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## Legal aid in the administration of criminal justice in Nigeria: issues and challenges

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### Abstract

All over the world, the need to afford indigent and vulnerable people access to justice is taken with much seriousness. It is the linchpin on which the concept of fair hearing revolves. The poor may be denied justice either in civil or criminal proceedings if he is too poor to pay for legal representation. Added to this is the fact that legal procedures are such that are so technical that the common layman may not be able to comprehend them let alone enforce his rights even when they are breached. To address this, the concept of legal aid is put in place to enable poor and vulnerable people be informed of their rights and where necessary, such rights be enforced on their behalf at little or no cost to them. In this paper, the authors take a look at the role of legal aid in the administration of criminal justice in Nigeria. After also analysing the problems and challenges of the system in Nigeria, the paper proffers suggestions that may enhance a more efficient delivery of access to criminal justice in Nigeria.

**Keywords:** Legal aid, legal advice, criminal, justice system, customary justice

### 1. Introduction

Legal Aid is defined as free or inexpensive legal services provided to those who cannot afford to pay full price<sup>[1]</sup>. It has also been defined as a scheme that gives to persons whose disposable income and capital fall within the limits prescribed from time to time assistance and/or legal representation in legal proceedings of most kinds<sup>[2]</sup>. Under the United Nations Principles and Guidelines (UNPG), “legal aid” includes “legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require”<sup>[3]</sup>.

### 2. The Criminal Justice System in Nigeria

The Criminal Justice System comprises of the collective institutions through which an accused offender (defendant)<sup>[4]</sup> passes until the accusations have been disposed of or the assessed punishment concluded. The system’s basic components are: the law enforcement (police), the judicial process (judges, prosecutors, defence lawyers), and correctional services (prison officials)<sup>[5]</sup> And all these institutions<sup>[6]</sup> are interrelated and must of necessity, work in tandem because, “an effective criminal justice system is fundamental to the maintenance of law and order...<sup>[7]</sup>”.

Perhaps, the greatest injustice that can be done in the criminal justice system is when an accused person undergoes trial, especially in capital offences, without legal representation. In most cases, such offender is too poor to afford legal services. It becomes obligatory for the government or court to provide such person with free legal services in order to secure a free and fair trial.

### 3. The Imperatives of Legal Aid

It is a truism, that without an effective legal aid, “equality before the law”, which is an integral part of the rule of law, cannot be achieved. And in the absence of a working machinery of justice that is readily accessible to citizens irrespective of their demographic divide; legislations on legal aid or access to justice generally, would not be worth the papers on which they are written and would, in our view, amount to futile exercise of legislative power.

Legal aid as a part of administration of justice is cardinal, to both developed and developing States alike; and to a greater degree, developing States, where legal aid is capable of being a catalyst for socio-economic development and growth. Accordingly, it has been said that:<sup>[8]</sup>

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Legal aid provides a workable basis on which the traditional legal system can come to terms with egalitarianism, socio economic instrumentalism and populist anti-formalism. It can help to tranquilize and normalize social tensions. It synthesizes change with continuity and stability. This is what made Legal Aid Scheme a historical necessity and a social imperative in the third world.

Over time, the concepts of “legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes”<sup>[9]</sup> have emerged as integral components of legal aid.

Legal aid is therefore, “an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. A foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process”<sup>[10]</sup>.

This leads us to a discourse of legal aid as practised in Nigeria and its impact on the administration of criminal justice in Nigeria, which is the crux of this paper.

#### 4.0 Legal Aid in Nigeria

The primary provider of legal aid service in Nigeria is the State<sup>[11]</sup>, which responsibility, it carries out mainly, through the Legal Aid Council (LACON). The Council is therefore, saddled with the near Sisyphean task of providing free assistance to people who cannot afford legal representation either because they are unemployed, underemployed or earn very little money, or are adversely affected by circumstances, rendering them incapable of earning income<sup>[12]</sup>.

Under the Nigerian Legal Aid Act, legal aid consists of “the assistance of a legal practitioner including all such assistance as is usually given by a private legal practitioner in the steps preliminary or incidental to any proceedings, representation by a legal practitioner before any court and such additional aid (including advice) as may be prescribed”<sup>[13]</sup>.”

#### State Legal Aid Service Providers in Nigeria Legal Aid Council of Nigerian (LACON)

Only persons whose income does not exceed the national minimum wage are entitled to legal aid (free legal assistance, advice and representation)<sup>[14]</sup>.

However, persons whose incomes are higher than the national minimum wage and in certain cases, people with incomes exceeding ten times of the national minimum wage, may be granted legal aid with the approval of the Council’s Board<sup>[15]</sup>. Where the aid is to a person whose income exceeds ten times the national minimum wage, it will be granted under a contributory basis and subject to certain conditions.

Thus, the primary function of the Legal Aid Council is the provision of legal aid to persons who cannot afford the services of legal practitioners of their own choice when legal need arises. Services offered by the Council, subject to merits of each case and indigence of the parties, are segmented into three namely<sup>[16]</sup>, Criminal Defence Service, Advice and Assistance in Civil Matters (includes legal representation in Court), and Community Legal Services. Under the ACJA, ACJL, and OPD, both the police and the Magistrate/Judge are required to inform a defendant of the existence of free legal aid by the Council<sup>[17]</sup>.

The Council provides these services through its salaried lawyers, and NYSC members on the mandatory one-year

national service with the Council. The Council can also refer beneficiaries to private legal practitioners, whose names are registered on the Panels of Legal Practitioners maintained by the Council<sup>[18]</sup>. A legal practitioner on the Panels of Legal Practitioners may elect to be paid a small fee or render the aid, *pro bono*.

#### Courts

The Constitutional provision of fair hearing entails amongst others, a right to silence until consultation with a legal practitioner of defendant’s choice, right to legal representation by a legal practitioner of defendant’s choice and the assistance of an interpreter where defendant does not understand the language used at his trial<sup>[19]</sup>.

The Courts are enjoined to inform the Defendant of his right of election (representation by Counsel of choice or a legal aid provider). And where a defendant is standing trial for a capital offence and has no legal representation, the Court where practicable, may assign to such a defendant, a legal practitioner within the jurisdiction of the Court or at the instance of the Defendant, contact the Council, the OPD or any other legal aid service provider for one<sup>[20]</sup>.

Also, the Court is to provide the assistance of an interpreter when needed and at no cost to the Defendant. The Court assisted legal aid, is therefore, rendered during the trial stage of the criminal justice process.

#### Office of the Public Defender (OPD)<sup>[21]</sup>

Lagos State established this institution in July 2000 as a unit under the Directorate for Citizens’ Rights of the Lagos State Ministry of Justice<sup>[22]</sup>. The OPD was created, mainly, to serve as an avenue or forum for the receipts of complaints that affect the socio-economic rights of the indigent residents of Lagos State and was to legally deal with issues irrespective of tribal background and emphasis “was and is” on the “rights of the disadvantaged in Lagos State”<sup>[22]</sup>.”

The OPD is not restricted in term of the nature of cases and offences, it handles and its services encompass the pre-trial, trial and post-trial stages. While these are positive developments, the coverage area is however, restricted to Lagos State. Another drawback of the OPD is its referral system, which appears hinged on the assumption of the OPD having and sustaining a robust synergy with other legal aid service providers. The Lagos State Government is OPD’s main source of funding supported by gifts, donations/grants-in-aid from individuals, NGOs, and foreign governments’ donor agencies.

#### Other Legal Aid Service Providers in Nigeria Nigerian bar Association

In the area of rendering Pro Bono Services, generally, a lawyer is enjoined by the Rules of Professional Conduct in the Legal Profession, to receive fees for professional services rendered by him<sup>[23]</sup> but lawyers may also accept briefs *pro bono* either on humanitarian or other grounds. The RPC encourages *pro bono* legal services and prohibits a legal practitioner from rejecting a criminal brief concerning an indigent accused person or asking to be excused except for substantial reason and such legal practitioner is expected to exert his best effort in the defence of the accused<sup>[24]</sup>. It is a professional misconduct to abandon a *pro bono* case without a justifiable reason<sup>[25]</sup>. *Pro bono* legal service is mandatory for those seeking appointment to the rank of Senior Advocate of Nigeria (SAN)<sup>[26]</sup>.

Thus, pro bono services contribute in some measures to the realisation of the Council's mandate and in recent times, there has been an observed increase in the number of legal practitioners offering such services<sup>[27]</sup>.

Some branches of the NBA have made very visible strides in assisting the Council fulfil its mandate through the Police Duty Solicitor Scheme (PDSS) and the Court Duty Solicitor Scheme (CDSS). Mr. Bayo Akinlade, a former chair of the Ikorodu branch<sup>[28]</sup> developed a PDSS Training Manual that is used presently in facilitating trainings for PDSS volunteer lawyers in NBA branches and the judiciary in States that have indicated interest in the PDSS<sup>[29]</sup>.

The various Panels of Enquiry set up by the government on the ENDSARS police brutality protests, saw the Council representing only 5 persons out of almost 3,000 petitions and in two States of the federation. A representative of the Council, attributed the low number of requests for the Council's legal aid services, to the legal services offered by the NBA across the States where the Panels sat<sup>[30]</sup>.

### **NGOs (local and international) and Foreign Governments' humanitarian or developmental donor Agencies:**<sup>[31]</sup>

The services provided by these secondary legal aid service providers, are mostly limited to specific legal needs; many are gender-based, restricted to specific vulnerable groups and even locations. Many of these NGOs are registered with the Council and provide legal services without collecting fees from the Council<sup>[32]</sup>. Because of its voluntariness however, the Council cannot compel an NGO to carry out the Council's mandate. But the fact that NGOs in Nigeria are filling what would otherwise have been a 'bottomless pit' vacuum in the Nigerian legal aid system cannot be over emphasised.

Worthy of note is the contribution, of campus-based law clinics to the provision of legal aid. These Campus-based law clinics, operating under the Network of University Legal Aid Institutions (NULAI) in Nigeria, are an introduction by way of addition to the legal education curriculum in Law Faculties and the Nigerian Law School. The law clinics are operated by students under staff supervision, which expose law students to the practical application of legal norms taught under the conventional law syllabus in tertiary institutions. They provide the students the opportunity to deal with real clients in real life situations, thus, enabling them to hone their lawyering skills preparatory to real practice after call to the Bar. The students render legal advice, offer opportunities for amicable settlements and where needs be, collaborate with interested legal practitioners to offer legal representation to indigent and vulnerable persons should such matters go to conventional courts. The accessibility to and repose of confidence in these clinics by vulnerable and indigent persons has in no small way enhanced access to justice by people, who ordinarily would have been robbed of justice due to their poor and vulnerable status; and is a plus to the efforts of the Legal Aid Council to render legal aid<sup>[33]</sup>.

### **Legal Aid CDS Scheme**

The Legal Aid CDS Scheme is one of the Community Development Services (CDS) of the National Youth Service Corps (NYSC). The legal aid CDS has presence in all local government areas in the Country, and members of the Scheme, offer legal aid services in their host communities; such as access to justice awareness campaigns, outreaches, mediation, and other legal needs of the communities. In

furtherance to this, the Council has established the Corp Legal Aid Group (CLAG), charged with the responsibility of providing legal aid to poor and vulnerable persons.

### **Issues and Challenges of Legal Aid in the Administration of Criminal Justice in Nigeria**

The extent of legal needs of the poor or persons who cannot afford legal advice, assistance and representations, at any stage of the criminal justice process in Nigeria, is glaringly huge. And the aftermath of unmet or substantially unsatisfied legal needs, is intractable, impacting multiple actors: those directly involved in the criminal justice process, their families or loved ones, the police stations, courts and correctional centres, the economy and the society at large.

These impacts range from monetary losses, to the not so obvious or easily quantifiable, but none the less real, psychological or physical losses such as suffering, pain, trauma, fear, reduced quality of life, damaged reputation and dignity.

Some pertinent questions at this juncture: "are the people aware of their rights, of options available to them and how to access these options, are their legal needs, being met and to what extent, do legal aid service providers have the capacity to substantially meet these needs, or the capacity of expansion, to meet these needs?"

The near Sisyphean nature of the state of our legal aid in Nigeria is common knowledge and also well documented as well as the issues and challenges dogging the efforts of legal aid service providers. We do not intend to imply that there are no lights or successes in the Nigerian Legal aid journey. It is just that, in the light of the unresolved issues and challenges, the successes appear more like squeezing oil out of a rock.

We will therefore, attempt answers to the above questions by looking at some issues in the provision of legal aid in Nigeria and how the fallouts from these, constitute the challenges that presently impede the legal aid success story in Nigeria.

The main issues are funding, lack of guidelines/code of conduct for lawyers participating in the process, education and information dissemination and attitudinal apathy. And the challenges range from infrastructural decay and deficits, inadequate manpower, logistics, poor work attitude or apathy, number of persons involved in the criminal justice process on a periodic basis (as suspects, accused persons, victims, and witnesses), the test of illegibility for legal aid, dissemination or communication of the availability of legal aid and how to access same, inappropriate professional cultures and attitudes<sup>[34]</sup>, to the legal practitioners needed to meet the varied legal needs of everyone member of the target group (taking into cognisance; the number of trained lawyers, experience/knowledge of criminal law and interest in legal aid, willingness and in some cases, ability to render pro bono services), and other legal aid services providers, available.

### **Funding**

#### **The Council observed**<sup>[35]</sup>

Legal Aid Council has continually been under-funded over the years and has had a low priority on the National Agenda. This is so because it is not placed in the category defined as "special parastatals" nor is it grouped in the "A" grouping and therefore does not fall amongst the priority parastatals. This is pathetic because being a public defender and one that provides access to justice for the indigents and the vulnerable in Nigeria one would expect that it should be classified as special. The under-funding has worked against the effective

delivery of legal aid scheme in Nigeria. Taking into consideration the size of the population, the vast mess of the area covered and some peculiar circumstances, Legal Aid Council deserves robust funding.

As at 2018, funding was still identified as the main issue of the Council and as a result, the Council have intensified its efforts in seeking partnership with NGOs and foreign donors; principal among which is the DFID <sup>[36]</sup>. It was further noted that despite repeated presentations of the need for increased funding to the National Assembly, the issue of funding has not been addressed <sup>[37]</sup>.

Sometime in 2012, the then DG of the Council, called for the creation of the access to justice fund <sup>[38]</sup> to enable the Council receive donations from corporate organisations and individuals as one way of improving funding <sup>[39]</sup>. The call was apparently not heeded because the Federal Ministry of Justice and the Council have just “concluded all the requisite legal arrangements for the launch of the Access to Justice Fund...which is a unique national fund aimed to (*sic*) raise funds for the assistance of legal aid work in Nigeria <sup>[40]</sup>.”

The consequences of poor funding of the Council are extensive, having an overall rippling effect on the implementation of its mandate, to wit:

#### **(a) Publicity and Awareness**

The Council’s effort at publicity and awareness creation about its existence and services is greatly hampered by various factors of which paucity of funds is one. Many Nigerians (living in both rural and urban areas) are not aware of the existence of the Council or the services it provides. As a result, those with legal needs, who do not understand the legal process or have a clue as to its workings or the means of meeting their legal needs, cannot readily access justice.

Illiteracy is another factor that impedes the efforts of the Council at publicity. Awareness sensitisation programmes that are published through handbills, posters, television, newspapers and other media do not achieve the aim of the Council at information dissemination and education of the masses with regard to their rights and how to access legal justice when legal needs arises. A person who is unaware of his legal rights and has no knowledge of the services available to him is in no better position than he would be if there were no such rights and services <sup>[41]</sup>.

#### **(b) Operational Vehicles, Office Equipment and Supplies and Infrastructure Deficit**

These are all fallouts of poor funding that adversely impact on the quality of service delivery of the Council. Lamenting on the state of its equipment for operation some 14 years back, the Council observed <sup>[42]</sup>:

The Legal Aid Council of Nigeria...at the moment has less than ten (10) operational vehicles. Presently more than ninety five percent of LACoN personnel depend solely on public transportation to carry out their official assignments. Considering the fact that the bulk of LACoN personnel are lawyers, two crucial professional characteristics are inalienable from their practice. One is punctuality and the other is appearance. Where LACoN personnel rely on public transport to attend both at police station and courts the likelihood of arriving late is high.

In 2016, Dr F.J Oniekoro <sup>[43]</sup> narrated his experience during a

visit to the South East Zonal office of the Council. That there was no modern office equipment in the office, no alternative source of power supply, and there was general infrastructure deficit. He had to pay to have photocopies of the 2011 Act and the statistical figures he requested. And the staff made the copies from a nearby business centre because there was no photocopier in the office. Other than the corporate headquarters in Abuja, the above state of affairs appears to be the norm <sup>[44]</sup>.

A former Chairman of the Council’s Governing Board, in 2018 <sup>[45]</sup>, identified logistics (movement of staff to and from the Courts, prisons and the offices) as one of the factors militating against the best efforts of the staff. There is no much improvement today in the above sorry tales of the Council, because funding has not improved <sup>[46]</sup>.

#### **(c) Inadequate number of Salaried Legal Practitioners**

The number of seasoned legal practitioners in the Council’s employ is wholly inadequate when compared to the enormous legal needs across the Country. As at 2017, lawyers in the employ of the Council were 270 and these were serving the entire 36 States of the Federation and the FCT. By approximation: a ratio of 8 lawyers to a State <sup>[47]</sup>. These salaried lawyers are therefore, over-burdened. The resultant effect is that more often than not, cases, even serious ones, are assigned to new wigs and NYSC Corp members serving with the Council. And the main factor encouraging the growth of this practice and which is unlikely to change in the foreseeable future is, the cost implication of employing more experienced hands.

The case of *Udofia v The State* <sup>[48]</sup> is a *locus classicus* of the disastrous consequences of this practice.

Another drawback of the use of Corp members is the nature of the National Youth Service Programme itself. Being a yearly programme, there is difficulty in continuation of such services rendered by a particular Youth Corper serving under the Council.

#### **(d) Lack of Commitment and Poor Attitude to Work**

A common trend in many government’s departments and agencies, is staff lethargy or lack of adequate commitment to duty. The Council is not exempted and many legal issues and cases are either abandoned or lost as a result. In criminal cases, the Defendants pay the price for this lack of diligence and commitment with deprivation of freedom and sometimes, the ultimate price, loss of life. Inadequate remuneration of staff, infrastructure deficits and manpower has been fingered as some possible reasons for this lethargic attitude <sup>[49]</sup>.

Availability of funds for legal aid by other governmental service providers is not robust either. The provisions in the Nigerian Constitution, ACJA, ACJL, and the various rules of courts on access to justice, do not translate to funding allocations for the sole purpose of meeting the obligations imposed for instance, on Nigerian courts by these provisions. Local NGOs’ major sources of funding are grants from foreign donors, and these may sometimes be subject to constraints and variables outside the control of the local NGOs, with adverse effects on their goals and mandate as international NGOs, and other foreign governments’ humanitarian or developmental donor agencies, rely on funds provided by their home governments or foundations/trusts (including donations). Here also, availability of funds for on-going or new legal aid services is determined by the policy thrust of successive governments or leadership. Policies

determine areas of prioritisations by governments, donor agencies, and foundations/trust boards. There is therefore, no blanket cheque or assurance that a legal aid effort or programme no matter how impactful, will continue or grow *ad infinitum* in the presence of the above variables; no matter how minuscule the risk of funding challenges may be.

#### **Lack of Guidelines/Code of Conduct for Private Legal Practitioners**

There are no conditions or requirements that a private legal practitioner who is willing to take up a legal aid brief for a fee, must meet or satisfy before the Council engages him or her. To be eligible for appointment by the Legal Aid Council, legal practitioners only need to register with the Council. No experience, qualification or special training is necessary.

Also, competence and quality of service provided are not monitored or subject to periodic review. Legal practitioners are therefore, recruited even if they lack any trial experience or familiarity with criminal law or procedure or the area of law they are required to render their services.

#### **Language**

Language barrier constitutes a great impediment to access to justice generally, in a country with about 300 tribes and almost the same number of languages. Legal aid service providers in communicating for example, with pre-trial detainees from diverse tongues, would face a herculean task<sup>[50]</sup>. Similarly is, a defendant from a remote tribe standing trial, and who lacks adequate understanding of the language of the Court.

#### **Inappropriate Professional Cultures and Attitudes**

Delays in the investigation of cases by the Nigerian Police, unnecessary delays in the Court, and prison congestion are all challenges that have been identified<sup>[51]</sup>.

Another impediment to the quick disposal of criminal cases is the attitude of staff in the Department of Public Prosecution of the various Ministries of Justice. Files that are meant for the DPP's advice, take several months and even years to be attended to, in most States of the Federation<sup>[52]</sup>. Often at the root of these delays, especially investigation by the police is bribery and corruption.

#### **Collaboration with NGOs and other Donor Agencies**

Because of the voluntary nature of the services rendered by these NGOs and other donor agencies, the Council cannot compel these organisations though registered with it, to carry out the Council's mandate.

#### **Restriction on Offences and Financial Eligibility Status under the Act**

These challenges are already over flogged, but nonetheless, they remain very crucial challenges.

#### **Conclusion and Suggestions**

That there are in existence statutory provisions for the provision of legal aid to the poor and economically disadvantaged in Nigeria is not in doubt. However, the target group is yet to have a good impact of these statutory provisions due to the numerous challenges already analysed in this work. Deliberate effort must be put in place to have these challenges surmounted. They are not beyond solution. Some of the measures therefore suggested below though utopian in outlook, could be of immense help towards achieving a robust

legal aid system in Nigeria.

#### **a. New Perception about Access to Justice**

To the politicians and policy makers, implementation of programmes and projects that will enhance their political relevance and thus provide electoral leverage in the next dispensation is more important than abstract concept of access to justice. Where attempts are made, they are mere lip service devoid of any concrete effort. Both politicians and policy makers must begin to see the question of access to justice as a human right that deserves protection, preservation and enforcement and not as a privilege to be enjoyed by the few wealthy and educated. If legal aid is understood in the context of human rights, there will be concerted efforts to ensure that the poor and indigent in the society are afforded adequate opportunities to seek redress both in court and other justice delivery options.

#### **b. Creation of more Windows of Accessibility to the Rural People**

The Council and other legal aid service providers can synergise to have offices or representatives that are accessible at the grassroots or local level in view of the challenges in funding. Steps should be taken to leverage on political wards and other facilities in Local Government Councils across the country. Rural town criers can also be utilised to spread the news of the services of the Council amongst the rural dwellers.

#### **c. Employment of more Experienced Legal Practitioners**

There is need for more qualified and experienced lawyers who are ready to offer pro bono services and those that can be employed. There are many qualified lawyers in the country without jobs. If they cannot be offered full employment due to the cost implications and paucity of available funds, they can be recruited and utilised on a contract basis per case and paid stipends provided that our suggestion in (g) below is taken into account with modification to provide for trainings.

#### **d. Independence of the Legal Aid Council**

We submit that the Council should be made an independent statutory body, instead of its present status as a parastatal of the Ministry of Justice. This independence will enable it to take appropriate decisions without the usual protocols associated with the civil service.

#### **e. Adequate Funding**

It appears to be a global trend that most government agencies established to serve the poor are usually deprived of funds and as a result, are usually epileptic in carry out their mandates. It is a recurring decimal that these agencies always complain of paucity or lack of funds. Just as was stated in (a) above, politicians must begin to appreciate the relevance of these agencies and to match up their usual advocacy for rule of law with actions by ensuring these agencies that are targeted at the poor and vulnerable elements of the society are well funded. We also suggest that the Nigerian Bar Association could be made to pay a certain percentage of its yearly subventions or dues to the Legal Aid Council. This will go a long way to assist the Council in the realisation of its mandate.

#### **(g) Provision of Guidelines/Code of Conduct for Private Legal Practitioners**

As a guide, it is pertinent to examine the system in the UK.

The UK Access to Justice Act 1999 provided for a comprehensive reform of public legal aid services in England and Wales and the creation of the Legal Services Commission (LSC) to implement a new system of contracts for legal aid service providers who are primarily, solicitors and legal professionals, solicitors' firms, and non-profit advice agencies. The Act empowered the Legal Services Commission (LSC) to directly employ lawyers for the provision of legal aid to the public and in furtherance of this, the LSC in 2001, established the first six public defender offices (PDS). They were subject to the same quality criteria as private practitioners and firms and operated in direct competition with them. Several safeguards were designed: Codes of Conduct, for professionals and the staff of LSC, appointment of a professional head of service who, to ensure professional integrity, must be a person with a private sector experience in providing and managing criminal cases, and independence of the LSC<sup>[53]</sup>.

The Law Society of England and Wales<sup>[54]</sup> in response to the quality control need of legal aid, have detailed guidelines on legal aid. The guidelines contain detailed best practices on professional standards for private legal practitioners who provide legal aid services. And accreditations are only awarded to solicitors and legal professionals, solicitors' firms and non-profit advice agencies that meet the highest standards of technical and client service in specific areas of law. Once a firm or individual has obtained a legal aid contract, the firm or the individual, is obliged to pass periodic quality audits in order to maintain the firm or the individual's contract status. With academic assistance, the Law Society has developed evaluation criteria for monitoring the quality of legal services rendered. Quality requirements are therefore, incorporated into service providers' legal aid contracts. So far, this is the most detailed accreditation scheme run by a representative body of the legal profession.

In spite of the PDS, private practitioners in England & Wales are still providing the bulk of legal aid services.

There is no such effort today in Nigeria to regulate the quality of practitioners engaged in legal aid services and the quality of services rendered either under the Office of the Public Defender or the Legal Aid Council. We therefore, recommend the above for the Legal Aid Council and the Nigerian Bar Association.

#### **(h) Attitudinal Empathy**

Reorientation, change, or cultivation of appropriate professional cultures and attitudes is a *sine qua non* to efficient dispensation of justice in any system. This is to ensure that all criminal justice actors work effectively and efficiently with constitutionally given timelines in making sure that the right of access to legal aid is respected and enforced. Bulk passing needs to stop, with key players taking responsibility for their failures and working to improve their commitment to access to justice.

Also, to curb corruption, political strong will is needed and workable mechanisms must, therefore, be put in place to check and block openings for corrupt enrichment. There must be internal mechanism to forestall diversion and inflation of contracts by the Council and other acts of corruption by the police, the judiciary and the ministry of Justice. Realistic measures to deal with instances of corruption must be put in place and not to wait for agencies established to fight corruption to take up such cases. There must be internal cleansing measures in place, in order to maximally utilise the

scarce resources made available by government for the interest of the public.

#### **(i) Encouragement and Strengthening of Traditional Justice Options**

It must be realised that no adequate access to justice can be achieved by concentrating on a single justice delivery option, i.e. the Courts. Other alternative media for resolution of disputes must be identified and encouraged. One of these options that can be of great intervention in the quest for adequate access to justice especially for the poor and disadvantaged members of the society, is the strengthening of our tradition justice system, especially in civil claims. This is essentially traditional or customary law arbitration.

A functional synergy can be worked out by adopting appropriate legislative reformative measures to ensure these traditional institutions play better roles in the administration of justice. Minor offences could be referred to these institutions for consideration and meting out of appropriate punishments. To make the decisions of these traditional institutions more certain, provable or ascertainable, they could be reduced into writing (by secretaries that would be paid stipends by the Council) and registered in the nearest native, customary or area courts. Decisions of the Supreme Court<sup>[55]</sup> on the ingredients for valid customary law arbitration that tend to give native disputants the right to resile from such awards (where not favourable or withdraw midstream in the process), must be overruled as bad decisions. These decisions, such as *Agu v Ikewibe*, inflicted more injustice than serve as a reflection of our traditional practice.

#### **References**

1. Black's Law Dictionary 1030 (11th ed. 2019).
2. Osborn's Concise Law Dictionary, (7<sup>th</sup> ed.), Roger Bird (ed.), (Sweet and Maxwell, London, 1983, 201.
3. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UNPG), 6 (adopted in 2012 by the General Assembly Res. 67/187, annex). Accessed on 8 March 2021.
4. Word in italics ours.
5. Black's Law Dictionary 472 (11th ed. 2019).
6. Have their validity in the Nigerian Constitution, 1999 (as amended).
7. Ayorinde B. "A Reformatory Approach to the Criminal Justice System in Nigeria", 2014, available at <https://www.mondaq.com/nigeria/public-order/293894/a-reformatory-approach-to-the-criminal-justice-system-in-nigeria/> accessed 14 October 2021.
8. Legal Aid Council News Magazine (LACON News), 2 ed., 03 - quoting a former Attorney General of the Federation and Honourable Minister of Justice, Chief Chike Offodile. 2007, 2(1).
9. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UNPG) adopted in 2012 by the General Assembly Res. 67/187, annex., 6. Accessed on 8 March 2021.
10. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UNPG) adopted in 2012 by the General Assembly Res. 67/187, annex. Accessed on 8 March 2021.
11. Another is, the Lagos State Office of the Public Defender. There are several other government units or agencies with quasi-legal aid functions. The secondary legal aid service providers comprise of the Nigerian Bar

- Association (NBA), NGO's (local and international) and foreign governments' humanitarian or developmental donor agencies.
12. How To Obtain Legal Assistance from the Legal Aid Council: A Pamphlet by the LAC, 2.
  13. Legal Aid Act, 2011 (Act), s. 8(5).
  14. Legal Aid Act, s. 10 (1).
  15. *Ibid* s. 10 (2) & (3).
  16. *Ibid*. s. 8(1).
  17. Administration of Criminal Justice Act (ACJA), 2015, s. 6 (2), s. 267(1) & (4); Administration of Criminal Justice (Repeal and Re-Enactment) Law (ACJL), Lagos State, Laws of Lagos State, 2015, s. 3(2), s.74.
  18. Legal Aid Act, s.14.
  19. The Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 35(2), s. 36(6)(c) & (e); ACJA, 2015, s. 6 (2), s. 267(1) & (4); ACJL, s. 3(2)(a), s.74.
  20. Supreme Court Act, s. 28; Court of Appeal Act, s. 25; ACJA, s. 6 (2), s. 267(1) & (4); ACJL 2010, s.3; *Odediran v The State* [2006] 18 NWLR (1012), 671 (SC), where it was held that for a capital offence, the Court must of necessity, assign a legal practitioner to the Defendant.
  21. Lagos State Office of the Public Defender Law, Cap 03 Laws of Lagos State, 2015.
  22. The Lagos State House of Assembly enacted the OPD Law in 2003 (now 2008) thereby giving statutory backing to the OPD's mandate: the safeguard of the fundamental human rights and freedom of the vulnerable and disadvantaged groups, resident in Lagos State, through qualitative legal aid.
  23. Office of Public Defender, OPD, available at <https://opd.lagosstate.gov.ng/> > Accessed on 14 March 2021.
  24. Rule 48(1), Rules of Professional Conduct in the Legal Profession, 2007 (RPC).
  25. *Ibid*, Rule 38.
  26. Legal Aid Act, s. 18(3).
  27. *Ibid*, s. 18(2); Regulation 23(7)(c) of Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria, 2018.
  28. See Uju Ude, "Rise in Pro Bono Uptake Brings its Own Challenges in Nigeria", The Trust, February 4, 2021, available at <https://www.trust.org/i/?id=5ce4c101-1723-439b-b97b-d6abb26b22db> last visited May 18, 2021.
  29. He is very passionate about the administration of the criminal justice system - monitoring the practice of the ACJA, he is the convener of Fight against Corruption in the Judiciary (FIACIJ), and he is also engaged in serious advocacy for legal aid through the PDSS across the NBA branches, the Nigerian Police Force and the CDSS in the Judiciary. During the covid-era and the post-covid, as well as the period of the country-wide downing of tools by judiciary workers, he facilitated the assignment of duty solicitors to various Magistrate Courts across Lagos State where the need arose, to ensure litigants, especially those on criminal matters, were given prompt legal assistance. One of the authors had several detailed discussions with Mr Akinlade.
  30. The British Council (EU funded) has contributed greatly to this drive in collaboration with the Open Society Justice Initiative and the Rights Enforcement and Public Law Centre.
  31. Legal Aid Council only Represent Five Petitioners. Premiumtimesng.com. visited on 2 July, 2021. Mr Bayo Akinlade was a frontline driver for these pro bono services rendered by the NBA.
  32. Act. S. 17; DFID, USAID, EU, the Network of University Legal Aid Institutions (NULAI), FIDA, Civil Liberties Organisation (CLO), Committee for the Defence of Human Rights (CDHR), MacArthur Foundation, the Ford Foundation, Open Society Initiative West Africa (OSIWA), Open Justice Society (OJS), Legal Defence and Assistance Project (LEDAP), Women Aid Collectives (WACOL) and Rights Enforcement and Public Law Centre (REPLACE), amongst others.
  33. Most of these NGOs however, do collect subvention or grants from foreign donors such as the Ford Foundation, McArthur, DFID, British Council, USAID, and so on.
  34. Prof Ernest Ojukwu a former Deputy Director General of the Nigerian Law School (Enugu Campus), Prof Tahir Maman a former Director General of the Nigerian Law School, and Prof Isa Hayatu Chiroma the present Director General of the Nigerian Law School, are the pioneers of the Clinical Legal Education Movement in Nigeria. And the authors have had the privilege of working with all three colossi. In fact, Prof Ernest Ojukwu is known as the Father of Clinical Legal Education in Africa. For a more detailed discussion of the role of law clinics in the provision of access to justice, see, O. Bamgbose, "Access to Justice Through Clinical Legal Education: A Way Forward for Good Governance and Development" (2015) 15 African Human Rights Law Journal, 378-396, also available at [https://www.researchgate.net/publication/295248648\\_Access\\_to\\_justice\\_through\\_clinical\\_legal\\_education\\_A\\_way\\_forward\\_for\\_good\\_governance\\_and\\_development/fulltext/56e96deb08ae77f87278fe1c/Access-to-justice-through-clinical-legal-education-A-way-forward-for-good-governance-and-development.pdf](https://www.researchgate.net/publication/295248648_Access_to_justice_through_clinical_legal_education_A_way_forward_for_good_governance_and_development/fulltext/56e96deb08ae77f87278fe1c/Access-to-justice-through-clinical-legal-education-A-way-forward-for-good-governance-and-development.pdf) last visited on May 13, 2021.
  35. 'Crime Prevention Criminal Justice', <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-3/key-issues/3--key-components-of-the-right-of-access-to-legal-aid.html>. Accessed on 9 March 2021.
  36. Legal Aid Council News Magazine (LACON News), 2 edn. Vol. 1 No. 2, 2007, 09.
  37. Speech by Mrs. Joy Bob-Manuel, a former DG of the Council, available at <https://www.independent.ng/legal-aid-council-facing-challenge-of-relevance-amid-poor-funding/> accessed 21 November 2021.
  38. *Ibid*.
  39. Reference is made to an "access to justice fund" in the Explanatory Memorandum to the 2011 Legal Aid Act.
  40. [http://legalaidcouncil.gov.ng/index.php?option=com\\_content&view=article&id=101%3Alegal-aid-council-calls-for-review-of-2011-act&Itemid=145](http://legalaidcouncil.gov.ng/index.php?option=com_content&view=article&id=101%3Alegal-aid-council-calls-for-review-of-2011-act&Itemid=145) (accessed 6 March 2021).
  41. Attorney General of the Federation and Minister for Justice, Abubakar Malami (SAN) in his address at a retreat organised by the Council's Governing Board in October 2020. Available at [businessday.ng](http://businessday.ng) - (accessed on 6 March 2021)
  42. Oniekoro *et al*, Procedural Denial of Access to Justice in Nigeria: An Appraisal of the In Forma Pauperis, African Journal of Social Sciences (University of Buea, Cameroon), 2018, 34.

43. LACON News, 07-08.
44. Director (Academics) (posthumous), Nigerian Law School, Augustine Nnamani Campus, Agbani, Enugu State.
45. 'Legal Aid Council facing Challenge of Relevance Amid Poor Funding', available at <https://www.independent.ng/legal-aid-council-facing-challenge-of-relevance-amid-poor-funding/> accessed 28th October 2021.
46. Chief Bolaji Ayorinde (SAN), *ibid*.
47. The Council is presently leveraging on its partnership efforts with various NGOs and donor agencies.
48. LACON News, Vol. 5, No. 1, 2017, 16.
49. [1988] 3 N.W.L.R. (Pt. 4) 533 - this was a trial for a capital offence and the lawyer assigned by the Legal Aid Council to defend the accused person was a new wig; about one year post Call. The Supreme Court nullified the trial; *Josiah v The State* [1985] 1 N.W.L.R. (Pt.1) 125, 141.
50. Chief Bolaji Ayorinde (SAN), *op. cit*.
51. A. A. Ibrahim, 'The Legal Aid Council in Nigeria: Challenges and Possible Solutions' Available at SSRN: <https://ssrn.com/abstract=3547025> <http://dx.doi.org/10.2139/ssrn.3547025> accessed 10th December 2021.
52. Legal Aid Council News Magazine (LACON News, Second Edition, Vol. 1 No.2, 2007) 9.
53. *Ibid*.
54. Lee Bridges *et al*. Evaluation of the Public Defender Service in England and Wales, 2007. <https://orca.cf.ac.uk>>... Visited last on 2 July 2021.
55. The Law Society, Legal Aid @[lawsociety.org.uk](http://lawsociety.org.uk) for a detailed role of the Law Society in legal aid services. Visited last on 2 July 2021.
56. See *Agu v Ikewibe* (1991) 3 NWLR (Pt.180) 385; *Ohiaeri v Akabeze* (1992) 2 NWLR (Pt.221) 1; *Oparaji v Ohanu*(1999) 9 NWLR (Pt.618) 290; *Igwego v Ezeugo* (1992) 6 NWLR (Pt.249) 561; *Egesimba v Onuzuruike* (2002) 15 NWLR (Pt.791) 466.