provides only one combined pathway into the Nigerian legal profession i.e. as **Barrister and Solicitor**.*
- *Total number of Barristers and Solicitors in Nigeria (December 2017): **120,006**.*
- *Total percentage of Young Barristers and Solicitors (0-7 years post call): **35% (42,704)***
- *This restricted pathway has led to the admission of an unprecedented number of legal practitioners into the Nigerian legal profession with limited areas of specialisation and inadequate employment or entrepreneurial opportunities.*



INTRODUCTION



- The Nigerian Bar Association Legal Profession Regulation Review Committee (NBA LPRRC) was constituted on 28th December, 2016 and inaugurated on 24th January, 2017 by the then President of the Nigerian Bar Association, A.B. Mahmoud SAN, OON.
- The core mandate of the Committee was to review the current regulatory objectives and the regulatory architecture of the legal profession and advice on its suitability to meet the current requirements for a robust, responsive and independent modern legal profession in Nigeria amongst others with eleven (11) Terms of Reference.
- The Committee consist of thirty (30) members chaired by Chief Anthony Idigbe SAN including six (6) young lawyers.
- It is noteworthy that our current NBA President **Mr. Paul Usoro SAN** was a member of the Committee and we hope the implication is that there is continuity.

WORK METHODOLOGY: MEMORANDA, STAKEHOLDER ENGAGEMENT, TOWN Hall, RESEARCH and retreat



Calls for memoranda

- The Committee sent out call for memoranda to the public; members of the legal profession and key stakeholders in the legal profession.
- Memoranda were received by the Secretariat from both individuals and institutions and the various stakeholders. In particular, we received memoranda from the Body of Benchers, various Attorneys General, Council of Legal Education, the Nigerian Law School, Law Faculties, various branches of the NBA, concerned legal practitioners, etc.
- The memoranda received were duly considered in the work of the Committee.

MEETINGS, Workplan and output



- The Committee was initially constituted into 2 sub-committees – the Current State Sub-committee and the Future State Sub-committee
- The Current State Sub-committee was headed by Mrs. Funke Adekoya SAN while the Future State Sub-committee was headed by Prof. Ernest Ojukwu SAN
- The Current State Sub-committee analyzed the current state of the legal profession in order to identify areas for reform which include review of existing laws, review of pending bills and review of the overall structure and institutional framework in the legal profession including examination of the NBA Constitution
- The Future State Sub-committee worked on what should be the future regulatory and institutional framework
- A third Sub-committee on Job Creation was set up on the request of the HAGF and submitted a Job Creation Report to the HAGF
- The Committee came up with deliverables on its main task in the form of a Report and a draft Bill - the Legal Profession Regulation Bill

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STAKEHOLDERS ENGAGEMENT/TOWN HALL MEETINGS AND RETREAT



- The Committee organized various stakeholders' engagement meeting e.g. meeting with the then Ag. CJN (now ex CJN), and meeting with the Hon. Minister of Justice and Attorney General of the Federation (AGF).
- The Committee also had engagement with the National Institute for Legislative Studies and the National Assembly, the judiciary, the Nigerian Law School, Law Faculties, Attorney Generals of various States, the National Judicial Council (NJC), the National Judicial Institute (NJI), etc.
- As part of its stakeholders' engagement activities, the Committee also organized various Town Hall Meetings which were held in Lagos; Kaduna and Calabar
- The strategic goal was to receive views/opinions/comments of our members and the public. The British Nigerian Law Forum (BNLF) made their input on international best practices.
- A Retreat was held to consider the various memoranda received; deliberate on the various initiatives for the future of the legal profession and work on a proposed bill to be presented to the National Assembly

RATIONALE FOR REFORM



- The cause of all misgovernment in any country is the maladministration of the laws in the courts of justice
– William Hume Blake 16th May 1849
- **Must lawyers be the fulcrum for justice delivery?** Some argue, no! Lawyers are expensive and parties can deal directly, cheaper!! See conflicting debates: R. D. Gidney and W. P. J. Millar, *Professional Gentlemen: The Professions in the Nineteenth Century Ontario* (Toronto: University of Toronto Press 1994) p.60-66.
- If lawyers are therefore the bastion against maladministration, what competences and ethical standards must they maintain?
- What about the Rawlings Revolution that took place in Ghana and its consequences on the legal profession? The warning signs are evident in Nigeria and if we do not drive the reform, it may come from outside and could be calamitous!
- Should the high chances of getting justice in a formal system with *well trained personnel* using *well established procedures and processes* be a reason to ignore the cost of maintaining several layers of courts in an appellate system of justice?
- So what we must do going forward is to ensure our personnel are well trained and have the ethical composition to offer the public the service they desire, that is - **JUSTICE**.
- We must appraise our system's preparedness for the future and preserve our profession from other contending and disruptive technologies and ideas- like what UBER has done to the taxi business. Union Bank and Cardinalstone have recently commenced services which threatens competitive advantages! See [Report of IBA President's Task Force on the Future of Legal Services, October 9 2017 Sydney](#)
- What about **WTO Protocol on Free Movement of Legal Services and African Continental Free Trade Agreement (AfCFTA)**?
- Reform is key to our continued relevance. This is a survival issue!!



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Our Offer

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- *Contract drafting, review, and negotiation;
*Perfection of titles to land;
- *Mediation and arbitration
*Debt recovery;
*General problem solving;

Inquiries

please contact
UnionCare on 0700 700 7000 or 01-2716316.
Email:
customerservice@unionbankng.com.
You can also visit any Union Bank branch for more details.

<http://www.nigeriabar.com/2018/04/union-bank-plc-apologises-as-nba-condemns-legal-advisory-and-adr-services-offered-by-them#.XVPgu7fTUzQ>

FINDINGS OF NBA LPRRC



- No clear regulatory objectives
- Regulation of the profession is fragmented
 - The HAGF, Body of Benchers, Bar Council, Legal Practitioners Disciplinary Committee, The Supreme Court, The Chief Justice of Nigeria, Legal Practitioners Privileges Committee, Council of Legal Education, Nigeria Law School, The Nigeria Bar Association
- No central organisation and bodies not subject to central control.
- NBA has both representative and regulatory roles.
- No licensing and supervision of practitioners and law firms
 - No practice license
 - No inspection
 - No insurance
 - No mandatory continuing professional development
 - No Annual Report
 - NBA current CPD programme has no statutory backing

FINDINGS OF NBA LPRRC CONTD



- No express character and fitness guidelines for candidates for call to the Bar
- Body of Benchers unwieldy at over 100
- Too many judges
- 36 AGs of states and 1 HAGF
- Few lawyer members not directly elected but appointed
- Regulatory capture and cronyism
- No term limits

- The HAGF chairs the General Council of the Bar and consequently with a political appointee in the chair, the Bar Council has not met in over 20 years and new regulations for the Bar has not been passed.
- Nigeria is not 'over-lawyered' but lawyers all want to practice and not embedded in the economy and politics
- Council of Legal Education also unwieldy. Government needs to exit training of lawyers and focus on setting standards
- Ethics education preparatory to legal practice in Nigeria is weak.
- Substantive curriculum does not prepare newcomers to be job ready
- Statutory bodies under the existing Legal Practitioner Act (LPA) are dominated by government appointees or judicial officers. Public served not represented.
- The mode of appointment of the practicing lawyer members is largely based on nomination and selection which may be subject to the whims and caprices of the appointing individuals or institutions. No direct representation of lawyers.

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Executive Summary of the Legal Profession Regulation Bill



- Following the Committee resolution that there is need for a new regulatory framework for the legal profession in Nigeria, the Legal Profession Regulation Bill was drafted to reflect the proposals of the Committee.
- The proposed Legal Profession Regulation Bill (the Bill) is made up of Parts I to IX with 103 sections and three (3) schedules.
- The Bill seeks to repeal the Legal Practitioners Act and the Legal Education (Consolidation etc.) Act and enact a more comprehensive single legislative framework for legal practice and education – the Legal Profession Regulation Bill.
- The Bill seeks to introduce clear regulatory objectives and principles that would guide the regulatory authority and committees established thereunder in carrying out their respective responsibilities and duties under the Bill.
- The Bill also seeks to establish a single apex regulatory organ that will be the highest regulatory authority to be known as the **Legal Profession Regulation Council of Nigeria** for the regulation of the legal profession.



Executive Summary of the Legal Profession Regulation Bill II



- The composition of the Legal Profession Regulation Council of Nigeria (LPRCON) is done in a way that it will guarantee its independent and the NBA will play a strong representative role.
- The funding of the Legal Profession Regulation Council of Nigeria under the Bill will be by the legal market (legal practitioners) and not the Government.
- The Bill seeks to reduce the risk of regulatory capture by making provision for direct election to positions and involvement of lay persons is introduced. This will meet the likely requirements of the new FCCPC if we follow from what happened in the UK. Term limits were imposed but existing life benchers get to keep their title. The battle should be on getting onto the LPRCON or its committees and not keeping existing bodies as they are!
- The Bill seeks to establish various Committees which shall be Committees of the Legal Profession Regulation Council of Nigeria with various functions. These Committees are – Body of Benchers; Professional Conduct Committee, Legal Services, Ethics and Standards Committee; the Legal Aid and Welfare Committee; Governance, Risk and Audit Committee; Compliance and Enforcement Committee; Education Committee; Young Lawyers and Career Committee; and the Privileges Committee.

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Executive Summary of the Legal Professional Regulation Bill III



- The technical and intellectual competence of legal practitioners would be maintained over time through mandatory statutory CPD program introduced under the Bill.
- The Bill introduced an elaborate system of supervision to address the issue of integrity and ethics in the legal profession.
- The Bill also introduced a new category of privilege – **the certified specialist** – apart from Senior Advocate of Nigeria.
- The Bill also introduced licensing of law firms and prohibition of local legal practice by foreign law firms.
- The Bill seeks to introduce the system of pupillage in order to enhance the development of legal ethics and professionalism in young lawyers.
- The Bill also seeks to make provision for licensing and accreditation of legal service providers such as para-legal.
- The Bill also seeks to introduce flexible legal structures allowing for conduct of legal practice. Please read the Bill for detailed information on how appointments and structure is made and maintained on based on international best practice confirmed by NBA and Supreme Court delegation visits abroad.

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REVIEW OF THE REGULATORY STRUCTURE OF THE NBA AND 1999 CONSTITUTION



- The Question of Leadership of the Bar: The Attorney General or the NBA President?
- **The Structure and Management of the NBA**
- There is a need to look at who manages the day to day activities of NBA .
- **Branches of the NBA**
- The NBA has no zonal or state structures but has about 125 branches in the various states
- **Source of Finance of the NBA**
- The effect is that the NBA is not financially independent as its revenue is collected and remitted to it by an agent of the government.
- **Representation of the NBA in some Regulatory Bodies of the Legal Profession**
- While the NBA plays limited role in the NJC, it has no representation in the State Judicial Service Commission.
- **Lack of Supremacy of the NBA constitution and the Possibility of Arbitrariness**
- In the absence of the supremacy of the NBA constitution, there is possibility of arbitrariness in the running of the affairs of the NBA which is contrary to the idea of the rule of law the promotion of which is one of the cardinal objectives of the NBA.
- **The NBA's lack of Jurisdiction over Non-members**
- Since membership of the NBA is not compulsory, the NBA cannot legitimately exercise disciplinary control over members of the Bar who are not members of the NBA.
- **Lack of Professional Secretariat**
- There is no constitutional provision for professionals to run the NBA secretariat on day to day basis. Elected and non-fulitime officers of the NBA cannot run the Secretariat on day to day basis. The current situation raises the challenge of continuity and sustainability of the projects and programmes of the NBA which are critical factors for fundraising from

THE WAY FORWARD



“Reform will not be easy. Whilst there is pressure for change, from consumer groups and also from many lawyers, reform will be resisted by other lawyers who are comfortable with the system as it is. Lawyers who are opposed to the reforms in this Review will either argue that I am mistaken and have failed to understand the special characteristics that set the law apart, or call for further research and consultation, kicking reform into the long grass. Changes will require significant political commitment, partly to meet the expected criticism from some lawyers and partly because reform will need primary legislation, which requires scarce Parliamentary time” – **Sir David Clementi, Report on Review of the Regulatory Framework for Legal Services in UK, December 2004**

What is the way forward? Finnemore and Sinkirk theory of norm life cycle: Emergence, Cascade and Internalisation

- Agenda Setting – Norm emergence – ideas, crisis or process. Our process has failed, so either crisis or ideas will lead to future regulation
- Policy Formulation – socialisation and engagement
- Policy Adoption – cultivate norm leaders and norm followers
- Policy Implementation or Termination – Norm Internalisation
- **“It is not the strongest of species that survives, nor the most intelligent; it is the one most adaptable to change” Charles Darwin**

THE FUTURE OF THE LEGAL PROFESSION ACCORDING TO RICHARD SUSSKIND



- What business are you in?
 - Railroad failed because we thought there were in railroad transportation
 - Clients do not want ... advisers
 - They want the outcome you bring
 - Build the system that will replace the way you work

- “ the best way to predict the future is to invent it”

- Richard Susskind Keynote Address INSOL

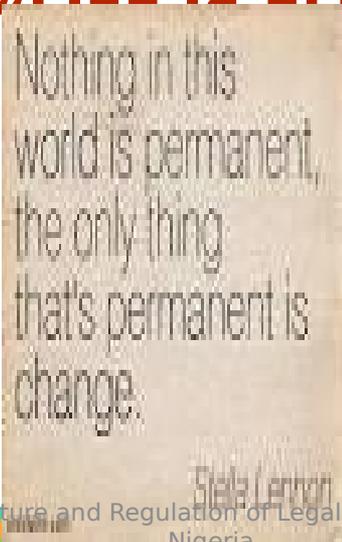
Singapore Conference April 2019 on The Future of the

Profession

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CONCLUSION

- We are grateful to the President of the NBA Mr Paul Usoro SAN for giving us the opportunity to continue to serve our great Association. We should not lose hope. It took Sir Clementi 9 years!
- We can indeed have a bright future, but we have to imagine how it would be and then walk backward towards it! Thank you for listening
- **HERACLITUS THE GREEK PHILOSOPHER MADE THE ASSERTION THAT “EVERYTHING IS IN FLUX” (PANTA RHEI IN GREEK, MEANING CHANGE).**



Nothing in this world is permanent, the only thing that's permanent is change.

Heraclitus

Nigeria