

# “Access to Justice and Protection of Rights of Citizens”

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BEING A PAPER PRESENTED

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AT

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## 1.0 PROTOCOLS

I wish to express my gratitude for it is indeed a great privilege to be invited here to share my thoughts and knowledge on a very important issue such as this, human rights and assessing justice, with a direct focus on magistrates.

## 2.0 INTRODUCTION

Human rights and justice are very fundamental parts of the law and development of any society. An aim of the law is to maintain order in any given society, and these laws are given for the benefit of everyone, from those in power to the common everyday man and the end of the law is justice. Justice should be assessed by all citizens for in the words of Chief Justice Hewart in (*R v Sussex Justices, Ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER Rep 233) “It is not merely of some importance, but of fundamental importance that justice should not only be done, but should be manifestly and undoubtedly seen to be done”. It may be duly said that the observance of human rights principles is in itself fundamental to securing justice and hence, must be protected in all circumstances. However, this is not entirely the case in our country, especially with regards to underprivileged citizens facing criminal trials. In most instances, there is flagrant disregard for constitutional safeguards up from the point of arrest down to sentencing and conviction.

This paper will explore the meaning of the theme, pinpoint areas of considered importance as well as some challenges and suggest sustainable recommendations to promote the cause of human rights and access to justice in Nigeria.

### 3.0 ACCESS TO JUSTICE IN NIGERIA AND HUMAN RIGHTS

The United Nations Development Programme (UNDP) has described access to justice as the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standards.

Again, Section 17(2) (e) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, provides for the independence, impartiality and integrity of courts of law and for easy accessibility to be secured and maintained. All these point to the fact that Access to justice is itself a human right and a denial of this is a denial of the basic tenets of human rights principles. As Kofi A Annan, the former Secretary-General of the United Nations rightly put, “Human rights are the foundation of human existence and co-existence; that human rights are universal, indivisible and interdependent; and that human rights lie at the heart of all that the United Nations aspires to achieve in peace and development. Human rights are what made us human. They are the principles by which we create the sacred home for human dignity”. ‘Life’ implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other basis for holding that denial of “access to justice” will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under section 36(1) of the Constitution of the Federal Republic of Nigeria, 2011 as amended, the African Charter and other major international instruments.

Where Access to Justice is concerned, it has four (4) facets:

- i. A proper adjudicatory mechanism- it is a necessity to have a strong and proper adjudicatory mechanism, be it a court, tribunal, commission, etc where an aggrieved citizen can go seek redress and justice for a wrong done

- to him or any violation of his fundamental rights. It is also necessary that such mechanism is just, fair and objective in order to be effective and in line with the principles of natural justice.
- ii. Such adjudicatory mechanism should be assessable to all citizens- this could be in terms of distance, time and other factors. The court or tribunal or other constituted authority so provided must, having regard to the hierarchy of courts/tribunals, be reasonably accessible in terms of distance for access to justice as so much depends on the ability of the aggrieved person to bring his/her grievance before that competent authority to grant the needed relief.
  - iii. The process of getting justice must equally be affordable- if such adjudicatory mechanisms are expensive so much so that indigent citizens cannot afford the payments, then the purpose of attaining justice is defeated. The constitution places an obligation on states to make provision for free legal services, that is Legal Aid for underprivileged citizens to have full access to courts and have their matters heard without money. Other lawyers also provide pro-bono services to support this aspect.
  - iv. Speedy process- Access to justice as a constitutional value will be a mere illusion if justice is not speedy. Justice delayed, as famously said is justice denied. If the process of administration of justice is so time consuming, laborious, indolent and frustrating for those who seek justice that it dissuades or deters them from even considering resort to that process as an option, it is tantamount to denial of not only access to justice but justice itself. Also, where the trial of a citizen goes on endlessly, his right to life itself is violated. Again, there should be jurisprudentially no qualitative difference between denial of speedy trial in a criminal case or a civil suit, because civil disputes can at times have an equally, if not, more severe impact on a citizen's life or the quality of it. Access to Justice would,

therefore, be a constitutional value of any significance and utility only if the delivery of justice to the citizen is speedy, otherwise, the right to access to justice is no more than a hollow slogan which is of no use or inspiration for the citizen. Over the years, the number of courts established in the country has increased considerably. However, the increase in literacy, awareness, prosperity and proliferation of laws has made the process of adjudication slow and time consuming primarily on account of the over worked and under staffed judicial system, which is crying for creation of additional courts with requisite human resources and infrastructure to effectively deal with an ever increasing number of cases being filed in the courts. While the States have done their bit in terms of providing the basic adjudicatory mechanisms for disposal and resolution of civil or criminal conflicts, access to justice remains a big question mark due to delays in the completion of the process of adjudication on account of poor judge population and judge case ratio in comparison to other countries.

Apart from these major characteristics, there are specific rights within rights which if ignored, will completely deride the definition of access to justice. Section 36 of the Constitution provides for constitutional safeguards that ought to be duly followed in the process of securing justice.

#### 4.0 THE CONCEPT OF FAIR HEARING

The twin pillars of natural justice that sum up Fair hearing are:

- Audi Alteram Partem Rule (Hear the other side); and
- (Namo Judex In Causa Sua Rule (No one shall be a Judge In his own cause)

Section 36(1) of the Constitution of Federal Republic of Nigeria, 2011 as amended, provides that: “In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality”. The constitutional safeguards provided under the same section are summarized thus:

- When a person is arrested and accused of a crime, he must promptly be charged and brought before a competent court. Promptly here entails time (within 48 hours) and distance (nearest competent court)
- Every person who is charged with a criminal offence shall be entitled to :
  - i. be informed promptly in the language that he understands and in detail of the nature of the offence;
  - ii. be given adequate time and facilities for the preparation of his defence;
  - iii. defend himself in person or by legal practitioners of his own choice, and where he cannot afford one, the court ought to make provision for that through Legal Aid;
  - iv. Examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and
  - v. Have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.
- The constitution further guarantees that an accused person shall not be convicted of any crime for acts that did not constitute a crime at the time the person committed it. The law does not work retroactively.

- Any person who has been pardoned for an offence can never be tried for that offence again (immunity from double jeopardy).
- An accused person may choose to remain silent and not say anything in his defence, and this should in no way be construed as guilt by the court.
- Any person accused of a crime must be charged only for an offence known to law and its punishment prescribed therein.

Fairness of a trial is indeed fundamental to the effective administration of justice; it does not only give integrity to the legal system but ensures the confidence of the society in the justice system.

It is pertinent to note that a convict serving his sentence is still entitled to certain fundamental rights such as access to safe water and sanitation and even health. The challenges involved here is justiceability of such rights especially when it involves convicts and judicial officers are encouraged to encourage the implementation of these when such cases are brought before the court objectively.

Where these fundamental principles are underused, we cannot boldly say Nigeria is Human Rights Compliant.

## 5.0 CHALLENGES IN ACCESSING JUSTICE, ESPECIALLY FOR THE UNDERPRIVILEGED.

There are numerous challenges that impede the access to justice in Nigeria, and a few of these include:

- Delay in justice: Many hundreds of thousands of people are currently in jail in Nigeria for minor and bail-able offences. Their lack of access to legal advice and the slow and cumbersome judicial systems keep them confined for long periods and deprive them of their human rights, when bail is actually a valid alternative.

- **Cost of Litigation:** the situation of the economy has further deepened the economic consequences of pursuing full legal proceedings for citizens trying to get justice. Some either abandon their legal causes when the fees become unbearable thus allowing violators go scot-free even though they have viable causes of action or resort to self-inflicting justice in order to get satisfaction.
- **Effects of some constitutional provisions:** it is interesting to note that some constitutional provisions in themselves are the reason for the delay in assessing justice. For example, Section 36 (6) (b) provides that a suspect be given adequate time and facilities to prepare for his defence. Although this provision should not ordinarily hamper the process of prompt proceedings, its implementation may cause unnecessary and undue delay of the cases by the courts.
- **Undue technicalities:** suspects usually require the services of legal practitioners not because they ordinarily would want to, but because the rigorous procedures of the court are beyond their comprehension and rather than spend more time trying to figure these out, they enlist legal practitioners which in the long run, is not cost or time effective.
- **Illiteracy:** Majority of people are unaware of these rights that are available to them and some do not understand that these rights can be violated and that they can seek redress for such violations.

## 6.0 DUTY OF THE COURTS AND THE MAGISTRATES

Judicial Officers, and with respect to magistrates, they are to duly respect the Code of Conduct for Judicial Officers. This document specifies how judicial officers are to carry out their adjudicative and administrative duties. They are to

bear these in mind at all times and that way, will ensure justice in all proceedings.

The rationale here is that there should be no social or economic hindrance whatsoever restricting Nigerians from approaching the law courts in their quest for justice. Although most courts of law now exist as havens of refuge for those who are oppressed, victimized or wrongly deprived of their rights, there is still a lot to be achieved. It follows, therefore, that all categories of judges ought to fulfill the vision of judgeship envisioned by Aristotle when he described the judge as “living justice” or “animate justice.” No Court should evade its responsibility to enforce the law for the benefit of all, the rich and poor alike because the rule of law respects equality. It would be most beneficial for the court to not only adopt but also implement the progressive view that it is unfair to predicate a person’s legal right on his financial ability or economic status. The court ought to provide a remedy whenever there is a violation of a public or private right. This Latin maxim “*Ubi jus ibi remedium*” sums this up. In line with this, I believe that lower courts especially the Magistrate Courts, have been established to champion the cause of unrestricted access to justice. This position is further supported when the features of Magistrate Courts are compared with other higher courts, from its summary jurisdiction, less-formal manner of conducting proceedings, and cheaper filing fees as is obtainable practice in Nigeria. It is obvious that the rules and practice of the Magistrate Courts have been specifically fashioned in a manner that allows easier and less cumbersome access to the Magistrate Court. These special features of the Magistrate Court make it all the more imperative for Magistrate Courts to be accessible by all and sundry.

## 7.0 WAY FORWARD

There is no hard and fast rule on achieving and sustaining a healthy justice system in any society, but a steady practice will eventually map a road towards sustainable promotion of human rights and a confident justice system. There are a few areas that may help in achieving this:

- **Mediation:** if you are unable to settle the dispute by yourself, you can consider alternative dispute resolution (ADR) techniques such as mediation and negotiation. This is quite effective and less time consuming, more so, it encourages privacy. The major challenge here would be criminal cases for which these methods may not suffice.
- **Legal aid:** the right to legal aid allows those who do not have sufficient financial resources to meet the costs of a court case or legal representation. The system should guarantee equal access to justice and ensure that the quality of justice satisfies the aspirations of our people in the context of civilised norms and practices including international standards and models.
- **Plea Bargain-** Allowing for this especially in major criminal cases will definitely ease and help expedite the speedy disposal of cases.
- We need to address barriers to both quantity and quality of justice.
- We need to strengthen the capacity of our justice delivery system including address issues of welfare packages and conditions in which justice is delivered in our country-this includes proper spot checks, supervision, stock taking and arrangement of files and finally, establish a proper court tracking system.
- We need to enhance physical access to justice including guaranteeing the luxury of justice to citizens through provision of legal aid to the citizens.

- We need to fund the justice delivery system by ensuring the independence and autonomy of the judiciary.
- Avoid unnecessary adjournments and postponements of cases
- We need to strengthen and promote legal awareness to the citizens.
- We need to strengthen civil societies and organizations as the foundation of promoting access to justice.
- We need to recognize that increased access to justice depends on public confidence which should not be allowed to wane or else anarchy looms.
- We need to support the enforcement of remedies and ensure that such remedies are adequate and commensurate with the nature of the offence.
- We need to encourage procedural fairness and equal application of the law to all manner of people without discrimination including facilitating transparency in all judicial processes.
- We need to increase the knowledge and professionalization of justice personnel to dispense justice.
- Judicial Trainings- Seminars and workshops such as this, to train judges should be held often. They should be conducted on weekends or public holidays to avoid wastage of judicial time and local as well as international speakers should be invited to speak and discuss on several contemporary topics. These trainings are actually found to improve the knowledge and therefore the efficiency of judges and magistrates.

## 8.0 CONCLUSION

In conclusion, access to justice and protecting human rights are two peas in a pod and both are fundamental parts of a strong legal system of any country, Nigeria is no exception. In our walk of achieving sustainable development, we must not forget to uphold the principles of fairness, equity and good conscience. Steady progress is better than no progress at all.

I must say that access to justice should not only be recognized as a distinctive Human right, it should equally be enacted into the Constitution of every modern and civilized nation as a fundamentally protected right. A right without remedy is utterly meaningless.

I end with the words of M. Cappellatti: “Effective access to justice can thus be seen as the most basic requirement, the most basic ‘human right’ of a system which purports to guarantee legal rights” and he couldn’t have said it better.

**I THANK YOU ALL FOR LISTENING!**

## 9.0 REFERENCES

- <[http://ec.europa.eu/justice/civil/access-justice/index\\_en.htm](http://ec.europa.eu/justice/civil/access-justice/index_en.htm)> accessed 4<sup>th</sup> April, 2017
- < <http://www.livelaw.in/access-justice-fundamental-right-guaranteed-article-14-21-constitution-sc-constitution-bench/>> accessed 4<sup>th</sup> April 2017
- <<http://www.nigeria-law.org/CodeOfConductForJudicialOfficers.htm>> accessed 4<sup>th</sup> April, 2017
- Abul-Ethem F, 'The Role of the Judiciary in the protection of Human Rights and Development: A middle Eastern Perspective' (2002) 26(3) FILJ 761
- Okogbule N, 'Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects' (2005) 3(2) IJHR 95
- Otaru R., 'Access to Justice and Fair Hearing' Being a lecture delivered at the Nigerian Institute of Advanced Legal Studies, 2<sup>nd</sup> December, 2010
- Umukoro M, 'Access to Justice in the Lower Courts: Re-examining the civil and criminal jurisdiction of Magistrate Courts in Nigeria' being a paper delivered at the 2016 Conference of all Nigerian Judges of the Lower Courts holding at National Judicial Institute, Abuja, 21st – 25th November, 2016
- Wahab S, 'The Challenges of Access to Justice', 21<sup>st</sup> July 2015 < <https://guardian.ng/opinion/the-challenges-of-access-to-justice/>> accessed 5<sup>th</sup> April 2017
- Zakariya T S A, 'Access to Justice-A fundamental Human Right', a paper delivered at the 17<sup>th</sup> Commonwealth Law Conference, Hyderabad, India, 7<sup>th</sup> February, 2011