

# Globalization of Legal Practice in Nigeria: Challenges and Obstacles

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## Abstract

Globalization is a highly contentious concept because it means different things to different peoples. It is perceived either as a panacea to the underdevelopment of the Third World or as a tool of neo-colonialism by the West. Globalized legal practice which implies the provision of legal services within local jurisdictions by foreign or offshore law firms suffers from similar controversy as the genus globalization. Legal practice is generally national in character because a lawyer enrolled to practice law in one jurisdiction does not have an automatic right to practice law in another jurisdiction. The relaxation of this basic rule of legal practice which may permit the penetration of the legal market within local jurisdictions by foreign lawyers must take into consideration the level of industrial development within the local jurisdiction and the need to protect its economy against shocks arising from likely massive repatriation of funds charged as legal fees by foreign lawyers particularly where the major sectors of the economy are controlled by foreign investors who may prefer the legal services of foreign lawyers. It is argued, therefore, that apart from the extant legal rules which bar foreign lawyers from engaging in any form of legal practice in Nigeria without express authorization, the level of industrialization and the development achieved in information communication technology cannot sustain globalized legal practice in Nigeria. The liberalization of trade in legal services in Nigeria at the present will not only jeopardize the professional interest of domestic lawyers who are already disadvantaged in terms of access to the global legal market but will also imperil the local economy.

## INTRODUCTION

Globalization is a concept that readily generates interest and division amongst scholars. Arguably, globalization is one concept that has deeply polarised scholars and commentators along racial, regional and cultural lines. Ordinarily, the idea that the whole world could evolve into a single global community or village with common humanity uninhibited by national barriers would have generated excitements across the globe but this is not the case because globalization means different things to different peoples. While the developed nations recommend globalization as the recipe for the emancipation of the underdeveloped and developing countries from the claws of poverty and technological backwardness, the latter believe that globalization is a mere rebranding of economic, political, social and cultural imperialism.<sup>1</sup>

The controversies which the concept of globalization has generated are not likely to abate any time soon. Indeed, the current humanitarian crises in the Middle-East has not only deepened the controversies but also raised serious doubts about the benefits of the process of globalization to the developing parts of the world. The historic mass immigration of refugees from Syria and other crises-torn parts of the Middle-East to Europe and the outright rejection of these refugees by many European countries, with perhaps, the exception of Germany, are clear pointers to the fact that globalization has not succeeded in breaking down national barriers.<sup>2</sup> While nationals of different nation-states of the world may have been brought more closely together than ever before due to advancements made in information and communication technology, the world is yet to merge into a truly global village which the proponents of globalization vaunted as one of its greatest benefits.

However, no matter the misgivings one may have about globalization, the truth of the matter is that the volume of global trade and commerce and other trans-border transactions as well as the level of interaction and intercourse amongst nation-states have increased significantly through globalization. The increase in these diverse activities has invariably resulted not only in increased interface among many legal systems but also in heightened demands for the services of lawyers across national boundaries. Given that the negotiations and perfection of many trans-border transactions generally require knowledge of the applicable host-country laws, demands for the services of both local and foreign lawyers by clients located in different jurisdictions have made

<sup>1</sup> Douglas Kellner, "Theorizing Globalization" (2002) 20(3) *Sociological Theory* 285, 286; Yusufu Bala Usman, "Keynote Address: What Exactly is Globalization?" in D. A. Guobadia and Epiphany Azinge (eds), *Globalisation, National Development and the Law: Proceedings of the 40<sup>th</sup> Annual Conference of the Nigerian Association of Law Teachers*, held at the Nigerian Institute of Advanced Legal Studies, Lagos (Nigerian Institute of Advanced Legal Studies, Lagos 2005) xiv, xvii-xix.

<sup>2</sup> See Aljazeera America, "Eastern Europe rejects refugee quotas as Hungary vows to arrest migrants" (September 11, 2015) <<http://america.aljazeera.com/articles/2015/9/eastern-european-countries-reject-refugee-quotas.html>> accessed 06/06/2015

globalized legal practice an increasing reality.

It is common knowledge that more than ever before, global law firms with branches located in various jurisdictions and staff drawn from different countries have emerged on the global scene and are rendering legal services outside of the countries where they are head-quartered.<sup>1</sup> Equally, as part of globalized legal practice, lawyers from foreign jurisdictions have participated in business negotiations and concluded transactions in local jurisdictions where they are not legally licensed to practice law. Bierman and Hitt alluded to these emerging trends when they noted that,

Today we live in a world of global trade and commerce, and lawyers along with American workers are increasingly competing with workers from other countries. For example, three of the five largest (based on revenues) law firms in the world are headquartered in the United Kingdom (i.e., Clifford Chance, Freshfields, and Linklaters), and each of these firms has over half of its lawyers located in various foreign countries.<sup>2</sup>

Laurel S. Terry has also shown that most of the “ten largest global law firms have more lawyers located outside their home country office than in their home country” and that “all of them have offices outside their home country.”<sup>3</sup> Besides, the outsourcing (via the internet) of basic legal research and documentation to “lower-wage earning lawyers in English-speaking India”<sup>4</sup> has been on a steady increase due to the globalization of legal practice. These growing trends in globalized provision of legal services informed Thomas Friedman’s “flattening” concept of the globe.<sup>5</sup> Although Friedman’s “flattening” concept has many dimensions, the central theme is that the breakthroughs recorded in information and communication technology have significantly shrank the size of the world thereby enabling individuals located in different parts of the globe to communicate, interact, transact business and even compete amongst themselves with considerable ease.

Lawyers licenced to practice law as barristers and solicitors of the Supreme Court of Nigeria must key into the evolving globalization of legal practice by positioning themselves to render professional services not only to clients resident or doing business within Nigeria but also to others either resident or doing business outside Nigeria. The subtle infiltration of legal practice in Nigeria by foreign-based lawyers who are not licenced to practice law in Nigeria can no longer be denied. Foreign investors seeking to do business in Nigeria have had to retain the services of foreign lawyers from their country of origin to work in collaboration with Nigerian lawyers in purely advisory roles. However, the provision of globalized legal services in Nigeria has been hindered by both legal and technological constraints.

This paper seeks to examine the trends in the provision of globalized legal services in Nigeria and the technological, institutional and legal constraints inhibiting the full participation of Nigerian and foreign lawyers in the evolving global legal market in Nigeria. The paper is organised into four sections. The introduction highlights the background to the study and the issues the paper seeks to examine. The second part of the paper discusses the concept of globalization and the contending issues involved in the formulation and analysis of the globalization process. The discussion in this part is informed by the fact that since legal globalization is only a part of the process of globalization, no meaningful examination of the trends and constraints of globalized legal practice in Nigeria can be undertaken without a proper understanding of the concept of globalization itself. In other words, globalized legal practice can only be understood within the broader context of globalization.

The third section of the paper will examine legal practice in Nigeria and the subtle infiltration of the legal market by foreign lawyers who are not qualified to practice law in Nigeria. It is argued that since there is no “global law” or “global bar”, only lawyers enrolled at the Supreme Court of Nigeria as barristers and solicitors are qualified to engage in any form of legal practice in the country and that given this legal constraint, foreign lawyers can only provide legal services to clients resident or doing business in Nigeria if they outsource their briefs to Nigerian lawyers. Another constraint is the technological poverty of the Nigerian society. Given that globalization is driven by technology, the limited access to internet service has continued to limit the effective participation of Nigerian lawyers in the global legal market. The concluding section proffers recommendations for dealing with the problems inhibiting the provision of globalized legal services in Nigeria.

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<sup>1</sup> David Lat, “The Global 100: The World’s Top Law Firms Ranked by Revenue, Profit and Head Count” <<http://abovethelaw.com/2015/09/the-global-100/the-world-s-top-law-firms-ranked-by-revenue-profit-and-headcount/>> accessed 08/06/2016.

<sup>2</sup> Leonard Bierman and Michael Hitt, “Globalization of Legal Practice in the Internet Age” (2007) 14(1) *Indiana Journal of Global Legal Studies*, 29-30.

<sup>3</sup> Laurel S. Terry, “The Legal World is Flat: Globalization and Its Effect on Lawyers Practicing in Non-Global Law Firms” (2008) 28(3) *Northwestern Journal of International Law & Business* 528-9.

<sup>4</sup> Bierman and Hitt (n4) 30.

<sup>5</sup> Thomas L. Friedman, *The World is Flat: A Brief History of the Twenty-First Century* (Farrar, Straus and Giroux, 2005) 71-81; Laurel S. Terry, “The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law” (2008) 28(3) *North-Western Journal of International Law & Business* 527

## THE CONCEPT OF GLOBALIZATION

Globalization is not a legal concept but rather a generic, complex and fluid concept which manifests various dimensions including political, economic, social, cultural, technological and legal. It has been one of the most hotly debated issues since the 1990's. Quite expectedly, the concept has continued to receive diverse formulations and interpretations. According to Douglas Kellner, for some, globalization

... is a cover concept for global capitalism and imperialism and is accordingly condemned as another form of the imposition of the logic of capital and the market on ever more regions of the world and spheres of life. For others, it is the continuation of modernization and a force of progress, increased wealth, freedom, democracy, and happiness. Its defenders present globalization as beneficial, generating fresh economic opportunities, political democratization, cultural diversity, and the opening to an exciting new world. Its critics see globalization as harmful, bringing about increased domination and control by the wealthier overdeveloped nations over the poor underdeveloped countries, thus increasing the hegemony of the "haves" over the "have-nots."<sup>1</sup>

The above view is supported by that of John Wiseman who argues that,

Globalization is the most slippery, dangerous and important buzzword of the late twentieth century. It is slippery because it can have many meanings and be used in many ways. It is dangerous because too often it is used as a powerful and simplistic justification for the endless expansion of unregulated capitalist relations into every part of life in every corner of the globe. It is important because debates about globalization can illuminate a world in which time and space have been so dramatically compressed that distant actions in one corner of the globe have rapid and significant repercussions on people and places far away.<sup>2</sup>

Arguably, the controversies over the very essence of globalization reflect not only the diversity of scholarly persuasions but also the historic divisions between the developed and core economies on the one hand and the developing and peripheral economies on the other. Whilst the Western countries present globalization as the magic wand that would open the Third World to development, economic prosperity, improved conditions of living, technological transformation and possibly democratisation, the Third World Countries perceive globalization as a rebranding of neo-colonialism by the West which may facilitate unregulated interference in their internal affairs and ultimately weaken their sovereignties as independent nation-states. For instance, Bala Usman, one of Nigeria's leading political economists, has argued that as long as labour which remains the source of all wealth and the foundation of economic activities is subjected to immigration barriers by Western countries, the perceived gains of globalization cannot be realized. On the prospect of the world becoming a global village, Bala Usman queried pungently:

What sort of village is it in which the villagers in one part of the village are totally prohibited from going to the other part of the village even though most of the good things of life in the village are to be found over there? The only ones allowed to go in, are those who are going to further enrich the richest part of the village from what they have stolen or somehow cornered from the poorer part of the village, or from the education the poor villagers have paid for them to have from their meagre earnings hoping that they would stay and serve them. Are we really now living in anything which anybody sensible can call a village, global or otherwise?<sup>3</sup>

Thus, globalization means different things to different peoples depending on their level of economic, technological, social, political and cultural developments. It is either a panacea to underdevelopment or a new tool of imperialism. These different perspectives have largely coloured most analyses of the process of globalization and must be brought to bear on any examination of globalization and legal practice.

The foregoing leads us to the question, what is globalization? Globalization is a process or a set of processes characterised by the free movement of people, ideas, information, capital, technology and goods and services across national boundaries in such a way that different nation-states are organised into a single global community through networking. Anthony Giddens defines the concept of globalization as "the intensification of a worldwide social relations which link distant localities in such a way that local happenings are shaped by

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<sup>1</sup> Kellner (n1) 286.

<sup>2</sup> J. R. Wiseman, *Global Nation? Australia and the Politics of Globalization* (CUP, Cambridge 1998) 1 cited in Nlerum S. Okogbule, *Globalization and Human Rights in Africa* (Sibon Books Limited, Lagos 2012) 18.

<sup>3</sup> Bala Usman, Keynote Address Delivered at the 40<sup>th</sup> Annual Conference of Nigerian Association of Law Teachers in D. A. Guobadia and Epiphany Azinge (eds), *Globalization, National Development and the Law* (Nigerian Institute of Advanced Legal Studies, Lagos 2005) xviii-ix

events occurring many miles away and vice versa.”<sup>1</sup>

The problem with Giddens’s definition is that it assumes that Third World African countries can influence or shape happenings or policies in other parts of the globe through globalization. However, the truth of the matter is that rather than influence or shape policies in the developed countries, policies and practices, whether social, political, cultural, religious or economic in the underdeveloped countries of Africa, are constantly being shaped, influenced and defined by happenings in the West. In other words, Africa is always on the receiving end and hardly impacts the rest of the world. Therefore, to define globalization as a process of mutual impact and influence between and amongst nation-states is misleading.

A broad definition of the concept of globalization as involving the interaction of technology and capital has been offered by Kellner. For him:

. . . Globalization involves both capitalist markets and sets of social relations and flows of commodities, capital, technology, ideas, forms of culture, and people across national boundaries via a global networked society. . . The transmutations of technology and capital work together to create a new globalized and interconnected world. A technological revolution involving the creation of a computerized network of communication, transportation, and exchange is the presupposition of a globalized economy, along with the extension of a world capitalist market system that is absorbing ever more areas of the world and spheres of production, exchange, and consumption into its orbit. The technological revolution presupposes global computerized networks and the free movement of goods, information, and peoples across national boundaries.<sup>2</sup>

Kellner argues that globalization cannot be divorced from scientific breakthroughs in the field of information and communication technology and that any analysis of the concept without reference to the innovative developments in information and communication technology which provides the catalyst for the process of globalization will be misleading. As Kellner puts it,

Hence, the internet and global computer networks make possible globalization by producing a technological infrastructure for the global economy. Computerized networks, satellite-communication systems, and the software and hardware that link together and facilitate the global economy depend on breakthroughs in microphysics. Techno-science has generated transistors, increasingly powerful and sophisticated computer chips, integrated circuits, high-tech communication systems, and a technological revolution that provides an infrastructure for the global economy and society. . . From this perspective, globalization cannot be understood without comprehending the scientific and technological revolutions and global restructuring of capital that are the motor and matrix of globalization.<sup>3</sup>

Arguably, one cannot imagine globalization without the scientific breakthroughs in information communication technology that drives the process. Networking amongst peoples of different cultural, social, religious, political, and economic backgrounds located miles apart from each other which lies at the heart of globalization, has only been made possible through scientific and technological innovations. Indeed, globalization has been more of free movement of ideas, information, capital, goods and services and technological innovations across national borders than of movement of peoples from one country to another. Thus, a country or region with retarded or stagnated scientific and technological advancements can hardly participate productively in the globalization process or influence policies and practices in other parts of the globe.

Globalization seeks to homogenize the world through free movement of people, capital, ideas, technology, good and services in such a way that activities occurring within the territory of one nation-state are influenced and shaped by those occurring in other nation-states. It is a multi-faceted process involving interactions and interconnections amongst sovereign nation-states and other international organizations in a common networked market characterised by free movements of peoples, ideas, capitals, goods and services across national boundaries. It is the opening up of national boundaries to external ideas, capital inflows, and economic, religious, political and cultural practices so as to unite the different sovereign states into a single global community.<sup>4</sup>

It has been argued by Robert Holton that any useful definition of globalization must emphasize three key elements, namely (a) the intensified movement of goods, money, technology, information, people, ideas, and

<sup>1</sup> Anthony Giddens, *The Consequences of Modernity* (Polity Press, Cambridge 1990) 64.

<sup>2</sup> Kellner (n1) 287.

<sup>3</sup> Kellner (n1) 287.

<sup>4</sup> See John M. Shishi, Yakubu Isa, and Abdulkarim A. Kana, “Globalization, Democracy and Good Governance in Nigeria-The Best Practices” in D. A. Guobadia and E. Azinge (eds), *Globalization, National Development and the Law* (Nigerian Institute of Advanced Legal Studies, Lagos 2005) 1 @ 4-5.

cultural practices across national and cultural boundaries; (b) the inter-dependence of social processes across the globe, such that all social activities are profoundly interconnected rather than separated off into different national and cultural spaces; and (c) consciousness of, and identification with, the world as a single global community.<sup>1</sup> Thus, globalization is not only about transnational movements of ideas, information and capital but also a phenomenon that marks a fundamental shift from the perception that nations can exist and prosper independently of each other to a new epoch founded on the consciousness that development across the globe is best stimulated and nurtured through interdependence, interaction and mutual intercourse amongst nations in the political, economic, social, cultural, religious, fiscal, scientific and technological spheres.

Indisputably, globalization has different aspects or dimensions including political, economic, social, cultural, religious, technological and legal.<sup>2</sup> Given that a discussion of all the dimensions of globalization is not necessary for our present purposes, it suffices to mention that each dimension of globalization has its own players and requires different collaborative efforts to achieving the establishment of the desired virtual global community. It may also be mentioned that the different dimensions of globalization are interrelated aspects of the same process and thus cannot be put into water-tight compartments.

The legal dimension of globalization, which is the most relevant for our present purposes, seeks to create a situation where changes in the municipal law of a given country may be decisively influenced “by formal or other informal international pressures by other states, international agencies or other transnational actors.”<sup>3</sup> Thus, legal globalization seeks to stimulate progressive development in the national laws of a country in response to similar developments in the national laws of other countries within the comity of nations so that a set of identical laws across national jurisdictions could evolve on every subject matter of global concern. This point is thrown into bold relief by the views of Martin Shapiro, that globalization of law refers to “the degree to which the whole world lives under a single set of legal rules” which might be “imposed by a single coercive actor, adopted by global consensus or arrived at by parallel developments in all parts of the globe.”<sup>4</sup>

Legal globalization, therefore, involves the integration and unification of laws across national jurisdictions so as to develop a system of global law. In this respect, reference could be made to the International Institute for the Unification of Private Law (UNIDROIT), an independent intergovernmental organization re-established in 1940 and charged with the responsibility to “study the needs and methods for modernising harmonising and co-ordinating private international law and particular, commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives.”<sup>5</sup> The UNIDROIT has in furtherance of its mandate developed several instruments prominent among which is the UNIDROIT Principles for International Commercial Contracts.<sup>6</sup> The United Nations Commission on International Trade Law (UNCITRAL) has also developed the UN Convention on Contracts for the International Sale of Goods (1980) which provides a uniform text of law for international sales of goods.

However, in spite of the above modest efforts at harmonization and unification of laws, no “global law,” strictly speaking, can be said to have emerged in the realm of private international law. In any event, such global law if it ever emerges, may be deliberately skewed in favour of the developed nations of the west to serve their economic and political interests at the expense of the underdeveloped nations of Africa.

There is still a further issue with globalization at least from the African perspective. As a process, globalization basically involves interactions between the “haves” and the “have-nots; the developed and underdeveloped countries for the overall purpose of creating a common global market for exchange of ideas, technology, information, capital and goods and services across national boundaries. In this envisaged global movement of capital, ideas, information, technology, and goods and services, what would be the contribution of the under-developed and/or developing countries of Africa? How much of ideas, information, technology, capital and goods and services would be shipped out of Africa to other parts of the world so as to influence activities in those parts? To put it differently, how much of influence can Africa exert on the global scene politically, economically, culturally, technologically, socially or religiously? What democratic or educational culture can Africa export to the rest of the world as her contribution to the emergence of a global democratic or educational culture? To come nearer home, to what extent can any African nation through its own laws, influence changes in the municipal laws of the poorest country in Europe? Will the global law that may emerge as a result of the process of legal globalization reflect African imprints? How can African lawyers be part of the globalized legal practice when access to the internet is still a luxury beyond the reach of many lawyers including those who

<sup>1</sup> R. Holton, *Making Globalization* (Palgrave Macmillan, New York 2005) 15.

<sup>2</sup> See a discussion of the dimensions of globalization in Okogbule (n6) 19-26.

<sup>3</sup> See B. de Sousa Santos, “Towards a New Legal Common Sense: Law, Globalization and Emancipation (2<sup>nd</sup> edn, Butterworths LexisNexis, London 2002) 194.

<sup>4</sup> Marin Shapiro, “The Globalization of Law” (1993-4) 1 *Indiana Journal of Global Legal Studies* 37.

<sup>5</sup> UNIDROIT, “History and Overview” < <http://www.unidroit.org/about-unidroit/overview/> > accessed 20/06/2016.

<sup>6</sup> See genera lly, M. J. Bonell, “Unification of Law by Non-Legislative Means: The UNIDROIT Draft Principles for International Commercial Contracts” (1992) 40(3) *The American Journal of Comparative Law* 617-633.

practice in big African cities?

These are questions to which this paper cannot proffer any ready answers. However, it is very arguable that while Africa may continue to be influenced by the cultural, religious, economic, political, democratic and social practices in the developed countries through globalization, she may not in a position to give back to the rest of the world anything in exchange for what she receives. Africa has become a dumping ground for foreign goods and services but she exports little to the rest of the world. The marginalization of Africa in global trade has been well captured by a perceptive writer who notes that,

The (post) industrialized North increasingly trades exclusively with itself. African urban areas though growing in population, lack the capacity and infrastructure to compete economically and have become completely marginalized. By 1996 Africa's proportion of world's exports had dropped from a minuscule 2.4 percent in 1980 to an irrelevant 1 percent. Take away South Africa and the oil producing states, the percentage is next to nothing.<sup>1</sup>

African youths are fed on daily basis with foreign news items and cultural practices beamed into their homes by western press via the satellite but very little is known about Africa by the West because Africa lacks the capacity to develop her own information communication technology. The subtle westernization of Africa by the foreign press has created a large community of native foreigners on the African continent who are not connected with the continent culturally, socially or morally. To be sure, the traditional western narrative about Africa is that the continent is "hopeless" and "diseased." Thus, to the western press the only news worth reporting about Africa are disaster and exoticism.<sup>2</sup> This perception of Africa by the West, perhaps, underpins the disdainful view of a French Diplomat that: "Economically speaking, if the entire black Africa, with the exception of South Africa, were to disappear in a flood, the global cataclysm will be approximately non-existent."<sup>3</sup>

It is against the foregoing background that this paper shares the reservations of many African Scholars that globalization after all, marks a new phase of cultural, economic, social, political and religious imperialism in Africa as it assures unrestricted penetration of the African continent for dumping of foreign practices.<sup>4</sup> As Gibson puts it, "globalization is a 'Northern' perspective with the G8 nations as the core power brokers."<sup>5</sup>

#### **NATURE OF GLOBALIZED LEGAL PRACTICE**

Globalized legal practice involves the provision of legal services by lawyers to clients located outside of their national jurisdictions and sometimes, without being physically present within the foreign jurisdiction. It is the provision of legal services across national boundaries without restrictions imposed by differing legal regimes or cultural, economic, political and religious diversities. Globalized legal practice is thus the de-territorialization of legal practice or the practice of law in multi-jurisdictions which is marked by broken national boundaries in the legal and political spheres. The commonest form of globalized legal practice is the establishment of a branch office of a law firm in a foreign country which enables a law firm headquartered in say, New York, to operate a branch or representative office in the City of London for the provision of legal services within the United Kingdom. In this way, the global law office is able to offer legal services to clients located in distinct national jurisdictions by maintaining physical presence in these various jurisdictions through representative offices which are integrated into and linked with the head-quarter in the home jurisdiction.

The catalyst for globalization of legal practice has been the internationalization of the economy. The increase in cross-border transactions and the quest for high quality legal services by investors have interplayed to make cross-border lawyering imperative. The Council for Trade in Services of the World Trade Organization (WTO), underscored this point when it noted that:

In the past decades international trade in legal services has grown as a result of the internationalisation of the economy. Increasingly, lawyers are faced with transactions involving multiple jurisdictions and are required to provide services and advice in more than one jurisdiction. The demand for lawyers to be involved in foreign jurisdictions often comes from their corporate clients, who do business across borders and choose to rely on the services of professionals who are already familiar with the firm's business and can guarantee high quality services. Some countries also favour international trade in legal services, as the establishment of foreign lawyers is seen as a catalyst for foreign investment, contributing to the

<sup>1</sup> Nigel C. Gibson, "Africa and Globalization: Marginalization and Resistance" (2004) 39 *Journal of Asian and African Studies* 1, 4.

<sup>2</sup> Gibson (n 21) 4.

<sup>3</sup> Cited in Michael Chege, *Remembering Africa* (1992) 71(1) *Foreign Affairs* 146-56.

<sup>4</sup> S. Akindele, T. Gidado and O. Olaopo, "Globalization, Its Implications and Consequences for Africa" (2002) 2 *Globalization*

<sup>5</sup> Gibson (n21) 4.

security and predictability of the local business environment. The concept of “one stop shopping” and access to high quality services for firms doing business cross-border appear as major factors in favouring the internationalisation of the legal profession.<sup>1</sup>

Globalized provision of legal services has taken several forms depending on the existing legal regime within particular national jurisdiction. In discussing the “typologies of globalization” of law firms operating outside of their national boundaries, Faulconbridge, Beaverstock, Muzio and Taylor identified the following forms or models amongst global law firms:<sup>2</sup>

1. As independents operating as global firms developed through organic growth of international office networks staffed by expatriate partners and lawyers and locals including merger and acquisition with local or host law firms or a combination of organic growth and merger and acquisition activity;
2. Through formal network relationships and strategic alliances/ partnerships with local or host law firms;
3. Through the emergence of conglomerates providing a suite of professional services of which law is one; and
4. Through ad hoc membership in a loose, ephemerally-formed affiliation or network with local or host firms.

Apart from the above mentioned forms and models, another common arrangement for globalization of legal practice is outsourcing of briefs to lawyers offshore which allows lawyers in particular local jurisdictions to address critical legal issues based on the applicable local laws. Outsourcing of briefs by offshore law firms to lawyers in local jurisdictions can enhance legal practice in local jurisdictions and boost its economy. This practice is frequently resorted to by UK lawyers whereby legal research and documentation are outsourced to lower-wage earning lawyers in English speaking India.<sup>3</sup> Franchising of local law firms has also been adopted whereby local law firms take direct charge of legal services entrusted to the offshore firms by clients within local jurisdictions.<sup>4</sup>

In furtherance of its efforts to expand the frontiers of globalized legal practice, the International Bar Association (IBA) published a comprehensive Report on Global Regulation and Trade in Legal Services, 2014 which covers legal practice in 90 countries or over 160 jurisdictions in all of Europe and North America and part of the Middle-East, Central and South America, Africa and the Asia Pacific Region.<sup>5</sup> The Report shows that:

- (a) 56 per cent of jurisdictions now allow partnership or association between foreign and domestic lawyers;
- (b) 77 per cent do not impose a nationality restriction on foreign lawyers requalifying as local lawyers;
- (c) In 47 per cent of jurisdictions, foreign law firms are present facilitating cross-border trade and investment;
- (d) That practice in other jurisdictions is by no means the preserve of traditional ‘international’ law firms. ‘Independent’ regional practices in places such as Central Asia and South America, linguistic collaborations between Portuguese speaking Africa, Brazil and Portugal, and foreign offices of Chinese, Korean and Japanese firms, are now commonplace;
- (e) That in 80 per cent of countries covered in the report, foreign firms are now permitted to open offices (although often with restrictions); 35 per cent of countries foreign firms may now employ local lawyers; and in 80 per cent of the countries covered local firms may now employ foreign lawyers;
- (f) That in Egypt, Morocco and Algeria, foreign law firms operate branch offices independently or in association with local law firms.

Although it is difficult to suggest which of the above models or forms of “global lawyering” is the most cost-effective or that guarantees the highest quality of professional services to clients across all locations of the global firm, the strategic partnership/alliance with local or host law firms has been the most prominent.<sup>6</sup>

Arguably, the choice of form or model for globalized legal practice may depend on the regulatory

<sup>1</sup> World Trade Organization, Council for Trade in Services, “Legal Services: Background Note by the Secretariat” (S/C/W/43 of 6 July 1998) < [http://www.wto.org/english/tratop\\_e/ser\\_e/w43.doc/](http://www.wto.org/english/tratop_e/ser_e/w43.doc/) > accessed 23 June 2016.

<sup>2</sup> James R. Faulconbridge, Jonathan V. Beaverstock, Daniel Muzio, and Peter J. Taylor, “Global Law Firms: Globalization and Organizational Spaces of Cross-border Legal Work” (2008) 28(3) *Northwestern Journal of International Law and Business* 455, 465-466.

<sup>3</sup> Leonard Bierman and Michael Hitt, “The Globalization of Legal Practice in the Internet Age” (2007) 14(1) *Indiana Journal of Global Legal Studies* 29, 30.

<sup>4</sup> D. Henderson, “The Globalization of the Legal Profession” (2007) 14 *Indiana Journal of Global Legal Studies* 1, 2.

<sup>5</sup> International Bar Association, IBA Global Regulation and Trade in Legal Services Report, 2014 (IBA, London 2014) < <http://www.ibanet.org/> accessed 27 June, 2016.

<sup>6</sup> Faulconbridge, Beaverstock, Muzio and Taylor (n27) 467.

regimes governing the provision of legal services in different jurisdictions. Where the establishment of foreign law firms within a local jurisdiction is permissible, foreign law firms may opt to establish branches or representative offices within local jurisdictions. For instance, following the permission granted by the Chinese government about 1992 for foreign law firms to establish representative offices in mainland China, several foreign law firms from the United States of America, Britain, Japan, Germany and Australia set up local offices in major Chinese cities like Beijing and Shanghai.<sup>1</sup>

Globalization of legal practice is not an entirely new phenomenon. Indeed, prior to the coming into force of the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) which enjoins member-states to make commitment on liberalization of the provision of legal services, globalized legal practice had existed in one form or the other in parts of Europe and the United States of America. There is evidence that prior to 1971, France had permitted foreign professional advisers on legal services to render services to clients mostly in the areas of civil and commercial transactions and to establish branch offices of their foreign law firms in Paris. These professional advisers who were commonly referred to as "*conseil juridique international*" (international legal advisers) constituted an unregulated body of foreign lawyers distinct from the regulated court lawyers called the *advocats*.<sup>2</sup> By December, 1971 France formally recognised the profession of *conseil juridique international* and American and English Lawyers including other foreign lawyers with established law firms in France were registered as *conseils juridiques international* but the registration of new applicants was made subject to the requirement of reciprocal treatment for French lawyers in the applicants' home jurisdictions.<sup>3</sup>

The admission of foreign lawyers to practice as "legal consultants" in the United States of America first occurred in the State of New York following the amendment of the New York State Judiciary law by the State legislature to permit rules to be made to license "as a legal consultant without examination and without regard to citizenship . . . a person admitted to practice in a foreign country as an attorney or counsellor or the equivalent."<sup>4</sup> Pursuant to this amendment, the New York Court of Appeal, adopted Part 521 of its Rules to formally recognise the status of legal consultants, also called foreign legal consultants.<sup>5</sup> Once registered, a legal consultant is qualified to render legal advice on the law of his local jurisdiction, or upon international law or the law of New York as well as federal laws operating within the State of New York.<sup>6</sup>

Cross-border legal practice had also been permitted within the European Community by the European Union (EU) Law since the 1970s. The 1977 Lawyers' Services Directive allows lawyers in the European Community to provide legal services throughout the community.<sup>7</sup> Similarly, the EU Directive on Lawyers' Establishment Rights 1998 facilitates practice of the profession of lawyer on a permanent basis in a member-state other than that in which the qualification is obtained.<sup>8</sup> In *Gebhard v. Milan Bar Council*,<sup>9</sup> it was held by the court that a lawyer's right of establishment could only be limited by State rules properly protecting an important public interest.

Finally, efforts have also been made through the North American Free Trade Agreement (NAFTA) signed on 12 August, 1992 to encourage the adoption of Legal Consultant Rules in States interested in trade with Canada and Mexico. Cross-border trade in services are covered in Chapter 12 of NAFTA while Annex 1210.5 deals with foreign legal consultants. The Annex 1210.5 seeks to encourage the adoption of legal consultant rules to facilitate cross-border provision of legal services.

It is clear from the foregoing that efforts had been made at national and regional levels towards the globalization of legal practice long before the adoption of GATS by the member-states of the WTO. However, with GATS, many more countries have made commitments on the liberalization of legal services thus facilitating global legal practice on a wider scale.<sup>10</sup>

## THE NIGERIAN SITUATION

A universal concept of legal practice is that the entitlement to practise as a legal practitioner is always defined

<sup>1</sup> John Child and David K. Tse, "China's Transition and Its Implications for International Business" (2001) 32(1) Journal of International Business 5, 9.

<sup>2</sup> Roger J. Goebel, "Legal Practice Rights of Domestic and Foreign Lawyers in the United States" (2000) 49(2) The International and Comparative Law Quarterly 413, 430.

<sup>3</sup> Goebel (n33) 430.

<sup>4</sup> N. Y. Jud. Law s. 53(6); cited in Goebel (n33) 430.

<sup>5</sup> N. Y. Ct. App. R. Part 521; cited in Goebel (n31) 430-1.

<sup>6</sup> Goebel (n33) 431.

<sup>7</sup> See Council Directive 77/249/EEC (1977) O. J. L78/17.

<sup>8</sup> See European Parliament and Council Directive 98/5/EC (1998) O. J. L77/36; see generally Julian Lonbay, "Assessing the European Market for Legal Services: Developments in the Free Movement of Lawyers in the European Union." (2011) 33(6) Fordham Int'l L. J. 1629, 1632.

<sup>9</sup> [1995] E. C. R. 1-4165.

<sup>10</sup> International Bar Association (n28).

and circumscribed nationally or territorially so that a lawyer is a lawyer properly so called, only within a defined geographical territory and before courts sitting within that territory. In other words, the right or licence to engage in legal practice is invariably defined by a national law and in some federations like the United States of America, by the laws of the respective States of the Federation so that no licence to practice law operates transnationally.<sup>1</sup> Put differently, a lawyer's licence to practice law is only cognizable within the country or state that grants it with the effect that no lawyer can engage in legal practice outside the country or state in which he is licenced except by express authorisation. In practical terms, therefore, no lawyer, has the right to practice law across national jurisdictions and there is no such term as "a global lawyer" with right of audience before courts sitting in different national jurisdictions across the globe except permitted under statute.

This is exactly the legal position in the Federation of Nigeria where legal practitioners enrolled at the Supreme Court of Nigeria as barristers and solicitors can only practice within the Federation of Nigeria. Indeed, section 8 of the Legal Practitioners Act 1975 makes it clear that the right of audience granted to legal practitioners subsequent to their enrolment under section 7 of the Act, is before courts of law sitting in Nigeria.<sup>2</sup> This is reinforced by section 2 of the Act which provides that a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll. To be sure, by virtue of section 7 (1) of the Legal Practitioners Act, a person shall be entitled to be enrolled as a legal practitioner, if and only if; (a) he has been called to the Bar by the Benchers; and (b) he produces a certificate of his call to the Bar to the Registrar. Therefore, the basic qualification to practice law in Nigeria is being called to bar and enrolled at the Supreme Court of Nigeria as a legal practitioner.<sup>3</sup>

Thus, a legal practitioner in Nigeria, is defined by reference to the roll of legal practitioners kept at the Supreme Court of Nigeria with the effect that a person whose name is not contained on the roll is not qualified to practice law in Nigeria.<sup>4</sup> This interpretation is fortified by section 24 of the Legal Practitioners Act which defines the term "legal practitioner" to mean a "person entitled in accordance with the provisions of this Act to practise as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings."

The only situation where a person whose name is not on the roll of legal practitioners may be allowed to practice in Nigeria as a legal practitioner for the purposes of any particular proceedings and of any appeal arising from those proceedings is provided for under section 2(2) of the Legal Practitioners Act. Under the said subsection, where an application is made to the Chief Justice of Nigeria by or on behalf of any person who appears to him to be entitled to practice as an advocate in any country where the legal system is similar to that of Nigeria and the Chief Justice considers it expedient to permit that person to practice as a barrister for the purposes of proceedings described in the application, the Chief Justice may by warrant under his hand authorise that person, on payment to the Registrar of such fee not exceeding fifty Naira, to practice as a barrister for the purposes of those proceedings and of any appeal brought in connection therewith.

The above legal position in Nigeria has been put beyond any dispute by the decision of the Supreme Court in the case of *Okafor v. Nweke*,<sup>5</sup> where the apex court (per Onnoghen, J. S. C.) stated that:

The combined effect of the above provisions is 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.

It is also clear from the decision of the Supreme Court of Nigeria in *Chief Awolowo v. Hon Mallam Usman Sarki*,<sup>6</sup> that the right of the accused to obtain the services of counsel of his choice in criminal trials guaranteed under section 36(6)(c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is not at large because the counsel contemplated under the provision is one who is not only qualified to practice before Nigerian courts but also does not suffer from any form of legal disability. Thus, the choice of a foreign lawyer by an accused facing criminal trial in any Nigerian court is outside the contemplation of section 36(6)(c) of the 1999 Constitution (as amended). This restriction was clearly stated by Udo Udoma, J., (as he then was) in *Chief Awolowo v. Federal Minister of Internal Affairs*:<sup>7</sup>

The Constitution is a Nigerian Constitution, meant for Nigerians in Nigeria. It only

<sup>1</sup> Goebel (n33) 417-422.

<sup>2</sup> Cap. L11, Laws of the Federation of Nigeria, 2004; licencing of lawyers in Nigeria is regulated nationally and a lawyer enrolled at the Supreme Court of Nigeria is entitled to practice law in all States of the Federation without any restrictions; see item 49 of the exclusive legislative list which vests the National Assembly with exclusive legislative competence over professional occupations.

<sup>3</sup> See *Yaki v. Baguda* [2015] 18 N. W. L. R. (Pt. 1491) 288, 320.

<sup>4</sup> *Okafor v. Nweke* [2007] 10 N. W. L. R. (Pt. 1043) 521, 534; *Brathwait v. Skye Bank Plc.* [2013] 5 N. W. L. R. (Pt. 1346) 1.

<sup>5</sup> *Okafor v. Nweke* (n45) 531; see also *S. P. D. C. N. Ltd., v. Sam Royal Hotel (Nig) Ltd.*, [2016] 8 N. W. L. R. (Pt. 1514) 318, 332-4.

<sup>6</sup> [1966] ANLR 171

<sup>7</sup> (1962) L. L. R. 177.

runs in Nigeria. The natural consequences of this is that the legal representative contemplated in s. 21(5)(c) ought to be someone in Nigeria, and not outside it. . . This provision is subject to certain limitations. It is clear that any legal representative chosen must not be under a disability of any kind. He must be someone who, if outside Nigeria, can enter the country as of right; and he must be someone enrolled to practice in Nigeria. For if the legal representative chosen cannot enter into Nigeria as of right, and he has no right of audience in Nigerian courts then he is under liability. In both such cases the legal representative chosen would run the risk of being refused entry into Nigeria by the Immigration Authority, and of being refused enrolment by the Chief Justice of the Federation.

The hurdles against globalization of legal practice in Nigeria have been further compounded by the introduction of the use of seal and stamp by legal practitioners. Rule 10(1) of the Rules of Professional Conduct for Legal Practitioners 2007 (RPCLP) provides that “A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any Government department or ministry or any corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association.” Rule 10(2) of the RPCLP 2007 defines the term “legal documents” to include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any similar documents.” By virtue of sub-rule (2) of Rule 10, any legal document signed or filed by a lawyer in contravention of Rule 10(1) shall be deemed not to have been properly signed or filed.

The above cited provisions of the RPCLP, 2007 have been interpreted by the Supreme Court of Nigeria in two of its judgments. In *Mega Progressive Peoples’ Party v. INEC (No. 1)*,<sup>1</sup> it was held by the Supreme Court that the failure to affix the Nigerian Bar Association (NBA) seal and stamp on a court process does not invalidate such court process and that Rule 10 of the Rules of Professional Conduct for Legal Practitioners 2007 is directory and not mandatory. In its second decision in *Yaki v. Baguda*,<sup>2</sup> it was held by the apex court that the provisions of Rule 10 of the RPCLP are designed to check and stop the alarming influx of fake lawyers into the legal profession by furnishing evidence of the qualification of the legal practitioner to practice law in Nigeria. On the effect of non-compliance with Rule 10 of the RPCLP, the apex court held that a legal document signed and/or filed in breach of rule 10(1) is not void or incompetent but merely rendered voidable. The offending document can be remedied at any stage of the proceedings by an application for and production and fixing of the seal and stamp thereon.

Arguably, since only persons enrolled at the Supreme Court of Nigeria as legal practitioners are qualified to be full members of the Nigerian Bar Association and bestowed with all rights and privileges of full membership including right of audience in any court in Nigerian and capacity to prepare, authenticate or frank legal documents<sup>3</sup>, it follows that the NBA seal and stamp can only be issued to Nigerian lawyers. The practical implication of this, is that persons not called to the Nigerian Bar and enrolled at the Supreme Court of Nigeria cannot sign, frank and/or file legal documents as defined under rule 10(2) of the RPCLP 2007. Thus, persons who are qualified to practice law in other jurisdictions cannot undertake any form of legal practice or documentation in Nigeria.<sup>4</sup>

The legal position in Nigeria, therefore, is that no foreign lawyer can engage directly in any form of legal practice in Nigeria. It makes no difference whether the foreign lawyer is engaged in purely advisory capacity for a foreign investor seeking to do business in Nigeria because he cannot undertake any form of legal documentation including company incorporation documents without affixing the seal and stamp of the Nigerian Bar Association. It is also important to point out that in Nigeria, and unlike the United Kingdom, the legal profession is fused in that every legal practitioner can practice both as a barrister and solicitor without any form of restriction. A foreign lawyer who has no right of audience before a Nigerian court is also barred from undertaking any form of solicitor’s work. It is equally doubtful whether an offshore law firm can incorporate a representative office in Nigeria in its own name under the Companies and Allied Matters Act since part of the requirements for the registration of law firms is the production of the certificates of call to bar of at least the principal members of the firm.

Thus, although Nigeria became a member-State of the World Trade Organization (WTO) on January 1, 1995, she has not made any specific commitment in the WTO on legal services in accordance with the provisions of the WTO’s General Agreement on Trade in Services (GATS).<sup>5</sup> The effect of this is that no foreign law firm

<sup>1</sup> [2015] 18 N. W. L. R. (Pt. 1491) 207 @ 212

<sup>2</sup> *Yaki v. Baguda* (n44) 315-6, 319-321.

<sup>3</sup> See section 4(1)(a) of the Nigerian Bar Association Constitution 2015.

<sup>4</sup> *Okafor v. Nweke* (n45).

<sup>5</sup> General Agreement on Trade in Services: Nigeria Schedule of Specific Commitments (GATS/SC/65 15 April 1994 (94-1062) ><http://www.esf.be/new/wto-negotiations/commitments/schedule/>> accessed 4June, 2016; see also International Bar Association (n30) 335; The phrase “Legal services” is defined under GATS to include advisory and representations services

engaged in any form of legal practice exists in Nigeria. Similarly, the concept of foreign legal consultant is not recognised in Nigeria because only persons duly enrolled at the Supreme Court of Nigeria as legal practitioners are qualified to engage in legal practice in Nigeria. It is equally correct to state that a foreign lawyer or law firm cannot operate a representative office in Nigeria and/or employ a Nigerian lawyer as a means of practicing law in Nigeria.<sup>1</sup>

It is also arguable that a foreign lawyer cannot participate in negotiations on behalf of a client in Nigeria as solicitor qua solicitor since that is a form of legal practice particularly where such negotiations are likely to lead to exchange of legal documents prepared and signed by the lawyers involved therein. Therefore, legal practice in every form is closed to lawyers not enrolled at the Supreme Court of Nigeria. However, it would that a foreign lawyer who is also a chartered arbitrator may represent a party in an arbitral proceeding in his capacity as an arbitrator since an arbitrator is not required to be a lawyer.

The above restrictions leave foreign lawyers wishing to provide legal services for clients either resident or doing business in Nigeria with the option of outsourcing the legal services in respect of specific legal works to Nigerian lawyers as partnership between local and foreign lawyers is not permissible in Nigeria. Outsourcing of legal services by offshore law firms to local law firms may require some form of alliance or networking between the host law firm and the offshore law firm but certainly not a formal partnership. The advantage of this model of globalized legal practice is that the host lawyers are better equipped to apply their knowledge of local law and regulations in dealing with the issues entrusted to them.

The restrictions placed on trade in legal services by foreign lawyers do not necessarily imply that Nigeria is in breach of her treaty obligations to liberalize restrictive trade rules as a member-state of the WTO. Both Article XI (2) of the Agreement Establishing the World Trade Organization and Article XIX (1) and (2) of the General Agreement on Trade in Services (GATS) recognise that the progressive liberalization (not deregulation) of trade in services by member-States of the WTO as a means of providing effective market access shall reflect the interest of all parties and accord with the policy national objectives and the level of development of individual member-states both overall and in specific sectors. Indeed Article XI (2) of the Agreement Establishing the World Trade Organization is emphatic that the “least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.”

Thus, Nigeria reserves the right not to liberalize trade in legal services if non-liberalization is consistent with her current level of industrial development, financial or trade needs, administrative and institutional capabilities. Arguably, considering the retarded level of Nigeria’s industrialization and the insignificant volumes of trade which she generates outside oil and gas, it seems that liberalization of legal services for now may not serve the best interest of the country. Clearly, any policy which allows the International Oil Companies (IOCs), which commands pervasive control over the nation’s oil and gas sector, to freely export legal services to foreign lawyers with the attendant repatriation of funds payable as legal fees to foreign lawyers, may deepen the instability in the economy. Put differently, liberalization of trade in legal services will not promote the economic stability of the nation. There is need to industrialize the country and increase the volume of commercial activities before considering liberalization of trade in legal services. The need for industrialization as a precondition for liberalization of trade in legal services is further underscored by the fact that since global legal practice is commercially driven, the current low level of commercial activities in the country cannot sustain such practice.

It is interesting to note that while the Nigerian Bar Association (NBA), the apex professional association of Nigerian lawyers, is positively disposed to liberalization of legal services in Nigeria in the foreseeable future, it does not support it as an imminent viable policy. The NBA urges the federal government not to include legal services in its schedule of commitment until bilateral and multilateral issues of market access and discriminatory practices are resolved.<sup>2</sup>

Another major challenge confronting globalization of legal services is the absence of global law. The concept of global law has been defined by Pierrick Le Goff as a set of multicultural, multinational and multidisciplinary legal rules designed to regulate the globalization of the world economy. Goff points out that global law is not coterminous with international public law, international private law, comparative law, international comparative law, international economic law or the *lex mercatoria*.<sup>3</sup> Therefore, the concept of

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for host country law, home country and/or third country law, international law, legal documentation and certification, other advisory and information.” See World Trade Organization, Services: sector by sector” [http://www.wto.org/english/tratop\\_e/serv\\_e/legal\\_e/legal\\_e.html/](http://www.wto.org/english/tratop_e/serv_e/legal_e/legal_e.html/) >accessed 20 June, 2016.

<sup>1</sup> International Bar Association (n30) 337.

<sup>2</sup> Joseph Bodunrin Daudu, “How to practice in multi-jurisdictions” Being Text of Paper Presented to the Annual Conference of the Section on Business Law of the Nigerian Bar Association on the 18<sup>th</sup> June 2012. See the Nation (28<sup>th</sup> April, 2015) ><http://thenationonline.ng.net/how-to-practice-in-multi-jurisdictions/> > accessed 4<sup>th</sup> July, 2016;

<sup>3</sup> Pierrick Le Goff, “Global Law: A Legal Phenomenon Emerging from the Process of Globalization” (2007) 14(1) Indiana Journal of Global Legal Studies 119 @ 123-7.

global law contemplates the development of new set of rules governing international commercial transactions based on the consensus of nation-states including both rich and poor nations. Thus, the contents of global law will reflect not only the differing interests of developed, developing and underdeveloped nations but also seek to preserve such interests.

The need for such law cannot be over-emphasised because differing national laws create serious obstacles to cross-border commercial transactions. The existence and applicability of a uniform body of legal rules governing cross-border commercial transactions will enhance the capacity of legal practitioners located in different national jurisdictions to offer informed legal opinion on the viability or otherwise of a proposed commercial transaction. On the other hand, differing national laws governing commercial transactions infuse unpredictability and inhibit the capability of lawyers operating outside particular national jurisdiction from offering sound legal advice to clients intending to participate in cross-border transactions.

There are also ethical issues involved in globalization of legal services. Considering the fact that there is no global bar, what is the standard of professional ethics required of lawyers rendering transnational legal services and which jurisdiction should enforce applicable ethical rules? This point is important because lawyers who are not physically present in third world countries but provide legal services to clients resident in such countries through outsourcing of such services may adopt lower standards of professional ethics than those prescribed within their own national jurisdictions.<sup>1</sup> There is no doubt that the Legal Practitioners' Disciplinary Committee can only exercise jurisdiction in disciplinary proceedings involving lawyers called to the Nigerian Bar. This leaves a client who engages the services of a foreign lawyer without any legal remedy in the event of professional misconduct by such foreign lawyer.

Finally, globalization of legal practice in Nigeria has been hindered considerably by poor investment by the state in the development of information communication technology. Limited access to internet service and the unpredictably poor quality of existing internet services in Nigeria have impacted negatively on the capacities of home lawyers to participate in the global legal market. Given that globalization is driven by innovations in information communication technology, limited access to and/or poor quality of internet service within a locality is bound to inhibit trade in legal services across national boundaries. The major constraints to efficient internet service in Nigeria is poor infrastructure. As Alex Mouka has rightly observed:

Now, internet connection again is tied to infrastructure, particularly power. There is also the fact that some of the solutions when it comes to internet connectivity, has to do with fiber of the cables and that entails laying fiber of the cables round Lagos. But it is available in few places. If it was to go round, there's a cost for that. There is need for some government concessions, so infrastructure is key and it's a thing the government should provide to lay the framework for private participation.<sup>2</sup>

Poor internet access could jeopardize networking between Nigerian lawyers and foreign lawyers and thus hamper the outsourcing of legal services by offshore law firms to local firms apart constraining the access of Nigerian lawyers to the global legal market.

## CONCLUDING REMARKS

This paper has demonstrated that the controversies associated with the concept of globalization are enriching and cannot be dismissed casually. As a concept that seeks to increase the level of interactions and intercourse amongst nation-states and deepen the interdependence amongst them, globalization has elicited fears amongst third world countries as signalling a new phase of cultural, social, economic, political, religious and technological imperialism. If developments in each nation-state in the cultural, social, political, economic, religious and educational spheres, are to shape and define developments in other parts of the world through globalization, then the capacities of African countries to influence the rest of the world in any of these spheres raise serious questions. Africa has made insignificant advancements in the social, cultural, political, economic and educational spheres to enable her impact the rest of the world. Besides, the abysmally poor efforts made in the development of indigenous technology particularly in the area of information communication technology means that Africa lacks the capacity to tell her story and thereby shape developments in other climes.

Thus, for Nigeria and the rest of Africa, globalization simply means removing all barriers to trade and services and free movement of peoples, and making her accessible to information, ideas, technology, economic and political policies and cultural, social, and religious practices from the outside world. However, there is insignificant export of information, ideas, technology, trade and services or cultural, social and political practices from Nigeria to the outside world through globalization. This is the inevitable imbalance that globalization has

<sup>1</sup> See generally, Laurence Etherington and Robert Lee, "Ethical Codes and Cultural Context: Ensuring Legal Ethics in the Global Law Firm" (2007) 14(1) *Indiana Journal of Global Legal Studies* 95-118.

<sup>2</sup> Cited in Yetunde Ayobami Ojo and Godwin Duma, "Lawyers, judges, stakeholders tasked on ICT" *The Guardian* (Lagos, 21<sup>st</sup> July, 2015) <<http://guardian.ng/features/law/lawyers-judges-stakeholders-tasked-on-ict/>> accessed 04/07/2016.

created thus making it far more beneficial to the developed nations of the West than to the underdeveloped countries of Africa.

The imbalance between Africa and the West in terms of the gains and benefits associated with globalization remains the same even in the sphere of globalized legal services. The dependence of the local economy on foreign direct investment by multinational corporations and the preference for foreign legal services by the foreign investors underscore the fact that the opening up of the legal market to foreign participation will give the foreign lawyers a decided advantage. It is thus indisputable that the gains of liberalization of trade in legal services through granting access to the local legal market to foreign lawyers may well inure to the benefit of foreign lawyers. Besides, the paralyzing effect which such liberalization may have on the local economy in terms of cash flight makes it unattractive as an imminent policy.

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