

Reflections on the Legal Aid Architecture in Nigeria and the Syndrome of Unequal Access to Justice

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ABSTRACT

Equal access to justice for the rich and poor alike is important to the maintenance of the rule of law. The practical actualization of most of the fundamental rights cannot be achieved in a country like Nigeria where millions live below starvation level. In the circumstances of this nature, fundamental rights provisions enshrined in the Constitution are nothing but meaningless jargon to Nigerians living in poverty. What is the value of fair hearing to the poor man who cannot pay summons fee let alone afford the service of a counsel? In a developing country like Nigeria where the illiteracy rate may be as high as 84%, it cannot be doubted that the government and the community must come to the aid of the poor if the administration of justice must have a social relevance. It is therefore essential to provide adequate legal advice and representation to all whose rights are threatened. The paper aims to appraise legal aid as an effective tool in dispensing justice in Nigeria where majority of the populace live below the poverty line. The paper also did a comparative analysis of legal aid systems in other jurisdictions of the world and concludes by proffering recommendations to improve legal aid architecture in Nigeria.

Keywords: Legal Aid, Evolution, Poverty, Comparative Survey, Legal Framework, Challenges.

INTRODUCTION

Legal Aid is the provision of assistance to people unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. Legal aid is also described as a system of providing free advice about the law and practical help with legal matters for people who are too poor to pay for it.¹ Legal aid also refers to free or inexpensive legal advice, assistance or representation provided to those who, because of their financial condition, otherwise would not be able to get.² In essence, legal aid is the provision of free legal services to persons who by reason of their disposable income or circumstances cannot

afford legal services. Ideally, legal aid is usually a country-wide system, which is administered locally from place to place, whereby legal services are rendered to persons who, by reason of little or no income, cannot afford the service of a legal practitioner on their own.³ A developed legal aid system in a country will always serve as a lubricant in the wheel of dispensation of justice, especially in the interest of the poor. The purpose of this paper is therefore to appraise legal aid as an effective tool in dispensing justice in Nigeria where majority of the populace live below the poverty line.

HISTORICAL EVOLUTION OF LEGAL AID

Legal aid has a close relationship with the welfare state, and the provision of legal aid by a state is influenced by attitudes towards welfare. Legal aid is a welfare provision scheme by the state to people who could otherwise not afford counsel from the legal system. Historically, jurists such as Mauro Cappelletti argue that

¹“Definition of Legal Aid” at Cambridge Advanced Learner’s Dictionary, Cambridge University Press, available at www.dictionary.cambridge.org accessed 24 June, 2019.

²“Definition of Legal Aid” at Business Dictionary available at www.businessdictionary.com accessed 15 February, 2020.

³Malemi, E.O. (2006), *The Nigerian Constitutional Law*, Lagos: Princeton Publishing Co, p. 414.

legal aid is essential in providing individuals with access to justice, it is for the enforcement of economic, social and cultural rights.⁴ Though legal aid is a fairly recent global trend from one country to another, its origin is far away rooted in the English legal system.⁵ In England, the right of an indigent person to the aid of the state was recognised far back as 1495 and was later granted by the High Court and Court of Appeal of England, and was later under the Rules of the Supreme Court of England.⁶ Much earlier in Scotland however, a statute of 1424 established the poor people's roll, whereby a person who has a civil cause with a reasonable chance of success, but which had no money to prosecute, qualified for legal aid by reason of poverty and was entitled to have his case conducted gratuitously by a counsel acting for the poor.⁷

Although legal aid in civil proceedings was granted to the poor in England right from the 15th century, however, legal aid in criminal matters was not granted to the poor accused that is standing trial until 1903 under the Poor Prisoners Defence Act 1903. This position remained until 1949 when the Legal Aid and Advice Act 1949 was enacted under the management of Law Society of England and the Law Society of Scotland.⁸ The idea of legal aid in the modern sense owes its origin to the account by Maguire on the arraignment of a litigant called Alice. The account shows that upon arraignment, Alice requested for assistance thus: "Alice can get no justice at all, seeing that she is poor and this Thomas is rich." Her further plea was: "For God's sake, Sir, Justice, think of me, for I have none to help me save God and you"⁹ Expectedly, there were responses to this problem by the people of the early ages, for instance, the Roman Law provided for *Legis Actio* which was the corrective procedure put in place. With time however, this proved to be more useful in defeating justice rather than upholding it.¹⁰ Presently, the legislation that

governs legal aid service in England is the Access to Justice Act, 1999 and its subsidiary legislation.

In the United States of America, the Legal Services Corporation established by the Legal Services Corporation Act 1974 provides legal assistance to persons who are unable to afford the services on their own.¹¹ In Nigeria, legal aid started by legal practitioners rendering legal aid and advice to indigent persons in civil and criminal matters on the ground of compassion *pro bono publico* (that is, for public good). Later on, the Criminal Procedure Act¹² and the Criminal Procedure Code¹³ made provisions for counsel to be assigned free of charge to indigent persons standing trial for a serious or capital offence. Later, the Legal Aid Association chaired by Chief Chimezie Ikeazor, SAN was formed by him and several lawyers in private practice like Chief Debo Akande, SAN and others to provide free legal services to indigent persons.¹⁴ This was the position until calls for a broad public legal aid scheme reach its peak under the Muritala Muhammed/Olusegun Obasanjo military regime, which enacted the Legal Aid Decree¹⁵ and established the Legal Aid Council. The Legal Aid Decree is now known as the Legal Aid Act¹⁶ which is still in force in Nigeria today.¹⁷

LEGAL AID AS AN INDISPENSABLE TOOL FOR DISPENSING JUSTICE IN CONTEMPORARY SOCIETY

The philosophy behind legal aid is that fair trial and justice should not depend on how much money a person has or his connections. Thus, access to court and justice must be available equally to all persons for there to be peace, harmony and happiness in a modern society.¹⁸ In

⁴Regan, F. (1999), *The Transformation of Legal Aid: Comparative and Historical Studies*, Oxford: Oxford University Press, p. 89.

⁵Malemi *opcit* 418

⁶Ibid

⁷Ibid

⁸Ibid

⁹Maguire, J.M. (1923), "Poverty and Civil Litigation", *Harvard Law Review*, vol.36, No.4, at 365-371

¹⁰ See Capperletti, M. (1975) "Towards Equal Justice: A Comparative Study of Legal Aid in Modern

Society." *Cambridge Journals*, pp16-18, available at www.journals.cambridge.org for more discussion of the problem of legal aid

¹¹Malemi, *op-cit.*, 420; Ayanru, A. (2018) "Making Legal Aid and Pro-Bono Count in Administration of Justice in Nigeria" *This Day*, 13 August 2018, available at <https://www.mondaq.com.management>

¹²Cap.C41, LFN 2004.

¹³Cap.C42, LFN 2004

¹⁴Malemi, *op-cit.*, 421.

¹⁵No 56 of 1976

¹⁶Cap.L9, LFN 2004

¹⁷Malemi *op-cit* 423

¹⁸Ibid; see also UNODC (2016): "Global Study on Legal Aid Global Report"- UNODC, available at https://www.undoc.org.documents_, accessed 21/2/2020.

support of this philosophy of Workshop Report (2013),” Widening Access to Justice: Quality of Legal Aid and New United Nations Principles and Guidelines on Access to Legal Aid”, being report of the workshop jointly organized by the United Nations Development Programme, the Ministry of Justice and the National Legal Aid Council of the Republic of Moldova, held at Chisinau, between 25-26 April, 2013. Available at <https://www.undp.org/rbec.docsequal> access to court and justice for all, the International Commission of Jurists at its conference on the Rule of Law in a Free Society held in Delhi in 1959 resolved that:

Equal access to law for the rich and poor alike is essential to the maintenance of the rule of law. It is therefore, essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation who are not able to pay for it.¹⁹

Thus access to justice for everyone depends largely on adequate legal representation, without which a party cannot properly present his case.²⁰ The necessity of justice in any given trial is sacrosanct. A major step at achieving justice is providing equal legal representation for parties in any given case. Hence, legal representation is an express road leading to justice. This remains the hallmark of the decision in the cases of *R v. Joseph Carter*,²¹ *R v. Mary Kingston*.²² In fact, *Oputa JSC in Josiah v. State*²³ succinctly put it thus:

The right to counsel is thus at the very root of, and is a necessary foundation for a fair hearing. The ordinary layman, even the intelligent and educated layman is not skilled in the science of law and he therefore needs the aid and advice of counsel

Justice in its universal conception is nebulous and incapable of precise definition. According to C.K. Allen,²⁴ “No riddle is more difficult to solve, none has more persistently engaged the attention of thoughtful minds, and those who

ignore the difficulties do so out of the abundance of their ignorance.” Notwithstanding the foregoing, the writer still concedes that:

“Incalculable though the variations of subjective opinion may be, it needs no subtle dialectics to demonstrate that there is in man at least an elementary perception of justice, as a form of the right and the good, which in law, save under an irresponsible tyrant, dare flagrantly transgress”²⁵

In this context therefore, *Blacks Law Dictionary*²⁶ defines justice as: “proper administration of the law which jurisprudentially, implies the constant and perpetual disposition of legal matters on disputes to render everyman is due.” Thus, for a meaningful administration of justice, the importance of legal aid cannot be over-emphasised. The safeguarding of this access is through legal education and assistance. A.U. Kalu²⁷ described the situation that: “In a developing country like Nigeria where the illiteracy rate may be as high as 80%, it cannot be doubted that the government and the community must come to the aid of the poor if the administration of justice must have a social relevance.”

The necessity of legal aid as a tool of access to justice in a modern society cannot be over-emphasised. Civilization and complexity in the society have made individuals acquire a new range of substantive rights. When a breach of this right occurs and the victim of such violation cannot seek redress, injustice lingers and becomes unavoidable.²⁸ There are several forms of injustice, it may be abuse of power as seen in the cases of *Tai Solanrin v. Inspector General of Police*,²⁹ *Dele Giwa v. Inspector General Of Police*,³⁰ *Frank Kokori v. General Sanni Abacha & Ors*³¹ and *Akande v. Nigerian Army*.³²

Injustice could also occur in the form of impunity of members of the armed forces or parliamentary

¹⁹“The Rule of Law in a Free Society” Committee Report on the Judiciary, Legal Profession and Rule of Law, p.14.

²⁰Denning, A. (1955) *The Road to Justice*, Stevens and Sons Publishers, p.34.

²¹44 CAR 225.

²²(1945) 32 CAR 183

²³[1988] 1NWL (pt.125) at 140 SC

²⁴Allen, C.K. (1966), *Law in the Making*, (7th ed.), Oxford University Press, p.386.

²⁵Ibid, p.387.

²⁶Garner, B.A. (1979) *Black's Law Dictionary*, (5th ed.), West Publishing Co., p.776.

²⁷Kalu, A.U. (2005) “Socio-Economic Consideration in the Administration of Justice”, being paper presented at the Annual Conference of the Nigerian Association of Law Teachers, (NALT), held at University of Jos, Jos, p.16.

²⁸Malemi, *op-cit.*, p.425.

²⁹(1984) unrep. Suit no M/55/84 Lagos High Court

³⁰(1984) unrep. Suit No m/44/83 of 30/07/1984

³¹(1994) unrep. Suit No FHC/L/CS/8/94

³²(2001) 8 NWLR (pt.714), p.1, CA

agencies. This was clearly illustrated in the case of Director, State Security Service v. Agbakoba.³³ Another form of injustice is unfair denial of bail, torture and criminal punishment without fair trial as seen in the case of FMG v. Ken Saro Wiwa & 8 Ors.³⁴ The case of Governor of Lagos State v. Ojukwu³⁵ further illustrates political, economic and social injustice. The forms of injustice are inexhaustible as they extend to discrimination,³⁶ unwarranted dismissal, misappropriation of another person's property, outright oppression, and other unfair and inhuman conducts.³⁷ To achieve the ends of justice and survive the web of injustice, free public legal aid scheme is a social necessity to ameliorate the suffering of injustice.

POVERTY, A MAJOR FACTOR NECESSITATING THE NEED FOR LEGAL AID

There are several factors that have been identified as grounds to deter an individual from obtaining justice in court. Ese Malemi³⁸ identified the factors to be legal,³⁹ structural⁴⁰ and administrative.⁴¹ Professor Abiola Ojo in his view opined that illiteracy remains a major cause of injustice in the society. He explained that, "democracy is not safe in a country where large majority of the population is illiterate. Worst still they become very strange bed fellows to politicians who make extravagant promises."⁴²

Professor Claude Ake clearly supported this view when he remarked that, "freedom of speech and freedom of the press do not mean much for a largely illiterate rural community

completely absorbed in the daily rigours of the struggle for survival"⁴³ Besides illiteracy which was identified as a cause of injustice, several notable Nigerian authors have identified poverty as a principal cause of injustice in the society, thus making legal aid a necessity. A foremost Nigerian nationalist, Chief Obafemi Awolowo, SAN defined as a condition which exists when a person lacks the means to satisfy the necessities of life.⁴⁴ In sharing this opinion, Chukwudifu Akunne, Oputa JSC, an eminent Nigerian jurist observed that, "many Nigerians are poor at one time or another during their lives, but many Nigerians are poor of all of their lives"⁴⁵

Another eminent Nigerian jurist, Akinola Aguda in examining the problem of poverty said:

The practical actualization of most of the fundamental rights cannot be achieved in a country like ours where millions are living below starvation level. In the circumstances of this nature, fundamental rights provisions enshrined in the Constitution are nothing but meaningless jargon to all those of our people living below or just at starvation level⁴⁶

The jurist further remarked in another lecture that "to think that a very poor person can have a meaningful day in court in the pursuit of his right, real or imaginary, is to live in a fool's paradise"⁴⁷ He said,

Most of the rights entrenched in our constitution are nothing more than empty words to millions of our people who are or whose children are suffering and in some cases dying of malnutrition and other preventable diseases associated with the poor.⁴⁸

³³(1999) 3NWLR (pt.595), p. 314, SC

³⁴(1995) unrep. Suit No OCDT/PH/1/95

³⁵(1986) 1NWLR (pt.18) p.621 SC

³⁶Section 42 of the 1999 Constitution of the Federal Republic of Nigeria, (As Amended)

³⁷Malemi, *op-cit*, 422.

³⁸Ibid

³⁹R v. BANGAZA (1960) 5 FSC 1, LAKANMI v. AG WESTERN STATE (1971) 1 UILR 210

⁴⁰For instance in a military government as demonstrated in BELLO v. AG OYO STATE (1986) 5 NWLR pt.45 p828SC

⁴¹BELLO v. AG OYO STATE, AWOLOWO v. MINISTER OF INTERNAL AFFAIRS (1962) LLR 177, (1966) All NLR 171

⁴²Ojo, A. (1982) *Development of the Executive under the Nigerian Constitution 1960-81*, University Press, p.169.

⁴³Claude, A. (1987) *The African Continental Human Rights*, a paper presented at the International Conference on Human Rights in African Context, Port-Harcourt, June 9-11, 1987.

⁴⁴Awolowo, O. (1981), *Path to Nigerian Greatness*, Fourth Dimension Publishing Co. Ltd. p76

⁴⁵Oputa, C.A. (1989), *Human Rights in the Political and Legal Culture of Nigeria* Idigbe Memorial Lectures, Nigerian Law Publications p66-67

⁴⁶Aguda, A., "Judicial Process and Stability in the Third Republic" *National Concord*. Lagos, Nov.7, 1988, p.7.

⁴⁷Aguda, A. (1986) *A Nigeria Perspective in Law and Justice in Nigeria*, National Institute for Policy and Strategic Studies, Distinguished Lecture Series, 8 October, p.8.

⁴⁸Ibid

The burning question still remains, how can a person who finds it difficult to feed, afford the service of a lawyer when his right has been violated. Better still, put in the words of Oputa JSC,⁴⁹ “what is the value to say, fair hearing, to the poor man, who cannot pay summons fee let alone afford the service of a counsel?” The words of Dr. Akinola Aguda is very instructive when he said, “what fair hearing can a poor person hope to have when he cannot even boast of a square meal a day.”⁵⁰

Thus, the need of a counsel even to the poorest poor man is a necessity in the interest of justice, fairness and equity. Professor H.F. Morris observed that “lay persons without a counsel are always in a mesmerized state of bewilderedness.”⁵¹ The right to a counsel and the need for a person to be represented by a counsel was clearly described by Justice George Sutherland in *Powell v. Alabama*⁵² thus:

Even the intelligent and educated layman lacks both skill and knowledge adequately to prepare his defence even though he had a perfect one. He acquires the guiding hand of a counsel at every step in the proceedings against him. Without it, though he be not guilty he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence how much more is it of the ignorant and illiterate or those of feeble intellect.

It is against this background that the Legal Aid Council was established by the Federal Government of Nigeria in 1976. The unavoidable question remains, has the objectives of the foundation of this Council been achieved? Are the goals of the Council a reality today? It must however be noted that one of the major problems of dispensing legal aid is how to determine the eligibility or otherwise of an applicant for legal aid.

COMPARATIVE SURVEY OF LEGAL AID PRACTICES IN SELECTED JURISDICTIONS

In the 20th century, legal aid has developed together with progressive principles; it has often been supported by those members of the legal profession who felt that it was their responsibility to care for those on low income.

⁴⁹Oputa, *op-cit*, p.68.

⁵⁰Awolowo, *op-cit*, p.77.

⁵¹Morris, H.F., *England Law in East Africa: A Hardy Plant in an Alien Soil*, in Malemi, *op-cit*, p.424.

⁵²(1932) 287 US 45 at 69.

According to Francis Regan, legal aid provision is supply driven, not demand driven, leading to wide gaps between provisions that meet perceived needs and actual demand.⁵³ This section attempts to comparatively study legal aid systems in some countries of the world.

New Zealand

The legal aid system in New Zealand provides government – funded legal assistance to those who are unable to afford a lawyer. Legal aid is available for almost all court actions across all levels of the court system, this includes criminal charges, civil issues, family issues, appeals and Waitangi Tribunal claims. Legal aid in New Zealand is government funded to pay for legal help for people who cannot afford a lawyer. It is an important part of New Zealand’s justice system.⁵⁴ It helps to prevent denial of justice on the basis of inability to afford a lawyer. People who get legal aid may have to pay a user charge and repay part or all of their legal aid costs.⁵⁵ Public Defence service lawyers defend people in criminal charges who are eligible for legal aid.⁵⁶

Canada

In Canada, legal aid is provided at the provincial level of government. For example, Legal Aid Ontario provides legal services for residents of Ontario, the Legal Service Society provides it to residents of British Columbia, and Commission des Service Jurisdiques does the same in Quebec.⁵⁷

The Canadian Bar Association is also playing a remarkable role in the advancement of legal aid in Canada and increased resources dedicated to that goal.⁵⁸ The Federal Government of Canada likewise supports the provinces and territories in the provision of legal aid.⁵⁹ For example, \$111.9million is given to the provinces for legal aid in criminal matters, \$11.5million for immigration and refugee legal aid, \$1.65 million

⁵³Regan, *op-cit*, p.90.

⁵⁴“Legal Aid Service in New Zealand”, available at www.justice.govt.nz accessed 20 March, 2020.

⁵⁵Ibid

⁵⁶Ibid

⁵⁷Currie, A. (1999) *Legal Aid Delivery Models in Canada: Past Experience and Future Developments*, Faculty of Law, University of British Columbia Lecture.

⁵⁸Ibid

⁵⁹Ibid

for the management of court-ordered counsel in federal prosecution cases, et cetera.⁶⁰

Hong-Kong

This is a unitary jurisdiction, Hong Kong provides legal aid solely through the Legal Aid Department which is in turn overseen by the Legal Aid Services Council.⁶¹ Administratively, the Legal Aid Department was under the Administration Wing of the Chief Secretary's office.⁶² In 2007, it was moved to the Home Affairs Bureau, which chiefly oversees cultural matters and local administration.⁶³

This was heavily criticized by the opposition pro-democracy camp for jeopardizing neutrality of the provision of legal aid. They voted en bloc against the whole package of reorganization of policy bureaus, of which the transfer of Legal Aid Department was part.⁶⁴

India

Article 39A of the Constitution of India provides for equal justice and free legal aid. The State shall secure that the operation of the legal aid system provides justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.⁶⁵ It must be emphasised that free legal service is an alienable element of 'reasonable, fair and just' procedure, for without it, a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.⁶⁶

In the civil side, Order XXXIII R.18 of the Code of Civil Procedure 1908 provided that the state and central governments may make supplementary provisions as it thinks fit for providing free legal

services to those who have been permitted to sue as an indigent person. The Legal Services Authorities Act, 1987 enacted in India also created a drastic improvement in the provision of legal services to Indians.⁶⁷

United States of America

A number of delivery models for legal aid have emerged in the United States. The Legal Services Corporation was authorized at the federal level to oversee these programs.⁶⁸ Lawyers are employed by levels of government on salary solely to provide legal assistance to qualifying low-income clients, this is called the staff attorney model.⁶⁹

There is also the judicature model, private lawyers and law firms are paid to handle cases from eligible clients alongside cases from fee-paying clients, much like doctors are paid to handle mediocre patients in the U.S.⁷⁰

The community legal clinic model comprises non-profit clinics serving a particular community through a broad range of legal services and provided by both lawyers and non-lawyers, similar to country-health clinics. Defendants in criminal matters are also guaranteed legal representation both to the charges and in the form of public defenders as well.

For example, when Detroit mayor Kwame Kilpatrick and his father were tried on charges of corruption, they claimed to be indigent, and their lawyers were paid more than a million dollars of public funds.⁷¹

Denmark

Article 47 of the Charter of Fundamental Rights of the European Union provides that legal aid will be made available to those who lack sufficient resources, in so far as such aid is necessary to ensure effective access to justice. In Denmark, applicants must satisfy the following criteria to receive legal aid for civil

⁶⁰Ibid

⁶¹Wong, Shin-chon, "Hong-Kong's Civil Legal Aid System", available at hub.hku.hk/bitstream accessed on 10 April, 2020.

⁶²Ibid.

⁶³Legal Aid Services Council (2006) *Legal Aid in Hong Kong* available at www.lasc.hk/eng/publications/legal-aid.html accessed 10 April, 2020.

⁶⁴Ibid.

⁶⁵Regan, *op-cit*, p.115.

⁶⁶*Hussainara Khatoon & Ors v. Home Secretary, State of Bihar (1979) AIR 1369, 1979 SCR (3) 532* available at <http://indiankanoon.org/doc>, accessed on 18 April, 2020.

⁶⁷Ibid.

⁶⁸United States Department of Justice, "Civil Legal Aid 101" available at www.justice.gov/atj/civil-legal-aid-101 accessed 10 October, 2019.

⁶⁹Ibid.

⁷⁰Houseman, A.W. and Perle, L.E., (2003) *Securing Equal Justice for All: A Brief Civil History of Civil Legal Assistance in the United States*. Centre for Law and Social Policy. Pp. 10&29.

⁷¹Kwame Kilpatrick's Legal Bill to Public: S813806, *Lansing State Journal*, 13 February, 2014,p.3A.

cases Kr. 289,000 (\$50,000) a year and the claims of the party must seem reasonable. In respect to criminal cases, the convicted will only have to cover the costs if he or she has a considerable fixed income – this is recidivism.⁷²

England and Wales

Legal Aid was originally established by the Legal Aid and Advice Act of 1949.⁷³ Legal aid in England and Wales cost the tax payers £2bn a year - a higher per capital spent than anywhere else in the world – and was available to around 29% of adults.⁷⁴

Legal Aid in England and Wales is administered by the Legal Aid Agency until 31 March 2013 when it was transferred to the Legal Service Commission, and available for most criminal cases and many civil cases. Exceptions include libel and cases associated with the running of a business.

Family cases are also often covered.⁷⁵ Criminal legal aid is generally provided through private firms of solicitors and barristers in private practice. A limited number of public defenders are directly employed by the Legal Aid Agency in the Public Defender Service offices; they provide advice in police stations and Magistrate and Crown courts.

The provision of legal aid is governed by the Access to Justice Act of 1999 and supplementary legislation, most recently the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Germany

The circumstance of legal aid is a bit different in Germany. In civil cases including administrative, constitutional and social cases, assistance under the Legal Aid Scheme Act is given, this extends to advice and, where necessary representation. In criminal cases and cases involving administrative offences, only advice but no representation is given.⁷⁶

⁷²Regan, *op- cit*, p.119.

⁷³Jon Robins, (2009) “Legal Aid 21st – Century Britain” *The Guardian*, London, 12 March, p.5

⁷⁴Ibid.

⁷⁵“Direct Access with a Barrister” available at www.salegal.co.uk accessed 16 March, 2020

⁷⁶European Judicial Network in Civil and Commercial Network, *Legal Aid – Germany* European Commission, 22 March, 2005 available at <http://ec.europa.eu> accessed 22 March, 2020.

OVERVIEW OF STATUTORY FRAMEWORK FOR LEGAL AID IN NIGERIA

In Nigeria, legal aid started by legal practitioners rendering legal aid and advice to indigent persons in civil and criminal matters, on the ground of compassion pro bono public (that is, for public good). There are, however legal provisions in the country’s statute books for legal aid in Nigeria. These statutes include mainly:

The Nigerian Constitution

The Legal Aid Act

The Criminal Procedure Act

The Criminal Procedure Code

The Supreme Court Act

The Court of Appeal Act

The High Court Civil Procedure Rules

There are also other laws establishing legal aid agencies, especially state laws. These laws will be examined briefly

The Nigerian Constitution

The Constitution of the Federal Republic of Nigeria remains the grundnorm in the Nigerian legal system. It is the basis for all statutory provisions for legal aid in Nigeria.

It is the supreme law from which other sources of law in Nigeria derive their validity. Section 36(6)(b) and (c) of the Constitution⁷⁷ provide that every person who is charged with a criminal offence shall be entitled to the following rights:

- Be given adequate time facility to prepare for his defence; and
- Defend himself in person or by a legal practitioner of his own choice.

The Constitution further makes a clearer and fundamental provision supporting legal aid in Section 46(4)(b)(i) and (ii)⁷⁸ that:

(4) The National Assembly-

⁷⁷Constitution of the Federal Republic of Nigeria 1999 (As Amended)

⁷⁸ Ibid. see generally, Workshop Report (2013),” Widening Access to Justice: Quality of Legal Aid and New United Nations Principles and Guidelines on Access to Legal Aid”, being report of the workshop jointly organized by the United Nations Development Programme, the Ministry of Justice and the National Legal Aid Council of the Republic of Moldova, held at Chisinau, between 25-26 April, 2013. Available at <https://www.undp.org/rbec.docs>

(b) Shall make provisions-

(i) For rendering financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view of enabling him to engage the services of a legal practitioner to prosecute his claim, and

(ii) For ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

Thus, legal aid is clearly and expressly provided in the Nigerian constitution.

The Legal Aid Act⁷⁹

The Legal Aid Act is the main statute that makes direct provision for rendering of free legal services to indigent citizens of Nigeria. The statute created the Legal Aid Council as the statutory agency of the Federal Government of Nigeria saddled with the responsibility of providing legal aid, legal advice and legal representation when necessary to anyone who cannot afford the service of a legal practitioner.

The Legal Aid Council administers the Legal Aid Act. The Council is headed by a chairman with a Director-General as the Chief Executive Officer responsible for the day to day running of the affairs of the Council.⁸⁰ The Act further provides that the Council shall not in any way be liable to pay costs, to any party in any suit, in respect of which it is giving legal aid to any person, howsoever, awarded against a person on legal aid.⁸¹

The Act also empowers the Council to maintain a list of legal practitioners willing to act for persons receiving legal aid for different purposes, for different courts and for different districts.⁸² In furtherance of the objectives of the Legal Aid Council as provided in the Legal Aid Act, the Council can make use of legal practitioners serving in the National Youth Service Corps to offer their services to the Council free of charge.⁸³

⁷⁹Legal Aid Act, Cap.L9, LFN 2004; Frynas, J.G. (2001), "Problem of Access to Court in Nigeria :Result of a Survey of Legal Practitioners", Social and Legal Studies, Vol.10, No. 3, available at <https://www.researchgate.net/publication>

⁸⁰Section 3 of the Legal Aid Act

⁸¹Section 9(4), *ibid*

⁸²Section 13, *ibid*

⁸³Section 14, *ibid*

The Criminal Procedure Act⁸⁴

This statute is operative in the Southern part of Nigeria. It regulates the procedure for criminal trial, it has limited provision for legal aid. Section 352 of the Act provides as follows:

Where a person is accused of a capital...if the accused is not defended by legal practitioner, the court shall, if practicable, assign a legal practitioner for his defence

This provision clearly reveals that the Criminal Procedure Act supports the provision of legal aid to an accused person standing trial. There are however some limitations in the provision of the legal aid, as envisaged in the Act. The first limitation relates to the nature of the offence. The Act only provides that an accused entitled to legal aid must be one standing trial for capital offence, and not other nature of offences. The second limitation is that it is only the court that can assign such accused person a legal practitioner. The provision of Section 352 of the Criminal Procedure Act never foresaw a situation where any person, body, organization or government agency is duty bound to assign or be assigned to defend the defenceless accused person standing trial for capital offence, except the court.

The phrase 'if practicable' used in the Criminal Procedure Act appears to be the third limitation. The provision of the law did not make it compulsory nor make the court compellable to assign a legal practitioner to an accused standing trial for a capital offence, the court can only do so if it is 'practicable'.

The Criminal Procedure Code⁸⁵

The Criminal Procedure Code is operative in the Northern part of Nigeria. It regulates the procedure for criminal trial, it has limited provision for legal aid. Section 186 of the statute provides:

Where a person is accused of an offence punishable with death, if the accused is not defended by a legal practitioner, the court shall assign the service of a legal practitioner for his defence.

This provision appears very clear and straight. There is a mandatory duty on the court in Northern Nigeria to assign a legal practitioner to any accused person standing trial for any offence punishable with death. The question to

⁸⁴Criminal Procedure Act, Cap.C41, LFN 2004

⁸⁵Criminal Procedure Code, Cap.C42, LFN 2004

ask however is, is there a contradiction between the provision Section 36(6) (b) of the 1999 Constitution of the Federal Republic of Nigeria, (As Amended) which provides that Every person who is charged with a criminal offence shall be entitled to defend himself in person or by, legal practitioners of his own choice and the provision of Section 186 of the Criminal Procedure Code which states, Where a person is accused of an offence punishable with death, if the accused is not defended by a legal practitioner, the court shall assign the service of a legal practitioner for his defence?

The Supreme Court Act⁸⁶

The Supreme Court Act in Section 28 provides in respect of proceedings at the Supreme Court as follows:

The Supreme Court may at any time assign counsel to the appellant in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him obtain that aid.

The above provision of the Supreme Court Act clearly states the essence of legal aid on proceedings in the Supreme Court. The court can, suo moto assign a counsel to an appellant if it appears in the opinion of the court that such is desirable in the interest of justice. Thus, the Supreme Court Act gives a wider power to the court to assign legal practitioner to an appellant in the interest of justice. This, by implication, connotes that the appellant need not lack a legal practitioner in the first place before the court can assign him a counsel, perhaps a more competent one, to continue the proceedings in the interest of justice.

The Court of Appeal Act⁸⁷

The Court of Appeal Act also has provision for legal aid for its proceedings or appeals. Section 26 of the Act provides:

The Court of Appeal may, at any time assign counsel to an appellant in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court of Appeal, it appears desirable in the interests of justice that the appellant should have legal assistance, and that

he has not sufficient means to enable him obtain that assistance.

This provision of the Court of Appeal Act is very similar to the provision of Section 28 of the Supreme Court Act.

High Court (Civil Procedure Rules)

Some High Courts of various states have provisions for legal aid in their Civil Procedure Rules. A typical example is in Order 47 of the High Court of Lagos State (Civil Procedure) Rule 2004 where the Chief Judge of Lagos State is empowered to grant legal aid to an applicant who qualifies for it.

State Laws Establishing Legal Aid

Some states have been establishing public agencies or bodies to render legal assistance at state level to indigent persons. An example is Lagos State which has established the Directorate of Citizens Rights, Office of the Public Defender and the Citizens Mediation Centre, to provide various legal assistance, and sometimes to arbitrate, conciliate and mediate between parties who apply to the agencies for legal services.⁸⁸ Rivers state, Ogun state and other states are following this pattern.

BASIC CHALLENGES OF LEGAL AID COUNCIL IN NIGERIA

Since the formation of the Legal Aid Council, the lofty objective of the Council remains rendering legal assistance to indigent persons in need of legal aid across the country. In working towards the realization of these objectives, the Council has faced numerous problems, some of which include:

- The Council is permitted to give legal assistance to a narrow extent. This is clearly provided in the Second Schedule of the Legal Aid Act where the areas in which the Council can render legal services include
- Murder
- Manslaughter
- Maliciously causing grievous bodily harm

⁸⁶Supreme Court Act, Cap.S15, LFN 2004

⁸⁷Court of Appeal Act, Cap.C36, LFN 2004

⁸⁸Malemi, *op-cit*, p. 424; Okogbule, N.S.(2005), "Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects", *Sur. Rev. Inter. direitos Human*, Vol.2, No.1, available at www.scielo.br/scielo accessed 21 April, 2020; Gayle, N.B.(2013) "What Ensures Effective State-Funded Legal Aid System in Jamaica", available at <https://.luc.edu.documents> accessed 21/4/2020.

- Assault occasioning actual bodily harm
- Common assault
- Affray
- Stealing
- Rape
- Aiding, abetting, counseling, procuring, being an accessory before or
- After the fact, attempt or conspire to do any of the listed offences.
- Civil claims in respect of accident and civil claims to cover breach of Fundamental Rights guaranteed under Chapter IV of the Constitution.
- Another challenge faced by the Legal Aid Council is inadequate funding. The Council relies largely on fund from the Federal Government which may not be adequate in running the affairs of the Council in relation to the actualization of its statutory objectives.
- The Council is also faced with the problem of inadequate facilities to carry out its services, and in the absence of adequate facilities, there cannot be proper service delivery.
- The problem of inadequate personnel in the Legal Aid Council is also another challenge faced by the agency. The volume of cases that needs legal aid outnumbers the number of lawyers in the Legal Aid Council.
- Little or no participation by prominent and more experienced legal practitioners in the legal aid system is also another challenge. This is partly due to unattractive remuneration or the bureaucracy involved or total lack of interest in pro bono service.
- The fair hearing clause of the Nigerian Constitution provides that an accused should have a legal practitioner of his own choice. Counsel under the Legal Aid scheme are however, chosen by the Council for the accused. Thus, the accused person or litigant has little or no influence of choice in respect of counsel assigned for him. It is only the wealthier litigants that seem to enjoy the fair hearing clause of the Nigerian Constitution, and poor ones appear to be without choice.
- The difficulty in reaching those in actual need of legal aid is another major problem of the Legal Aid scheme. The Legal Aid

Council lacks nearness to the people. Most of their offices are located at the Federal or State capitals, and their services and addresses are hardly advertised. This obviously leads to unawareness on the part of the people of the existence of the Council and services. The Council relies mainly on application from persons seeking aid, references from courts, police and prisons.

RECOMMENDATIONS FOR A BETTER LEGAL AID SYSTEM IN NIGERIA

It is no doubt that the aims and objectives of the Legal Aid Council is so high, thus to achieve these aims, some services must be put in place to enhance the performance of the Council. It is only in an atmosphere of improved performance of the Legal Aid Council that the achievements of the Council can be laudable in providing free legal services to the masses. The Nigerian legal aid system requires an urgent development for it to meet international standard. Some of the factors that will help improve the services of the Council include:

- There should be an increased and regular funding for the legal aid scheme, not only by the government but by philanthropic bodies and persons within and outside Nigeria.
- The Legal Aid Council should not depend largely on the services of external legal practitioners but adequate staff should be employed with a lucrative salary structure and a good condition of work.
- There is the urgent need to amend the Legal Aid Act to widen the scope of services rendered by the Legal Aid Council. This can only be done by increasing the number of proceedings in respect of which legal aid may be given.
- It is a major problem that the Legal Aid Council lacks nearness to the people, especially those who truly need the service of the Council. Therefore it is recommended that the Legal Aid Council should provide more offices and meeting centres in all local government areas in the country. This will certainly make the Council nearer to the people, and more citizens will benefit from the services rendered.
- There should be constant public enlightenment campaign through the mass media to create awareness of the existence of the scheme, its scope and services. Public and private media

organizations should donate time to promote the services of the Legal Aid Council.

- The mass media should design programmes to constantly educate people on their rights and duties under the law, and how such rights can be defended when violated; not resorting to self help or jungle justice.
- It is also a recommended idea that adequate remuneration should be paid to external lawyers who are rendering legal services on the scheme. The rate paid as appearance fee for legal practitioners in private practice should be commensurable with the appearance fee for lawyers in the scheme.
- The use of younger lawyers and lawyers in the National Youth Service Corps scheme for all forms of cases in the legal aid scheme should be discouraged. Minor jobs should be handled by new lawyers for a start to enable them learn, while experienced lawyers should be given the serious matters which attract stiff penalties.⁸⁹

CONCLUDING REMARKS

An attempt has been made in this paper to examine the role of legal aid in the effective dispensation of justice and the overall administration of justice system in Nigeria. The foregoing has shown that the concept of law and justice will be more meaningful to Nigerians if there is a standard and easily accessible legal aid system in the country, especially for the large population living below the poverty line. The development of legal aid system in Nigeria will further enhance equal access to justice for Nigerians.

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⁸⁹*Udofia v State* (1988) 3NWLR (pt.84), p.53, SC; *Udo v State* (1988)3 NWLR (pt82),p.316, SC.

Reflections on the Legal Aid Architecture in Nigeria and the Syndrome of Unequal Access to Justice

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