

The Office of the Attorney-General: to Split or not to Split

The National conference has come and gone but one thing is for sure: it generated a lot of interest last year, particularly its recommendations. The question before Nigerians is will there be a constitutional amendment or not? Though politics is the order of the day at the moment, it would appear that all not is lost. The National Assembly is poised to conclude the amendment of the 1999 constitution before the end of parliament on May 29, 2015, as there are indications that various State Houses of Assembly have returned their inputs into the process back to the National Assembly via their Speakers. Many recommendations were made but one that is generating overwhelming debate at this point in time is that of the Standing Committee on Law, Judiciary, Human Rights and Legal Reforms chaired by retired Justice George Oguntade on the putative separation of the office of the Minister of Justice from that of the Attorney-General of the Federation (AGF). The main reason for the recommendation to split the office of the AGF is to enhance the administration of justice and to ensure the independence of the office of the Attorney-General from political influence. The Committee further recommended that the Minister of Justice should remain a political appointee while the Attorney-General of the Federation would be a career civil servant, who will be appointed by the President subject to the Senate's confirmation for a fixed and single term of 6 years. This decision will also affect the 36 states of the federation where the office of the attorney general of the state will be separated from the state commissioner for justice's office. The state attorney-general will be appointed by the governor subject to confirmation by the State House of Assembly. The intention for the call to split the position of the Attorney-General into two is to allow the Minister of Justice to be

a political appointment while the Attorney-General's office is held by a core professional. With the submission of the document granting approval by the State legislatures for this separation of powers to the Chairman of the Constitution Amendment Committee and Deputy Senate President, Senator Ike Ekweremadu, lawyers have been debating the pros and cons of this proposed split.

In Nigeria the AGF is the chief law officer of the Federation or of a state as the case may be. He or she also performs some political roles. Sections 150 and 195 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) respectively provide for the offices of the Attorney-General of the Federation and those of the States. The Constitution states as follows: Section 150 '(1) There shall be an Attorney-General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of the Government of the Federation. Section 195 '(1) There shall be an Attorney-General for each State who shall be the Chief Law Officer of the State and Commissioner for Justice of the Government of that State. Section 174 (1) further gives enormous powers to the Attorney-General of the Federation with regards to the exercise of prosecutorial powers as follows;

174 (1) The Attorney-General of the Federation shall have power –

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

(d) The powers conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person

or through officers of his department.

(e) In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.

Over the years the corruption level of public officers has risen tremendously resulting in flagrant abuses of office, which I believe has led to the agitation of lawyers, activists and human rights groups for the separation of the office of the Attorney-General as the AGF is considered a part of the Executive and therefore cannot be said to exercise his powers independently and freely, most especially in the prosecution of corrupt public officers. The belief is that the appointment of the Attorney-General is made by the President or Governor and as a result of the appointment, he or she will be susceptible to political pressure in the discharge of duties and therefore might not carry out the lawful duty of administering justice fairly for the greater good of the country. It is hoped that in the separation of the office, the Minister of Justice would be appointed by the President, while the Attorney-General will be a career officer in the Ministry of Justice. Another suggestion is for the AGF to be appointed by the President upon the recommendation of the National Judicial Council and confirmed by the Senate. Anything that would add to the independence of the AGF's office would be widely welcomed. There are countries who operate a system similar to Nigeria. In New Zealand for example, the Attorney-General is a political and legal officer. He/ She simultaneously holds a ministerial position whilst also being the chief law officer of the Crown and has responsibility for supervising the state's administration of the law and for providing legal advice to the government. In the latter role (but strictly not in the former), the Attorney-General is assisted by the Solicitor General, a non-partisan official. This is to reduce the extent to which the Attorney-General's actions on behalf of the state (as opposed to



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the government) can be influenced by their political allegiance.

In other jurisdictions such as England, the Attorney-General for England and Wales serves as the chief legal adviser of the Crown and its government and is a non-cabinet minister who can delegate to the Solicitor General. In turn, the Solicitor General's actions are treated as coming from the Attorney General. Ministry of Justice (MOJ) however is a ministerial department headed by the secretary of state for Justice and Lord Chancellor (combined position). The department is responsible for areas of constitutional policy, rights law and information rights law across the UK. In Australia the Minister for Justice is a government minister responsible for certain matters relating to law and the administration of justice. The Minister for Justice here is a more junior minister who supports the Attorney General and administers the portfolio through the Attorney-General's office. The Minister for Justice is responsible for the following matters within the Attorney-General's portfolio: criminal law and law enforcement including: criminal offences criminal procedure and enforcement powers; organised crime; proceeds of crime and anti-money laundering; crime prevention; cyber crime fraud and anti-corruption policy; and international crime cooperation (extradition, mutual assistance and international transfer of prisoners, excluding national security cases).

Advocates for the separation of the office often highlight the potential for abuse of power by the AGF, citing instances where certain corrupt public officers should have been prosecuted without any shadow of doubt as to their offences but have been allowed to go scot free. Nigeria being one of the most corrupt countries in the world desperately needs a strong and independent institution that can prosecute crime to its logical conclusion. There are those who hold the firm conviction that separation is not the answer, believing as they do that the 'status quo' will remain because of the manner in which governments operate in a "top-down" structure, so that even if the AGF is a public servant from the rank and file of the Ministry of Justice he/ she would still face political pressures in the performance of his/her duties. It is therefore posited that a career Attorney General appointed from the Civil Service may offer nothing different from the present order.

A high level of impunity and a complete disregard for the law is the order of the day and the need therefore to enforce and uphold the law cannot be over emphasised, starting with the administration of justice which urgently requires being rescued in this country.

