NATIONALISM AND ECONOMIC JUSTICE IN NIGERIA

Edited By

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Table of Contents i

Preface vii

Introduction viii

SECTION ONE:

Chapter 1: Capitalism, Economic Inequality and National Liberation in Fashina's Philosophy.
Yunusa Kehinde Salami 1

Chapter 2: Imperatives of Social Order.
A.G.A. Bello 9

Chapter 3: Worth Dying for: Citizens' Welfare and Nationalism in Nigeria.
Yomi Akinyeye 28

Chapter 4: The Labour Movement and the Politics of Liberation in Nigeria.
Omotoye Olorode 45

SECTION TWO

- **Theoretical and Conceptual Issues**
- **National Patriotism and Rights of Workers**
- **Equality and Priority in the Distribution of Wealth**

Chapter 5 Democratic Leadership in Nigeria's Fourth Republic: A Loss of the Ideals of Nationalism.
Jonathan Chimakonam & Joseph N. Ogar 78

Chapter 6: Nationalism in Nigeria: A Case for Patriotic Citizenship.

Isaiah Negdu & Augustine Atabor 99

Chapter 7: Gender Justice and the Nationalist Discourse: A Critique of Neoliberal Conditionalities in Nigeria.
Chidiebere Onwutuebe 114

Chapter 8: Tribalism and the Crises of Nationalism in Nigeria.
Felix Ayemere Airoboman 134

Chapter 9: Re-inventing National Patriotism and the Rights of Workers: The Quest for Local Government Autonomy.
Francis Fagbohun and Godwin Ihemeje 154

Chapter 10: Nationalism and Project Delay: A Case Study of the Universal Basic Education (UBE) Buildings.
K.O Kadiri 181

Chapter 11: On Economic Injustice and Distribution of Resources in Nigeria: What will H.L.A Hart Say?
Paul Haaga 191

Chapter 12: De-Transcending Corruption to Culture and Tradition in Nigeria: Imperative of Anti-Corruption Laws for the Attainment of Economic Justice.
Jade' Mohammed 209

Chapter 13: Socio-Economic Rights as Just Allocation of Economic Resources in Nigeria.
Olatokunbo Ogunfolu and Oludayo Fagbemi 225

Chapter 14: Equality and Priority in the Distribution of Wealth in Nigeria.
Tella, S, Adenaike A., Sennuga M. and Adekoya E. 258

Chapter 15: Poverty and Unequal Access to Justice by the Poor in Nigeria: Lessons from other Jurisdictions.
Animasahun 'Sola 300

Chapter 16:Right Pay as Workers' Right in Nigeria: A Factor in Building a Patriotic Worker.
Ayorinde Odulaja. 336

SECTION THREE

- **Issues of Fairness and Goodness in Allocation of Resources**
- **Ethnicity, Class Struggle and National Development**
- **Marxism and Economic Justice**

Chapter 17: The Beatification of Area Boy: Rythmic Dialectics between Military Tyranny and Mass Poverty.
Segun Adekoya 348

Chapter 18: Fairness and Goodness in the Allocation of Resources: Evidence from Nigeria.
Adenaike Abayomi, Sennuga Mabayoje and Adekoya Esther 373

Chapter 19: Complexion of the Petroleum Industry: Rethinking the Roles of Government and Oil Companies in Niger Delta Communities.
Udechukwu Udeke and Okolie-Osemene James 401

Chapter 20: Class Struggle in Ousmane Sembene's *God's Bits of Wood.*
Akinwumi Olafisayo 421

Chapter 21: The Crisis of Labour and the Anomaly of Capital In Marxist's Conception of Social Disorder: Precepts from Ujaama.
Balogun Oladipo Jimoh 438

Chapter 22: Privatisation and Economic Justice in Nigeria: A Marxist Perspective.
Otinche Inyokwe 464

Chapter 23: The Politics of Ethnic Identity in Nigeria: An Examination of the Origins of the Notions of Hausa-Fulani and the Yoruba Identities.
Abdulahi Sule-Kano 486

Chapter 24: An Evaluation of Ethnic Hostility and the Survival of Democracy in Nigeria.
Mashood Omotosho 507

Chapter 25: Ethnic Conflicts and the Quest for Unity in Nigeria.
Pelumi Folajimi 536

Chapter 26: The State, Subsidy Question and Social Class Struggles
Dele Seteolu 560

SECTION FOUR

- **Self-Knowledge, The Intellectual and National Liberation**

Chapter 27: Anti Colonial Politics and the Struggle for Socio-Economic Liberation in Nigeria: The Example of Sa'adu Zungur.
Sani Ali & Aminu Hayatu 574

Chapter 28: Religion, Economic Injustice and the Dialectics of Socio-Political Transformation in Nigeria.
Adetolu Jacob 603

Chapter 29: Patterns of Human Rights Denial among some Older Persons in Nigeria.
Olatubosun Tope 618

Chapter 30: Sexual Rights (in Nigeria) and the Defence of the Right of Homosexuals: The Abolition of Prejudicial Justification.
Oyedola David Abiodun. 628

Chapter 31: Ethics of Posterity and National Sustainable Development.
Otto Dennis 660

Chapter 32: Interrogating Regional Loyalty and National Interest: The Question of Nationalism

and Governance in Nigeria, 1952-1999.
Taiwo Olaiya & Opeyemi Iroju 681

Chapter 33: Globalisation, Imperialism and Economic Injustice in Africa: The Nigerian Instance.
Akhakpe Ighodalo. 713

Chapter 34: Effective Leadership as the Basis for Nigeria's Quest for Development.
Adefarasin, V.O. 730

Chapter 35: Self-Knowledge and Intellectualism: A Perspective from the Yoruba Cosmology.
Odejobi Adetunji 747

Index --- **790**

CHAPTER FIFTEEN

Poverty and Unequal Access to Justice by the Poor in Nigeria: Lessons from other Jurisdictions

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Abstract

The global financial crises have enlarged the rank and multiplied the suffering of the poor significantly. The power elite who are the architect of the crises have created safe pathways for their rank while the poor and the middle class bear the brunt of the problem. In Nigeria, evidence abounds that the poor and the disadvantaged are vulnerable to various human rights abuses. One of such is the unequal access to justice that undermines the possibility of equality in the society. It is against this backdrop that this chapter examines obstacles that the poor face in accessing justice and proposes some ways in which these problems may be addressed. The chapter highlights various social, political and legal obstacles that are peculiar to the poor and those that, though are applicable to the affluent, create more problems for the poor because of their status. The chapter goes on to analyse the concept of fundamental rights as enshrined in the 1999 Nigerian Constitution and the impact on the rights of the poor to access justice. Furthermore, the article evaluates the capabilities of the court system as a whole, as well as the judiciary, and identifies the principle of independence as the main requirement. The chapter also examines the institutional and procedural obstacles that the poor encounter when seeking justice and suggests policy responses for overcoming them. However, if for whatever reason, this access is denied, the hope of the poor is automatically dashed and they become disillusioned and lose confidence in the whole system. In most cases, they take the laws into their own hands and resort to violence and self-help. Drawing inspirations from other jurisdictions, the chapter explains why justice is so important for poor people and introduces a broad range of responses in the areas of legal and institutional reforms.

Introduction

The global economic meltdown which came like a thief in the night has increased the rank of the poor world over (Zoellick, 2009).The hitherto middle class, in certain instances, have fallen from a high pedestal to this abyss. This accounted for the increase in the level of stress, mental distress and suicide, as those who had been used to affluence and relative comfort now find it difficult to endure the impoverished situations they now find themselves (Yamada, 2012). The poor in Nigeria are a special species of human beings because they have their own culture and are conditioned in certain ways. They constitute about 80% of the total population but have access to less than 20% of the resources of the land (Owasanoye, 2004). There are different reasons for these setbacks; while some are self-inflicted, most are inflicted by the society or a combination of both.

There are a lot of discourses on the plight of the poor in Nigeria but such discourse usually pay mere lip service to this vexed issue till date there has not been any worthwhile solution proffered by each of the successive governments to alleviate the suffering of the poor. Under the new democratic dispensation, the aspirants express different rhetoric and make election campaign promises on how poverty alleviation and the course of the common people would be the major priority when elected. However, as soon as they are elected, the electorate, mostly the common man and woman and the downtrodden in society are immediately forgotten and all the promises made during the campaigns are left unfulfilled.

The constitution of Nigeria recognises that the rights contained therein are to be promoted, protected and enjoyed by all the citizens irrespective of sex, religion, race or geographical location. More importantly, both the poor and the rich in society

have equal rights. But the pertinent questions are: Do the poor in Nigeria have the same rights as the affluent or are these rights real or a mere mirage? Furthermore, when it comes to the issue of access to justice, can it be said that the poor have the same access to justice as the affluent?

Research Methodology

The research methodology adopted in this study is qualitative. The research is library based and reliance is placed on material such as learned journals, textbooks, case laws, conference papers, law reports legislations and electronic sources. We will look at the practice in other common law jurisdictions.

Concept of Justice: An Overview

Views from the Bench

The ex-English Master of the Rolls, Lord Denning in the case of *Magor and St. Mellows Rural District Council v Newport Corporation (1950)* states thus: "I have no patience with an ultra-legalistic interpretation which would deprive (the appellants) of their rights altogether." This means that he would rather ensure that justice is attained rather than placing too much emphasis on unnecessary legalistic interpretation of the law which would, at the end of the day, result in miscarriage of justice. Similarly, the learned ex Master of the Rolls stated in the case of *Metropolitan Properties Co. v Lennon* (1969) that: "Justice must be rooted in confidence, and confidence is destroyed when right-minded people go away thinking, the judge was biased". Esho (1991) JSCN further posited that, the ultimate purpose of law is the attainment of justice. He further stated that justice in a case is not an abstraction or an academic rendition; it must relate to the given society.

In *Sule Anyegwu and Nuhu Atodo v Aidoko Onuche* (2009) the Supreme Court stated emphatically that: "cases should be considered on merit rather than technicalities". Also, Karibi-Whyte, JSCN as he then was, posited that: "in the discharge of its sacred duty to do justice, the court cannot be inhibited by the

ignorance or carelessness of the counsel." In a nutshell, the clarion call mentioned above is to ensure that, in the dispensation of justice, at any point in time, a high standard devoid of sentiment and favouritism is expected from those conferred with the responsibility of interpreting the law. Consequently, justice must be seen to have been manifestly done. By way of an analogy, law and justice should be seen as Siamese twins. It is in this light that these judges perceived justice.

Perspectives from the Philosophers

Different interpretations and meanings have been given to the word justice. The volume of writing on the subject is indicative of the anxiety the concept has generated, while the complexity of the theories evolved thereon has been a testimony to the importance both jurists and the society attach to it (Esho, 1991).

The ancient philosophers such as Plato, Aristotle, Aquinas and other natural law theorists basically used the law of God, metaphysics and rational principles to define law and justice (Adaramola, 2003). The concept of justice connotes the legal equality of human beings (Adaramola, 2003). It is a concept conceived and formulated around the dignity of the human person (Universal Declaration of Human Rights, 1948).

Aristotle speaks of local or particular justice and universal justice. He further sub-divides local justice into distributive and corrective justice. According to him, distributive justice is founded on the assumed principle that there is equal distribution of distributable things among equals in a given society. However, whenever distributable justice is distorted or disturbed through some wrong doing, the judge applies corrective justice to restore the status quo ante (Adaramola, 2003).

Recently, postulates of John Rawls (1971) set up his principles of justice thus:

> The maximisation of liberty, subject only to such constraints that are essential for the protection of the liberty itself; equality of all in basic liberty and distribution of all social goods subject only to certain exceptions; fair, equality of opportunity, and the elimination of all inequalities of opportunity based on birth or wealth.

Jeremy Bentham (1789), however, adopted a sensual approach by equating justice to pleasure and pain. The ultimate end of legislation (to provide for justice)' to him, is the provision of happiness for the greater number. Lord Denning M.R, in his "Road to Justice" (1955) opined that the nearest one could get to defining justice is to say that justice is what the right-minded members of the community – those who have the right spirit within them – believe to be fair. Here, a court is seen as not only as a Court of law but a Court of Justice.

After appraising these definitions, we can see that they suffer from one deficiency or the other. The deficiencies in the definitions of the ancient philosophers and other natural law theories stem from their explanation of law and justice from metaphysical and esoteric perspectives that do not lend itself to rationality. John Rawls on his part only set the principles of justice rather than defining it.

Consequently, in this chapter, we will adopt and expand the definition of Lord Denning to the effect that justice is what the right-thinking members of the society consider to be fair and just, and those members are sane, reasonable and intelligent. It also includes the refusal of judicial authorities to allow litigants and their counsel to use technicalities to evade due dessert and punishment.

On the issue of access by the poor to justice, Madison (2002) states that the special problem the poor have with accessing justice is not unconnected with the fact that: first, the judiciary

was conceived as a body firmly "separated" from the people. Most precisely, those who lack property, those with less education, the debtor, the majority of the population should have less access to the judges. Madison further stated that the judges:

> By the mode of their appointment as well as the nature and permanency of it [...] would be too far removed from the people to share in their prepossession [...]their connections of blood, of friendship and of acquaintance embrace a great proportion of the most influential part of the Society.

The interpretation of this is that since judges are far removed from the poor, the judges that they may not appreciate the plight of the poor. Secondly, judicial seats are filled with certain kinds of persons who are wealthy, well-educated and live in highbrow neighbourhood where the poor are most unlikely to be their neighbours. Thirdly, court premises are located in good neighbourhood far removed from the slums and the poor neighbourhood in most cases. Fourthly, members of the disadvantaged group may actually have gone to court but treated impartially owing to a judge's cultural, class or social biases. Lastly, many of the problems that the poor are encountering originate from the very law that is applied through the Judiciary. Law on trespass to property, defamation, power to hire and fire and other such similar laws, are deemed to be of doubtful importance to the poor.

United Nations Development Programme (UNDP, 2005) defines access to justice as: "The ability of the people to seek and obtain a remedy through formal or informal institution of justice, and in conformity with human rights standards".

The Concept of Poverty

Poverty is primarily a concept of economics (Ale, 2001) but it is a phenomenon that is complex in origin as well as in its manifestation because it is a state of the inability of a person, household, community or state to satisfy basic needs (New Encyclopaedia Britannica, 1980). However, poverty is best explained from the inherent situation in a particular society or community. Dressler (1976:481) explains poverty thus:

> Absolute poverty, which is a situation whereby an individual or household is unable to provide even the basic necessities of life; and [...] Relative Poverty, which is a situation in which an individual or household is unable to maintain the standard of living normal in the society in question.

In the same vein, Adam Smith (1776:69) explains the concept of poverty thus:

> By necessaries, I understand not only the commodities which are indispensably necessary for whatever the custom of the Country renders it indecent for creditable people, even of lowest order, to be without. A linen short for example is strictly speaking not a necessary of life. The Greeks and Roman lived, I suppose, very comfortably though they had no linen. But in the present time...Labourers would be ashamed to appear in public without a linen shirt, the want of which would be supposed to denote that disgraceful state of poverty.

Obafemi Awolowo (1981:76) defines poverty as "a condition which exists when a person lacks the means to satisfy the necessaries of life". Similarly, McConnel (1969:71) states that "a family lives in poverty when its basic needs exceed its available means of satisfying them." Ojetunji Aboyade (1975: 25) and

Akinola Aguda (1993) adopted a rather radical approach in defining poverty. Aboyade posited thus:

> [...] In the final analysis though being a tragic and socially unacceptable human experience, poverty is probably not a subject to be defined or measured, to be appreciated it may have to be suffered.

Similarly, Aguda (1993:441) in his own treatise posited that "we need not define what poverty is. We have either suffered from it in our life time or we have seen it in others."

The U.N.D.P (1996) describes poverty as the:

> [...] inability to provide for physical subsistence to the extent of being incapable of protecting human dignity. These include food, clothing and shelter, potable water, healthcare services, basic education, public transport and work.

Grans (2004) stated that the rich, including political leaders sustain poverty for the following reasons:

- Poverty ensures that dirty work of the rich such as floor scrubbing, manual labour gets done.
- Poverty creates jobs for those who are not poor. Many people such as policemen/women, welfare workers, social workers indirectly have their livelihood at the expense of the poor.
- Poverty makes an affluent life easier; poverty enables the rich to enjoy the services of cooks, gardeners, house helps and others, leaving them free to pursue pleasure.
- Poverty provides a market for inferior goods and services.
- Poverty guarantees the status of those who are not poor. The existence of the poor confirms the superior status of everyone else.

> Poverty provides a group that can be made to bear the inconvenience of change. New highways are usually cut through the residential area of the poor neighbourhood but rarely through the estates of the rich or upper middle class suburbs. Moreover, the latter are most likely to have legal documents and letters of allocation; hence the government pays a higher compensation.

Against the above guidelines, poverty is now widely defined in economic terms (low income), social terms (fulfillment of basic needs – food, clothing, shelter, safe potable water, and basic education and so on), and political terms (participation in decision making) (Kaufmann and Grosz, 2007). Far from describing poverty in economic terms as postulated above, an additional word "extreme" has been added by the United Nations in order to extend the meaning of poverty. Consequently, in 1992, the United Nations General Assembly recognised in Resolution 134 that extreme poverty is a violation of human dignity which may amount to a threat to the right to life (GAR, 1992). On the 20th of December 2004, the General Assembly finally passed Resolution 59/186 reaffirming this issue.

The meaning of poverty was recently extended to include poverty production by Else Oysen. This is a new approach to the concept and it is a recent addition to poverty terminology. Accordingly, Oysen (2006) describes poverty production as the process of producing poverty. This is a total departure from the orthodox way of describing poverty. She argues that the time has come to focus research on poverty production and to understand better the forces that keep on producing poverty in spite of all the many poverty-reducing strategies (Mubangizi, 2007). Oysen further argues that unless new knowledge is acquired to stop those poverty-producing processes or even better reverse them, there is little gain in introducing measures to counteract those forces. Applying Oysen's argument to the Nigerian society, it is

apparent that, the people trusted with the duty to govern continue to produce poverty rather than reduce it. With regard to access to justice, majority of the poor cannot access it because they are jobless and do not have the wherewithal to enforce or seek redress where their rights have been violated.

From the foregoing discussion, the common trend in all the various meanings, definitions and descriptions of poverty is lack. Thus, poverty for our purposes will be construed to be a state of deprivation where a person lacks the means to satisfy the necessities of life. We humbly submit that access to justice is one of the necessities of life. Consequently, lack of means to access justice will therefore amount to deprivation or denial of access to justice.

Implications and the Effects of Poverty on Fundamental Rights in Nigeria

Fundamental rights are those rights that are inherent in a human being. In fact, Justice Chandrachund C. J. of India in *Minerva Mills Ltd v Union of India* (1980) describes it as "transcendental", "inalienable", "primordial", that constitute "the ark of the constitution." A former American President Thomas Jefferson quoted in Aguda (1986:53) in a letter to James Madison dated 20th December 1987 said:

> Let me add therefore that a bill of rights is what the people are entitled to against every government on earth, general or particular and what no just government should refuse or rest on inference.

Accordingly, and in view of the above letter, most of the modern constitutions have incorporated fundamental human rights and are resolute to guarantee the enjoyment of the rights. For instance, Chapter IV of the Constitution of the Federal Republic of Nigeria

(CFRN) 1999 guarantees a set of fundamental human rights (Sections 33-46). The same constitution provides in Chapter II for fundamental objectives and directive principles of state policy, which are essentially non-justiciable. This section includes rights to housing, education and other social services. The inability to enforce the provision of this section hurts the poor more than the affluent; after all, the latter could provide these services for their needs.

Does the mere enunciation of these rights presuppose that there is equality in the accessibility to these rights by the poor? The answer is no. The CJ of Philippines, Reyna to Reno has expressed this concern in one of his judgments and stated that the playing field in the justice system is tilted against the poor. For while it is a noble endeavour to provide better access to justice by the poor, it is far nobler to put a period to the persistent problem of poverty so that all Filipinos would have the opportunity, within their own means, to protect and enforce the rights enshrined in the constitution. Furthermore, Reno emphasised that:

> We shall now look at some of these rights vis-à-vis the poor. Words on a parchment, without more, will not automatically open the doors of justice to the marginalized among our people. Their rights must be respected beyond mere paper guaranties and must be translated into reality by their enforcement.

The following rights though guaranteed by the 1999 CFRN are being criticised on the scores stated below:

The right to life (Section 33 CFRN 1999): Most legal writers and thinkers believe that a right to life is more than a mere right to exist. Uchegbu (1981:153) posits that "the right to life presupposes as a minimum, the right to food, shelter, health and education". In one of his lectures, Aguda (1986) asked: What does the right to life mean to a man when indeed he feels he is happier if that very life were taken away from him?

Freedom of Expression and the Press (Section 39 CFRN 1999): The ideals of freedom of expression and the press are lost to a basically illiterate society. Free speech and free press are means by which the society, as a collection of individuals, can participate in government (Azinge, 2004). The Indian Supreme Court Judge, Hon Krishna Iyer (1981), aptly summarises the position thus:

> Necessitous men are not free men. Freedom is not free merely because speech is free in theory if your mind is fettered by fear of tomorrow, your body handcuffed by harrowing hunger and your facilities be numbered by bounded labour. Distributive justice is a fundamental condition of life and liberty.

Also, Claude Ake (1987) in Azinge (2004:191) captures the position thus:

> [...] Freedom of speech and freedom of press does not mean much for a largely illiterate rural community completely absorbed in daily rigours of the struggle for survival [...]. Granted I have freedom of speech. But, where is this freedom, this right? I cannot read, I cannot write. I am too busy trying to survive, I have no time to reflect, I am too poor, I am constantly at the mercy of others [...].

Right to Dignity of Human Person (Section 34 CFRN 1999): An able-bodied unemployed who has dependents is a supplicant who could lay no claim to any dignity. Aguda (1986:9) posits that:

> [...] it is most inhuman and degrading for an able-bodied man or woman willing and able to work to find himself or herself a victim of unabated and frustratingly prolonged unemployment. Such a

> situation leads to an acceptance of failure in life which must be a state of extreme torture.

Krishna Iyer (1981), quoting Josef Stalin, aptly states that:

> [...] what can be the personal freedom of an unemployed person who goes hungry and finds no use for his toil? Only when exploitation is annihilated, no unemployment, no beggary and no trembling fear that man may on the morrow lose his work, the habitation, and his bread – only there is true freedom found.

Right to Fair hearing (Section 36 of CFRN 1999): This right and the right to legal aid by indigent litigants. Though guaranteed by the Constitution, a good majority of Nigerians, due to poverty, lack access to justice. Hon. Justice Oputa (JSC) (1989:66) puts this in the proper perspective when he says:

> Access to the courts is a necessary adjunct of the rule of law and the effectuation of the rights of the citizens. It underlines and emphasises that justice should not be the privilege of the few who are rich but should be available to all citizens of our country. But access to Court implies the payment of summon fees, the payment of lawyers' fees, the payment for records of proceedings in the case of an appeal. All these are far beyond the reach of the poor and the unemployed who, finding justice too expensive, gladly resigned themselves to the denial of it [...] one of the best tests of the efficacy of the fundamental rights provisions of our constitution should therefore be whether the rights enshrined therein are accorded the poor, the unemployed, the weak, the oppressed and the defenceless. In theory our constitution in its preamble talks nobly of promoting the good government and welfare of all persons in our country on the principle of freedom, equality and justice. But in actual practice one sees

> that it is the powerful, the rich, and the dominant class that seem to have all the rights, while only the rights left to the poor, the weak and the downtrodden seem to be the right to suffer in silence, to be patient and wait for their reward in heaven (if they are believers).

The Right to Acquire and Own Immovable Property (Section 43 CFRN 1999): This right is rather elitist as only the very rich could acquire immovable property. The Land Use Act Cap L5 LFN 2004, which vests all the land in state in the Governor of the state, is even used by the government and its agencies to take the land from indigenous people in whom the land was vested from time immemorial. The state government charges heavily to grant the Certificate of Occupancy and the building permits, while the local authorities come up with varied levies. Essentially, this is of no concern to the poor and the downtrodden who are busy battling with hunger, weather and diseases.

The Poor and Access to Justice in Nigeria

Letto-Vanamo (2005) posits that the idea of access to justice implies the existence of a concrete and equal right to use court or other dispute resolution institutions in the society. While conceding to the view as expressed above, it is pertinent to mention that equal access to the courts becomes viable and reliable if there is an independent judiciary and that the rule of law is allowed to regulate the judicial processes (Erhard, 1995). More importantly, equal access to justice will be meaningless unless basic obstacles such as economic problems (poverty), lack of access to information and lack of access to adequate representation are defeated (Letto-Vanamo, 2005). From the previous backdrop, it is apparent that to define the concept of access to justice precisely is difficult because other rights have

direct influence on the right to access to justice. Nevertheless, a consensus exists as to the central role of the court system in guaranteeing individuals' access to justice (Letto-Vanamo, 2005).

It can be said that access to the courts is a necessary part of an effective democracy while access to justice begins with a just society (Gregory, 2001). The courts protect our rights and freedom against arbitrary interference and also ensure that we do not unlawfully interfere with the rights and freedoms of others. Implicit in this responsibility is the duty of the courts to ensure equality of access (Letto-Vanamo, 2005). However, the assumption in Nigeria as in most democratic countries of the world that all are equal before the law is merely a myth (Aguda, 1987). For instance, under the Nigerian criminal justice system, the major hindrance to access to justice starts with the police in Nigeria. The thoroughness, interest and persistence in investigating any case are functions of the ability of the complainant to mobilise the police.

Mobilisation in this sense means to give money as bribe to the police in order to set in motion investigative mechanism or to thwart it. The fact that the Nigerian police are very corrupt is no news. There have been many instances where citizens were shot dead at the police checkpoints just because they refused to give N20 bribe (Nigerian Naira – approximately 13 American cents). The law enforcement officers extort money by insisting that some gratis should be paid even if no crime is committed at all. This usually happens when the victim is accosted or apprehended at night at the bus stops or even in front of the victim's house.

According to the United Nations Reports, in December 2008, police officers from Ketu (Lagos-Nigeria) Anti-Robbery Squad arrested persons attending a community party and released only those who could pay an illegal fine imposed by the officers. One of the detainees was unable to pay because he was indigent; he was severely beaten with an iron bar and rifle butt by the policemen and he died (US Department of State Diplomacy in

Action, 2009). Similarly, a 70-year-old man on the way home from the wedding ceremony of his son died after being shot in the head at a police checkpoint in Oshogbo, Osun State Nigeria. The man had refused to pay a N20 bribe (Nigerian Naira - approximately 13 American cents) (US Department of State Diplomacy in Action, 2009).

However, if a crime was actually committed, the bribe to be paid by the suspect is graduated as to the severity of the case and the geographical location. Should there be any need for the police to go and visit the scene of the crime, it usually takes several hours or days after the crime has been reported. However, if at all they do go to visit the scene, on arriving at the scene of the crime, anybody found around the vicinity is deemed to be a suspect and would be randomly arrested with the use of force except the affluent that have the where-withal to bribe their way or promptly use their connections by getting in touch with the superior officer who will order their immediate release.

In 2001, a heavily pregnant woman was arrested after a duel between the Odua People's Congress (OPC) and the National Union of Road Transport Workers (NURTW). She gave birth to her baby in prison. The woman was resident in Lagos. She travelled to Ibadan, a distance of about 140 km from Lagos, to see her friend when she was arrested. She was incarcerated for about six months. She was unable to secure her release because she was chronically indigent and so also were her family members. All her constitutional rights were violated and yet she could not constructively access justice and seek redress. Recently, a Nigerian was arrested for recording a police bribe collecting scene (*The Punch*, 2013) As a matter of fact, it is apt to say that the Nigerian Police could arrest for good reasons, bad reasons or no reasons at

all and their victims usually are the poor, the weak, the unemployed and the vulnerable.

Obstacles to Effective Access to Justice by the Poor

Lack of information or Illiteracy

The poor lack information with regard to their legal rights and what to do to have the violated rights redressed. More so, complication occurs when the oppressed even shout and demand relief from the appropriate quarters but the latter due to *'espirit de corps'*, inefficiency or corruption is unwilling to grant the relief. Majority of Nigerians particularly the poor are illiterate and do not know what rights they have under the Constitution. Lack of communication, ignorance and illiteracy are indeed major obstacles to access to justice by the poor. Till date, the Constitution is written in the country's official language – English, and has not been translated into the major local languages spoken by the local people (Brems and Adekoya, 2010).

This observation is re-invigorated in the 2006 periodic report (CEDAW Committee), where it was observed that the use of the English language rather than the local languages as the communication medium in court, and the complex nature of the court system, are barriers to women accessing justice in Nigeria (CEDAW, 2006). It is worth mentioning that the barriers are not exclusive to women alone; they also apply to men (Brems and Adekoya, 2010). In South Africa, the Constitution recognises eleven official languages and it is written in these languages. Remarkably, both the literate and illiterate population in the society is therefore well informed of their constitutional rights. In courts, a litigant is entitled to communicate in any of the eleven official languages. The court will also assist in getting an interpreter for any individual who does not fall within the recognised eleven official languages; consequently, foreign nationals have effective access to justice. This model has

drastically removed the constraints of accusation of not being informed.

Economic costs

These difficulties appear in all countries and affect all kinds of people. However, these problems are more serious in developing countries and particularly, for the poor people. Poor countries seem to have problems in guaranteeing decent minimum social protection and good education for all (Madison, 2002). The likelihood of failure of a poor litigant involved in a civil action regardless of the fact must be 80% right from the beginning. First, the poor are unable to secure the services of a competent counsel to prepare and argue the case (Aguda, 1993) if they could afford one at all. The judge and the state do not have the powers under the law to render any assistance. More so, chronic abject poverty particularly hunger and starvation may compel a poor litigant to abandon the pursuit of his or her right. This scenario is aptly described by Oyebode thus:

> There is no gainsaying the fact that Nigeria of our time can only make a fetish of equality before the law in the face of millions not knowing where their next meals would come from or where to lay their miserable heads at night, talk less [sic] of being conscious of their rights or possessing the wherewithal to ventilate their grievances through the judicial process. Cicero's notion of justice of everyman getting his due would inevitably pose the question of what is really the due of every Nigerian (Oyebode, 2009:3).

Furthermore, a simple case may be protracted to between seven and twenty years in Courts (Ariori, 1981). In most cases, the original claimants may be long dead and have to be substituted by

their wives or children (Brems and Adekoya, 2010). For instance, the case of Wilson Bolaji Olaleye versus Nigerian National Petroleum Corporation (NNPC) took thirteen (13) years before judgment was given and damages awarded to a dead victim of a kerosene explosion and his dependants. There are also other costs such as court fees, transport fare to cities where courts are located and living expenses on such trips amidst several adjournments, cost of obtaining basic documents such as certified true copies (CTC), photocopies and phone calls. Litigants are also expected to make various unofficial payments (bribe) for various administrative activities in the judicial process otherwise the case will not be listed in the case list for hearing (Ayu, 2001). A learned author commenting on the state of justice for the poor in the United Kingdom, a developed country stated that:

> The scale of justice are [sic] inevitably weighed in favour of the richest people, who can afford the best lawyers and advise [sic], whereas the person of average income may be excluded from his rights unless he is so irresponsible as to gamble – since there is always a risk that even a small claim might escalate to the House of Lords [...] but could result in bankruptcy for him and his family (Iyer, 1981).

It is noteworthy to mention that the filing fees in most courts are prohibitive (*The Guardian*, 2009). They vary with the amount of the monetary claims by the litigants hence denying the indigent litigant access to justice. However, the European jurisprudence discourages this sort of administrative judicial processes. In 1979, the Court in Airey's (1980) case held that the convention had been violated because prohibitive costs deprived the applicant of the effective right of access to a court. It has been said that the one normative justification for legal aid flows out of the state's commitment to the rule of law (Dyzehhaus, 1997) and ensuring that every individual enjoys his or her right to justice (Hennie,

2005). This obligation can be fulfilled partly through the legal aid system (Sikulibo, 2009). Thus, in its broadest sense, legal aid may be described as the provision of legal services by lawyers and legal practitioners freely or charging less legal fees than a regular market rate to the client, in order to ensure the accessibility of these legal services to those who otherwise could not afford them. Confirming the adverse effect of the inefficient administration of justice in Nigeria, Aguda (1987:5) states that:

> The whole system of administration of justice is heavily weighed against the poor, who are unable to afford the expense of any search after justice. If however, the poor is [sic] foolhardy enough to enter the temple of justice, he and his family may regret it for the rest of their lives. For in the process – in the pursuit of what he considers to be just – he may become bankrupt and die a pauper. Because, no matter how little a claim may be if one of the parties is a wealthy person or is the State, such a case may traverse eight courts in between 5 and 20 years.

There is therefore the need to enhance the legal empowerment of the poor as this is essential to poverty reduction. Given the chance, poor people will work to get out of poverty. More importantly, the poor will be able to move out of poverty if they have access to secure and tangible property rights, enforceable labour rights and a justice system that provides them real legal protection (Commission Document, 2006).

Inordinate Court Delays

Unnecessary and protracted litigations are the major causes of inordinate delays in the Courts. These are further complicated by an unnecessary unwieldy hierarchy of courts and cumbersome procedural rules that serve as an incentive to

unpardonable delays in judicial process. The court takes a lifetime to decide a case. Other reasons for protracted delays in litigation are few judges, some of them having heavy workload. Some of the judges lack adequate equipment such as computers, assistants and work station and if they are available, majority of them do not know how to use modern appliances. The working environment is not conducive because of constant power outage. The offices are bad and the library contains archaic books. In a nutshell, the judiciary is moribund. A judge in Nigeria (Ononeze Madu, 2008) sat and presided under a Mango tree claiming that it was better than her court room. Some judges are pathologically lazy or prefer to direct their attention to cases that are important in terms of press attention, power, relations or where they can derive illegal benefits.

Transfer of Judges from one judicial division to another has been the major obstacle to justice delivery and the poor are the most affected. In the same vein, criminal trials in Nigeria are also bogged down by inordinate delays (Garba, 1972). The poor accused persons are the worst affected by having to spend long periods in detention awaiting trials (Saidu,1982) due to inability to afford legal representation (Brems and Adekoya., 2010). According to the 2005 prison report reform, 64% of the inmates of Nigerian prisons are awaiting trial and languishing in prisons, most spending between two to fifteen years (Nigerian Report on Prisons, 2005).

There have been several instances of refusal to settle cases out of court where it is apparent that the chances of success are almost nil thereby clogging the court with frivolous cases (Ezekiel, 2000). In this regard, Mohammed (JSC) in *Nyambi and others versus Osadim and others* (Nyambi, 1997) observe as follows:

> Four Courts; district, magistrate, high and Court of appeal all decided against the appellants on matters of fact, not law. Yet the appellants had to reach the Supreme Court for final verdict. It is high time the

> burden of Supreme Court be reduced by disallowing appeals like this one through constitutional provision from reaching the Supreme Court. The process of Court must be used bona fide and must not be abused.

In *Wakino versus Ade John* (1999), the case took eleven years in the High Court alone, due to a series of adjournments. Also, in *Ariori and ors versus Elemo and Ors* (1983), the case took twenty two years to reach the apex court – the Supreme Court – which ordered a trial de novo (meaning to commence the hearing of the case altogether at the court of first instance where it was first instituted and heard by the high court). A case of wrongful dismissal, *CBN and Ors versus Mrs Agnes Igiwillo (substituted for Victor Igwillo* 2002) took 10 years before judgement. The plaintiff/respondent died before judgement and had to be substituted by his wife (CBN, 2002). The question to ask here is, could the poor withstand such stress without capitulating? According to the 2006 United Nations (UN) reports, the length of trial was the most serious problem of Nigeria's justice system when compared with other factors hampering justice delivery (Aguda, 1987).

The report revealed that court users, who had more negative perceptions and experience when it came to seeking access to justice, were likely not to use the courts when needed, and that inefficient courts are likely to encourage citizens not to seek solutions in accordance with the law but to resort to other often illicit means including corruption (UN, 2006). This is the exact picture of what is happening in the country's justice system and it is not likely to stop anytime soon except if there is political will and concerted efforts by the people responsible for the administration of justice to reform the system and heavily overhaul it.

Corruption

The world over, an independent judiciary is regarded as a sine qua non for a functional democracy. In fact, its centrality to social harmony and good governance in any given democratic society is widely documented. This explains why advocates of good governance for instance, stress that if the rule of law must be guaranteed in a democratic society, the funding of the judiciary must necessarily be removed from the control of the executive so that its officials would not be unduly influenced or hamstrung in the discharge of their statutory responsibilities (Nwokeoma, 2010). The incidence of corruption which has plagued the judicial system in Nigeria relates to unofficial payments to judges, lawyers, court staff and police with the purpose of obtaining favourable judgements (Brems and Adekoya, 2010). Corruption in the justice administration system in Nigeria takes many forms such as the acceptance of gratification or other considerations by the presiding judge or magistrate to influence the decision in a case in favour of one of the parties (Brems and Adekoya, 2010). Faking the actual service of court process as well as forged endorsements of service in the court records with the aim of ensuring non-appearance of the defendant to defend the suit, so that the plaintiff can obtain a default judgment against the real defendant who has no knowledge of the suit (Adeyemi, 2001).

Court bailiffs who are central to the service of court processes and execution of judgments in Nigeria have been particularly identified as the most mischievous and corrupt personnel within the judiciary who act as barriers to speedy trials and dispensation of justice (Brems and Adekoya, 2010).When judges are corrupt or perceived to be so, wealth and justice become closely related. Thus, the poor in Nigeria believe that justice is the preserve of the mighty and wealthiest that have the wherewithal and financial means to purchase it. This mindset leads to a pernicious dynamic (Brems and Adekoya, 2010) in

which the judicial process is viewed as an auction whereby judgement goes to the highest bidder (Owonikoko, 2003).

The overall implication of this is that corruption extirpates objectivity and impartiality from the judicial process and leaves litigants at the mercy of compromised judicial officers (Rotberg, 2007). Another major impediment to access justice by the poor is that the choice of judge or magistrate who is to hear the matter may be influenced, with the aim of perverting the course of justice. In criminal cases, corrupt practices also influence the granting or refusal of bail to accused persons (Brems and Adekoya, 2010).

Bail may sometimes depend on the defendant's ability to pay gratification while accused persons who cannot pay may be denied bail or be given onerous bail conditions which may be difficult to fulfill (Adeyemi, 2001). Corruption is endemic in Nigeria and it is a serious malaise in the country. The former acting Chief Justice of Oyo State was accused of corruption, bias and impropriety in an open court (Sunday Sun, 2007) in which he presided and the Judge was unable to charge the counsel with contempt of the court because the judge's action left much to be desired. To call a spade a spade, his misdemeanour confirmed that he had compromised his position. We shall also cite only a few examples of the proven cases of the indiscretion of our Judges.

Kayode Esho Commission on Judicial Reforms of 1994 found 28 Judges of Superior Courts culpable of offences ranging from low productivity to corruption. Consequent to this, judicial corruption disaffects the masses and diminishes the already low level of confidence in the judicial process (Okechukwu, 2009). Esho has warned that endemic of corruption in the judiciary if left unchecked could sound the death knell for justice administration

and delivery in the country with dire consequences for its democratic governance (Nwokeoma, 2010).

Four judges serving on the panel of Akwalbom election petition tribunal were investigated and found guilty of corruption and eventually dismissed (Nigerian Muse, 2006). In a related case two justices of the Court of Appeal received bribes of N15 million (Nigerian Naira-approximately $98,039.216) and N12 million (Nigerian Naira - approximately $78,431.373) and gave judgement in favour of their patrons whilst the third judge refused the bribe and gave the dissenting judgement. The case was investigated and the guilt of the two judges was established. The National Judicial Council recommended their dismissal for corruption and abuse of office (Fawehinmi, 2007). The President acting under Section 292 of the Constitution dismissed the two Justices on 3rd May, 2005. If these atrocities were committed against the so-called affluent and wealthy litigants then, wither the case of the poor? "Poverty invites corruption while corruption deepens poverty" (Nwokeoma, 2010).

The judiciary is expected to function in such a manner as to mitigate, if not eliminate, in its entirety, this depressing corruption-poverty conundrum in Nigeria. Sadly, this is becoming one huge forlorn hope (Nwokeoma, 2010). The reason is that the judiciary is failing in discharging its constitutional responsibility and allowing corruption to excel. This automatically destroys the fabrics of the society and makes the populace lose confidence in the judiciary and the judicial system whereby people resort to self-help which promotes anarchy. This has started manifesting. Judicial corruption now sends an unsettling message to an already demoralised citizenry that the judiciary is not the forum for seeking redress. Some citizens are reluctant to process their disputes through the judicial process because they believe that it is money that ultimately determines the outcome of cases in court (Long, 2003). Other citizens are distrustful of the judiciary thereby

resorting to self-help. Some invite vigilante groups to settle civil disputes (Rotberg, 2007).

Furthermore, the effects of a corrupt judiciary is that it becomes inevitably too weak and increasingly incapable of discharging its critical responsibilities to the society especially to the poor and vulnerable. Incidentally, this is one of the indicators of a "failed state", according to the Failed States Index (Nwokeoma, 2001). Confirming the endemic corruption prevalent in Nigeria, the report of a survey on crime and corruption in the country conducted by the Economic and Financial Crimes Commission and National Bureau of Statistics with the support of the United Nations office on Drugs and Crime revealed that corruption is rampant in the courts of laws, among public officials, police personnel and other law enforcement agents (Nwokeoma, 2010). The United Nations assessment found that the more corruption the less the trust, the more people accept bribery as a given fact when dealing with justice sector institutions (UNDC, 2006).

Similarly, the plight of the poor prisoners that are awaiting trial under the Nigerian criminal justice system is very appalling. Most of the inmates are not charged with any offence and may remain in prison for years. The only common denominator is that they are poor. Hence, it is taken for granted that in a society buffeted by corruption such as Nigeria, a courageous, independent, unbiased and financially autonomous judiciary is a much needed bulwark against the continued reign of the monster of corruption and graft in the country (Nwokeoma, 2010). Consequently, an independent judiciary is an indispensable tool in any meaningful anti-graft war (Nwokeoma, 2010).

Moreover, public perceptions of the integrity and performance of the justice system are crucial to maintaining

respect for the rule of law and the role of the courts in a healthy democracy. Consequently, instituting a case in a court of law before an independent and impartial court or institution is an integral part of the right to a fair hearing (Brems and Adekoya, 2010). Lack of impartiality and independence of the judiciary is often linked to corruption. In fact, widespread corruption subverts the entire formal legal system (Muralidhar, 2006).

Differential Treatment

Nigeria's prisons are filled with people whose human rights are systematically violated. Approximately 65% of the inmates are awaiting trial for years. Most of the people in Nigeria's prison are too poor to pay lawyers because of the expensive legal fees (Kirby, 2000) and only one in seven of those awaiting trial have private legal representation (Amnesty International, 2008). In the same vein, in civil cases, most of the poor are unable to pursue their constitutional remedy rights mainly because of inability to pay highly exorbitant and expensive legal fees. The legal assistance being rendered to indigent in most cases is substandard. The poor are usually represented by largely a disinterested and inexperienced legal aid, while the opposing counsel employed by the rich is experienced, well connected and diligently committed. Examples of sentencing that were not commensurate to the offence committed abound especially when the accused person is poor and indigent. For example, three poor persons were jailed for six months for stealing two tubers of yam (Aguda, 1987). This was without an option of fine whereas former Edo State Governor, Lucky Igbinedion though convicted on one count charge of corruption by the Federal High Court, Enugu on 19thDecember 2008was ordered to pay N3.5 Million fines (Nigerian Naira) (approximately $22,875.82). The money allegedly stolen was N4.4 Billion (Nigerian Naira – approximately $28.8 million dollars) (Ossai and Adewole, 2008). Similarly, ex-governor

of Bayelsa state, D.S.P Alamieyeseigha who pleaded guilty was convicted and sentenced to twelve years imprisonment for fraud and false declaration of assets. He spent most of the reduced prison term in a cosy hospital bed, as he was in the hospital for most of the prison term.

Five Ex-Governors were to return N50 billion (Nigerian Naira – approximately $326,797,000.39 million dollars) stolen money. All these persons are moving freely, fraternising with the President and have free access to the Presidential Lodge – Aso Rock. In contrast with the case of one Nathaniel Utoh (Aguda, 1987) who was sentenced to four months imprisonment but ended up spending seventeen years in prison, just because he was poor and the system is biased against his ilk.

Fear and Mistrust of the System

In his final report in 1996, Leandro Despouy, the special rapporteur on human rights and extreme poverty, indicated that mistrust is among the obstacles barring access to justice for the very poor (Despouy, 1996). Consequently, most poor people prefer to suffer in silence because they fear the humiliation they are likely to suffer during cross examination or are not accustomed and intimidated by the system. Others mistrust the system believing it was made for the rich. The poor also mistrust the system as they do not understand the language and the jargons of the courts. They have on several occasions seen criminals being released or debt cancelled or winner becoming loser in election petitions due to legal manipulations and exploitation of technicalities.

There is consequently a low level of public trust in the courts and declining willingness of citizens to use the courts to protect their rights (Aguda, 1987). Most times, the poor people do not access

the legal system willingly unless they are forced into it as an accused or defendant in a law suit. They see the law as an instrument of oppression and try to avoid it (Muralidhar, 2006).

Distance

More often than not, the Court house is located at a considerable distance to where the poor are housed or outside their towns. Thus, it is difficult physically, economically and emotionally for them to make the trips to the temple of justice.

Conclusion

It has been shown in this essay that the poor undergo severe stress in accessing justice. It has also been demonstrated that the concept of fundamental human rights is meaningless to the vast majority of the poor people and not a few of them are unjustly punished. It is recommended that concerted efforts should be made to reduce poverty and reform institutions concerned with justice such as policies to promote efficient growth and make use of the poor most abundant resource, labour; efficient, effective, accessible and affordable social welfare services for the vulnerable group; promoting a culture of transparency and grassroots' participation in governance. Stable macroeconomic policies, reformation, re-organisation and re-orientation of the Police force, independent Judiciary, sustenance of good governance, free and fair election, reform of the Prison and improvement of the welfare of the inmates are important ingredients for arresting this menace.

In cases where there is gross abuse of human rights and where the poor have no or limited access to justice, they take matters into their own hand through vigilantism, mob justice or lynching, ethnic militia and the like. In communities where state presence is limited and where informal, conflict resolution mechanism is not functioning effectively, the people resort to self-help less often than in communities that have functioning conflict resolution mechanism.

It is noteworthy to state at this juncture that the Nigerian state has passed many laws to alleviate poverty and eradicate corruption, but due to lack of transparency the impact has been minimal so far; such laws include, Niger Delta Development Commission (Establishment) Act Cap N 86 LFN (2004), National Housing Fund Act Cap N 45 LFN 2004, National Minimum Wage Act Cap N 45 LFN 2004; National Centre for Women Development Act Cap N 15 LFN 2004; National Commission for Women Act Cap N 23 (LFN 2004); National Directorate of Employment Cap N 28 (LFN 2004); National Emergency Management Agency Act Cap N 34; Legal Aid Act Cap L9 LFN 2004; Employees Compensation Act Cap 2010. In the final analysis, the 15th Century prayer for Judges and Magistrate in England is apt here:

> Oh God, at whose hand the weak shall take no wrong, nor mighty escape just judgement, pour thy grace on THINE Servants, Our Judges and Magistrate that by their true and faithful execution of justice and equity to all men equally, THOU may be glorified, the commonwealth daily promoted and increased and we all live in peace and quietness, in Godliness and virtue. (Babalakin, 2007:3)

This prayer is also equally significant to Nigeria in order for all and sundry and more especially, people at the temple of justice to be able to discharge their judicial responsibility without fear or favour. This will definitely encourage the poor in society to look up to the justice system and the judiciary as the last hope in case of any conflicting or precarious situations.

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