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## PRESENTATION



***Sur – International Journal on Human Rights*** is a biannual publication that presents an analytical and balanced standpoint on human rights in Southern Hemisphere countries. With the aim to strengthen the South-South and the South-North dialogue among human rights activists, scholars and UN officials, this journal promotes a critical debate on several issues related to the theme. It breaks away from a pseudo-consensus and opens up spaces to improve the quality of this discussion. It therefore invites dissent, since we believe that a consistent human rights doctrine will only be put into place after a wide-ranging exchange of ideas.

We firmly believe that the information that is being produced must be widely publicized and, for this reason, this journal is issued in three languages (English, Portuguese and Spanish). Approximately 6,000 copies of the first two issues have been distributed free of charge in over 100 countries and, to ensure an extended readership, we have made an unabridged version available at <[www.surjournal.org](http://www.surjournal.org)>, in the three languages.

For this edition, papers have been submitted from thirteen countries (Argentina, Brazil, Cameroon, Chile, India, Ireland, Namibia, Nigeria, Switzerland, Tanzania, Uganda, United Kingdom, and United States). After a selection by an International Editorial Board, whose members are human rights scholars, specialists and UN officials, we are publishing eight contributions, one of which reports on a research project. The subject matters dealt with are: security and human rights; trade and human rights; access to justice on domestic and international levels; and land reform.

Two papers contributed by participants of the Knowledge Development Group, organized by **Sur** in April 2005, focus on the subject of **trade and human rights**. Caroline Dommen discusses mechanisms that, by protecting human rights, actually favor the trade practices in which they are inserted. Carlos Correa depicts the progresses made in the

process to lend more flexibility to the TRIPS Agreement for medical drugs, and shows how the Doha Declaration and the 2003 Decision of the TRIPS Board are insufficient to ensure a reduction in prices and the negotiation of voluntary licenses.

Tracing a bridge between **security and human rights**, the article of Bernardo Sorj deals with the concept of human security applied to Latin American problems.

Four articles – contributed by Alberto Bovino, Nlerum S. Okogbule, Maria José Guembe and José Roberto Cunha – discuss different aspects concerning **access to justice**, on domestic and international planes. From an international perspective, Bovino dwells on the peculiarities of evidence evaluation conducted by the Inter-American Court of Human Rights, underlining the flexibility shown by this jurisdictional body in dealing with grievous infringements of rights. Okogbule weighs the specific obstacles hampering access to justice in the Nigerian context. Guembe discusses the decision of the Supreme Court of Argentina, which deemed unconstitutional the amnesty laws that benefited military personnel involved in violations of human rights during the dictatorship. Cunha presents the results of his survey among magistrates in the state of Rio de Janeiro, Brazil, as to the extent of their familiarity with and their actual use of international law in issues involving human rights.

Land reform in Namibia is the theme of the text by Nico Horn, who considers the implications of the colonizing process and custom-law.

Although very varied in their themes and approaches, all these papers share a common point of departure – the contextualization of human rights – attempting to contribute to the reconstruction of these rights, with a view at their implementation, and to ensure a better coverage of local and regional demands.

We are wrapping up this issue with a summary of the plan of action submitted by the High Commissary for Human Rights, Louise Arbour, who proposes mechanisms to increase the effectiveness of human rights protection in the several UN member countries.

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#### ABSTRACT

The article examines the importance of access to justice as an essential instrument for the protection of human rights in Nigeria and demonstrates that it is only when an individual has access to courts that his fundamental rights can be enforced. It then looks at the reality of the Nigerian situation and posits that there are a number of obstacles to the realization of access to justice in the country. These obstacles, such as undue delay in the administration of justice, high cost of litigation, reliance on technical rules, *locus standi*, and illiteracy are then examined in turn, in validation of the proposition. Finally, it inquires as to the prospects for improvement of access to justice in Nigeria and opines that if mechanisms such as judicial reforms and resort to alternative dispute resolution mechanisms are encouraged and properly put in place, with less emphasis on technical rules, and if the Legal Aid Scheme is strengthened, there would be meaningful access to justice which will impact positively on the quest for the protection of human rights in the country. [Original article in English.]

#### KEYWORDS

Nigeria – Access to justice – Judicial reform – Human rights

# ACCESS TO JUSTICE AND HUMAN RIGHTS PROTECTION IN NIGERIA: PROBLEMS AND PROSPECTS

Nlerum S. Okogbule

The political and constitutional development of Nigeria has been intertwined with the quest for the promotion and protection of human rights in the country. From the pre-independence constitutional conferences,<sup>1</sup> through the First and Second Republics<sup>2</sup> and the various military dispensations, to the present democratic government,<sup>3</sup> human rights questions have received merited attention in legal and political discourse. There has been a sustained struggle for the protection of the human rights of individuals, groups and communities in Nigeria.

The Willinck Commission<sup>4</sup> and the Oputa Panel<sup>5</sup> are eloquent testimonies of this concerted effort to promote and protect human rights and justice in the country. While the purpose of the former was to assuage the feeling of marginalization by the minority groups in the country during the colonial era, the Oputa Panel examined instances of human rights abuses from 1<sup>st</sup> January 1984 to 28 May 1999.<sup>6</sup> Although the report of the Oputa Panel was eventually not released for public knowledge,<sup>7</sup> much less implementation, the point remains that its very constitution signaled the concern of the government to correct the mistakes of the past in respect of human rights abuses. While these formalistic approaches can easily be mentioned, the same cannot be said of the actual implementation of mechanisms designed to facilitate the realization of basic human rights.

This is because there is a wide gulf between official pronouncements of respect for human rights and their actual implementation. The explanation for this appears to be that there still exists a number of substantive and

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*See the notes to this text as from page 109.*

procedural obstacles or impediments that not only inhibit the actual implementation of such measures, but preclude the masses in general from having access to justice in Nigeria.

The question is then what are these impediments and how can they be surmounted to guarantee access to justice for the vast majority of Nigerians? Are there any in-built legal mechanisms that can be deployed to ensure the attainment of access to justice in the country? What has been the response of successive governments to the quest for the enforcement of basic rights through increased access to justice?

This paper purports to examine these questions and to chart a new course in the quest for the promotion and protection of human rights in Nigeria through enhanced access to justice. We will first discuss the concept of access to justice and its relationship with human rights, before proceeding to examine the various substantive and procedural obstacles conspiring against effective access to justice.

The concluding part of the paper will deal with how the legal system can be made more responsive to the yearnings and aspirations of Nigerians by guaranteeing that individuals and groups will have access to justice in the country, and consequently enhance human rights protection.

## Conceptual framework

Access to justice can be looked at from two main perspectives: the narrow and the wider senses. In the narrow sense of the term, it can be said to be co-extensive with access to the law courts while in the wider connotation it embraces access to the political order, and the benefits accruing from the social and economic developments in the state.<sup>8</sup>

One may therefore say that, generally speaking, access to justice implies access to social and distributive justice. It is however important to underscore the point that these perspectives are not necessarily disconnected since the extent to which one can have distributive justice in any system is largely determined by the level and effectiveness of social justice in the country. The consequence of this is that any discussion of one aspect of the concept will necessarily entail a reference to one or more components of the other. This is because without access to justice, it is impossible to enjoy and ensure the realization of any other right, whether civil, political or economic. Thus, while this paper will emphasize the concept from the narrow perspective, the wider conception of the term will also be incorporated in the analysis.

Bearing this in mind, one may therefore say that access to justice simply refers to the substantive and procedural mechanisms existing in any particular society designed to ensure that citizens have the opportunity of seeking redress



for the violation of their legal rights within that legal system. It focuses on the existing rules and procedures to be used by citizens to approach the courts for the determination of their civil rights and obligations.

It entails more. It has been said that access to justice is not limited to the procedural mechanism for the resolution of disputes but includes other variables like the physical conditions of the premises where justice is dispensed, the quality of the human and material resources available thereat, the quality of justice delivered, the time it takes for the delivery of justice, the moral quality of the dispenser of justice, the observance of the general principles of the rule of law, the affordability of the cost of seeking justice in terms of time and money, the quality of the legal advisers that assist the litigants, the incorruptibility and impartiality of operators of the system.<sup>9</sup>

It is therefore apparent that access to justice is a charged concept that embraces the nature, mechanism and even the quality of justice obtainable in a society as well as the place of the individual within this judicial matrix.

It is also important to underscore the fact that access to justice is undeniably an important barometer for assessing not only the rule of law in any society but also the quality of governance in that society. This brings to focus the present refrain about transparency, accountability and good governance as an effective panacea for socio-economic development.<sup>10</sup>

While justice itself is an elusive concept,<sup>11</sup> it can loosely be said that it implies equity and fairness; and for there to be meaningful access to justice, there must be some element of fairness and equity in a system to guarantee the realization of basic fundamental rights.

Moreover, to enhance access to justice in any society it is necessary for certain basic infrastructures to be put in place and the requisite number and quality of the personnel involved in the scheme.

For instance, where the courts are not sufficiently manned, or manned by men and women who are morally depraved, then such a State can hardly guarantee social justice to its citizens. Indeed, corrupt judicial officers may very well act as serious impediments to the attainment of justice even where the infrastructures and legal instruments are well-wrought and structured.<sup>12</sup>

### **Interface between access to justice and human rights protection**

The relationship between access to justice and human rights protection stems from the fact that it is only when individuals have access to the courts that they can espouse and seek for the protection of their basic rights. In other words, the legal and institutional structures existing in a system may be such as to preclude the citizens from having access to the courts, who are therefore

unable to seek for the enforcement or protection of their basic rights.

While some of these legal and institutional mechanisms may have been put in place to achieve particular objectives, they may indeed constitute formidable obstacles to the promotion and protection of human rights.

Yet other obstacles may be traceable to the structure and composition of the political and economic systems operative in a given country. In the case of Nigeria, it does appear that a combination of the obstacles in the first and second categories has led to a systemic inability of the legal order to guarantee access to justice in the country. The importance of this second class of obstacles stems from the fact that for a third world country such as Nigeria, where the level of illiteracy is unacceptably high, and the conditions of existence extremely difficult for people to eke out a living, issues concerning human rights protection necessarily take a secondary position in the scheme of things.

Professor Claude Ake put the importance of these obstacles in their proper context and perspective when he observed as follows:<sup>13</sup>

*For reasons which need not detain us here, some of the rights important in the West are of no interest and no value to most Africans. For instance, freedom of speech and freedom of the press do not mean much for a largely illiterate rural community completely absorbed in the daily rigors of the struggle for survival... if a Bill of Rights is to make sense, it must include, among others, a right to work and to a living wage, a right to shelter, to health, to education. That is the least we can strive for if we are ever going to have a society which realizes basic human rights ... in Africa, if liberal rights are to be meaningful in the context of a people struggling to stay afloat under very adverse economic and political conditions, they have to be concrete. Concrete in the sense that their practical import is visible and relevant to the conditions of existence of the people to whom they apply. And most importantly, concrete in the sense that they can be realized by their beneficiaries.<sup>14</sup>*

Indeed, to a large majority of citizens, issues of human rights protection appear to be luxuries that they can hardly afford.<sup>15</sup> The result is that it is often seen as an elitist past time designed to attract attention, even when the underlying objective is the promotion of corporate good.

### *Factors inhibiting access to justice in Nigeria*

A number of obstacles conspire against access to justice in Nigeria. While some of these obstacles are substantive in nature, others are procedural and yet others have their roots in the present political and economic system in the country. We shall here examine some of these factors to see how they have continued to inhibit access to justice in Nigeria.

## Delay in the administration of justice

That there is inordinate delay in the administration of justice in Nigeria is a pedestrian statement. What is however difficult to understand is how Nigerians have been able to live with this phenomenon for several decades without proffering a lasting solution to it. Very often, we see ordinary cases of unlawful termination of employment or even those for the enforcement of fundamental rights lasting between three to five years or even more. A number of circumstances could give rise to this delay: lawyers writing letters of adjournment of cases, inability of judges and magistrates to deliver judgments on time, failure of the police or prison authorities to produce accused persons in court for trial, the rule that once a magistrate or judge is transferred and a new one takes over a case, it has to start *de novo*, etc.<sup>16</sup>

The bottom line is that today it has almost become an accepted fact in Nigeria that cases must last several years in court before they are concluded.<sup>17</sup> Under such circumstances, citizens would naturally be reluctant to initiate actions for the enforcement of their basic rights.

There is no doubt that such delays not only erode public confidence in the judicial process but also undermine the very existence of the courts (see Oputa, *op. cit.*, note 8). This is in spite of the fact that speedy trial is guaranteed by Article 36 (paragraph 1) of the 1999 Constitution which 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”.<sup>18</sup> In the same vein, Article 36 (paragraph 4) of the Constitution provides that whenever any person is charged with a criminal offense, he shall be entitled to a fair hearing within a reasonable time by a court or tribunal.

Unfortunately, the Constitution does not define the meaning of the expression “within a reasonable time” as used in these subsections. The Supreme Court however had cause to define this phrase in the case of *Gozie Okeke v. The State*.<sup>19</sup> In his judgment, Justice Ogundare held that:<sup>20</sup>

*The word “reasonable” in its ordinary meaning means moderate, tolerable or not excessive. What is reasonable in relation to the question whether an accused has a fair trial within a reasonable time depends on the circumstances of each particular case, including the place or country where the trial took place, the resources and infrastructures available to the appropriate organs in the country. It is, therefore, misleading to use the standard or the situation of things in one or a particular country to determine the question whether trials of criminal cases in another country*

*involves an unreasonable delay ... A demand for a speedy trial, which has no regard to the conditions and circumstances in this country, will be unrealistic and be worse than unreasonable delay in trial itself.*

His Lordship went further to state that in ascertaining whether the trial of an accused person was held within a reasonable time, the following four factors are to be considered, namely, “the length of the delay, the reasons given by the prosecution for the delay, the responsibility of the accused for asserting his rights and the prejudice to which the accused may be exposed”.<sup>21</sup>

Nevertheless, it is clear that any trial which lasts more than three to four years can hardly be said to be “within a reasonable time”. There are many causes of delay in the judicial process: some of these are endemic in the system like highly technical and complicated rules of procedure, while others are caused by operatives of the system, those who serve court processes, the lawyers who ask for unending adjournments of cases, and judges who lack the virtue of promptness (see Oputa, *op. cit.*, p. 162).

While it may be conceded that some delay may be unavoidable in civil or criminal proceedings, since the parties are to be given “adequate time and facilities”<sup>22</sup> for the preparation of their cases, it becomes offensive and injurious to the due administration of justice when delay is inordinate. In this connection, the courts should consider seriously the issue of applications for adjournment of cases, and it may be suggested that adjournments designed to aid the due process of litigation should be considered, while those dictated by sheer laziness or a failure to grasp the real issues in dispute should not be entertained. This is because the court has a discretion to grant or refuse an adjournment.<sup>23</sup>

However, even as we insist on the desirability of speedy disposal of cases, one must bear in mind the need to give all parties the opportunity to present their cases before final decision by the court. As Justice Mikailu pointed out in the case of *Governor of Ekiti State and 4 Others v. Prince James Osayomi*:<sup>24</sup> “Every party is entitled to a fair hearing and there should be no over speeding and no stampeding in order to enable the trial court arrive at a just decision. Justice delayed is justice denied but justice rushed may result into justice being crushed”.<sup>25</sup>

Thus in this case where the trial court refused to give the defendants the opportunity to give evidence in the case, with the purpose of avoiding undue delay, it was held that the action violated the requirements of fair hearing and a retrial was ordered. This is because the doctrine of fair hearing is one of the immutable and fundamental principles of Nigerian Constitutional Law, and any other rule which offends it, no matter how well-intentioned, must necessarily take a secondary position.<sup>26</sup>

## Cost of litigation

It is a well known fact that, relative to the economic situation in Nigeria, the cost of litigation in the country is so high that the ordinary Nigerian can hardly afford adequate legal representation when he has a legal matter to pursue.

This is all the more so if one considers that the vast majority of Nigerians are constantly preoccupied with how best to make a living for themselves and their extended family.

Perhaps in order to enhance their own economic standing, legal practitioners in Nigeria have devised the method of collecting not only their professional fees but also transportation fees each time they go to court, thus invariably adding to the financial burden of the litigants. When this is considered against the background that a particular case could last up to four or five years, then the enormity of the financial burden on litigants can better be appreciated.

As if this were not enough, filing fees in some courts are so high that it is often impossible for majority of Nigerians to have access to the courts. This is particularly so in the case of the Federal High Court, where the filing fees are related to the amount of monetary claims made by litigants. The result is that Nigerians, especially those from the Niger Delta region who are the usual victims of oil spillages, pollution and other environmental hazards, find it extremely difficult to exercise their legal rights when these petroleum-related activities adversely affect their normal activities.<sup>27</sup>

Under the current Rules of the Federal High Court,<sup>28</sup> for a claim of ten million naira, the litigant must pay a filing fee of over fifty thousand naira and this must be paid before the filing of the suit. Moreover, for matters requiring survey plans and valuation reports, the Nigerian citizen, rich or poor alike, is required to ensure that these are already attached to the Statement of Claim at the time of filing, even when it is known that the payment of these professionals could very well be beyond the financial capability of the litigants.

## Effect of some constitutional provisions

It is ironical that some of the constitutional provisions basically designed to guarantee the protection of fundamental rights, unwittingly have the effect of precipitating delays in the judicial process. In this connection reference must be made to some provisions of the 1999 Constitution. Article 36(6).b for instance, provides that “every person who is charged with a criminal offense shall be entitled to be given **adequate time and facilities** for the preparation of his defense”.<sup>29</sup>

How has this constitutional provision been interpreted or applied by the courts?

The guiding principle has been to ensure that an accused person is allowed to utilize the available opportunities to properly present his defense in a criminal case. This implies for instance, that if an accused person is arraigned in court and does not have a counsel, the court will oblige him with an adjournment to enable him secure the services of one.<sup>30</sup> Similarly, when he requires a particular document or court process for his defense and these are not immediately available, he should be given enough time to make arrangements to obtain the said document or court process or even file a process if he intends to do so.<sup>31</sup> Ordinarily, the application of this rule should not result in undue delay, but in the peculiar circumstances of Nigeria, with the ubiquitous Nigerian factor,<sup>32</sup> it has often resulted in prolonged delays and has often been abused.

### Undue reliance on technical rules

Law is an inherently technical subject and this technicality is manifested in the various rules and procedures in place. For a litigant to be able to approach the courts, he has to retain the services of a legal practitioner who will initiate the appropriate action, on his behalf.

The litigant, however well educated he may be, is usually unable to understand the intricate processes and rules applicable to his case. The situation is certainly worse for an illiterate Nigerian, and when one realizes that a vast majority of Nigerians are illiterate then the actual picture can better be appreciated.

Add to this the procedural problems that are often encountered in the filing of suits for the enforcement of fundamental rights, and the picture is complete. There had been controversy as to the proper procedure to be followed in the commencement of actions for the enforcement of fundamental rights in Nigeria. This problem became more critical following the coming into effect of the Fundamental Rights (Enforcement Procedure) Rules 1979.<sup>33</sup> While some judges are of the view that the only acceptable procedure is that prescribed under the Rules, others take a contrary position. Thus in the case of *Din v. Attorney-General of the Federation*,<sup>34</sup> Justice Nnaemeka Agu declared that: “The Fundamental Rights (Enforcement Procedure) Rules 1979 have prescribed the **correct and only procedure** for the enforcement of fundamental rights which arise under Chapter IV of that Constitution”.<sup>35</sup>

This procedure entails making a prior application *ex-parte* for leave to apply for the enforcement of the fundamental right, and subsequently filing a motion or originating summons together with the supporting statement and affidavit.<sup>36</sup>

However, in the subsequent case of *Alhaji Dahiru Saude v. Alhaji Halliru Abdullahi*,<sup>37</sup> where the plaintiff commenced the action for the enforcement of his fundamental rights by originating summons after obtaining leave of court and the summons was not signed by the trial judge as prescribed in the Rules, the Supreme Court held that it was immaterial what procedure was adopted as long as it is clear that the relief sought was the enforcement of fundamental rights. In the words of Justice Kayode-Eso:<sup>38</sup> “It is my view that it would not matter by what manner that application has been made, once it is clear that it seeks redress for infringement of the rights so guaranteed under the Constitution”. He added that the Enforcement Procedure Rules are clearly worded and does not lay the procedure therein contained as the only procedure by which redress could be sought.<sup>39</sup>

There is also the related problem of determining whether a claim for the enforcement of fundamental rights can validly be joined to one relating to other substantive claims.<sup>40</sup> The watershed in this area is the case of *Alhaji Umaru Tukur v. The Governor of Taraba State and 2 Others*,<sup>41</sup> where the appellant was deposed as the Emir of Muri and kept under house arrest for several months. He commenced an action at the Federal High Court under the Fundamental Rights (Enforcement Procedure) Rules 1979, for the enforcement of his fundamental rights. The Supreme Court held that since the primary complaint of the appellant was his deposition as the Emir of Muri, the alleged breaches of his fundamental rights to fair hearing, liberty and freedom of movement were merely accessories to his primary complaint and so the proceeding by way of the Fundamental Rights (Enforcement Procedure) Rules was inappropriate in the circumstances”.<sup>42</sup>

This insistence on technical rules relating to the principal and the accessory claim categorization has greatly hampered access to justice and the enforcement of fundamental rights in Nigeria. Although it is impossible to have a legal system with persons specially trained in that field without technical rules,<sup>43</sup> we suggest that the technicalities be minimized to an acceptable level to facilitate access to justice by a large majority of Nigerians.

### **Locus standi**

One other factor that is often used to preclude access to courts in Nigeria is the overused concept of *locus standi*. This could indeed create a formidable obstacle in the quest for the protection of human rights. *Locus standi* is not an easy concept to define but one can say that it basically means the standing to sue. It refers to the right of a party to an action to be heard in a litigation before a court of law or tribunal or the legal capacity of instituting, initiating or commencing an action in a competent court of law or tribunal without

any inhibition, obstruction or hindrance.<sup>44</sup> In other words, “for a person to have *locus standi* in an action he must be able to show that his civil rights and obligations have been or are in danger of being infringed. Thus, the fact that a person may not succeed in an action does not have anything to do with whether or not he has standing to bring the action”.<sup>45</sup>

It is pertinent to mention here that two tests are often used in determining the *locus standi* of a person, namely, the action must be justifiable, and there must be a dispute between the parties.

The courts have also taken the position, quite rightly in our view, that it is better to allow a party to go to court and be heard than to refuse him access to the court.<sup>46</sup> This is so because Nigerian courts have inherent powers to deal with vexatious litigants or frivolous claims. Justice should not be rationed.<sup>47</sup> Justice Fatayi-Williams underscored this point when he declared in the case of Senator Abraham Adesanya v. President of the Federal Republic of Nigeria<sup>48</sup> as follows:

*...I take significant cognizance of the fact that Nigeria is a developing country with a multi-ethnic society and a written Federal Constitution, where rumor-mongering is a pastime of the market places and the construction sites. To deny any member of such society who is aware or believes, or is led to believe, that there has been an infraction of any of the provisions of our Constitution ... access to the Court of Law to air his grievance on the flimsy excuse (of lack of sufficient interest) is to provide a ready recipe for organized disenchantment with the judicial process.*<sup>49</sup>

Moreover, it is essential that before seeking redress in court a plaintiff must show that he has sufficient legal interest in the subject matter of the suit. However, it is in the determination of the term “sufficient interest” that the courts have given a number of decisions, some of which have actually operated against access to justice in the country. Thus in the case of Chief Irene Thomas and 5 Others v. Timothy Olufosoye,<sup>50</sup> the plaintiffs who are communicants of the Anglican Communion within the Diocese of Lagos challenged the appointment of Reverend Joseph Abiodun Adetiloye as the new Bishop of Lagos and asked the court to declare it void.

The plaintiffs in their statement of claim did not say that they had an interest in the office of the Bishop of the Diocese, or how their interest (if any) had been affected by the appointment of Reverend Abiodun Adetiloye.

They averred that they were not interested in a particular candidate but that the process of the appointment of Reverend Adetiloye contravened some provisions of the Constitution of the Church of Nigeria (Anglican Communion).

The Defense challenged the competence of the action on the ground



that the plaintiffs had no *locus standi* to institute the same. The Supreme Court held that the appellants indeed had no *locus standi* in the matter. In his concurring judgment, Justice Oputa<sup>51</sup> made the following important pronouncement:

*The question will then arise – who or what law invested the Plaintiffs with a legal right to defend the constitution of the Anglican Church in the Diocese of Lagos or does the mere fact that the Plaintiffs are “communicants of the Anglican Communion within the Diocese of Lagos” ipso facto and to quote, mutatis mutandis, the memorable words of my learned brother Bello, JSC in Senator Adesanya v. President of Nigeria (1981) 2NCLR 358 at p. 384 invest them with the right “to play the role of archivists and build a shrine to preserve the sacred provisions of the constitution of the Anglican Communion? Does it make them sentries to ward off all those they suspect to be potential transgressors of the constitution of the Anglican communion? Does it further enlist them in the army to take up arms against all those they consider to be aggressors of the constitution of the Anglican Communion? Or, are the Plaintiffs merely constituting themselves into ‘a busybody’ to perambulate the Diocese of Lagos suing and prosecuting all those they regard as constitutional (here constitution of the Anglican Church) offenders?”*<sup>52</sup>

Moreover, Justice Obaseki, in agreeing with the judgment stated that: “This court does not make the law. Its function is to administer and interpret the law. As the law stands, there is no room for the adoption of the modern views on *locus standi* being followed by England and Australia. The adoption of those views in England have found support in the statute law of England” (emphasis added).<sup>53</sup>

It is clear that such conservative approaches have the effect of limiting access to justice in Nigeria, since it precludes a Nigerian, even a member of the House of Assembly, from taking legal action against a violation of the Nigerian Constitution. Happily, the courts have recently begun to adopt a more liberal approach to the issue of *locus standi*,<sup>54</sup> although relics of such conservatism can still be found.<sup>55</sup>

## Illiteracy

As already mentioned in the preceding, one other significant obstacle to the realization of access to justice in Nigeria is the high level of illiteracy prevalent in the country today. It is most unfortunate that the socio-economic structure of the country has made it impossible for the vast majority of Nigerians to have access to education, notwithstanding the various development plans and

programs by successive governments, which emphasize the importance of education.

This problem has been worsened by the current collapse of public schools, including universities which has now made education an exclusive commodity to be purchased and consumed by the bourgeoisie through private institutions.<sup>56</sup>

Yet the inestimable value of education and its capacity to empower the citizenry can hardly be over-emphasized. An educated man will easily adapt to the realities of the situation and have the intellectual capacity to insist on the enforcement of his rights, quite unlike the illiterate. Education thus empowers him to maximize the opportunities and resources available in his environment.

The point must be made that since education has the capacity of liberating the individual from ignorance, poverty and disease, the lack of it has serious mental, political and economic implications which greatly impedes access to justice in Nigeria. At a particular level, it breeds poverty, docility, and even forced connivance with agents of oppression and marginalization. The net result is that, today, a large majority of Nigerians do not have access to social justice and are alienated from the political and economic structures of society.<sup>57</sup>

### *Prospects and proposals for reform*

The question of access to justice in Nigeria is so fundamental to the promotion and protection of human rights that it is necessary to appraise the prospects in the light of the deficiencies and inadequacies highlighted above.

There is no doubt that the present government is desirous of enhancing the promotion and protection of human rights in the country in tandem with democratic norms. Hortative declarations<sup>58</sup> emphasizing this concern can only be meaningful if concerted efforts are made to address the issues along the following lines:

#### **Judicial reform**

There is an overwhelming need for a reform of the judicial process in the country in line with the global concern for human rights protection. This is necessary because the judiciary plays a pivotal role in ensuring that individuals have access to justice. It is suggested that the starting point of such reform should be a review of the relevant court rules that inhibit access to justice. In this connection, the Federal High Court rules which preclude a large proportion of the citizens of the Niger Delta from enforcing their environmental rights through exorbitant filing fees and procedures must be

reviewed and the filing fees reduced. This will invariably lead to a marked reduction in the current agitations and crisis in the Niger Delta since it will enhance access to courts, and affords aggrieved persons the opportunity of ventilating their views and claims in a court of law.

As Justice Fatayi-Williams stated in the case of Senator Abraham Adesanya v. President of the Federal Republic of Nigeria, it is better for people to have access to the courts than for them to act on rumors about the activities of government. This is where judicial activism comes in, as the courts will act as veritable instruments for the espousal of claims and rights. It is gratifying that the Honorable Attorney-General of the Federation has recently declared the determination of the Federal government to encourage and support the review of the Rules of Court. According to him, the aims of such review will include:<sup>59</sup>

- *to reduce the cost of litigation and broaden access to justice;*
- *to reduce delays so that cases can be decided speedily;*
- *to ensure that litigants have an equal opportunity regardless of their resources, to assert or defend their rights;*
- *to make the legal system understandable to those who use it.*

It is also necessary that conscious efforts be made to reduce the perennial delay in the attainment of justice in the country. A situation where a simple case of unlawful dismissal of an employee could last between 3 to 5 years before being disposed of, does not speak well of the legal system and makes mockery of the government's commitment to ensure increased access to justice by a large majority of Nigerians.

### **Alternative dispute resolution mechanisms**

Even more significantly, efforts should be made to increase awareness of and resort to arbitration or other methods of alternative dispute resolution mechanisms in the country. Not only are these mechanisms more cost-effective, they are largely in tandem with the traditional method of dispute settlement, which had served African societies so well before the imposition of the received English system of adjudication.<sup>60</sup> Happily, there is now a growing trend to formalize and popularize the use of these mechanisms as viable alternatives to the judicial settlement of disputes in Nigeria.<sup>61</sup>

It can hardly be disputed that resort to this mechanism coupled with improvement in the socio-economic and political conditions of the masses will go a long way in ensuring increased access to justice by a large majority of Nigerians.

## Enhancement of the Legal Aid Scheme

One important agency that can usefully be deployed to enhance access to justice in the country is the Legal Aid Scheme, which was established to provide assistance for indigent Nigerians unable to secure the services of private legal practitioners to enforce their legal rights.<sup>62</sup>

Although the scheme has been unable to make significant impact in this endeavor over the years partly due to structural and operational problems,<sup>63</sup> it is suggested that it be made more proactive to meet the yearnings and aspirations of Nigerians through creating greater access to justice. This will necessarily entail the widening of the scope of its operations in terms of increase in the level and category of potential beneficiaries from the scheme the subject matter coverage, coupled with aggressive public enlightenment exercise.

This is because similar schemes have proved extremely successful in countries such as India, as an instrument for enhancing access to justice.

## Conclusion

An attempt has been made in this paper to show the linkage between access to justice and the quest for the promotion and protection of human rights in Nigeria. We have also shown that there are a number of fundamental obstacles to the attainment of this highly desirable goal of increasing access to justice. While some of the obstacles are substantive, others are procedural. The point has further been made that some of the constitutional provisions which are geared towards ensuring human rights protection, also have the unintended effect of engendering undue delays, and consequently, conspire against access to justice.

The implication of this is that there is need to strike a delicate and beneficial balance between the desire to maximize human rights protection and the imperative of enhancing greater access to justice in Nigeria.

Thus, the right of an accused person to be given adequate time and facilities for the preparation of his defense need not result in undue delay in the dispensation of justice which has been said to be a three-way traffic; for the plaintiff, the accused and the society at large.<sup>64</sup> This calls for well-thought out schemes that take cognizance of these factors and considerations to enhance the attainment of justice.

It is only when we approach the issue along these lines that the overwhelming concern for increased access to justice in Nigeria will be realized and basic human rights given their proper place in the scheme of things.

## NOTES

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1. Some of these include the London Constitutional Conference and the Lagos Conference and they led to the adoption of several constitutions for the country, the Clifford's Constitution (1922), the Richards Constitution (1946), the Macpherson's Constitution (1951) and the Lyttleton Constitution (1954). See S. T. Hon, *Constitutional Law and Jurisprudence in Nigeria* (Port Harcourt, Nigeria: Pearl Publishers, 2004), pp. 4-8.
2. The First Republic spanned the period 1960-1966; the Second Republic extended from 1<sup>st</sup> October 1979 to 31 December 1983. Both civilian régimes were terminated by military coups.
3. The present civilian government came to power on 29 May 1999, after about 15 years of successive military regimes that were notorious for gross violations of human rights. See S. Tolofari, *Exploitation and Instability in Nigeria: The Orkar Coup in Perspective* (Lagos: Press Alliance Network, 2004). It also constituted the current National Political Reforms Conference as a way of stemming the increasing agitation by various groups and regions in the country.
4. This was established in 1957 and it made far-reaching recommendations to redress the injustices inflicted on the minority groups in the country. Unfortunately, their recommendations were never implemented by the government before the military coup of 1966.
5. Set up by the present government on 7<sup>th</sup> June 1999 with the objective, among others, of ascertaining and establishing the causes, nature and extent of human rights violations or abuses and identify the person or persons, authorities, institutions or organizations responsible for such violations or abuses, and make appropriate recommendations.
6. As contained in the Commission's terms of reference.
7. The Panel toured several areas of the country and took evidence from several victims of human rights abuses, at times with dramatic public shows. Unfortunately, it was dogged by litigation and eventually its recommendations could not be published, see Brigadier General A. K. Togun (Rtd) v. Hon. Justice Chukwudifu Oputa (Rtd) and 3 Others (2001) 16 *Nigerian Weekly Law Reports* (NWLR), pt. 740 p. 577; and Chief Gani Fawehinmi and 2 Others v. General Ibrahim Babangida (Rtd) and 2 Others (2003) 3 NWLR pt. 808 p. 604.
8. See Chukwudifu A. Oputa, *In the Eyes of the Law* (Friends Law Publishers, 1992), p. 50.
9. See M. I. Gwangudi, "Problems Militating against Women's Access to Justice in Nigeria" (*University of Maiduguri Law Journal* n. 5, 2002), pp. 13-14.
10. See G. Akinrinmade & O. Oloyide, "The Best Models for Good Governance in Africa", in D. A. Guobadia & E. Azinge (eds.), *Globalisation, National Development and the Law*, Proceedings of the 40<sup>th</sup> Annual Conference of Nigerian Association of Law Teachers (NIALS), 2005, p. 51.
11. See R. W. M. Dias, *Jurisprudence* (4. ed., Butterworths, 1976), p. 67.
12. In the words of C. Oputa (op. cit., p. 12), a retired Justice of the Supreme Court: "It is a calamity to have a corrupt judge, for money – its offer and its receipt – corrupts and pollutes not only the channels of justice but the very stream itself. Honesty and judicial rectitude are therefore the very minimal requirements of the judicial office".

13. C. Ake, "The African Context of Human Rights" being a paper presented at the International Conference on Human Rights in the African Context held in Port Harcourt, 9-11 June 1987, quoted in T. Akinola Aguda, *Human Rights and the Right to Development in Africa* (Lagos: Nigerian Institute of International Affairs, 1989), p. 26.

14. See also J. N. Aduba, "Human Rights and Social Justice in Nigeria: Issues, Dilemma and Options", in A. U. Kalu & Y. Osinbajo (eds.), *Perspectives on Human Rights* (Nigerian Federal Ministry of Justice, 1992, p. 220), pp. 229-231.

15. See T. A. Aguda, *The Crisis of Justice* (Akure, Nigeria: Eresu Hills Publishers, 1986), pp. 31-33.

16. This writer is at present handling an inherited land case that commenced in 1984 and is still pending at the Okehi High Court in Rivers State of Nigeria, largely as a result of the application of this *de novo* trial principle. By the time the hearing of the case gets to a certain level, a new judge will be posted to the division and then the trial will commence *de novo*. This has been the fate of this matter which has exerted so much, financially, from the litigants.

17. See the examples given by Dr. Aguda, 1986, *op. cit.*, pp. 15-16.

18. This provision has received judicial interpretation and application in several cases. See for example, *Ifeanyi Nwankwu and Another v. Oraegbunam Anieto, Esq.* (2002) 2 NWLR pt. 752 p. 729; *Governor of Ekiti State and 4 Others v. Prince James A. Osayomi and 2 Others* (2005) 2 NWLR 67 at ratios, 71-72.

19. (2003) 15 NWLR pt. 842 p. 25.

20. *Id.*, at 84-85.

21. *Id.*, p. 85.

22. As provided in Article 36 (4) of the Constitution, see *infra* for a discussion of this phrase.

23. The Supreme Court restated this principle in the recent case of *Alsthom S. A. v. Dr. Olusola Saraki* (2005) 3 NWLR pt. 911 p. 208 ratios 3, 4 and 5. See also *Fred Chiedozie v. Dayo Omosawan and 2 Others* (1999) 1 NWLR pt. 586 p. 317.

24. (2005) 2 NWLR pt. 909 p. 67.

25. *Id.*, p. 90. Justice Adolphus Karibi-Whyte has ably provided the rationale for this. According to him: "The aphorism justice delayed is justice denied is as accurate as the saying that quick justice inevitably results in injustice. The imperfection of human memory in recollecting the events, identifying the main participants and assessing the impressions long after the event is as risky as the impression when the freshness of the event leads to exaggeration when mistaken identify is without further reflection assumed to be the real thing. Hence both inordinate delay and hasty dispensation of justice are not conducive to the proper administration of justice". See A. G. Karibi-Whyte, "An Examination of the Criminal Justice System", in Y. Osinbajo & A. U. Kalu (eds.), *Law Development and Administration in Nigeria* (Federal Ministry of Justice, 1990), pp. 55-77.

26. See *Adebayo Ogundoyin and 2 Others v. David Adeyemi* (2001) 13 NWLR pt. 730 p. 403.

27. See J. F. Fekumo, "The Problem of Jurisdiction in Compensation for Environmental Pollution

and Degradation in Nigeria: A Fundamental Rights Enforcement Alternative" being a paper presented at the Nigerian Bar Association Annual Conference held in Abuja, 22-27 August 2004, p. 26.

**28.** Order 53 (1) and Appendix 2 of the Federal High Court (Civil Procedure Rules), 2000.

**29.** This provision goes a long way in protecting and safeguarding the fundamental rights of citizens.

**30.** This is because "the right to counsel is at the root of fair hearing and its necessary foundation". Per Ogwuegbu, JSC in *Solomon Ogboh and Another v. The Federal Republic of Nigeria* (2002) 10 NSCQLR pt. 1 p. 498 at 509.

**31.** This is the only way to give meaning to the fair hearing provision.

**32.** See N. S. Okogbule, "The Nigerian Factor and the Criminal Justice System" (*University of Benin Law Journal* n. 7, 2004), p. 165.

**33.** Made by the Chief Justice of Nigeria pursuant to the provisions of Article 42.3 of the 1979 Constitution. It came into effect on 1<sup>st</sup> January 1980.

**34.** (1986) 1 NWLR pt. 17 p.471.

**35.** *Id.*, p. 478.

**36.** By Order 1 Rules 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules, 1979. For an appraisal of the Rule, see M. O. Unegbu, *Enforcement of Fundamental Rights in Nigeria, Notes, Cases and Precedents* (Deeplaw Professional Publishers, 1997).

**37.** (1989) 4 NWLR pt. 116, p. 387.

**38.** *Id.*, p. 419.

**39.** *Id.*, *ibid.*

**40.** See *Borno Radio Television Corporation v. Basil Egbuonu* (1991) 2 NWLR pt. 171 p. 81; *Federal Republic of Nigeria and Another v. Lord Chief Udensi Ifegwu* (2003) 15 NWLR pt. 842 p.113.

**41.** (1997) 6 NWLR pt. 510 p. 549. The earlier decision of the Supreme Court on another aspect of the case is reported in (1989) 4 NWLR pt. 117 p. 517.

**42.** This case had a chequered history. It was first commenced at the Federal High Court under the Fundamental Rights (Enforcement Procedure) Rules 1979 and the Supreme Court finally held that the Federal High Court had no jurisdiction to entertain the matter as it raised principally chieftaincy question. Another action was then commenced at the Yola High Court wherein the Supreme Court held that for an action to be commenced on the Fundamental Rights (Enforcement Procedure) Rules, the principal question must be the enforcement of a cognizable right; and that this one ought to have been commenced by a writ of summons.

**43.** Indeed, any profession worth its name must necessarily relish reliance on some technical rules, clauses and phrases and law is no exception.

**44.** See *Alhaji Adetoro Lawal v. Bello Salami and Another* (2002) 2 NWLR pt. 752 p. 687.

Babatunde Adenuga and 5 Others v. J. K. Odumeru and 7 Others (2003) 8 NWLR pt. 821 p. 163.  
Attorney-General of Akwa Ibom State and Another v. I. G. Essien (2004) 7 NWLR pt. 872 p. 288.

45. Attorney-General of Akwa Ibom State and Another v. I. G. Essien, *supra*.

46. The rationale for this rule is to promote respect for the rule of law. See Senator Abraham Adesanya v. President of the Federal Republic of Nigeria (1981) 2 NCLR 358.

47. It should be made available to everybody notwithstanding the person's status or economic standing in society, but see J. N. Aduba, "The Impact of Poverty on the Realization of Fundamental Human Rights in Nigeria", in Y. Osinbajo & A. Kalu (eds.), *Democracy and the Law* (Federal Ministry of Justice, 1991), p. 200, on the disability of the poor to press for the enforcement of their basic rights.

48. *Id.*, *ibid*.

49. *Id.*, p. 131.

50. (1985) NWLR pt. 18, p. 669.

51. Paraphrasing the views of Bello, Justice of the Supreme Court (as he then was) in Senator Adesanya v. President of Nigeria, *supra*.

52. The current acceptance of the liberal approach to the interpretation of constitutional provisions should necessarily entail the presence of *locus standi* where the suit is designed to challenge constitutional breaches.

53. *Op. cit.*, p. 686. See however, A. Guobadia, "Constitutional Adjudication: Locus Standi; Recent Trends in Nigerian Courts" (*The Nigerian Juridical Review*, v. 3, 1978-1988, pp. 37-53); S.T. Hon, *op. cit.*, pp. 409 – 410; I. E. Sagay, *A Legacy for Posterity: The Work of the Supreme Court (1980-1988)* (Nigerian Law Publications, 1988), pp. 263-274.

54. See the case of J. K. Owodunni v. Registered Trustees of Celestial Church of Christ and 3 Others (2000) 79 LRCN p. 2406.

55. Such as the decision in the case of Babatunde Adenuga and 5 Others v. J. K. Odumeru and 7 Others, *supra*.

56. See A. G. Shettima, "Socio-Economic Obstacles to the Realization of a Just Society: The Nigerian Experience", in Y. Osinbajo et al. (eds.), *Human Rights, Democracy and Development in Nigeria* (Lagos: Legal Research and Resource Development Centre, 1999), pp. 100-104.

57. See Aguda, 1989, *op. cit.*, pp. 29-30.

58. By government officials of the governments' commitment to uphold the rule of law and respect for human rights are common place in Nigeria especially during conferences, valedictory court session for retiring judges and during the commencement of new legal years.

59. See A. Olujinmi, *Agenda for Reforming the Justice Sector in Nigeria* (Federal Ministry of Justice, 2004), p. 6. It is significant that these objectives are in line with our suggestions in this paper and it is hoped that they will be translated to effective implementation in the no distant future.



**60.** See A. O. Obilade, "The Relevance of Customary Law to Modern Nigerian Society", in Y. Osinbajo & A. U. Kalu (eds.), *Towards a Restatement of Nigerian Customary Laws* (Lagos: Federal Ministry of Justice, 1991), pp. 1-4; A. A. O. Okunniga, *Transplants and Mongrels and the Law: The Nigerian Experiment* (Inaugural Lecture Series 62, University of Ife Press, 1983), pp. 20-21.

**61.** The advantages of these mechanisms are highlighted in A. I. Chukwuemerie, *Studies and Materials in International Commercial Arbitration* (Port Harcourt, Nigeria: Lawhouse Books, 2002), pp. 1-31; see also G. C. Nwakoby, "Exploring Arbitration: A Commentary" (*Modern Practice Journal of Finance and Investment Law*, Jan.-April 2004, v. 8, n. 1-2, p. 1), pp. 8-16); on the Lagos Multi-Door Courthouse see K. Aina, "The Lagos Multi-Door Courthouse and the Judge: A New Beginning" (*Modern Practice Journal of Finance and Investment Law*, July-Oct. 2004, v. 8, n. 3-4, p. 340).

**62.** See the preamble to Cap. 205, *Laws of the Federation of Nigeria*, 1990.

**63.** These include inadequate funding, lack of sufficient manpower and the limited scope of its operations. See I. O. Omoruyi & O. Enabulele, "The Effectiveness of the Legal Aid as a Means of Access to Justice in Nigeria" (*Benin Journal of Public Law*, v. 2, n. 1, 2004), pp. 144-146.

**64.** See *Ogobodu v. The State* (1987) 2 NWLR pt. 54 p. 20.