

# **LEGAL OFFICERS INDEPENDENCE: ADDRESSING THE CHALLENGES IN PUBLIC SECTORS**

## **Protocols**

### **Ladies and Gentlemen,**

I am very pleased to have the honour and opportunity to be present here to present this paper. This topic is of key importance to the efficiency and integrity of our Justice system and the Legal Profession with particular reference to the independence of the Legal Officers. The word independence means “Not dependent or not having to depend on anyone or anything else. It also means being strong and able to survive alone<sup>1</sup>”.

### **WHY IS INDEPENDENCE IMPORTANT?**

Independence is generally defined as the absence of influence, coercion or pressure from external factors. It is understood that socio-political, cultural and economic factors can have an effect on the concept of independence<sup>2</sup>. Suffice it to say that there is economic, political and professional independence. The Constitution of the Federal Republic of Nigeria 1999<sup>3</sup> ensures the independence of the Judiciary. Neutrality, independence of mind and the absence of external interference in the application of the law and the administration of justice are central to judicial independence. If the community is to have faith in our legal system, not only must they be assured that our judiciary is free from bias and unafraid to make unpopular decisions in the face of powerful interests, but we must also have lawyers and related members of the legal profession who are willing to defend the rights of people they may morally abhor, and advocate on popular causes without fear or favour where this is consistent with the Rule of Law. It is no wonder that the independence of the judiciary and the legal profession is recognized internationally as the core element of a civilized society and is the backbone of a free and democratic society.

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<sup>1</sup> <https://simple.wikipedia.org/wiki/independence> accessed 29-10-2018

<sup>2</sup> A report by the IBA's Presidential task force on the independence of the Legal Profession, 2016

<sup>3</sup> Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

The independence of the legal profession requires that lawyers should be free to perform their work without fear of reprisal or outside interference. We must always keep in mind our commitment to the Rule of Law and cherish our independence. We must be willing to confront issues which challenge this independence- this could manifest itself in the form of restrictions, limitations, intimidation, or harassment or unreasonable interference or sanctions imposed preventing you from undertaking your professional duties. Where these challenges arise, as lawyers, it is our duty to maintain a steadfast position and always adhere to the Rule of Law. It is necessary for lawyers to guide against the erosion of independence if the principle of independence is going to survive in a society. There are established systems of checks and balances, providing accountability, which resides at the core of independence<sup>4</sup>.

### **LEGAL OFFICERS AND THE LEGAL PROFESSION**

The term legal is used to describe things that relate to the Law. It also connotes something established by, or founded upon Law while the term Officer refers to a person holding a position of authority, especially one with a commission.

A legal officer functions both in the private and public sector. Legal Officers are responsible for monitoring all legal affairs within their organization. They handle both internal and external legal concerns and are tasked with doing everything in their power to keep their organization out of legal trouble<sup>5</sup>.

A legal officer must understand and have knowledge of the operations of public bodies in the public sector. A legal officer will sometimes interface with legal officers in the entities and ministries, Attorney-General, Board Members as well as other consultants and advisors.

Legal Officers are lawyers who are employed by the Government, large companies and other organizations to provide legal advice and services to the

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<sup>4</sup> The Hon. David K. Malcolm AC; Independence of the Legal Profession and Judiciary, ("The Church Service") 2005

<sup>5</sup> <https://www.jobhero.com/what-is-a-legal-officer/> assessed on 29-10-2018

organization and its employees. In other words, legal officers or advisors are in-house lawyers as compared to attorneys and advocates who provide their services to the public as a whole rather than to an employer. The requirements and training for legal officers or advisors are the same as for advocates and attorneys.

### **GENERAL CHARACTERISTICS OF A LEGAL OFFICER**

Apart from general characteristics like ambition, dedication and a disciplined approach, a legal advisor also needs to possess special characteristics and skills including;

1. Honesty, decisiveness and integrity.
2. Being objective in a matter.
3. Being able to distinguish facts from irrelevant details.
4. Confidence.
5. The ability to solve problems.
6. Exceptional communication skills.
7. Discretion, diplomacy and tact.
8. Working well under pressure.

Specifically a legal officer can work in a public sector such as; N.N.P.C, Universities, Dangote Plc, University Teaching Hospitals. A legal officer can also work in the private sector. A legal Officer can work for the Federal, State or Local Government<sup>6</sup>.

### **KEY RESPONSIBILITIES OF A LEGAL OFFICER**

The Legal Officer is accountable for taking the day to day legal responsibilities and providing legal advice that includes all the aspects of the analysis, investigation and drafting process. Some of the responsibilities handled by the legal officer are;

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<sup>6</sup> <https://www.robertwalters.co.za/career-advice/the-role-of-a-legal-advisor.html> accessed 29-10-2018

1. To provide advice on different legal issues and assist in drafting legal opinions, memoranda and other briefing documents.
2. To draw up formalities regarding the settlement of disputes and monitor the implementation of the legal clauses.
3. To advise the executives and employees affecting the company or organization.
4. To oversee lawsuits.
5. To conduct legal analysis and research on various matters of the client or the organization.
6. To draft and review agreements, ensuring the timely filing of statutory returns, liaising with external solicitors.

Thus, the legal officer is primarily responsible for providing high quality advice to the organization or the client on major legal issues and problems. The legal officer handles the multitude of responsibilities.

### **DIFFERENCE BETWEEN THE PUBLIC SECTOR AND PRIVATE SECTOR**

#### **PUBLIC SECTOR:**

In general terms, the public sector consists of governments and all publicly controlled or publicly funded agencies, enterprises, and other entities that deliver public programs, goods, or services. It is not, however, always clear whether any particular organization should be included under that umbrella. Therefore, it is necessary to identify specific criteria to help define the boundaries. The concept of public sector is broader than simply that of core government and may overlap with the not-for-profit or private sectors. For the purposes of this guidance, the public sector consists of an expanding ring of organizations, with core government at the center, followed by agencies and public enterprises. Around this ring is a gray zone consisting of publicly funded contractors and publicly owned businesses, which may be, but for the most part are not, part of the public sector<sup>7</sup>.

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<sup>7</sup> [www.globaliia.org/standards-guidance](http://www.globaliia.org/standards-guidance) assessed on 29-10-2018

The public sector is that portion of an economic system that is controlled by national, state and local governments<sup>8</sup>.

Public sector refers to all organizations that exist as part of government machinery for implementing policy decisions and delivering services that are of value to citizens. It is a mandatory institution under the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Chap.VI of the Constitution, Executive, Part1(B) and Part2(C) provides for a public service at the federal and state levels of government.

The public sector in Nigeria is made up of the following;

1. **The Civil Service**, which is often referred to as the core service and is composed of Ministries and Extra-Ministerial agencies.
2. **The Public Bureaucracy**, which is composed of the enlarged public service, including the following:
  - a) Services of the State and National assemblies,
  - b) The Judiciary,
  - c) The Armed Forces,
  - d) The police and other security agencies,
  - e) Paramilitary services (Immigration, customs, prisons etc)
  - f) Parastatals and agencies including social service, commercially oriented agencies, regulatory agencies, educational institutions, research institutes, etc.

## **PRIVATE SECTOR**

The private sector is the part of a country's economic system that is run by individuals and companies, rather than the government. Most private sector organizations are run with the intention of making profit<sup>9</sup>. Organizations in the private sector are usually free from government control or ownership, but sometimes choose to partner with government<sup>10</sup>.

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<sup>8</sup> Margaret Rouse; [www.what-is.com](http://www.what-is.com) assessed on 29-10-2018

<sup>9</sup> Margaret Rouse; [www.what-is.com](http://www.what-is.com) assessed on 29-10-2018

<sup>10</sup> <https://na.theia.org/standards-guidance/PublicDocuments/PublicSectorDefinition.pdf> assessed on 29-10-2018

## **OVERLAP BETWEEN PUBLIC AND PRIVATE SECTOR**

There is considerable overlap between public and private sector industries. Examples of enterprises that are often run cooperatively include; waste management, water management, health care and security services.

An industry or business may start out in one sector and move to the other. The act of turning a publicly-run enterprise over to private citizens is known as **Privatization**. The opposite movement from private to public is known as **Nationalization**.

## **LEGAL OFFICERS IN THE PUBLIC & PRIVATE SECTOR**

Legal Officers in the public and private sectors work/function in an advisory capacity. They work within the policy outline and dictates of the organization or corporation.

### **The key challenges faced by legal officers are;**

1. Managing a number of technically and legally complex matters simultaneously while working under constant pressure.
2. Working autonomously with limited guidance to meet short and tight deadlines of both internal and external clients.
3. Providing authoritative verbal and written advice on a wide range of matters, to people with widely varying understanding of legal principles<sup>11</sup>.

## **KEY CHALLENGES IN THE PUBLIC SECTOR**

**Inefficiency** due to;<sup>12</sup>

1. Corruption.
2. Poor capacity of the majority of civil servants, sometimes to the point of illiteracy.
3. Certificate forgery to gain entry and get promotions.
4. Age falsification to remain in service beyond the stipulated period/age.

<sup>11</sup> <https://www.ignsw.org.au/files/imce-uploads/79/pd-legal-officer-4.5.16.pdf>

<sup>12</sup> <http://www.gamji.com/article8000/NEWS8589.html> by Salisu Suleiman

5. Colonial, outdated administrative machinery.
6. Policy reversals.
7. Primordial considerations like ethnicity at the expense of merit etc.
8. Failure to keep up with technological advances.
9. Lack of transparency.
10. Nepotism
11. Quota System (Federal Character)

In order to tackle these challenges, government must shift in the way public sector goes about its business. The focus should be on effectiveness, efficiency and innovation as a priority. Government should look at improving the public sector's productivity by doing the same tasks in new ways, learning from the private sector and overseas experience.

### **ADDRESSING THE CHALLENGES IN PUBLIC SECTOR THROUGH LEGAL OFFICERS' INDEPENDENCE**

In the public sector, and also in the private sector the scope of work of a legal officer is defined and limited to specific functions. A legal officer acts in an advisory capacity. Legal officers in the public sector work in a constrained environment created by the organization they work for. A legal officer operates with some independence within the limit of delegations.

A legal officer works in the interest of the organization, sometimes against his conscience because he takes directives from his superiors such as the M.D or C.E.O and this is a constraint/impediment to his independence.

The independence of legal officers would help solve some of the challenges in the public sector. They will be able to bring their legal knowledge to bear in the administration of the public sector thereby leading to reduction in the number of litigations that could affect efficiency of the organization.

### **CONCLUSION**

There is no doubt that there are notable challenges in the public sector which needs to be addressed through training, punitive measures, employee incentives, collaboration with the private sector, use of improved technology etc. The legal officer in the public sector should be given the latitude to take decisions and act for the organization with a high level of independence to ensure effectiveness and efficiency in the public sector. Allowing the legal officer to work in a constrained environment in the public sector would be counter-productive.

**HON. JUSTICE ESOHE FRANCES IKPONMWEN FCJEI: FICMC  
CHIEF JUDGE, EDO STATE**