The Commercial Law Reform Network Nigeria (CLRNN) Inaugural Conference Proceedings

By:

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The perennial challenge for each Nigerian government has been to successfully diversify the Nigerian economy from its oil and mineral-base. Successive governments have responded to this by designing economic plans that advocate the development of the private sector. Within this framework, the government facilitates development by opening up various sectors of the economy and providing institutional frameworks to engender confidence in domestic and foreign investors. As a result, Nigeria has witnessed extensive law reform; intensified since its return to democracy in 1999. In the area of commercial law, the reforms have drawn extensively from international systems and experiences, partly as a result of Nigeria's membership of the common law family and partly to meet Nigeria's obligations under bilateral and international treaties; leading to questions about their suitability to Nigeria's domestic realities and generating unease amongst some keen observers.

The Commercial Law Research Network Nigeria (CLRNN) was established in 2019 to create a platform through which the suitability of reforms to the commercial law in Nigeria can be critically discussed. CLRNN creates a collaborative environment in which researchers with expert knowledge of Nigeria's domestic and international contexts can engage on various commercial law subjects germane to Nigeria's economy. It achieves this goal through two main mediums. The first is its conference, through which scholars and commentators meet to critically review reforms. The second is through its workshops, through which methods and methodologies suitable to the understanding of Nigeria's realities are considered. The workshop also provides an avenue through which the next generation of scholars can be mentored by more established counterparts. CLRNN also enables interactions between scholars and the stakeholders who deal with the practicalities and consequences of the reforms, with a goal to collaboratively shaping balanced reform policies that achieve the government's vision. This interaction takes place through the stakeholder roundtable that focuses on policy discussions.

The inaugural CLRNN conference, funded by an Arts and Humanities Council (AHRC) grant, was hosted by the University of Reading. The conference theme, 'effective commercial law reform: the next steps', invited delegates to reflect on facets of the Nigerian commercial law that interest them, and to consider the actions that should be taken towards reform. Researchers and commentators discussed across 10 streams of commercial law including: New Technologies, Business and Development, Secured Transactions, Corporate Governance, Corporate Law, Intellectual Property Law, Competition Law, Financial Regulation, Insurance Law, Energy Law, Dispute Resolution and International Trade Law. Afronomicslaw in collaboration with CLRNN presents some of the engaging debates at the conference. Each piece describes the challenge facing an aspect of commercial law in Nigeria, reviews the reform responses proposed or taken by the government, and concludes with insights for future reforms.

The tone of the conference was set by the impassioned keynote speech from Prof Chidi Oguamanam that discussed the challenges of commercial law reform within the context of disruptions that have taken place in global commercial systems. In particular, he noted that 'the advent of new Information and

Communication Technologies (ICTs)' has reduced society 'into an ocean of unlimited commercial navigation and experimentation', with far reaching implications for the society as we know it. The new approaches to business portend great wealth but also 'massive job loss and populations to be left behind: the threat and reality of mega global monopolies; higher concentration of massive wealth in far fewer hands: colossal democratization of access to commercial opportunities across jurisdictional boundaries', amongst other things. The result is that the commercial system has 'fused with the development and capacitation imperative' like never before; necessitating an 'integrative approach to commercial law reform' at both global and national levels.

In the area of corporate law and governance, the pieces examine challenges in the design of effective corporate law, governance and insolvency systems that address the realities of the Nigerian context, with its active interplay of domestic and foreign natural and legal persons juxtaposed within the government's economic vision. Dr Bolanle Adebola and Chief Anthony Idigbe SAN, call for a critical examination of one of the recently proposed changes to the insolvency law regime in Nigeria, which places strong control powers in the directors of a distressed company. They place the proposed regime within the global discourse to show that proposed regime though welcome, presents challenges to the balance of powers amongst stakeholders, which must be rectified. Ms Ibukun Iyiola-Omisore examines the need for Nigeria to consider a sustainable approach to development which involves a broader view of the purpose of the company to transcend shareholders and embrace other stakeholder groups. She recommends a modification of the Indian approach to Corporate Social Responsibility for Nigeria. Dr Oludara Akanmidu and Chris Riley consider the role of large multinational companies in the Nigerian economy. They examine the challenges faced by victims of the misconducts of multinationals like Shell in emerging economies with debilitating institutional problems. They advocate for an approach that holds the parent companies liable within their jurisdictions. Finally, Dr Francis Okagbunan examines the challenges of creating effective corporate governance systems in Nigeria; noting the particular difficulties in embedding independent non-executive directors in the Nigerian system.

The International Trade Law, Dispute Resolution and Financial Regulation streams examine the challenges faced by the government in appropriately regulating the laws and policies that deliver on its vision of economic diversification, resilience as well as the reduction of corruption in Nigeria. Dr Olabisi D. Akinkugbe assesses the implications of Nigeria's delay in signing the Africa Continental Free Trade Act (AfCFTA) and subsequent border closures for trade policy in Nigeria. He calls for deeper and robust Nigerian and regional (ECOWAS) trade policy as a critical step to harnessing a coherent and beneficial trade regime. In the same vein, Dr Pontian Okoli examines the principles underlying Nigeria's legal framework for international commerce, which impact international trade. He calls for a cohesive and coherent approach that improves legal certainty and predictability. Dr Valerie Azinge assesses the challenges that undermine the compliance of countries with Anti-money Laundering Regulations. She makes the case for the importance of the quality of the legal framework in the ability of a country to meet compliance requirements. She notes however, that the level of development of a country is relevant to their ability to fight economic crimes, including money laundering.

The New Technologies, Business and Development, as well as the Insurance streams examine the challenges facing the government in creating an inclusive and resilient economy. Dr Nwanneka Ezechukwu examines the Central Bank of Nigeria (CBN)'s approach to regulating mobile payments, which include the decision to exclude Mobile Network Operators (MNOs) from providing mobile payments. Drawing on the experiences of other emerging economies, she advocates a different approach which would see the CBN regulate the risks introduced by the service rather than focus on the status of the provider. Such an approach, in her opinion, would better serve the mobile payments market to meet the CBN's financial inclusion objectives. Ms Adekemi Adebowale queries the compatibility of the law governing the pre-contractual duty of voluntary disclosure with modern insurance practice in Nigeria and presents a proposal to modify the current law. Ms Omotolani Somoye examines the challenges in developing an effective legal framework to regulate the principle of subrogation in the Nigerian insurance sector and makes suggestions that draw from the practice in the United Kingdom.

The challenges Nigeria faces in making appropriate policy directions in the

regulation of Intellectual Property Law are considered by Dr Titilayo Adebola, who critically discusses plant variety protection in the light of Nigeria's proposed membership of the International Union for the Protection of New Varieties of Plants (UPOV). She calls for a human rights impact assessment on the demerits and merits of UPOV membership. Ms Theona Elizee examines the interplay of patent protection for pharmaceutical products and access issues for emerging states. She identifies the challenge of finding the right balance between the European Union's sui generis protection, on the one hand, and access to generic medicines on the other and recommends proactive measures for emerging states. Mr Dike Ibegbulem discusses the challenges the Nigerian consumer faces in protecting personal data. He notes that the Federal Competition and Consumer Protection Act which caters to the interests of e-commerce consumers does not cover personal data. He makes suggestions which would rectify this omission.

Membership of and participation in CLRNN is not limited to Nigerians. It is open to everyone interested in developing effective commercial law for emerging economies. In that vein, Prof James T. Gathii's piece holds important lessons for the Nigerian reform process. He examines the transplantation of the English Companies Act 2006 into Kenyan Company Law in 2015; arguing that the 2015 approach truncated the successful implementation of a competing home-grown law. The piece holds important insights into theories of transplantation. Dr Jorge Guira, in alignment with the CLRNN vision, suggests a framework for an integrated and systematic coordination of commercial law reform in Nigeria, which draws on examples from other jurisdictions. CLRNN will hold its first stakeholder roundtable in Abuja. Representatives of stakeholder groups including regulators, judges, practitioners, and end-users of the law will discuss policy priorities across 6 main streams of commercial law: International Arbitration, New Technologies, Business and Development, Corporate Law, Intellectual Property Law, Energy/Environmental Law and International Trade Law. Action points arising from the event will be published shortly after.

Contributors

Chidi Oguamanam: Commercial Law Reform in the Age of Integration: Of Stakeholders, Futility of Boundary-Marking and Strategies

Bolanle Adebola and Anthony Idigbe SAN: 'The Debtor's Trident: The Prospective Business Rescue Proceedings in the Nigerian Insolvency Framework '

Ibukun Iyiola-Omisore: Assessing the Relationship between the Nigerian Companies Act and Corporate Social Responsibility in Nigeria

Oludara Akanmidu and Chris Riley: Should Parent Companies be held responsible for their subsidiaries wrongs? The case of Shell in Nigeria

Pontian Okoli: Bridging Gaps to Facilitate International Commerce – Implications for Nigeria

Theona Elizee: Supplementary Protection Certificate's in EU Legislation: The Access Challenge for Developing Countries

Valerie Azinge: Strained Marriage? Linkage Between Development and Combating Economic Crime

Adekemi Adebowale: Voluntary Disclosure: An Appraisal of the Insured's Precontractual Duty of Utmost Good Faith under the Nigerian Insurance Law

Nwanneka Ezechukwu: Re-visiting Nigeria's approach to Regulating Mobile Payments

Omotolani Somoye: The Doctrine of Subrogation in Insurance Law: An Appraisal of the Nigerian and English Perspectives

Anthony Idigbe SAN: An Overview of the Regulatory Framework for Secured Transaction in Moveable Assets in Nigeria

Titilayo Adebola: Can the Subaltern Speak? Nigeria's Untoward Path to UPOV

James Thuo Gathii: Lessons From the Transplantation of Kenya's 2015 Companies Act From the U.K.'s Companies Act of 2006

Olabisi D. Akinkugbe: Developing Robust and Coherent Regional Trade Policy could quell chaos surrounding Land Border Closures in Nigeria

Jorge Guira: The Call and Practice of Reform

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