JUSTICE IN TIMES OF EMERGENCY: LESSONS FROM THE COVID-19 PANDEMIC

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Abstract

Justice is one of the fundamental and most cherished benefits of constitutional democracy in modern day governance systems. The legal restrictions in justice systems and other extraneous challenges, however, negatively impact on the accessibility of justice for all. To improve access to justice, these restrictions should be reduced by prioritising substantive justice over technicalities and traditions, especially where they have no substantive impact on justice delivery. During the COVID 19 pandemics, attempts were made to introduce approaches to reduce some of these restrictions in order to improve access to justice. This paper examined these approaches as more sustainable alternative initiatives to improving access to justice during the COIVID 19 experience. The paper adopts a critical analysis approach at examining the initiatives and the challenges they sought to resolve, their successes and limitations. The paper finds that abundant opportunities exist for improving access to justice. It further finds that what is mostly required is an approach of prioritising substantive justice over technicalities and traditions. The paper thus makes recommendations against each challenge and how to make each good initiative

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sustainable. The paper is useful for scholars in law and stakeholders in the justice system towards crafting universally effective justice promotion initiatives.

KEYWORDS: *Access to Justice, Alternative Dispute Resolution, Criminal Justice, Crisis, Human Rights*

Introduction

Justice is one of the key hallmarks of a constitutional democracy. It demonstrates and assures citizens of the capacity of the law through the state to protect everyone. The best time to demonstrate this capacity is during times of crisis and emergency. The COVID 19 pandemic threw up this opportunity for Nigeria to assess itself, show the extent its laws promote justice and what may be done, if any, to improve justice in Nigeria. Justice is beyond access to court. It includes the process of deciding based on authentic and reliable information whether to approach courts or explore other options. Justice starts with access to information about understanding one's rights and duties, accessing those rights and promoting justice. For instance, with regard to judicial process of promoting justice, upon understanding one's rights and duties and feeling it is being breached, the next step is decision on how to enforce those rights: whether to access the courts, the capacity to understand that you need legal representation and being able to afford one or have one provided for you by the state. These are facilities that should be accessible to everyone, whether wealthy, poor, healthy or sickly. More importantly, in times of emergency and crisis, it should be available to persons whom the crisis or emergency may affect most or whose capacity to fend for themselves would be drastically reduced.

The facilities should, however, be such that every person can access. An inequality of access to justice facilities should not be created to benefit the vulnerable only and thereby short-change the supposedly capable. Such policy would only be creating another group of oppressed and disenfranchised. This can be achieved by exploring all policies and initiatives developed to protect the vulnerable to ensure that others are not excluded. Accordingly, the discourse in this paper examines the issue of access to justice from an inclusive perspective – for both the vulnerable and the capable. Accordingly, in this paper we explore access to justice in Nigeria in the context of COVID 19 challenges and initiatives and what may be done to strengthen existing policies or introduce new ones.

To explore these issues, the remaining parts of the paper are structured as follows: The next section provides a conceptual clarification of the key concepts of this paper. This is followed by a literature review on access to justice in Nigeria. Next segment deals with presentation of the challenges thrown up by the COVID-19 pandemic, how attempts were made to contain them, and examination of the sustainability of each initiative towards promoting access to justice for all in Nigeria. Thereafter, is a set of recommendations on what may be done to meet identified challenges as a model for improving access to justice in Nigeria. The paper ends with a conclusion.

Background

Access to justice has been variously defined with scholars emphasising different aspects depending on the author's intention or context. However, in Nigeria, the primacy of justice is duly enshrined in the Nigerian Constitution wherein it categorically

states to the effect that justice, democracy, security and welfare of citizens is the primary objective of government.[75] These objectives can neither be achieved nor sustained without citizens having access to justice which ensures that security of persons are maintained, peace is enshrined and opportunity for economic development assured. These objectives are not meant only for times of peace and stability; rather they are most needed in times of crisis and emergency. These are times when more than any other time, the law should be dependable, stable and not ad hoc or discretionary.

The events of the COVID-19 pandemic in Nigeria, particularly in the justice system, seem to have created a different impression. Ironically, the challenges arose both from judicial officers and legal practitioners.[76] There seem not to be any consensus on the primacy of justice or the understanding of constitutionality.[77] For instance, whereas the police continued to arrest people and put them in detention, the Chief Justice of Nigeria announced a lockdown of courts without first setting out a sustainable system to ensure that the justice system is not grounded.[78] Everyone seemed to be in panic mode, including the judiciary. Ironically, when the Chief Justice of Nigeria (CJN) eventually realised the

[75]CFRN 1999 s 14(1) (2) (b)

[76]The Guardian, "Lawyers sue FG, demand categorization of Legal practice as essential service" The Guardian, May 6th 2020, The Guardian. Available online at: <https://guardian.ng/news/lawyers-sue-fg-demand-categorization-of-legal-practice-as-essential-service/> accessed 1ST February 2022

[77] See Bethel Uzoma Ihugba'Conceptualizing Constitutionalism in Times of Emergency: The Covid-19 Experience' University of Port Harcourt Law Review, (2020) Vol. 4. 40 -52, 47

[78]SeeHalimah Yahaya'Coronavirus: Nigeria shuts all courts' March 23, 2020<https://www.premiumtimesng.com/news/headlines/383446-just-in-coronavirus-nigeria-shuts-all-courts.html> accessed 16TH February 2022

implication of the justice system shut down and sought to introduce remote justice system, it was challenged by some lawyers.[79] There was less attempt to improve CJN's initiatives but more to condemn it. In fact, when some groups of lawyers sought court intervention to declare legal services an essential service, the idea was lampooned by some other lawyers.[80] All these incidents raise the question of whether the justice system in Nigeria is strong enough to withstand such inevitable though unplanned shocks. It is recognised that the shocks and attendant missteps were not peculiar to Nigeria. Even some advanced systems faced similar challenges, although it appears that Nigeria, amongst her peers had a harder time stabilising, if at all it has done so. It is against this background that questions of how our justice system fares in times of crisis and how it may be improved arise.

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[79]See Unini Chioma, "Lagos State Drags FG, NASS, To Supreme Court, Seeks Determination of Constitutionality of Online Court Hearings" June 7th 2020, The Nigerianlawyer. Available online at: <https://thenigerialawyer.com/lagos-state-drags-fg-nass-to-supreme-court-seeks-determination-of-constitutionality-of-online-court-hearings/>accessed 1ST February 2022: Adegboyega Awomolo "Virtual Court Hearing Does Not Pass The Test For Proceedings Conducted in Public: There is need for Constitutional Amendment" Barristerng May 20 2020,<https://www.barristerng.com/virtual-court-hearing-does-not-pass-the-test-for-proceedings-conducted-in-public-there-is-need-for-constitutional-amendment/> accessed 1ST February 2022; Queen Esther Ironsi, "Nigeria Senate introduces bill to legalise virtual court proceedings" Premium Times Online, May 12 2020,<https://www.premiumtimesng.com/news/headlines/392429-nigeria-senate-introduces-bill-to-legalise-virtual-court-proceedings.html> accessed 1ST February 2022

[80] See Raphael Christopher "Case for Designating Lawyers as Essential Service Providers during COVID-19 Lockdown" theloyalnigerianlawyer, May 24th 2020, available online at: <https://loyalnigerianlawyer.com/case-for-designating-lawyers-as-essential-service-providers-during-covid-19-lockdown/> accessed 1ST February 2022, The case was not just about getting court approval but also swaying public opinion in favour of improving access to justice

Clarification of Concepts

To properly address these issues, it is better to first define and appreciate key concepts. In this work key concepts include Justice, access to justice, constitutional democracy and fundamental rights. Understanding these concepts will provide a rich context to appreciating the arguments herein proffered.

Justice

Justice has several conceptualisations depending on the context and subject of discussion. Generally, however, it implies equity, equality and fairness in the distribution of protection by state including the distribution of public goods or resource. For these reasons, the recurrent theme in the discussion about justice is fairness and equity in procedural requirements and substantive provisions.[81] Although justice is seemingly an abstract philosophical concept which may be determined by the legal, cultural, religious and political background of the discourse, it is practicalised in the day-to-day relationship between individuals and with the state. For instance, in the context of Nigeria, justice is perceived as social justice. The Constitution of Federal Republic of Nigeria 1999 demonstrates or expects demonstration of justice through the principles of rule of law, sovereignty of the people, primacy of welfare and security of the people, and democratic participation in governance.[82] Accordingly, for purposes of this paper justice is defined in terms of its practical application in the equal and equitable enjoyment of rights and

[81] See Peter Vallentyne (ed), 'Justice in General: An Introduction in Equality and Justice: Justice in General, (Routledge, 2003)
[82] CFRN 1999 s 14

privileges that are permitted and mandated by law. Therefore, an unequal and unfair enjoyment of rights and privileges is injustice.

Access to Justice

This is the availability of access and knowledge about a system, facility and structures which assure and empower citizens and every individual within a state to approach the State for the protection and enforcement of rights and compelling the state to perform its duties. Access to justice starts with the understanding of a constitutional entitlement and duty in the enjoyment of such right through a constitutionally guaranteed and predictable process.[83] In details, these include the knowledge of these fundamental rights, of rights statutorily provided, how to enforce them, choice of options for their enforcement, and the ability to enjoy the fruits of a judicial or administrative decision on the enjoyment of rights and performance of civic duties.[84] Access to justice is assured by a sustainable and effective constitutional democracy where fundamental rights are protected. In practical terms, this entails the existence and access to every facility and infrastructure that ensures equitable access and enjoyment of fundamental rights of each individual. This means the existence

[83]Office of the Parliamentary Counsel, 'When Laws Become Too Complex: A review into the causes of complex legislation' Office of the Parliamentary, Counsel Cabinet Office March 2013, 34 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/187015/GoodLaw_report_8April_AP.pdf> accessed 1 February 2022.

[84]Stefanie A. Lindquist and Frank C. Cross,'Stability, Predictability And The Rule Of Law: Stare Decisis As Reciprocity Norm' <https://law.utexas.edu/conferences/measuring/The%20Papers/Rule%20of%20Law%20Conference.crosslindquist.pdf> accessed 1 February 2022; Marzena KORDELA 'The Principle of Legal Certainty as a Fundamental Element of the Formal Concept of the Rule of Law' Revue du notariat<https://www.erudit.org/en/journals/notariat/2008-v110-n2-notariat03643/1045553ar.pdf> accessed 1 February 2022

of an independent judiciary, a simplified process of accessing the judiciary, a knowledge of its existence and affordability (or not obstructed by cost).[85]

Constitutional Democracy

Constitutional Democracy is arrived at by a combination of the two concepts of constitutional supremacy and democratic process. This implies a democratic state wherein the constitution dictates how the process is achieved and maintained.[86] The key pillars of constitutional democracy are that the fundamental rights of citizens are assured and protected through an independent judiciary and that government is formed through democratically elected government where principles of separation of powers is fully maintained and observed.[87] In other words, a government where sovereign power resides in and is exercised by the citizens directly or through representatives.[88] These attributes must be demonstrated in the Constitution. In the case of Nigeria, the

[85] Bem Angwe 'Access to Justice and Protection of Rights of Citizens' being a paper presented, [by Secretary-General/CEO Centre For Legal Rights Advancement (CLERA)] at a Session of The Refresher Course for Magistrates on Modern Judicial Practice And Procedure-Modernizing Judicial Practices and Procedures, Held at the Andrews Otutu Obaseki Auditorium, National Judicial Institute, Abuja 24th-28th April, 2017, < https://nji.gov.ng/images/Workshop_Papers/2017/Refresher_Magistrates/s5.pdf > accessed 22 August 2022

[86] See CFRN 1999 s 1; Bethel U. Ihugba (2020) note 3, 43

[87]Diamond, L. What is Democracy?(2004) Lecture at Hilla University for Humanistic Studies
January 21, 2004, Stanford University<https://diamond-democracy.stanford.edu/speaking/lectures/what-democracy> accessed 22 February 2021; see generally Paula Becker and Jean-Aimé A. Raveloson, What is Democracy? September 2008Friedrich-Ebert-Stiftung (FES) and University of Trier, <http://library.fes.de/pdf-files/bueros/madagaskar/05860.pdf> accessed 22 February 2021

[88]Black's Law Dictionary 435 (9th ed. 2009)

Constitution of the Federal Republic of Nigeria 1999, wherein the principles of equality before the law, rule of law, separation of powers and independent judiciary are constitutionally enshrined.[89] The implication therefore is that justice delivery in Nigeria whether in times of stability or emergency must abide by the Constitution. The Constitution does not exempt times of emergency under its scope. It rather makes provisions for adherence to its provisions at all times including special emergency powers[90] and the limit to which certain provisions of the Constitution may be derogated.[91] In other words, there is no vacuum for discretion.

Fundamental Rights

In Nigeria, fundamental rights are constitutionally enshrined. These rights are non-negotiable except in accordance with the Constitution and through the power, process and procedure statutorily provided and regulated.[92] Under the CFRN 1999 Chapter IV, there are 11 fundamental rights. These are the (s 33) Right to Life, (s 34) the Right to Dignity of Human Person, (s 35) the Right to Personal Liberty, (s 36) the Right to Fair Hearing, (s 37) the Right to Private and Family Life, (s 38) the Right to Freedom of Thought, Conscience and Religion, (s 39) the Right to Freedom of Expression and the Press, (s 40) the Rights to Peaceful Assembly and Association, (s 41) the Right to Freedom of Movement, (s 42) the Right to Freedom from Discrimination

[89] See CFRN 1999ss 1, 4, 6 and chapter IV; Charles N. Quigley "Constitutional Democracy" Center for Civic Education. Available online at: <www.civiced.org/resources/publications/resource-materials/390-constitutional-democracy> accessed 29th April 2018.

[90] E.g. CFRN 1999 ss 45, 64, 135 and 305

[91] CFRN 1999 ss 45,

[92] CFRN 1999 s 45

and then, (s 43) the Right to Acquire and Own Immovable Property anywhere in Nigeria.[93] Access to justice is assured when individuals have confidence that the justice system is available and capable to protect and promote these rights.

The Extant Discussion

Scholars have sought to explore the concept of access to justice from several perspectives. One of such scholars found that the validity of access to justice is the enshrinement of rule of law demonstrated by none interference with and obedience to judgments of courts.[94] When judgments of courts lose efficacy because government does not obey them, then access to justice is of no value. In a similar position, an early scholarly work argued that access to justice does not just mean access to courts but includes effective and efficient dispensation of justice.[95] One of the ways of ensuring access to justice is improving legal education and imbuing in practitioners the culture of justice for all. This includes addressing factors like awareness by citizens of their rights and how to protect those rights. Others include issues of poverty and illiteracy.[96] Enhancing access to justice must not overlook the impact these negative factors have. In an apparent

[93]Chapter IV CFRN 1999

[94]Ayodele, John Alade 'The Concept of Rule of Law and the Notion of Justice in the Survival of the Nigerian State' Global Journal of Social Sciences' VOL 20, 2021: 25-32, 30 <https://dx.doi.org/10.4314/gjss.v20i1.3> accessed 12th January 2022

[95]C. I.N. Emelie 'Legal Education and Access to Justice in Nigeria' Research Journal of Humanities, Legal Studies & International DevelopmentVol. 2, No. 1 April, 2017, <http://internationalpolicybrief.org/journals/international-scientific-research-consortium-journals/research-jrnl-of-humanities-legal-studies-intl-dev-vol2-no1-april-2017> or <http://internationalpolicybrief.org/images/2017/APRIL/RJH/ARTICLE12.pdf> accessed 12th January 2022

[96]ibid

agreement with these conclusions, an empirical study on access to justice in Nigeria made some confirmatory findings. The 2018 study found that the problem of access to justice is universal and affects both poor and rich and that none access to justice for any group eventually result in harm and injustice to all.[97] It found however, that education and wealth improves access to justice for those who have education and wealth. Education here includes knowledge of the legal system, how it operates and how to access it.[98]Against these findings, it can be posited that to ensure equal access to justice, the government and other stakeholders must work to improve access to legal information, be creative in the use of alternative dispute resolution processes before civil matters degenerate to criminal cases and give the police a positive and civil role to play in resolving non-criminal cases.[99]A United Nations Development Programmes (UNDP) guidance note appears to have drawn from these studies to develop an access to justice guidance note for the COVID 19 period. The guidance note outlined access to justice improving strategies to include continuity plans to ensure that pandemics and consequential lockdowns do not stop justice dispensation.[100] Such strategic plan includes prioritising cases, supporting remote functioning through

[97]Rodrigo Núñez et al 'Justice Needs and Satisfaction in Nigeria2018: Legal problems in daily life' The Hague Institute for Innovation of Law 12 September 2018 <> accessed 12th January 2022

[98]ibid

[99]Ibid 222

[100]United Nations Office on Drugs and Crime "UNODC and UNDP issue guidance note on ensuring access to justice during the COVID-19 pandemic" United Nations <https://www.unodc.org/unodc/en/frontpage/2020/May/unodc-and-undp-issue-guidance-note-on-ensuring-access-to-justice-during-the-covid-19-pandemic.html> accessed 16th February 2022

effective deployment of technology,[101] being gender sensitive and inclusive in approach and expanding access to legal information. Access to legal information is important because at times, knowledge could help avoid undue waste of time in the court system.[102] One of the areas that this was experienced as noted by another scholar is on the issue of bail and trial for criminal offences, especially where defendants are remanded in jail.[103] The extant literature suggest that initiatives can be developed from crisis strategies to create an inclusive and sustainable access to justice model. We explore this in the next section as we look at attempts at negotiating the impacts of COVID 19 pandemic measures on the justice system.

Legal Initiatives and Challenges to Justice Caused by Covid 19 Pandemic

During the COVID 19 pandemics, particularly at its peak in Nigeria in March 2020, people felt confused as to how to resolve their legal issues. This was particularly troubling as courts were closed and lawyers were on lockdown like many in other professions. The directive coming from the office of the Chief Justice of Nigeria was that all courts should be closed for all

[101]Tania Sourdin, Bin Li, Donna McNamara, 'Court Innovations and Access to Justice in Times of Crisis' <https://www.researchgate.net/publication/343984796_Court_Innovations_and_Access_to_Justice_in_Times_of_Crisis?enrichId=rgreq-7fa0a81819fdb9e229dc9f12f04e3e7e-XXX&enrichSource=Y292ZXJQYWdlOzM0Mzk4NDc5NjtBUzo5MzE0NzA5MzE2NzcxOTVAMTU5OTA5MTM4NDg2NA%3D%3D&el=1_x_3&_esc=publicationCoverPdf> accessed 13 January 2022

[102]UNDP, 'Guidance Note: Ensuring access to justice in the context of COVID 19' UNDP May 2020 <https://www.undp.org/publications/ensuring-access-justice-context-covid-19#modal-publication-download> accessed 16th February 2022

[103]Tania Sourdin, Bin Li, Donna McNamara (n 27) 2

services except for matters 'that are urgent, essential or time-bound according to our extant laws'.[104] However, the directive failed to properly describe or define 'urgent, essential and time bound matters'. While election cases obviously fell under time bound matters, it was quite difficult to tell persons facing fundamental right abuses, for instance in form of false imprisonment, that their cases were not urgent. The directive was thus not helpful as these criteria were left undefined. The circumstance was more troublesome because although litigation lawyers were aware of this directive, the general public were hardly aware. More intriguing was that there were no emergency or contact numbers which the general public could access to reach the court administration. The effect was to leave litigants entirely at the mercy of lawyers.

With emergency numbers or dedicated websites, the general public would have been able to use these media to receive regular updates on the pandemic particularly as it relates to justice delivery. It would also have been a resource to help citizens understand how the lockdown affected them and what was expected of them. Questions about court sitting days, cause lists, email addresses and phone numbers of relevant officers could have been made available. It is however, noteworthy that later on in the pandemic, some courts made it a point of duty to share contact details of court officers with lawyers. While this was an

[104]Circular from the CJN titled 'Re: Preventive Measures on the Spread of Corona Virus (COVID – 19) and the Protection of Justices, Judges and Staff of Courts'. See Halimah Yahaya 'Coronavirus**:** Nigeria shuts all courts' March 23, 2020. Premium Times<https://www.premiumtimesng.com/news/headlines/383446-just-in-coronavirus-nigeria-shuts-all-courts.html> accessed 14th January 2022

improvement, it was discriminatory and only benefited lawyers while the general public were made to suffer.

There was also the issue of legal representation. Most lawyers panicked and did not have the courage to leave their homes and offices to attend to clients. The legal system was also unfriendly to innovative approaches at legal representation. Both the lawyers and judicial officers were not receptive of innovative approaches and resolving disputes. According to section 36 of the Constitution, citizens are entitled to legal representation where they cannot afford one. Such representation usually come as pro bono services from private legal practitioners and lawyers working with the Legal Aids Council. But during this period, none was forthcoming. An environment that encouraged remote working or provided willing lawyers with protective equipment would have minimised the negative impact of the COVID lockdown on the protection and promotion of rights of citizens. It is true that at a time, about two months after the initial lockdown, lawyers were agitating for exemption from the lockdown and declaration of legal services as essential services. This call was never categorically heeded.[105] This was not an encouraging response from the judiciary or body of lawyers.

Mobile court is another initiative that was promoted during the pandemic and lockdown in Nigeria. It improved an important aspect of access to justice – speedy dispensation of justice. The courts were brought closer to parties to a dispute. More

[105]Editorial 'Lawyers sue FG, demand categorization of Legal practice as essential service' The Guardian Newspapers 06 May 2020 <https://guardian.ng/news/lawyers-sue-fg-demand-categorization-of-legal-practice-as-essential-service/> accessed 14 January 2022.

importantly, parties did not have to wait indefinitely to get court dates for simple offences and civil wrongs. In Abuja, this was held at the Eagle Square. Anambra and Kwara states also took up this initiative.[106] The trials at these courts were however mostly limited to violation of COVID 19 regulations. The cases included breaches like failure to wear mask and gathering in excessive numbers.[107]

While this was a welcome initiative, its limitation to implementation of COVID regulation breaches was not ideal. It appeared more government centred than people centred. This was especially because, as was demonstrated in Abuja, most of the convictions resulted in payment of fines. It gave the impression that government was not interested in resolving crimes that directly affected individuals daily e.g., theft, assault and battery. The mobile courts should have been given the opportunity to try out the resolution of other misdemeanours and simple offences involving real victims.[108] Lagos State appears to have taken this approach and established mobile courts with expanded jurisdiction. The Lagos State Mobile Courts tried traffic as well as environmental offences.[109] While this was better than limiting it to COVID breaches, it still left a lot unattended. Offences

[106]Abraham Achirga 'Mobile courts target Nigeria's COVID-19 rule-breakers' REUTERS <https://www.reuters.com/article/uk-health-coronavirus-nigeria-court-idUSKBN2B3160> ACCESSED 14 January 2022

[107] ibid

[108]This is not to say that COVID does not have real victims. It is however a recognition that for many people, that is the perception. People still had to live their lives and resolve everyday struggles and challenges.

[109]Tayo Ogunbiyi 'Appraising Reforms In The Lagos' Justice Sector' Lagos State Government Official Web Portal, <https://lagosstate.gov.ng/blog/2019/04/28/appraising-reforms-in-the-lagos-justice-sector/> accessed 14 January 2022

directly affecting persons were not covered by the mobile courts. Another important check that seems to have been absent in the establishment of these mobile courts was the check for full and proper legal defence for defendants. While speedy dispensation of justice is a good objective, proper legal defence should not be sacrificed. That would be a breach of fundamental right to fair hearing as enshrined in section 36 of the Constitution of the Federal Republic of Nigeria 1999 (CFRN).

Another important initiative introduced as strategy to combat COVID 19 which can be adapted solely for access to justice was the establishment of COVID 19 emergency and toll-free telephone number. It is a means for Nigerians to report any COVID related issues.[110] The telephone number continues to play very important role for reporting outbreaks and calling for assistance. Other roles include reassuring the population that government was available to listen and guide them in the difficult process of dealing with COVID 19. The telephone numbers included alternate numbers to inform first responders about persons seeking help on COVID related health issues. It is also to pass critical information to the Federal and State Governments' Task Forces on COVID-19.[111]This initiative is a confirmation of the importance of information and access to information at resolving human challenges.

[110]NCC 'COVID-19: NCC's 112 National Emergency Number Offers Succour to Nigerians' Nigerian Communications Commission (NCC)02 APRIL 2020 <https://www.ncc.gov.ng/media-centre/news-headlines/810-covid-19-ncc-s-112-national-emergency-number-offers-succour-to-nigerians> accessed 17TH January 2022

[111]ibid

Access to justice, particularly understanding individuals' rights and where to seek assistance is one of the key challenges to achievement of the objectives of Sustainable Development Goal (SDG) programme. For instance, target 16.3 of the SDGs focuses on measuring whether persons who are faced with legal problems, both civil and criminal legal problems, are able to get access to legal advice that would assist in resolving their legal problems.[112] This is on the premise that at this stage, access to information rather than legal advice or representation may be most necessary.[113] Aside legal advice, one of the ways of ensuring access to justice is by providing access to information. Provision of emergency telephone numbers, emails addresses and websites, as done for COVID-19 emergencies, assists citizens and residents to access information on specific legal questions which will then guide their decision on how, whether and when to enforce their rights.[114]

The COVID-19 initiatives with regards to prison decongestion also demonstrated that people need not be locked up for every

[112] UN Sustainable Development Goals, Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels < https://unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=16.3#:~:text=Target%2016.3%3A%20Promote%20the%20rule,access%20to%20justice%20for%20all > accessed 22 August 2022

[113] World Justice Project, 'Access to Civil Justice Indicator Proposal for SDG Target 16.3.3' World Justice Project <https://worldjusticeproject.org/our-work/publications/working-papers/access-civil-justice-indicator-proposal-sdg-target-1633> accessed 17 January 2022

[114]The UN puts it this way: 16.10 ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements. See UNITED NATIONS SUSTAINABLE DEVELOPMENT GOALS, 'Goal 16: Promote just, peaceful and inclusive societies' UNITED NATIONS, <https://www.un.org/sustainabledevelopment/peace-justice/> accessed 17 January 2022

minor infraction. Justice can still be achieved if people attend courts from their homes. People need reassurance that, in accordance with the Constitution, they are indeed innocent until proved guilty. For some who have been found guilty, there are other forms of punishment and rehabilitation processes that could be initiated aside incarceration. However, the approach being followed in some States of the Federation is not clear. According to a report from Lagos State, the Police treated suspects who tested positive to COVID 19 instead of sending them to detention centres.[115] It is unclear if this approach was in accordance with the call for the Minister of Interior to decongest the Prison which was made sometime in March 2020.[116] The Ministers of Interior and Justice recognised the threat to health posed by congestion of prisons both to the prisoners and staff of correctional facilities including judges and court officials. This is especially the case as over 70 percent of detainees were awaiting trial. According to the Comptroller General of Corrections at the time, there were '74,127 inmates, among whom 1,450 are female, 21,901 convicted and 52,226 awaiting trial.'[117]A UNDP report suggests that the approaches being considered by Nigeria include release of prisoners convicted or detained for minor offences. Another approach is to improve the health facilities at detention

[115]Ifeoluwa Adediran 'COVID-19: How police are decongesting prisons – Official' Premium Times, September 16, 2021 <https://www.premiumtimesng.com/news/more-news/485205-covid-19-how-police-are-decongesting-prisons-official.html> accessed 18 January 2022

[116]Oge Udegbunam 'Coronavirus: Nigerian minister wants speedy decongestion of prisons' Premium Times, March 26, 2020 <https://www.premiumtimesng.com/coronavirus/384180-coronavirus-nigerian-minister-wants-speedy-decongestion-of-prisons.html> accessed 18 January 2022

[117]ibid

facilities.[118] There is also the opportunity of granting bail to detainees even for offences more serious other than capital offence. Bail is a constitutional right and not gratuitous.[119] Detention is only to ensure that defendants are present to answer for criminal charges against them. It is not meant to be punitive. Accordingly, where there is no fear of the defendant absconding, there should be no need to detain.[120] Another approach which should augment the issuance of bail, including bail on self-recognisance, is the power of the Chief Judge to order the release of persons.[121] The exercise of this power is not exactly a commendation to the justice system but an indictment of failure of the justice system and an attempt at providing a remedy to a constitutional breach. This is because it only arises or is exercised when the justice system has erred against a defendant. According to the Criminal Justice (Release from Custody) Special Provisions Act, the Chief Justice of Nigeria or the Chief Judge of a state can only exercise this power when it is demonstrated that detention is unlawful or the person has been detained longer than the length of whatever sentence the person may have received had the person been convicted.[122] In other words, the person being released should not be in detention in the first place at the time the person is being released. With regards to COVID 19

[118] UNODC 'Leaving No One Behind: Protecting people in prisons from COVID-19'UNODC <https://www.unodc.org/nigeria/en/press/leaving-no-one-behind_-protecting-people-in-prisons-from-covid-19.html> ACCESSED 18 January 2022
[119]CFRN 1999 s 35
[120] See – Onyebuchi V FRN & Ors (2007) LPELR-CA/L/358/07; Suleiman& Anor v COP., Plateau State [2008] 8 NWLR (PT.1089) 298
[121] See Criminal Justice (Release from Custody) Special Provisions Act, Cap 79,1990, s 1
[122]ibid

strategies, this power can only be used to expedite action to clean up and decongest the already congested prisons.

Another interesting approach is the call to expand the scope of plea bargain to all states [123] as contained in the Administration of Criminal Justice Act 2015 (ACJA) through domestication of the ACJA and the use of alternative dispute resolution to resolve some criminal cases.[124] These include criminal cases that arise from civil cases between natural persons or involving natural persons. Often, criminal cases arise because parties are unable to resolve what should ordinarily be civil disputes. As is wont to happen in many cases which flood police stations, individuals usually call in the police to intervene and this may end up being escalated to detentions. In such cases, the parties want the police to arrest people and escalate the civil case to a criminal one when Alternative Dispute Resolution (ADR) initiatives, including proper record keeping could have been positively deployed.[125] Incidentally, the new Police Act 2020 promotes this approach through its provisions on promotion of prevention of crime as

[123] Administration of Criminal Justice Act 2015 (ACJA) s 270

[124]See Anoop Kumar & Udai Pratap Singh, ADR In Criminal Justice System In The Backdrop Of Global Pandemic, White Black Legal : The Law Journal, Volume 2 : Issue 1 (June 2020)<https://www.researchgate.net/publication/342365738_ADR_IN_CRIMINAL_JUSTICE_SYSTEM_IN_THE_BACKDROP_OF_GLOBAL_PANDEMIC> accessed 28th January 2022; Diana Awino Orago, "Alternative Dispute Resolution in Criminal Justice System in Kenya" LLM Dissertation, School of Law, Parklands Campus, University of Nairobi 2016<http://erepository.uonbi.ac.ke/bitstream/handle/11295/154149/Final..A.D.R%20Dissertation%20Nov%202020%20(1).pdf?sequence=1> accessed 28 January 2022

[125]Ifeoluwa Adediran 'COVID-19: How police are decongesting prisons – Official' Premium Times, September 16, 2021 <https://www.premiumtimesng.com/news/more-news/485205-covid-19-how-police-are-decongesting-prisons-official.html> accessed 18 January 2022; Tania Sourdin, Bin Li, Donna McNamara (n27) 12

against only detection of crime and its promotion of partnership with communities and the protection and promotion of the fundamental rights of persons.[126]

Standardising Legal Initiatives for Inclusive Justice Delivery

Justice is not meant only for times of crisis. Justice is meant for all times and for everyone. It is most important that citizens are assured during times of crisis that justice will neither take the back seat nor be ignored. Times of crisis are times when everyone should have faith in government and governance. The establishment of government arose, as explained by the social contract theory, as a result of the desire to eliminate the problems and injustices that happen at times of lack of law and order, chaos, crisis and emergency. It is also a recognition that such chaos and crisis can happen at any time or be triggered by seeming justice imbalance that makes it necessary to ensure that the justice system is inclusive and stable for all and at all times. Against this background and drawing from the experience of COVID 19, the following are recommended:

1. ***Constitutional and Civic Literacy:*** Government should make concerted efforts to increase constitutional literacy and civic education. Citizens should have a fair idea at any point in time what their rights and duties are. Access to such information should not be limited to only lawyers or the highly educated members of society. This may require the use of jingles and community platforms, civic emphasisings, Non-Governmental

[126]See Police Act 2020 ss 1, 2 and 4

Organisations (NGOs) to educate the people. Similar to information about constitutional rights and duties, is the need for government to have on ground well-articulated legal and policy positions for all imaginable crisis scenarios. Even when these are developed ad hoc, they should be immediately translated into accessible language and format for citizens. This will help reduce confusion, engender sense of patriotism and reduce lawlessness. Access to such knowledge and confidence in its content, including use of websites and emergency numbers, desk offices at local government offices (including public libraries) will encourage citizens to willingly and actively participate in justice promotion initiatives, thus encouraging access to justice.

2. ***Installing Emergency Numbers***: Government should promote the practice of establishing emergency numbers and well-staffed call centres. Less use of automated responses and more use of human responders will assist in assuring callers that their concerns are being dealt with. Such centres could also be deployed to alert the citizenry of imminent dangers and what may be done to avert the worst cases. This will give individuals the feeling of being cared for by the state and in return evoke a spirit or patriotism and ownership of stake in the nation. It will reduce feelings of helplessness and desperation which are usually contributors to lawlessness. For instance, in the case of accessing

courts for update on ongoing cases, such information should either be freely available or easily accessible on government webpages. People should be informed the extent a crisis, chaos or emergency contacts may affect delivery of justice.

3. ***Free and Adequate Legal Representation:*** It is noteworthy that Nigeria has a legal aids system operating under the Legal Aids Council which provides legal services to indigent members of the public. Unfortunately, they are usually poorly staffed, poorly remunerated and poorly funded. While it may be necessary for government to fund such institution, it will also be helpful for professional organizations like the Nigerian Bar Association to encourage members to provide legal aids services to members of its immediate community. Such services should be recognised by professional organisations. This will encourage professionals to appropriately address paucity of legal practitioners for legal representation cases.

4. ***Mobile Court:*** This is a positive initiative and ought to be promoted. However, clear and unambiguous standards should be set to ensure that justice is done. Parties should be aware of what to expect from mobile courts, have knowledge of the practice and be properly guided. This will help to reduce arbitrary decisions and assure protection of fundamental rights, particularly the right to fair hearing. The standard should be such that justice and

fair hearing are not sacrificed for speedy trial. Establishment of standard and fair practice may also encourage defendants to opt for mobile courts and thus free the regular courts for more complex judicial cases.

5. ***Expand Mandate of Emergency Numbers***. Government should make it a matter of priority to expand the mandate of emergency numbers. There may be no need to have several emergency numbers. However, it could be configured in such a way that one emergency number could be used to explore available options – fire service, legal assistance, report of crime, etc. In this manner, persons in emergency will not have to worry which of the telephone numbers should be called but will just have to call one telephone number and be properly guided by the call centre.

   Call centres could also be established purely for providing information on citizens' rights, duties and how to access constitutional rights and privileges within extant legal framework. Such centres, whether virtual or in-person can, follow the United Kingdom model of citizens' advisory bureau. Similar to the UK Citizens advisory bureau, the centres could help collate information on recurring legal challenges facing citizens. Such data may then be used to develop models to resolve such challenges when they arise in the future.

6. ***Restorative Justice and Other Non-punitive Alternatives***: There have always been calls for alternatives to jail time and reducing punitive approaches to criminal justice. It is now a movement that justice should be restorative, both to the defendant and the victim. This will not only help defendants appreciate the hurt and harm caused, but also save them from the appellation of jail bird and its attendant hassles. For the government, it will save money being expended on caring for prisoners when such persons could have been at home with little or no harm to society. The initiative to decongest courts to reduce incidents of COVID-19 transmission demonstrated that this is a viable alternative that gives defendants opportunities to remain useful to society, less stigmatised and easier to integrate.

7. ***Decongestion of Courts:*** The magnitude of congestion of courts and prisons in Nigeria, without any hope of the numbers reducing indicates an urgent need to explore other options beside prosecution and detention for settling criminal cases. This is necessary as there is need to let the accused know their fate as soon as possible and for victims to get closure. In this regard, it may be necessary for Alternative Dispute Resolution mechanism to be expanded to accommodate criminal cases. These may include use of practices recognised by customs which are not repugnant to natural justice. Example

> is the use of oaths, payment of restitution and rendering of apology for theft, injury, destruction of property, death, etc..[127]

Conclusion

Questions about justice delivery will continue to plague society far beyond times of crisis and particularly, COVID 19. The trick is for government and stakeholders to realise that justice is for all times and accordingly set in place structures, institutions and laws that will assist in cushioning crisis challenges to the justice system. Issues like congestion of courts, poor access to information, scarcity and high cost of engaging legal practitioners, poor civic knowledge etc., will continue to bedevil society and impact negatively on access to justice. However, hope exists for the development of initiatives to counter these challenges as they arise. It is also far better to have these initiatives established and ready for deployment as soon as the issues needing their implementations arise. The COVID 19 pandemic, despite the challenges it brought, has proved positive and useful in showing us a glimpse of the depth of human initiative and availability of options. Drawing from this opportunity, we can explore and standardise mobile courts, access to legal information, use of technology, civic education, use of call centres for legal aids services, ADR and more, in resolving justice challenges. This paper has effectively highlighted these opportunities and calls on scholars to interrogate them for other stakeholders, particularly government. Civil Society

[127] Saylor.org Academy 'The Igbo Indigenous Justice System' < https://learn.saylor.org/mod/book/view.php?id=30522&chapterid=6473 > accessed 22 August 2022

Organisations (CSOs) and media should endeavour to put these opportunities into practice while testing their sustainability.