

J-K GADZAMA LLP

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The Aspiring Advocates

The emerging generation of lawyers from Funtaj International School, Abuja with our Founding Principal Partner, Joe-Kyari Gadzama, SAN and the Practice Manager of the firm, Mrs Daramfon Ayeni during the Students' Job Training Exercise with the firm.

Editorial

It is with great excitement that we present this edition of our firm's quarterly Newsletter. Opening this edition is an article by our Founding Principal Partner, Joe-Kyari Gadzama, SAN, on the imperativeness of census. The significance of accurate data gathering cannot be overemphasized if good planning and development will be achieved in any nation. The recent challenges witnessed in the attempt to distribute palliatives to vulnerable Nigerians during the lockdown is a clear example. The Newsletter also features very hilarious jokes, and witty quotes.

Editorial team

Pelumi Adewumi | Paul Ebiloma | John Unachukwu | Chimdindu Onyedim-Etuwewe | Adegbemisoje Olasubomi
Adedapo Adewuyi | Collins Ede

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PATH TO AVOIDING CENSUS LITIGATIONS

By

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A Paper delivered at the 2020 National Population Commission Retreat at Uyo, Akwa Ibom State



There is no doubt that dispute is a universal phenomenon that is inevitable in human interaction. Disputes are an invariable and recurring decimal in human and commercial endeavors, thus the need arises for effective dispute resolution mechanisms to be adequately put in place. Dispute resolution techniques assist the resolution of antagonisms between parties that can include citizens, corporations, and governments. Traditionally, Litigation and Alternative dispute resolution mechanisms have been identified as the major means of resolving disputes. Census activities are not exempted from disputes as population figures can be disputed along geographical, ethnic and religious lines.

As much as possible, the National Population Commission owes the country a duty to minimise litigations to the barest minimum when carrying out its functions. The Nigerian political development and growth cannot be discussed without addressing the issues of census. This is because of the socio-cultural diversity in Nigeria, where census plays a vital role in the politics and administration of the country.

From the history of census activities in Nigeria it is

evident that there had never been agreements among different ethnic units in Nigeria with respect to census results. Either the figures were disputed or there were queries as to the methods of data collection. This has been a thorn in the flesh of the agency in charge of Census as there has been series of disputes against them like the case of *Orija & Ors v Chairman National Population Commission & Ors* (2013) LPELR- 2083, *Komolafe & Ors v Chairman, NPC* (2014) LPELR- 22773, *Amasa & Ors v The Chairman, National Population Commission & Ors* (2014) LPELR- 22773 (CA), amongst others.

This article seeks to identify issues giving rise to census litigations as well as the possible means of avoiding them. In addressing this point, it is pertinent to conceptualize the subject matters article; Litigation and Census as well as equally consider the reasons and causes for census litigation and how to avoid same or limit its occurrence. It is believed that in the end, the reader would have had succinct enlightenment on the subject matter.

CONCEPTUAL FRAMEWORK

For the purposes of better assimilation, it is imperative to clarify two key terms used in this article, to wit, census and litigation:

CENSUS

A census is the procedure of systematically acquiring and recording information about the members of a given population. This term is used mostly in connection with national population and housing censuses; other common censuses include traditional culture, business, supplies, agricultural, and traffic censuses.¹ Odewumi (2000) while referring to the 1970 United Nations Draft Recommendation on

Population Census defined census as 'the total process of collecting, compiling, evaluating, analyzing and publishing or otherwise disseminating demographic, economic and social data pertaining at a specified time to all persons in a country or in a well delimited part of a country'.²

According to the OECD³ Glossary of statistical terms⁴, a census is a survey conducted on the full set of observation objects belonging to a given population or universe. A census is the complete enumeration of a population or groups at a point in time with respect to well defined characteristics: for example, population, production or traffic on particular roads. In some connection the term is associated with the data collected rather than the extent of the collection so that the term sample census has a distinct meaning. It also makes provisions for the acceptability of census results.

In Nigeria, the 1999 Constitution⁵ provides for the functions, composition and proceedings of the National Population Commission, which is the agency empowered to deal with population and census matters. Paragraph 24 of the third schedule to the Constitution confers the National Population Commission with the function of undertaking periodical enumeration of population through sample surveys, censuses or otherwise amongst other functions.

The National Population Commission is also mandated under the National Population Commission Act 2004 (NPC Act) to undertake the enumeration of the population of Nigeria periodically, through censuses, sample surveys or otherwise amongst other functions. Section 6(1) (a-c) of the Act provides thus:

“(I) The Commission shall - (a) undertake the enumeration of the population of Nigeria periodically, through censuses, sample surveys or otherwise; (b) establish

and maintain a machinery for continuous and universal registration of births and deaths, throughout the Federation; (c) prepare and maintain a national framework, including locality list and house - numbering, for the delineation exercise for census and sample surveys in each local government area in Nigeria”

From the above provision it can be conclusively submitted that the subject of census is an important matter with constitutional backing. The primary objective of the census results is to assist a country in knowing as accurately and reliably as is possible, the population size, its composition and distribution. The population figures and characteristics arising out of the census helps the country to meet its developmental, administrative and political needs and provide inputs in planning for improving the quality of life of citizens.

In Nigeria, census collection began in the mid-80s.⁶ The first census was held in 1866 and subsequently in 1871, 1881, 1891 and 1901.⁷ However, these earlier censuses were restricted to the Lagos Colony at that time. It later spread to other parts of the country in the 1950s.⁸

Census in the East was conducted from May to August, 1953.⁹ This enumeration strategy made the comparability of data between one region and another difficult. Furthermore, the disruption of the Second World War made people suspicious of the intention of the exercise and therefore many people did not submit themselves for enumeration. This meant that the exercise was characterized by gross under enumeration.

The refusal of the government to accept population census of 1962 prompted the 1963 population census which critics claimed were arrived at by negotiation rather than enumeration. The result was contested at

the Supreme Court which ruled that it lacked jurisdiction over the administration of the Federal Government.

The 1973 census conducted between November 25 and December 2 was not published on the ground of deliberate falsification of the census figures for political and /or ethnic advantages. The 1991 census was conducted under Decree 23 of 1989 which set up the National Population Commission. It was conducted all over the country from November 27 to December 2, 1991. This was the most scientific and most acceptable until 2006 population and Housing census. Several stages were involved in the project. For the first time, the use of GPS and Satellite Imagery to carve out Geo-referenced Enumeration Areas was adopted. Also machine readable forms (OMR/CR/ICR) were used to record information from respondents.

LITIGATION

Litigation in the context of this paper means lawsuit. Black's Law Dictionary defines lawsuit as a proceeding by a party or parties against another in the court of law. The term "lawsuit" is used in reference to an action brought in a court of law in which a plaintiff, a party who claims to have incurred loss as a result of a defendant's actions, demands a legal or equitable remedy. A lawsuit may involve dispute resolution of private law issues between individuals, business entities or public institutions.

The conduct of a lawsuit is called litigation. It is a dispute resolution technique whereby the court considers the issues in dispute between parties and arrives at a decision based on facts and evidence presented to it by the parties involved.

While Litigation is a commendable and practicable means of settling dispute, it is fraught with a lot of limitations which makes it less disadvantageous to the parties. First, Litigation costs money. Although some authors have opined that other dispute resolution

methods are equally expensive on the long run. Litigation has also been said to lead to broken relationships at the end of the process, when Judgment is given in favour of one person against the other. However, due to the procedural nature of litigation, it comes with a lot of time wasting processes which indirectly incurs cost for the parties.

CAUSES OF CENSUS LITIGATION IN NIGERIA

There are many causes of census litigation in Nigeria. A great number of these causes stems from the problem with conducting census in Nigeria generally. I have identified some causes of census litigations in Nigeria:

1. DRIVE FOR INCREASED REVENUE ALLOCATION

Revenue Allocation is one of the most important reasons behind census litigation in Nigeria. Paragraphs 32 (a) and (b) of Part 1 to the Third Schedule of the 1999 Constitution of the Federal Republic of Nigeria (as amended) saddle the Revenue Mobilization Allocation and Fiscal Commission with the responsibility of distributing revenue in the country.¹⁰ By Paragraph A, the commission has the power to monitor the accruals to and disbursement of revenue from the federation account and review from time to time the revenue allocation formula to ensure conformity with changing realities. In exercising the above powers, census is necessary in determining which area should have its revenue share reviewed either upwards or downward to mirror a current census.

Although revenue is mostly in monetary form, it also reflects access to demand for more allocation from densely populated states. For example, Kano State is better placed to demand for more allocation than Imo State simply because it is more populated than Imo.

This may lead to litigation if the result is perceived to be inaccurate by the population concerned. Similarly, revenue allocated for the provision of infrastructure is more likely to be allocated to densely populated states. As a result, states may attempt to influence the figures to justify the need to have more tertiary institutions and other amenities.

2. NATURE OF CENSUS LEGISLATIONS IN NIGERIA

An examination of the legislation which provides for census in Nigeria is imperative towards avoiding census litigations. As has been stated earlier the National Population Commission Act is the primary legislation that regulates the conduct of population census in Nigeria. There is an inherent gap in the legislation with regards to the power of the President to accept or reject the census results in Nigeria. This is stated in section 213 of the 1999 Constitution of the Federal Republic of Nigeria as amended and section 27 of the NPC Act which provides that any report of the National Population Commission containing the population census figures after every census shall be delivered to the President by the Chairman of the Commission. The President can on the advice of the Council of State reject the census on the ground that the population census figures contained in the report are inaccurate or that the report is perverse.

It is submitted that this provision is problematic as there appears to be no guideline on how the President exercises such powerful discretion and there is nothing that requires him to be accountable for rejecting or accepting the results. It allows for the President to reject or accept the result on the basis of his personal idiosyncrasies which

could stem from his decision to propagate his own political ambitions. In a diverse country like Nigeria, it allows room for ethnic or religious sentiments to trump serious national issues. Ethnic or religious sentiments on the part of the President could be perceived as the reason behind the rejection or acceptance of the census figures.

In a diverse country like Nigeria even if the rejection is truly based on the two grounds above, many ethnicities will not believe that and this may stir up litigation. The discretion of the President above might be viewed by a section of the Country as personal agenda to propagate his own ethnic and political aspirations. More so, subjecting the acceptability or rejection of a census result carried out by the Commission to the President questions the independence of the Commission and risks the image of the Commission being portrayed as puppets of the President.

3. ETHNICITY AND RELIGION

Ethnicity and religion are one of the triggers behind census litigation in Nigeria. With over 200 ethnic groups and a population divided along religious lines, each religious group is struggling for dominance over the other. Oftentimes, ethnic groups with lesser population in the census results reject the results as it instills a fear of being wiped out by the majority. For example, during the 2006 census, the spokesperson of the Pan-Igbo Sociocultural Organization Ohanaeze Ndigbo said the census artificially reduced Ndigbo to a minority.¹¹ Because of the distrust created by tribalism and the quest to dominate perceived 'rival' ethnic groups or religions, a situation of distrust is created hence leading to apprehension about census figures.

4. **IMPACT OF CENSUS RESULT IN POLITICS**

Time and again, census has influenced the politics and elections of Nigeria. The Independent National Electoral Commission relies on census results to deploy more staff to higher populated areas for better efficiency during the election period. In other words, densely populated areas are at a lower risk of having their elections marred with irregularities than communities with low population. They rely on census for this. It is not surprising to note that where this happens, low populated communities feel less important in the heart of governance and are very likely to litigate census figures in Court.

Politically, population has been a defining factor in many decisions in the country. Argument for state creation for instance has always been premised on the fact that densely populated areas are better managed if more territories are created for a more effective governance and better representation of the diverse groups of that locality. Representation in the legislature is influenced by census. In the House of Representative, for instance, Kano and Lagos states have 24 representatives each not by reason of their landmass (certainly not in the case of Lagos State) but due to their population. In contrast, Bayelsa and Nasarawa states only have 5 representatives. Thus, it is easy to understand why this is a reason why census results are contested in court.

5. **IMPACT OF CENSUS RESULT ON EMPLOYABILITY**

Furthermore, employment in the civil and public service in Nigeria is impacted by census figures. The Federal Character policy which seeks to ensure appointments fairly represent the diverse nature of the country is central to this. Densely populated areas are

entitled to more slots even within the same geopolitical zones in Nigeria. In essence, people will contest census results since it has consequences on the opportunities they have in governance and employment. Census is also used to determine the number of people the Military and Paramilitary employ from each state. Obviously those with higher population have more slots.

6. **PERCEIVED BIAS AND TRUST FACTOR**

Like elections, census in Nigeria is sometimes believed to be tainted with corruption and irregularities. This has created a trust deficit in the minds of the populace. This leads to unnecessary litigation of census results not because there are necessarily any factual or reasonable grounds to litigate on but because people believe political leaders may be biased in favor of their own constituencies, hence influencing falsification of the figures. Indeed there are reports by some complainants that during the census exercise, some areas are not counted by the officials of the National Population Commission. According to reports, the officials guess the figures and this may be due to bribery and corruption, insufficient census materials or incompetence on their part. Indeed, inhabitants of those areas are likely to contest results especially if it affects their opportunities in governance.

PATHS TO AVOIDING CENSUS LITIGATIONS

In addressing the above enumerated causes of Census Litigations in Nigeria, the following solutions would go a long way in avoiding such litigations.

a. **ADEQUATE PREPARATION BEFORE CENSUS EXERCISE**

The popular saying that he who fails to plan,

plans to fail is instructive in avoiding problems that might escalate to become subjects of litigation after the exercise. The usual experience of planning census just before the exercise is chief among the reasons for poor and unreliable census results leading to litigation. There ought to be early, proper and adequate preparation and planning for census in Nigeria to avoid obvious lapses that might create a bias in the minds of the public. Since census in Nigeria is held periodically, it is expedient that preparations are made beforehand, including training of field personnel, logistics, and public awareness on the procedure for population census. It is essential to provide instruction manuals and extensive training for the Commission's officials to standardize procedures, secure a common understanding of tasks to be performed and provide a reference guide during the exercise. Instruction manuals and enumerator training programmes are essential because census data quality depends primarily upon the enumerators. There is an inherent risk that all efforts and investments made towards the success of the census exercise will fail if adequate training is not given to officials of the Commission. Training should be carefully organized and conducted within an appropriate time schedule.

b. ADOPTION OF MODERN METHODOLOGY AND IMPROVED TECHNOLOGY FOR CONDUCTING CENSUS.

The National Population Commission needs to design and adopt modern census methodology and technologies in conducting future censuses to ensure accuracy and boost public confidence in the exercise. Modern technologies exist and are most likely to be

immune from man-made errors and interferences associated with purely manual systems. Modern Geographic Information Techniques such as remote sensing (high resolution satellite imagery and aerial photographs), Geographical Positioning System (GPS), digital cartography and Geographic Information System (GIS), should be used to facilitate the production of all base maps needed for successful conduct of population censuses.

As a preliminary step, census must be preceded by preparation of Enumeration Area (EA) maps to guide enumerators, with accurate, comprehensive, geographically-referenced, mutually exclusive and non-overlapping enumeration area maps, supervisory area maps and locality maps covering every nook and cranny of the country must be made readily available to enumerators¹². What this would do is that it will enhance credibility and promote trust for the commission when public perception of the exercise is viewed as top notch.

c. PROPER TRAINING OF STAFF OF THE COMMISSION

In general, census personnel should be experienced, technically and professionally skilled in the conduct of censuses and surveys. The commission should embark on value change and re-orientation programs that change the wrong perception of censuses as strictly instruments for national resources sharing, taxation, ethnic dominance and determination of people's political and economic status. Staff should also be enlightened on their responsibilities under the Act. Continuous education on census related spheres should be top on the list for capacity building.

d. REVIEWING THE PROVISIONS OF THE CONSTITUTION ON PRESIDENTIAL DISCRETION TO ACCEPT/REJECT CENSUS RESULT

Since it has been noted that sections 213 of the Constitution and section 27 of the NPC Act which gives the President the power to accept or reject census result is vague and problematic, no matter how well conducted a census is in Nigeria, the section has the potential to breed litigation for the Commission as the President may decide to exercise such power for the wrong cause. Thus, section 213 of the Constitution should be amended to the extent that the Commission is given autonomy to exercise its expertise, or the powers of the president under the section is limited by the introduction of conditions that would ensure such discretion is exercised in the best interest of Nigeria. The National Assembly recently inaugurated a committee to review the 1999 Constitution and recommend a brand new Constitution. The Commission must make presentations before this committee to this fact in a persistent and tenacious manner.

e. MASS EDUCATION AND ENLIGHTENMENT

Census enlightenment and mass education of the public is very important in ensuring reliable census exercises. Experience has shown that inadequately informed and hence uncooperative citizens may jeopardize the entire census. The purpose of publicity is to bring the census to the attention of members of the public, both in rural and urban areas. The scope and coverage of the census should be clearly explained in English and local languages via the national and local media to familiarize people with the nature of information to be asked. Emphasis should be

placed on the purpose of census as a tool for national development rather than it being a measure of who gets what. The publicity strategy should explain the uses to which the data will be put, particularly for development planning and formulation of infrastructural policies; making the census meaningful to people, and highlighting, in particular, the possible benefits to the citizens, thus establishing confidence between the people and census authority. The Commission has the obligation of educating the public on the essentials of a properly conducted census exercise in Nigeria. This role must be continuously carried out not just before census exercises, but at all times before, during and after the exercise. A dispute free census exercise in Nigeria is not the sole duty of the Commission. I must add that the citizens have a role to play too. However, they can only perform their own part if they actually understand what census is all about, what is expected of them and the proper cause to take to see that they are carried along.

f. RECRUITMENT OF OFFICIALS OF THE COMMISSION

Furthermore, recruitment of the employees of the commission should be meritbased and not based on ethnicity. This is to ensure the integrity of the Commission and also cure the perception deficit being faced by the Commission. You can agree with me that most of the suits on census results in Nigeria attack the integrity of the Commission. There is a pressing need to ensure that the employees of the commission are persons whose integrity cannot be compromised, whether by ethnic or religious standards. Employment into the census department of the Commission should factor in professionals with skills needed in conducting census exercises.

g. RESTRUCTURING

Most disputes arising from census in Nigeria are in contemplation of the Nation's allocation of revenue and resources. It has attached so much weight on census and has kept each region at alert to ensure they are not marginalized or short changed. Nigeria is a federating unit with a unitary structure in the sense that the states all depend on the center for allocation. It therefore defeats the core indicators of a federal system of government which Nigeria purports to practice. Thus, there is a need for clear decentralization of powers to the regions, such that states are allowed to evenly develop and every form of competition for resources or infrastructure is removed. This would make each state interested in promoting its economy rather than the tussle for federal allocation.

RECOMMENDATIONS

Accurate census exercise whether periodical or continuous is paramount to every state's socio-economic, political and development growth. As earlier stated while litigation might not be completely avoided, it can be reduced to the barest minimum in the following ways:

- i. The Commission should as a matter of urgency, re-strategise its census methodology to ensure accuracy and transparent recording of census figures. This has the effect of boosting the integrity of the Commission and minimizing resultant disputes. Also, where litigation is explored by an aggrieved party, it places the Commission at an advantage because litigation is evidence based, hence accuracy can only be determined by accurate and transparent records.
- ii. Advanced preparations before the conduct of trial and main census exercise should be explored by the Commission.
- iii. The integrity of the Commission is essential in reducing the bias the public has about its undertakings hence the Commission should embark on a self-assessment exercise to identify and understand the lapses in its operational system. The Commission should also operate and position itself as a transparent agency of Government devoid of political affiliation. This will build public confidence in the results announced by the Commission.
- iv. The Commission should particularly pursue penal sanctions for breach of the NPC Act by its officials to portray its stance in upholding the Act and conducting transparent census exercises. This has the effect of putting officials with criminal motivation to falsify figures on check hence improving accuracy of census figures.
- v. The Commission should embark on value change and re-orientation programs that change the wrong perception of censuses as strictly instruments for national resources sharing, taxation, ethnic dominance and determination of people's political and economic status. The Commission should collaborate with the National Orientation Agency and media outfits to successfully reach members of the public and launder its image. Advanced preparations should always commence on time before the conduct of trial and main census exercise. There should be extensive and intensive census enlightenment campaign especially in the rural areas using the most accessible media to reach all.
- vi. The Commission should avoid any variable or secondary questions likely to generate controversy and or suspicion among Nigerians. By so doing, likely areas that create a bias in the mind of the public are limited and public confidence on the results is boosted.

- vii. The Commission should always ensure the recruitment of highly skilled and qualified permanent and ad-hoc staff who are familiar to census methods and procedures to guard against distortion and mutilation of data in its possession.
- viii. Politicians who use such exercises to politicize issues and policies should be accordingly dealt with by law enforcement agents and the justice system. Therefore the commission has an obligation to report such persons to the appropriate agency.
- ix. Government should ensure adequate funding of the Commission as its functions are strategic and indispensable to Nigeria's socio-economic and political prosperity. Government should also ensure that the NPC is truly an independent and autonomous body free from political interference as envisaged by its enabling Statute. The Government can also support by ensuring proper budgetary allocation and early release of budget to ease the Commission's operations.

CONCLUSION

Census is one concept that generates a lot of issues once raised. This is apparently because of the nature of the Nigerian socio-economic and political structure. A lot depends on the population of an area, especially as it relates to political representation and revenue allocation. This means that no region would take it lightly when the census exercise is carried out in such a way that there is a reason to suspect foul play. Thus the Commission has a duty to alleviate such suspicion by seeing to the conduct of census exercises free of suspicions and doubts. This means it has to improve on its enumeration standards in order to ensure accuracy and accountability in the event of potential disputes. This will be done alongside the amendment of the NPC Act to review those provisions that fuel these perceived suspicions. Thus, it is my conclusion that in view of the fact that disputes cannot be completely

avoided, litigation can likewise also not be completely avoided, however it can be reduced to the barest minimum by the Commission immediately taking deliberate steps to implement the recommendations stated above. This quest to tow the path of avoiding census litigation does not rest on the Commission alone, but also on the Federal Government of Nigeria. As an agency of the Federal Government of Nigeria, it is in the interest of the public, that the causes which have been identified in this paper to result in disputes that lead to litigation, be worked upon to restore the public's confidence on the Commission for the continuous peace, development and stability of the Country.

END NOTES

¹<https://en.wikipedia.org/wiki/Census> accessed on 5th February, 2020

²Challenges of National Population Census and Sustainable Development in Nigeria: A Theoretical Exposition; Dr Peter Ezeah et al, IOSR Journal of Humanities and Social Science (IOSR-JHSS) Volume 18, Issue 1 No- Dec 2013 accessed on 5th February, 2020

³Organisation for Economic Corporation and Development.

⁴Economic Commission for Europe of the United Nations (UNECE), "Terminology on Statistical Metadata", Conference of European Statisticians Statistical Standards and Studies, No. 53, Geneva 2000 <<https://stats.oecd.org/glossary/detail.asp?ID=301>> accessed on 4th February, 2020

⁵Established by Section 153 (I) of the 1999 Constitution.

⁶Challenges of National Population Census and sustainable Development in Nigeria: A Theoretical Exposition; Dr Peter Ezeah et al, IOSR Journal of Humanities and Social Science (IOSR-JHSS) Vol 18.

⁷Ibid.

⁸Ibid.

⁹Okolo A. 1999, The Nigerian Census: Problems and Prospects; The American Statistician.

¹⁰Ali Mazrui (1975) Ethnicity, Power and Population in Eastern Africa in R. k Udo et al (cds) Population Education Source Book for Sub-sahara Africa. Heineman, London.

¹¹<<https://www.prb.org/objectionsovernigeriancensus/>> accessed on 4th February, 2020

¹²Nnameka Onochie, 10 Problems Of Nigeria Census And Possible Solutions<<https://infoguidenigeria.com/10-problems-nigeria-census-solutions/>> accessed on 8th February, 2020

WORDS ON MARBLE

"Collecting more taxes than is absolutely necessary
is legalized robbery."

Coolidge Quotes

"Compromise is the best and cheapest lawyer."

Stevenson Quotes

"A jury consists of twelve persons chosen to decide
who has the better lawyer."

Frost Quotes

"If you must break the law, do it to seize power: in all
other cases, observe it."

Julius Caesar

"Punishment is justice for the unjust."

Saint Augustine

"I am the inferior of any man whose rights I
trample under foot."

Robert Green Ingersoll

"From your confessor, lawyer and physician,
hide not your case on no condition".

John Harington

The firms's 2020 Job Training Exercise for Emerging Generation of Lawyers was attended by students of Funtaj International School, Abuja.



L-R: Mr. Kaosy Azuka (Supervising Teacher), Oluwatofeyifun Tolufashe, Mouktar Kabiru, Fatima Umar Abdullahi, Ibtihal Garba, Muhammad Hafiz, Ilhaam Maaji Shettima and Somoechukwu Ugnolue with the Founding Principal Partner, Joe-Kyari Gadzama, SAN (middle)

“Reconstructing the Treaty Network, Subject 1, Nigeria”

Dr Cyril Ikechukwu Obika is the 2020 Branch Reporter (Nigeria), for IFA, Congress in Cancun, Mexico, November 16-25, 2020

ABSTRACT

There is no gainsaying that the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument (MLI), which Nigeria signed on 17 August, 2017, has greatly and advantageously impacted the Nigerian tax system especially tax treaties. Despite the fact that Nigeria has not deposited the MLI document because it only signed it but have not ratified, accepted or approved it. This is because the 1999 Constitution of the Federal Republic of Nigeria (as amended 2010), section 12 thereof, mandatorily requires that before any treaty shall have the force of law, it must first be enacted into law by the National Assembly of Nigeria. This is in line with the dualist theory which Nigeria practices and which regards international law and domestic law as two completely different systems of law, as it views international law as governing the relationship between states, while domestic law governs the rights and obligations of individuals within states. This is in contradistinction to the monist theorists that propound the unity of the international and domestic law, the automatic incorporation of international law into domestic law, and the supremacy of international law over domestic law in cases of conflict between the two. Nigeria has signed Double Taxation Treaties or Covered Tax Agreements (DTTs/CRAs) with nineteen (19) countries, with different dates for the DTTs to come into effect and some others have no dates specified yet for them to come into effect. The DTT with Singapore which is the nineteenth (19) country was signed on 02 August, 2017, after the MLI came into effect. Nigeria's DTTs tilt more towards the UN Model, which favours and gives greater weight to the retention of greater taxing rights under a tax treaty to the “source country”, which is the host country of investment. The direct impact of the BEPS Action Plan and the MLI on Nigeria's DTTs are incorporated in the Nigeria's BEPS MLI Position document titled, Reservations and Notifications under the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting. Nigeria at the time of signing the document, gave a provisional list of expected reservations and notifications to be made by Nigeria pursuant to Articles 28(7) and 29(4) of the MLI Convention.



Cyril Ikechukwu Obika, *PhD, LLM, ACTI, ACI Arb* (UK) is a Partner at our Firm. He is a Chartered Tax Practitioner and has been published locally and internationally on a wide range of tax and commercial related issues. His latest creative output titled: “Reconstructing the Treaty Network, Subject 1, Nigeria”, has been published by the International Fiscal Association on its website.

He presently heads our Corporate Department and is also involved in dispute resolution matters. Prior to joining our Firm, he was the Head of Department (HOD), International Law & Jurisprudence, Postgraduate

Programme Coordinator and Law of Taxation Lecturer (Postgraduate and Undergraduate levels), all at the Faculty of Law, Enugu State University of Science and Technology (ESUT), Enugu State of Nigeria.

He is a member of the International Fiscal Association (IFA), Chartered Institute of Taxation of Nigeria (CITN), Chartered Institute of Arbitrators (CI Arb, UK), Nigerian Bar Association (NBA) & National Association of Law Teachers of Nigeria (NALT). He was a member of these committees; Learned Conferences Committee of the university (ESUT), Ethics and Exams Committee of ESUT, Blueprint for Nigeria's Development 2018-2050 (a National University Council Pilot Project) and Caucus member, Academic Staff Union of Universities (ESUT Chapter).

NEWS FROM THE FIRM

- Darlington Onyekwere, a Junior Partner in the Firm tied the nuptial knot with his sweetheart, Mimi Jooji at the Abuja Municipal Area Council (AMAC) Marriage Registry. The firm wishes them a blissful married life.

LEGAL HUMOUR



Eggers, Eggers, Eggers, and Eggers, Attorneys at Law

Image credit: Dose of Funny

Three generations of Eggers in one practice.
They hatch so fast.

Lawyers Nuclear Weapons

Why are lawyers like nuclear weapons?

1. If one side has one, the other side has to get one;
2. Once launched, they can't be recalled; and
3. When they land, they screw everything up for the next 20 years.

End of Discussion

Two lawyers were walking along negotiating a case. "Look," said one, "let's be honest with each other." "Okay, you first," replied the other. That was the end of the discussion.

UPCOMING EVENTS

Nigerian Bar Association (NBA) Annual General Conference 21-27 August, 2020



International Bar Association (IBA) Annual Conference Miami, USA, 1-6 November 2020



Chartered Institute of Arbitrators (CI Arb) Nigeria Branch Annual
Conference and Gala Nite, 4-6 November, 2020

IN LOVING MEMORY OF

Our beloved Wife, Mother and Sister
who slept in the Lord on 5th April, 2014



Mrs. Janada Joe Gadzama

11th July, 1971 - 5th April, 2014

How Time Flies!

To live in the heart of those you love is not to die. You left us exactly 6 (six) years ago, but your sweet and fresh memories still linger in our hearts like it was just yesterday.

Continue to rest peacefully in the bosom of our Lord

Always Remembered by

Chief Joe-Kyari Gadzama, SAN } Husband	Madu Joe Gadzama Yahaya Joe Gadzama Lamar Joe Gadzama Bitrus Joe Gadzama } Sons	Maryam Joe Gadzama Jemima Joe Gadzama } Daughters
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Mrs. Tamabari James Hamman (Sister), Mr. Zaman Bitrus Kajal (Brother),
Mrs. Anasili Medugu (Sister) and Mr. Ijai Bitrus Kajal (Brother)

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