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THE IMPORTANCE OF INFORMATION AND COMMUNICATION TECHNOLOGY AS MECHANISM FOR LEGAL EDUCATION, PRACTICE AND DISPUTE RESOLUTION IN NIGERIA

FAGBEMI, SUNDAY AKINLOLU*

Abstract

Information and Communication Technology (ICT) is a set of activities facilitated by electronic means for the purpose of processing, transmitting and displaying information. Some of its components include hardware, software and telecommunication equipment. It is widely believed that the present time is information age and the near daily advancement in ICT have revolutionised the traditional or customary way of doing things. ICT can now be applied to virtually every field of human endeavour of which law is not an exception. At present, the changes brought about by the use of ICT can be seen in legal education, research and practice. For instance, students, researchers, lecturers, practitioners and judges can in the comfort of their homes and offices access millions of materials online including laws and judicial decisions of Nigeria and other jurisdictions. The aim of this paper is to examine the ways by which ICT can and has transformed the traditional and customary methods of doing things including law in Nigeria. The specific objective of this paper is to analyse the impact of ICT on Nigeria legal education, legal practice, legal research as well as online transaction and dispute resolution. The paper highlights various challenges confronting the prospects of ICT in Nigeria. The paper concludes with recommendations.

1. Introduction

The importance of ICT in the 21st century legal education and practice cannot be over-emphasised. ICT has ushered in the use of technology in almost every facet of life in such a way that the traditional method of doing things has to change. The truth of the matter is that ICT can now be applied to virtually every field of human endeavour of which law is not an exception. The awakening call for the importance of computer and other ICT components in law was first made in 1969 by the

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Supreme Court of Nigeria in the case of *Esso West Africa Inc. v T. Oyegbola*,¹ in that case, it was held amongst others that "...the law cannot be and is not ignorant of modern business methods and must not shut its eyes to the mysteries of the computer. In modern times, reproduction or inscriptions on ledgers or other documents by mechanical process are common place...."

The advent of technology has fundamentally altered how we live and work as well as how we learn. In the case of higher education, for example, virtually every aspect of scholarship – from learning, teaching and conducting research to communication of ideas – has been influenced by technology. According to Amupitan *et al*,² not only has the nature of classroom learning changed, but also the very concept of the classroom itself has been redefined by the proliferation of distance education and e-learning. Similarly, the advent of ICT has changed the practice of law in the 21st century. Talking about the importance of ICT to legal practice in this 21st century, Oliyide *et al*,³ posit that 'law practice is much more complex and demanding in the twenty-first century that it was ever was'.

Thus, in term of curriculum development, teaching methodologies, learning-aids and review of legal education to meet the demands of legal education and practice, integration of ICT is inevitable, if the demands of contemporary world must be met. Of course, the principal objective of legal education is the training of law students to become lawyers. However, the reality on ground is that it is out of the pool of lawyers, judges, law teachers, corporate lawyers, government legal officers, advocates and solicitors that government and organisations source for national development.

An effective legal education is one that is geared towards preparing law graduates to practice law effectively and to play leadership roles in today's global society including Nigeria. In order to be effective, legal education must be in tune with the

¹ (1969) 1 NMLR 194 at 198. See further the cases of *Yesufu v ACB* (1976) 4 SC 1 and *Mrs. Elizabeth Anyaebosi v R. T. Briscoe Ltd.* (1987) 3 NWLR (Pt. 59) 84. In these cases, a computer generated statement of account was tendered and admitted as exhibit without objection. The agitation for the admissibility of computer and other electronically generated evidence led to the amendment of the Nigeria Evidence Act in 2011. For a more robust discussion of story that led to the amendment of the Evidence Act in Nigeria in 2011. See generally Fagbemi. S.A., "Admissibility of Computer & Other Electronically Store Information in Nigerian Courts: Victory at Last" (2011) 2 (1) *University of Ibadan Law Journal* 161-162.

² Amupitan, J and Adewale, A and William, L and Kigbu, S., "ICT in 21st Century Legal Education" being paper presented at 43th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 17th -20th May, 2010 at Kogi State University, Anyigba, Kogi State 315-350 at 316.

³ Oliyide, O and Imasogie, M and Leigh, S and Ogunsakin O.A., "ICT in Twenty-First Century" being paper presented at 43th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 17th -20th May, 2010 at Kogi State University, Anyigba, Kogi State 351-379 at 352.

times, and be able to accommodate innovations and developments within the wider world. Thus, rather than focusing exclusively on the appreciation of statutes and judicial pronouncements, lawyers today function in a more complex environment and operate in every sphere of human endeavour: from the court room to the bank, from the class room to the industry, from government departments, in politics, and in various international agencies, the influence of lawyers remain pervasive and extensive. In whatever field lawyers function in, ICT remains a common denominator in all spheres as they enable lawyers to perform optimally. It is therefore a truism that ICT literacy is not only helpful for the law teacher, but also for law students and legal practitioners.⁴

Premised on the importance of ICT to legal education and practice, this paper seeks to examine the ways in which ICT can and has transformed legal education and practice in Nigeria. The paper is divided into eight sections, following this introduction; the paper traces the emergency of ICT in legal education. The third section deals with ICT as tool for curriculum development; this section dovetails into section four, which examines the use of ICT for teaching, learning and research. Section five is devoted to discourse on the impact of ICT in legal practice. In this section, the admissibility of computer and other ICT generated evidence as well as impact of ICT on e-transaction and dispute resolution are discussed. Of course, there is no system without its challenges; hence, section six highlights various challenges confronting the use of ICT as a medium of legal education and practice in a country like Nigeria. The seventh section is devoted to a brief discussion on National Policy on ICT in Nigeria. The outcome from the above analysis constitutes the basis for recommendations and conclusion in this paper.

2. Emergency of ICT in Legal Education and Practice

To start with, it is essential to distinguish information technology from information and communication technology. While ICT focuses on infrastructures needed to allow free and faster flow of information, knowledge and idea and in most cases requires huge capital investment on building, equipment, installation, networking and power. IT is the knowledge and skill that is required to be able to use ICT facilities put in place. IT is all about developing capacity for ICT.⁵ ICT is an umbrella term that includes communication infrastructure, physical equipment, hardware, software and application.⁶ It encompasses mass media, computer networks, satellite systems as well as the various services and applications associated with them. However, for the purpose of this paper, the importance of ICT and skill in IT will be considered together due to their relevance to legal education and practice in contemporary world.

⁴ Pereowei, S and Danfebo, D., "Harnessing Technology for Effective Legal Education in Nigeria" being paper presented at 48th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 31st May -5th June, 2015 at Afe Babalola University, Ado-Ekiti (ABUAD) Ekiti State, Nigeria 713-736 at 716.

⁵ Amupitan, *op cit.*, at 318.

⁶ Jos-Carnegie Partnership Project., *The History of Information and Communication Technology at the University of Jos* (Fab Education Books, Jos, 2006) 4.

The phrase ICT is not amenable to single definition or meaning. Hence, we have as many definitions as we have authors. It is then apt to just describe the term ICT rather than look for a unanimous definition. According to Edward *et al*,⁷ the term 'information and communication technology' describes the integration of two previously existing disciplines: computing and telecommunication.⁸ ICT therefore refers to the convergence of audio-visual and telephone networks with computer networks and the technology encompasses a wide range of activities, ranging from office data processing to remote control and monitoring of manufacturing robot. It also covers the cabling infrastructure such as fibre optic cables, which carry voice, data and video communication.⁹

ICT are the computing and communication facilities and features that variously support teaching, learning and a range of activities in education and in other spheres. Such facilities include use of broadcast material or CD-ROM as source of information in history, micro-computers with appropriate keyboards and other devices to teach literacy and writing as well as internet-based research to support learning process.¹⁰ Legal education was founded on the educational structures put in place in the 19th century and the first half of the 20th century. It was based on the classical idea of encyclopaedic knowledge and a simplistic view of education as a mere direct transmission of that knowledge.¹¹ With the emergence and the development of the ICT, the industrial age has been overtaken by the information age, wherein a new model of society now requires new skills and competence. Furthermore, the society is now confronted with new concepts such as: e-banking, e-commerce and more recently e-learning. These, therefore, render the need for the acquisition of these new skills and competencies even more urgent, because it cannot be gain said that those are critical areas of human endeavour that propel the global economy in particular, and the new age in general.

⁷ Edwards, C and Savage, N., *Information Technology and the Law*, 2nd ed. (Macmillan, 1990) 1.

⁸ This definition probably account for why ICT and Computer are generally understood as one and the same. The dichotomy between ICT and computer is however captured in section 258 (1) of the Nigeria Evidence Act, 2011, which defines 'computer' as any device for storing and processing information and any reference to information being derived from other information is a reference to its being derived from it but circulation, comparison or any other process. See also section 1 of the South Africa Computer Evidence Act of 1983; Yusuf, A. O., "Computer Technology and Copyright under the Nigerian Copyright Law" (2005) 3 *Igbinedion University Law Journal* 41 -69 at 41.

⁹ Oyewumi, A. O., "The ICT Revolution and Commercial Sectors in Nigeria: Impacts and Legal Interventions" (2012) 2(1) *University of Ibadan Law Journal* 201-223 at 203.

¹⁰ A major offshoot of the convergence of ICT is the emergence of the internet, which is a content distribution network comprising of a global system of interconnected computer networks through which data is interchanged. The technology consists of millions of private and public academic, business and government net-works of both local and global scope which facilitate the dissemination and exchange of information, and makes diverse other forms of non-physical interaction the new reality.

¹¹ Moremo-Ger, *et al.*, "Game-Based Learning in e-learning Environment" (2008) IX, issue 3 *UPGRADE – The European Journal for Informatics Professional* 25.

Between 1870 and 1895, Langdell famously said 'the law is a science, and the library is its laboratory.'¹² However, the physical library no longer holds the privileged position that it did in Langdell's day, but the grain truth in his pronouncement is that the law is grounded in a body of information.¹³ During the last two decades of the twentieth century, American law underwent a revolution in the management of information. Prior to that time, legal research required consultation of a variety of books in a law library, but today, automated system brings full texts of virtually everything one needs for legal research to the desktop computer.

The first database of machine in readable form of case law called Federal Legal Information Through Electronics (FLITE)¹⁴ was developed in 1963 by the United States Air Force.¹⁵ It was started as a research project funded by the U.S, which eventually got a worldwide participation and development of new technologies which led to the commercialisation of an international network by the mid 1990s. The FLITE also adopted the CD and DVD technology at an early stage.¹⁶ Legal Researchers using Computer Assisted Legal Research (CALR) have the option of using CD-ROM libraries, CD drive and some may require specific software, while other require modem.

In line with the global practice albeit from modest beginning in the 1990, internet penetration and uses have continued to grow in Nigeria¹⁷ and apart from its impact on the banking sector,¹⁸ it has become very popular as a mean of communication, through the electronic mail system as well as a mean of accessing new and information generally. In summary, the impact of ICT in virtually every aspect of human endeavour has been massive and indeed revolutionised legal education and practice the word over. Thus, at present, ICT has now allowed students, a

¹² Gilmore, G., "The Ages of American Law 42 (1977) cited in Allan Hanson, F., "From Key Number to Keywords: How Automation Has Transformed the Law" (2002) *Law Library Journal* 563-600 at 574. The same position was echoed by Hoeflich, M. H., "Law & Geometry: Legal Science from Leibniz to Langdell (1986) 30 *AM. J. Legal Hist* 95 at 96.

¹³ Amupitan, *op cit*, at 321.

¹⁴ Hellyer, P., "Assessing the Influence of Computer-Assisted Legal Research: A Study of California Supreme Court Option" available at http://www.aallnet.org/products/pub_llj_v97n02/2005-16pdf, (accessed 17th June, 2016).

¹⁵ Murley, D., "Selective History of Technology in Law Libraries: A Microfiche and Microfilms were said to be on Use in 1970" (2009) 101 *Law Libr. J.* 417 cited by Bello, F and Shanyula, T. S., "Legal Research Insight for the 21st Century" being paper presented at 43th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 17th -20th May, 2010 at Kogi State University, Anyigba, Kogi State 380-409 at 383.

¹⁶ Pacific, S. I., "Features Virtual Libraries: Myth and Reality" available at <http://www.llrx.com/features/virtual.htm> (accessed 17th June, 2016).

¹⁷ For instance, on 31st March, 2011 internet usage statistics for Africa revealed that Nigeria had 43,982,200 internet users represented 28% of the population of Nigeria. The figure constitutes 37% users in Africa, available at Internet World Stats: Usage and Population Statistics <http://www.internetworldstats.com/stats1/htm> (accessed on 2nd June 2016).

¹⁸ Where it has its in-road to Nigeria landscape

lawyers and judges to locate materials using a personal computer, software or internet and online connection.

3. ICT as Tool for Curriculum Development

Curriculum is defined as a regular or particular course of study, as in a college or all such course of study collectively.¹⁹ According to Encarta Dictionaries,²⁰ 'curriculum' is 'the subjects taught at an educational institution, or the topics taught within a subject'. Curriculum could therefore be taken to mean the totality of all academic teaching and learning for a particular programme and in the context of this paper, 'legal profession'. According to Lokulo-Sodipe *et al.*,²¹ many of today's law students will likely still be practising well into the last of the 21st century and it goes without saying that law schools face a daunting challenges as they try to estimate the demand for their graduates and then help those graduates adapt to the realities they are likely to face.

Comparing the present curriculum of legal education with the requirements for 21st century law practice reveals a mismatch between the traditional graduate preparation and prevailing workplace demands. An impact of globalisation and changing landscape of legal practice is the seeming conversion of the legal profession from a profession to business, with profit rather than principle as the basis for legal practice.²² The curriculum of legal education in Africa including Nigeria shows that limited efforts have been made towards integrating ICT into information, development and dissemination of curriculum in aid of legal education and practice. The truth is that integrating ICT in the curriculum development of legal education has direct bearing on the legal system and the quality of legal practitioners produced. Premised on the foregoing, the process of preparing lawyer for legal practice should start with curriculum development. For instance, there is the need to develop curriculum for the course to be taught online. It should be noted that in 2003, the University of Jos, through the support of Carnegie Corporation of the US established the necessary infrastructures needed for ICT education in Nigeria.

Part of efforts put in place by the University of Jos was the establishment of a Curriculum Development Team saddled with the responsibility of creating online syllabus template, establishing multi-media content lab, developing the curriculum for the e-learning fellowship, preparing academic staff to use technology for teaching and learning, marrying pedagogy and technology to improve teaching and learning.²³ It is submitted that the step taken by the University of Jos is in a

¹⁹ The New International Webster's Comprehensive Dictionary of the English Language, Encyclopedic Edition 2004 Trident Press International.

²⁰ Encarta Dictionaries Microsoft 2009.

²¹ Lokulo-Sodipe, J. & Olomola, O., "Appropriate Curriculum for Training 21st Century Lawyers" being paper presented at 43th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 17th -20th May, 2010 at Kogi State University, Anyigba, Kogi State 187- 212 at 205.

²² Tahir Mamman., "Globalisation and Challenges for Legal Education in Nigeria" (2010) *The Punch Newspaper* 20.

²³ Amupitan, *op cit.*, at 340-341.

right direction and worthy of emulation for the training of 21st century lawyers in various Faculties of Law in Nigeria Universities. A ready solution to this is the development of e-curriculum portal or e-learning platform.²⁴

Another way technology has affected legal education in Nigeria, which should be mentioned here, is the use of e-handbook by the Nigerian Law School. The e-handbook consists of brief summaries on each course to be taken by students, statutes and case law encrypted on a CD-ROM. With this, students can have direct access to the entire course contents for the duration of the programme with easy reference to other relevant materials through the hyperlink feature.

Finally, the central idea in the ICT revolution in law teaching all over the world is to re-direct the focus and emphasis of law curriculum to electronic education which involves the use of information, communication and instructional technologies to enhance student's learning of the law and to provide law teachers with conducive environments and tools for law teaching.

4. Use of ICT for Teaching, Learning and Research

A British education theorist, Pere Newman²⁵ in his paper "Teaching and Learning" examined two approaches to education. He explained that the two extreme methods which have long been adopted by those involved in the field of education is, on the one hand, 'traditional' and on the other, "progressive."

According to Newman, the traditional method proceeds with an assumption that the learner is a novice lacking in the required knowledge or values which is possessed by the teacher and, whose duty is to pass it to the learner. From the nature of this relationship, a number of things follows: the systematic transmission of knowledge and values from teacher to learners and disciplined environment, if necessarily externally imposed with sanctions for failure in compliance. Teaching and learning also benefit from carefully designed syllabuses and prescribed curriculum content.

The progressive method of teaching on the other hands is called "child centred." Under this method, the learner is not seen as a person without knowledge and to whom a body of knowledge should be taught. The learner is treated according to his age and the curriculum is not as a rigid, predetermined knowledge. The function

²⁴ An e-learning platform is also referred to as a 'learning management system' (LMS). Programmes are used to create training platforms and provide computer-aided learning. Some of these programmes include Moodle, KEWL, Blackboard, Sakai, the German Ilias and Dokeos etc. The e-curriculum portal is a web-based and effective curriculum management system designed to provide digital access to school curriculum, teaching and learning resources both for teachers and learners and other stakeholders. The purpose is to ensure online and offline access to the prescribed curricula in all courses offered at all education levels in tertiary institutions. See Ubabukoh, O., "e-Curriculum Portal: A Policy on IT Education" (May 2016) *The Punch* 32.

²⁵ Cited by Brickman, Williams, W., "Teacher Training" Microsoft © Encarta © 2009 (DVD) Redmont, WA: Microsoft Corporation, 2008.

of teacher as well as parents in this second stage is to be aware of each child capacity and stage of development for appropriate assistance.²⁶

It is no gain saying that the use of the progressive method has become the in-thing in legal education in the contemporary world. In other words, learning has virtually become student base rather than teacher base due to the advent of ICT. This also informed the introduction of Clinical Legal Education in most of the Nigerian Universities Faculty of Law to assist student to read in advance the syllabus and area of instruction during an academic session. The importance of ICT on learning cannot be over-emphasised. Speaking on the role of ICT in legal education, Dr. Tahir Mamman stated in a paper titled: "The Globalisation of Legal Practice: The Challenges for Legal Education in Nigeria,"²⁷ that the development and advances in ICT have had important impact on education and teaching and proposed how it may be harnessed by the law teachers. He further stated that the development and redeployment of advance computer assisted learning systems such as: law Courseware and IOLIS, which have changed dramatically the way students learn, created vast opportunities and ease in information storage, retrieval and dissemination and facilitated collaborative activities. Students can learn a lot these days via material accessed online. Teachers can also make huge number of material for teaching available to the students via e-mail, Compact Disk Read Only Memory or uploading same to designated sites or portals for students to download therefrom. The use of computers and projectors had also made it easier to teach a large number of students without much difficulty.

In the area of research, the use of ICT has also assisted greatly. According to Creswell,²⁸ research is any creative work undertaken on a systematic basis to increase knowledge. In the realm of legal research, it has been described as the means of searching and playing authorities to given sets of facts and issues. It is a process of identifying and retrieving valuable information needed to support a legal position.²⁹ The ultimate purpose of legal research according to Olawuyi *et al*³⁰ is to unearth legal solutions to complex legal problems. Through legal research, scholars can establish or confirm facts, reaffirm the results of previous work, solve new or existing problems, support or critique existing legal theories or develop new theories.³¹

²⁶ Oji, S. I & Abdullahi, I and Muhammad, K. G, "Ethics in Teaching and Practice of Law" being paper presented at 43th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 17th -20th May, 2010 at Kogi State University, Anyigba, Kogi State 239-262 at 243.

²⁷ Cited by Itanyi, I., "Impact of Information Technology on Legal Education: A Proposal for the Introduction of Information Technology Law in the Nigerian Law Curriculum" being paper presented at 48th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 31st May -5th June, 2015 at Afe Babalola University, Ado-Ekiti (ABUAD) Ekiti State, Nigeria 439-465 at 447.

²⁸ Creswell, J., *Education Research: Planning, Conducting and Evaluating Quantitative and Qualitative Research*, 3rd ed. (Pearson, 2008) 29.

²⁹ Bello, & Shankyula, *op. cit.*, at 380.

³⁰ Olawuyi, D and Ako, R., "Methodology, Theoretical Framework and Scholarly Significance: a Review of International Best Practice in Legal Research" being paper presented at 48th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 31st May -5th June, 2015 at Afe Babalola University, Ado-Ekiti (ABUAD) Ekiti State, Nigeria 219-240 at 219.

³¹ *Ibid.*

Legal research relies heavily on the awareness of the different types of materials and sources of law such as primary and secondary sources, the relationship that exist between them, and the ability to discern such sources and apply them to issues. Legal research has been categorised into four broad headings namely: doctrinal research, which provides a systematic exposition of the rules governing a particular legal category and analyse the relationship between rules, explain areas of difficulty and perhaps, predicts future developments. The second is a reform-oriented research, which extensively evaluates the adequacy of the existing rules and recommend changes to any rules found wanting; and the third is a theoretical research. It fosters a more complete understanding of the conceptual bases of legal principles and of the combined effects of a range of rules and procedures that touch on a particular area of activity. The fourth is the fundamental research, which is a research designed to secure a deeper understanding of law as a social phenomenon, including research on the historical, philosophical, linguistic, economic, social and political implications of law.

Traditionally, legal research was print oriented. It entails reading through books, journals, statutes, periodicals and other materials in a law library. In other words, the traditional legal research method was library based. The search tools used to access resources in a library include digest of case law, indexes, periodical indexes, legislative history and indexes to statutes among others. Furthermore, legal research, before the 19th century was based on book cataloguing system used by libraries. The system was fraught with the problem of inability to move from one place to another as well as difficulties in making copies. This system by 19th century gave way to card catalog containing subject, title, and author information for all the items in the library.³² Although, traditional method has its merit and it is being used up till date. However, it has its limitations and these among others include: a library has specific opening days as well as opening and closing time,³³ another one is delay, which has to do with inter library loans and limited number of copies of some books. Similarly, the time it will take a researcher to familiarise himself with the library and their cataloguing and indexing system will also encroach on the researcher's valuable time.³⁴

In view of the above shortcomings, the arrival of ICT has made significant in-road, starting with the introduction of virtual library in the 1960, to the way and manner legal research is conducted. Virtual library emerged as a result of integration of information technology with the traditional print materials to facilitate access to libraries continually expanding hard-copy collections. Another feature is the earlier forms of alternative media being used by libraries. They include tapes, sound recordings and electronic files which are now replaced by online commercial database systems.³⁵

³² Bello, F and Shankyula, T.S., *op cit*, pp. 382-383. See generally Arowosegbe, O.O., "Law Libraries and Sustainable Development of the Legal Profession in Nigeria: A User's View Point" (2016) 4 *Ebsu Journal of International Law and Juridical Review* 91-101 at 80.

³³ It means the researcher has to fit whatever search he needs to do within the operating time of the library

³⁴ Bello, & Shankyula, *op cit.*, at 382-383.

³⁵ *Ibid.*

The early technology focused on rating electronic card catalog known as Online Public Account Catalog (OPAC) which replaced traditional card catalog. Another one is the growth of electronic database of specific information such as Education Resources Information Centre (ERIC), and database for physics, electronic and computing (INSPEC). The growth of electronic tool has become an important tool in the hands of researchers, hence, there are three basic tools used by people to find their way through web. These include search engine, which is a software programme that searches for sites based on the words designated as search terms. There is also subject directories, which is smaller to search engine but useful to focus search into a particular sites. Example of this is yahoo. The third tool is meta search, which get their result from several search engines and useful for broad search. Other category of ICTs in use includes World Wide Web (WWW)³⁶ and electronic database. An electronic database is a collection of data arranged in a systematic way to make search easy and fast. Electronic database come in different forms and they could be for indexes, citations, cases and full text. Example of full text database includes: Google Scholar, JSTOR, Lexis, LAWRev, Library, Hein online, Westlaw, JLR project muse. There are also varieties of internet modems which give instant access to the internet and online libraries if a researcher has access to a computer. Examples of these are: MTN, StarCom, GLO, Etisalat, Smile and Airtel Modem etc.

Electronic research tools have no doubt become a very important part of legal teaching, learning and research process. They bring valuable and unimaginable resources right to where the researchers are and give today's researcher a wide option of not just the tools to use but the research techniques arena.³⁷

5. Impact of ICT in Legal Practice

Worldwide, the legal profession is confronted with high demands for its services and the cost for securing such services. The core essence of legal education in Nigeria is to train prospective lawyers on principles of Nigeria law. Beyond this, a lawyer being a professional is expected to acquire certain skills that would enable him to be a complete legal practitioner upon being called to the Nigerian Bar. The hard truth is that the knowledge of ICT has capacity to enhance the competence of law students and practising lawyers by developing their ability to analyse and evaluate issues and complex facts from a legal perspective, respect principles of copyright and intellectual property and identifying legal principles applicable to a given situation for problem-solving.³⁸

³⁶ Worldwide web is one of the most popular services provided by the internet. It is a collection of interconnected documents and other resources linked by hyperlinks and URLs. The worldwide web (www) is a global set of documents, images and other resources interrelated by hyperlinks and references with uniform resources identifiers.

³⁷ Bello & Shankyula, *op cit.*, at 408.

³⁸ Lawal, V., "Legal Research and Legal Education in Africa: The Challenge for Information Literacy" available at <http://www.scholarship.law.cornell.edu/sws.paper5> (accessed on 23rd June, 2016).

E-learning offers the opportunity for the prospective lawyer to acquire the skills because as he receives instruction electronically, he perfects his skills and competencies in ICT and its application.³⁹ The global acceptability of ICT in modern time had changed legal practice. Talking about the attributes of a lawyer in the 21st century, Adegoke⁴⁰ opines that ‘the legal profession has evolved from being an elitist vocation to being a generalised profession though urbane in character. Like every other profession, it has metamorphosed and the 21st century developmental changes have impacted on the rules and principles of practice and these have also galvanised the modalities of practice inevitably. The 21st Century is a technological age; an age which has inadvertently turned the world into a global village. The practice of law cuts across borders and races, therefore Lawyers are not restricted to any particular jurisdiction and practice is decentralised as it were. There is an avalanche of avenues for the practice of law, so much so that, methods and processes of resolving disputes globally are no longer restricted to litigation which had taken the centre stages in the civilised climes for centuries. The otherwise hitherto localised Alternative Dispute Resolution (ADR) mechanisms have now been brought into the fore and these compete favourably with the projected orthodoxy system of settling disputes which notably was litigation.⁴¹ The impact of ICT on legal practice is mostly felt in the admissibility of electronically or computer generated evidence in litigation and resolution of dispute by any of the ADR mechanisms, the new one being disputes emanating from online transactions and online arbitration agreement. These two are discussed in turn hereunder.

5.1. ICT and Admissibility of Electronic Evidence

A discussion on the nature of evidence generated by using ICT devices has its starting point on the assertion that evidence generated or procured vide ICT are documentary evidence.⁴² Electronic evidence is the evidence generated by some mechanical or electronic process.⁴³ The use of computer and other means of electronic storage and communication systems have largely replaced the traditional method of keeping records and communication in written documents. Essentially, the introduction of computer and other electronic devices had increased the storing of information in electronic form.⁴⁴ Although, there are myriad of definitions of computer, the simple meaning given to it by Yusuf⁴⁵ is that “computer” is a device, an ‘intelligent’ electronic devise, constructed to receive and process information

³⁹ Amupitan, *op cit*, at 337.

⁴⁰ Adegoke, O. A., “The Character and Learning of Nigerian 21st Century Lawyers: Playing a Game by Its Rules” (2013) 12 *Nigerian Law Practice Journal* 68-93 at 70/71.

⁴¹ *Ibid*.

⁴² Omiunu, O and Azuka, I.C and Ighodalo, I., “Information and Communication Technology and the Nigerian Rules of Evidence” (2008) 11 (1 & 2) *Uniben Law Journal*, 83-93 at 89.

⁴³ Allii, Y.O (SAN)., “The Nigerian Evidence Act and Electronically-Generated Evidence: A Need to Fast Track the System” (2010) in Akin Onigbinde and Seun Ajayi (eds) *Contemporary Issues in the Nigerian Legal Landscape*. (Crown Goldmine Communications Limited) 68.

⁴⁴ *Ibid*; see also Fagbemi, *op cit*, at 161.

⁴⁵ Yusuf, *supra*.

and data, bringing out the desired output. A one comprehensive definition of "computer" is in section 1 of the South Africa Computer Evidence Act 1983. The section defines "computer" as:

*"Any device or apparatus, whether by electronic, electronic-mechanical, mechanical or other means capable of receiving or absorbing data and instructions supplied to it, of processing such data according to mathematical or logical rules in compliance with such instructions of storing such data before or after such processing and of producing information derived from such data as a result of such processing."*⁴⁶

From the above definitions, it is apt to conclude that a computer is any device or intelligent device used for storing or processing information, which is capable of being retrieved with mathematical precision.⁴⁷ Before, any information stored or processed by mean of computer is admissible in evidence; its mathematical accuracy must be guaranteed. The print out information must be capable of being compared with the e-copy. Once these conditions are met and there is no proof that the process had been tampered with in any material particular, it is safe for the court to admit same as electronic evidence.⁴⁸

The introduction of computer and other electronically generated evidence into the Nigerian law of evidence as well as ICT oriented transaction has changed the face of legal practice in Nigeria. Hence, for a legal practitioner to be effective and succeed in practice, knowledge of ICT is very essential. The reality of legal practice in modern time is well captured by Eimunjeze⁴⁹ in the following words:

"Today's reality is that globalisation aided by digitalisation and other technologically advances have made multinational and multidisciplinary practices of law become a reality though a nightmare for many lawyers in developing economies. Under this regime, lawyers in developing economies will survive to the extent that they are ready to innovate, accurately identify and effectively meet the needs and demands of global market place. After all, there is nothing sacrosanct in the business that a lawyer does in one location which cannot be done in another and which may not be intruded upon by other professionals who are sufficiently

⁴⁶ See section 258 (1) of the Nigeria Evidence Act 2011.

⁴⁷ However, an electronic stored document in a computer may be hacked and the contents tampered with by hacker, hence, it is not one hundred percent sure that information stored in a computer is full proof.

⁴⁸ Fagbemi, *op-cit*, at 162. See further sections 51 and 84 of the Nigerian Evidence Act 2011 for the conditions stipulated for the admissibility of computer and electronically generated evidence.

⁴⁹ Eimunjeze, F., "Achieving International Best Practices in the Legal Profession: Imperative for Developing Economies" being paper presented at 48th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 31st May -5th June, 2015 at Afe Babalola University, Ado-Ekiti (ABUAD) Ekiti State, Nigeria 241-269 at 247.

knowledgeable in the particular area of knowledge or law....These competitive threats from globalisation and technology can only be overcome by lawyers retooling themselves, the profession rethinking the content of legal education curricula and, survival of the trend will require lawyers returning to the most important component of their professional training, which is, offering professional legal services to clients professionally with ethics, integrity and value i.e. being client ready."

In view of the foregoing, the legal practice in the contemporary world requires adequate and comprehensive knowledge of ICT. The use of ICT has taken over virtually all professions. With the passage of the Evidence Act in 2011, the vast challenges in the admissibility of electronic records now have a platform for resolution. The Evidence Act 2011 recognises the use of electronic texts and records and provides for e-signatures.⁵⁰ Similarly, electronic invoices are admissible for the purpose of invoicing provided the authenticity of the origin of the data and the integrity of the content are guaranteed.⁵¹ An electronic document now has the same evidential weight as a written paper provided that the person who is the source of the document can be identified and the document is preserved and conserved under condition that guaranteed its integrity.

An electronic signature on electronic document is now admissible on the same terms as signature in written paper provided that the signature uses a reliable identification procedure that guarantees its linkage with the act to which it relates. Such procedure shall be presumed to be reliable until proved otherwise.⁵² Hence, for a legal practitioner to be effective in his practice in this 21st century, he requires the following skills:

- Mastery of varieties of word processing, presentation, time and billing and practice relating to software application;
- Mastery of communication technology including the use of e-mail, voice messaging systems, video conferencing and related technology;
- Becoming familiar with electronic discovery computerised litigation support and document management software;
- Be proficient with legal research software and internet research and browsing and
- Develop the technology know-how to make wise technology decisions.

⁵⁰ See section 84 and 93 (3) of the Evidence Act 2011.

⁵¹ Akhigbe, *op cit.*, at 795-796.

⁵² *Ibid.*

5.2. ICT and Online Dispute Resolution (ODR)

The development of technology, especially the internet, has brought exponential growth in legal relations cutting across diverse jurisdictions with little or no obstacle. This new method of communication brings people together and it is inevitable that conflicts will ensue.⁵³ Arbitration is part of a wide spectrum of Alternative Dispute Resolution (ADR) techniques designed to assist parties in settling their dispute in a most tension free and conducive atmosphere.⁵⁴ Apart from arbitration, other types of ADR mechanisms are: Negotiation, Mediation, Conciliation, Summary Jury Trial, Mini Trial, Med-Arbitration, Early Neutral Evaluation (ENE) and other hybrids.⁵⁵ The new entrant into these arrays of ADR is Online Dispute Resolution (ODR).

With the internet, this new method of resolving dispute evolved. ODR has transformed the way in which consumer disputes are being settled.⁵⁶ There is no universal definition of ODR. The collective term ODR is used internationally for different forms of online dispute settlement by means of ADR methods. ODR is a method of resolving dispute using technology as a facilitator or as a 'fourth party' in the dispute. ODR is dispute resolution outside the courts, based on ICT and in particular, based on the power of computers to effectively process enormous amounts of data stored and organise such data and communicate it across the internet on a global basis and with speed.⁵⁷ The term ODR refers to an array of dispute resolution procedures, some are fully automated, others, although place exclusively online, involve a human neutral. Thus, ODR is not a monolithic concept – for this reason, some authors argued that it is more accurate not to speak of ODR, but rather of ODR techniques.⁵⁸

ODR has been accepted by practitioners, although many names have been used to describe the same concept: Electronic Dispute Resolution, Online Alternative Dispute Resolution, Internet Dispute Resolution....⁵⁹ ODR has only one overarching feature – it takes place online. ODR encompasses many other forms of ADR and court proceedings that incorporate the use of Internet, Web sites, e-mail

⁵³ Araromi, M.A., "The Legality of Online Arbitration Agreements: Whither Lays Nigeria?" (2015) 2 (1) *BIU Law Journal* 88 to 117 at 88.

⁵⁴ *Ibid.*

⁵⁵ Odoh, B.U., "Alternative Online Dispute Resolution (ADR) as Important Component in the Promotion of Social Justice in Nigeria" (2015) 6 (2) *Ebonyi State University Law Journal* 116.

⁵⁶ Ahmed, R.I., "The Concept of Online Dispute Resolution in the Administration of Justice" (2013) 12 *Nigerian Law and Practice Journal* 135-146 at 142.

⁵⁷ Horne, J., "Encouraging Online Dispute Resolution in the EU and Beyond – Keeping Costs Low or Standards High" (2012) *Queen Mary School of Law Legal Studies Research Paper No 122* available at <http://ssrn.com/abstract=2154214> (accessed on 22nd June, 2016).

⁵⁸ Horne, J., "Online Dispute Resolution – Emperor's New Clothes? Benefits and Pitfalls of Online Dispute Resolution and its Application to Commercial Arbitration" available at <http://www.bileta.ax.uk/02papers/Hornie.html> (accessed on 22nd June, 2016).

⁵⁹ Petrauskas, F and Kybatiene, E., "Online Dispute Resolution in Consumer Dispute 2011" available at <http://www.mruni.eu/en/mpsklo.darbai/jurisprudential> (accessed on 20th June, 2016).

communications, streaming media and other information technology as part of the dispute resolution process.⁶⁰ By the late 70s, trading activities were conducted by a combination of physical and electronic means using more of fax, telex and then the Electronic Data Interchange (EDI). This first contact with electronic transaction was partially a combination of paper and pen taking order through the use of pre-offer. However, by the late 70s, online shopping applications were developed⁶¹ and by the 80s, other applications such as the Electronic Fund Transfer (EFT) and EDI enjoyed widespread use.

In 1990, the worldwide web server was created by Tim Berners-Lee and by 1991 it was opened for commercial use. Thereafter, technological innovations emerged in 1994 such as online banking, e-mail contracting; web-shopping which led to the opening of an online pizza shop by Pizza Hut, SS: v2 encryption standard for securing data transfer and inter-shops online shopping system. Immediately after, Amazon.com launched its online shopping site in 1995 and eBay was also introduced on 1995. This period transited gracefully to what we now term the technological age where transactions are now either 'transaction' or 'e-transaction'.⁶²

Other forms of ODR technology assist mediators and arbitrators in their traditional process, for example an online mediation service such as Juripax offers support for individual mediator, or for businesses with large volumes of cases, in relation to divorce, employment, e-commerce and small claims. This includes online intake of forms, online discussion room and conference facilities, digital document and case management systems and the use of network software (ASP).⁶³ The above are the extent in which ICT has impacted electronic transaction and resolution of dispute predicated on online or e-transaction.

6. Challenges of ICT as Medium for Legal Education and Practice

The impact of ICT on legal research and allied matters as discussed in this paper has shown the importance of ICT in the contemporary legal education and practice. However, like every other human endeavour, it has its own challenges, which may inhibit the realisation in full of its prospects. Some of these challenges are discussed below.

6.1. Poor Electric Supply

Perhaps the major challenge to the use of ICT in Nigeria is the shortage of electricity supply. Lack of electricity has prevented even those who have computers from using them and it makes the purchase of an internet modem an unwise option. The epileptic supply of power in Nigeria has rendered the use of ICT largely ineffective as user may not get value for their investment. For those who go to cyber café, the

⁶⁰ Ahmed, *supra*.

⁶¹ Akhigbe, J.I., "E-Transactions: Challenges for Nigeria Legal Education" being paper presented at 48th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 31st May -5th June, 2015 at Afe Babalola University, Ado-Ekiti (ABUAD) Ekiti State, Nigeria 762-805 at 764.

⁶² *Ibid*.

⁶³ Ahmed, *supra*.

cost of operating such places on generator means more cost to the user. Similarly, the use of other alternative source of power such as inverter and solar panel has added a huge amount to the already expensive cost of using ICT, especially if the researcher has to print some of the materials he needs. Hence, downloading them onto portable devices will be a better option in this case.

6.2. High Cost of Technology

This may be responsible for the low response to the use of ICT in Nigeria. A high cost of capital is needed if a law faculty or office is to be technology compliant. For instance, most of the reliable and valuable resources are not free, whoever is interested in using them can only have access to them for a fee on subscription. Again, not do computers and other ICT devices or hardware need to be purchased, but a constant upgrading and maintenance is required from time to time. Majority of the law offices are however sole proprietorship which cannot afford such capital intensive investment.⁶⁴ The same problem also applies to law faculties since there are no sufficient funds allocated by the government for the education sector. The bulk of resources available to legal education and the judicial institutions are from the various tiers of government, which do not come in time.

The effect is that legal training institutions and the entire spectrum of the judiciary have to scramble for available meagre resources with other department of the government. Most law faculties within the country do not have adequate computers, projectors or internet connectivity within the classroom.⁶⁵

6.3. High Level of Computer Illiterates

Computer illiteracy is a challenge facing many Nigerians including legal researchers and practitioners. Operating computer requires some basic knowledge which can even assist when doing electronic research. For those who own computer but do not know how to use them, fiddling with it can help familiarise a researcher with the basics knowledge. A corollary to this is the dearth of expert law teachers in ICT field. For instance, a law teacher who is not trained in the field of ICT cannot teach his students the use of computer and other ICT apparatus. In addition to this, there is general apathy towards using e-learning methods by some members of faculty. Furthermore, apart from students who were fortunate to receive their primary and secondary education in private schools in the cities where basic computer skills are taught, most of the students admitted into institutions of higher learning do not possess the skills in how to use the computer and internet facilities.

6.4. Lack of Access to Computer and Internet Facilities

Part of the problem confronting Nigerian researchers in term of ICT know how include access to computers and internet facilities. Some of the inherent problems

⁶⁴ Coker, C.A., "The Use of Information and Communication Technology (ICT) among Legal Practitioners in Ibadan Metropolis" available at <http://www.pubs/sciepub.com/jcsa/2/1/1/> (accessed on 20th June, 2016).

⁶⁵ Owoeye, J.E., "Information Communication Technology (ICT) Use as a Predictor of Lawyers' Productivity", (Library Philosophy and Practice Paper 662) available at <http://digitalcommons.unl.edu/libphilpract.662> (accessed on 18th June, 2016).

in this area include proximity to the cyber café and poor network coverage and frequent service disruption. Thus, in order to ensure the use of ICT in legal education and practice, what is required is dependable power supply, uninterrupted internet access and a good network of computers.

6.5. Issue of Genuineness of some Sources (Sites)

One of the biggest shortcomings of ICT is the issue of accuracy and reliability of information. This is associated with lack of regulatory control and fixed standard of uniform rules governing posting and authenticity of data available on the internet. As a result of this, a researcher has to treat some free resources with caution and use reputable sites. Reason being that information posted on some sites could be edited by anybody and as such it is possible for a person to add false or unconfirmed information on to a site which can easily mislead users.⁶⁶

6.6. Plagiarism

Another critical challenge to law teacher contending with the use of ICT by law students is that of plagiarism. The internet and technology makes it easy for students to plagiarise the works of others by simply copying and pasting information found on the internet as theirs, the situation could be worse where students collect the soft copies of someone's thesis and merely effect a change of personal information and institution while presenting same as their own research work.⁶⁷

7. National Policy on ICT in Nigeria

The imperative of law in regulating conducts and activities cannot be over-emphasised. Of course, the use and acceptability of ICT in virtual aspects of human activities has come to stay. The need to regulate the use of ICT in legal education, practice and allied fields has made the Nigeria government to evolve policies and law on information technology. Few of these laws are already in place while others are undergoing process for their promulgation. In this paper, two of the existing policies in response to the challenges of ICT are highlighted viz:

7.1. National Policy on ICT and National Information Technology Development Agency

In 2001, the government put in place a national policy on information technology. The policy targets the effective utilisation of ICT for the promotion of efficient national development including wealth creation and encouragement of participation by Nigerians in software and IT development.⁶⁸ Responsibility for the implementation of the policy lies with NITDA. Its mandate is to address the challenges and harnessing the opportunities presented by ICT.⁶⁹ Section 6 of the

⁶⁶ Bello, *op cit.*, at 405.

⁶⁷ Olubiyi, A. I., Olaniyan, J. A & Odiaka, N., "The Role of Technology in the Advancement of Legal Education and Practice in Nigeria" being paper presented at 48th Annual Conference of the Nigerian Association of Law Teachers (NALT) held on 31st May -5th June, 2015 at Afe Babalola University, Ado-Ekiti (ABUAD) Ekiti State, Nigeria 737-761 at 756.

⁶⁸ Oyewunmi, *op cit.*, at 215.

⁶⁹ NITDA Policy paras 3 & 4.

NITDA Act provides for the creation of a framework for the planning, research, development, standardisation, application, coordination, monitoring, evaluation and regulation of IT practices, activities and systems in Nigeria. This extends also to the provision of universal access for its penetration including rural, urban and underserved areas.

Another mandate of NITDA is to consult with, and advise government at all levels on the need to put strategies in place for adoption and use of IT to enhance service delivery to the citizenry as well as to business in the country. ICT is of particular importance in promoting efficient and accelerate service delivery for the enhancement of business and technological development including foreign investment. Its use in land registries, trademarks, patents and designs registry and corporate affairs commission can facilitate registration, submission of statutory reports and online inspection and monitoring of compliance with regulations in convenient, timely, efficient and cost effective manner.

7.2. Nigerian Communication Commission's Guidelines for the Provision of Internet Service

One of the agencies whose work is related to ICT in Nigeria is the Nigerian Communication Commission (NCC), established under the Nigerian Communication Commission Act.⁷⁰ By virtue of section 3 of the Act, the Commission was charged with the responsibility of regulation of the communication sector in Nigeria with a view to the provision of efficient and qualitative telecommunications service in the country. In furtherance of its mandate, the Commission has put in place Guidelines for the provision of internet services, which apply to all Internet Service Providers (ISPs), that is, providers of internet access services or any other internet protocol based telecommunication services.

The Guidelines require ISPs to ensure that users are informed of any statements of cybercrime prevention or acceptable internet use published by the Commission or any other authority. Failure to comply with these acceptable use requirements may lead to criminal prosecution.⁷¹

8. Conclusion and Recommendation

Starting with the emergency of ICT, this paper has examined the importance of ICT in legal education, practice as well as its impact on online transaction and disputes resolution. The paper identified the use of ICT as a tool for curriculum development in aid of effective teaching, learning and research activities. The paper also established that ICT has far reaching effect in the learning of law as well as its practice and that it has become useful tool in providing access to the use of massive legal information retrieval systems possible. In spite of the foregoing, the paper highlighted various challenges confronting the use of ICT in legal education and practice. Despite these challenges, the use of ICT in all facets of human endeavour holds lot of promises for the future.

⁷⁰ Cap N97 Laws of the Federation of Nigeria, 2004.

⁷¹ Para 5 of the Guidelines.

There is no doubt that the world in this 21st century has seen an unprecedented transformation with the emergency of ICT and its constant innovations and improvements. However, to fully enjoy various benefits offer by ICT innovations and prepare students for future challenges in practice, our law faculties should make ICT a priority in teaching and learning of students. For instance, students should not be taught only theories, they should be given opportunity to practice what they are taught by making ICT devices available to students. Again, our law faculties should reach out to IT companies to make available necessary facilities including funding of ICT devices.

Granted the fact that some percentage of members of the legal profession are computer illiterates, the Nigerian Bar Association (NBA) should constantly organise workshop and training, making the use of ICT its main focus as part of its continuing legal education programme. Furthermore, it is high time that the knowledge of ICT use and proficiency be made a major criterion for the appointment of judges into the bench. For instance, they need to be aware of the potentials and mechanics of ICT. Nowadays, a good percentage of business is now done online apart from banking sector; also ICT is being exploited by criminals in all sort of criminal activities. Accordingly, legal practitioners and judges ought to be computer literates to adjudge the veracity and weight of evidence adduced in court.

There is no doubt that ICT has recently been in constant use as instrument of fraud, hence, our legislative houses should be proactive and fast track the passing of various bills pending on information and communication technology to checkmate ATM cards fraud and cybercrimes generally. New statute or law with direct provisions on the use of ICT should be enacted in aid legal education and practice Nigeria.

With regard to plagiarism, it is a known fact that plagiarism is an academic offence frowned at with sanction within academic environment, due to this, it is recommended that our institution of higher learning should be proactive and make use of 'turn it in' device to detect culprits among students and other offenders. Finally, government should show more interest in ICT. This can be done through increasing funding and provision of alternative sources of electricity to our universities in support of curriculum development in aid of teaching and learning processes in Nigeria Universities.