

Review

Poverty, human rights and access to equity: Reflections from Nigeria

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In Nigeria, poor people are vulnerable to various human rights abuses. Their guaranteed rights under the Constitution are being infringed on a daily basis and this is exacerbated by persistent denial of access to justice. The article highlights obstacles that the poor encounters when seeking justice and at the same time suggests policy responses for overcoming them. Towards this end, the article analyses 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's system as a whole, as well as the judiciary and argues that unless the judiciary is independent, access to justice by the poor will continue to be a mirage. The article examines jurisprudence of other jurisdictions and draws useful inspirations from them to explain why justice is so important for poor people and introduces a broad range of responses in the areas of legal and institutional reforms.

Key words: Poverty, human rights, justice.

INTRODUCTION

Poverty, denial of access to justice, and human rights violations are rampant in Nigeria due to pervasive corruption and impunity among those who exercise public and judicial powers (US department of State diplomacy in action, 2009). The poor constitute about 80% of the total population but have access to less than 20% of the resources of the land (Shabi, 2000). On a daily basis, they suffer severe deprivations of economic, social and civil rights (Moneke, 2010). This is further exacerbated by the global economic meltdown that has increased the rank of the poor in Nigeria as they are severely feeling the heat of hardship and deprivation in all aspects of human endeavours (Zoellick, 2009).

The poor are also most at risk from the abuse of political power and are least able to protect themselves against the injury and economic loss consequent upon such abuse. They are always the victims of police violence (Anderson, 1999).

Similarly, the poor are usually ignored or mistreated by bureaucrats. They are most vulnerable to being left the

skills and resources necessary to empower them with the economic, political and social rights to fight their way destitute by petty corruption, and are least likely to have out of extreme poverty (United Nations 7th global forum on reinventing government building trust in government, 2007).

According to Anderson, these factors are not just symptoms of poverty but that they are part of its cause and a most fundamental aspect of its manifestation (Anderson, 1999). While poverty has traditionally been regarded as a phenomenon best understood in terms of income and productivity. It has more recently been recognised that poverty is a multi-dimensional problem, extending beyond low income to include physical vulnerability and powerlessness within existing political, judicial and social structures (Shepherd, 2009).

While there have been numerous discussions and debates on the plight of the poor in Nigeria, nothing concrete has been done to alleviate their sufferings because mere lip services are being paid to how to find a workable and sustainable solution by each successive government (Smith and Chin, 2009). Politicians only use different rhetoric and election campaign promises without fulfilling any when they are elected into office.

Pursuant to section 42 of the Constitution of Nigeria

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(CFRN 1999), the rights contained in the Constitution are to be protected, defended and fulfilled in order to ensure peace and justice for all irrespective of sex, religion, race or geographical location (The Constitution of the Federal Republic of Nigeria, 1999). But the overarching questions are; do the poor and the poorest of the poor in Nigeria have the same rights as the affluent or are these rights real or a mere mirage? What posed as mind bugging and very disturbing is that when it comes to the issue of access to justice can it be said that the poor have equal access to justice as the affluent? The answers to these questions are not far-fetched hence; an independent judiciary and promotion of access to judicial institutions are the only means of guaranteeing access to justice.

According to Nwokeoma, an independent judiciary is regarded as a sine qua non for a functional democracy and that it is also central to social harmony and good governance in any given democratic society (Nwokeoma, 2010). An independent judiciary in a democratic setting guarantees the rule of law devoid of any interference from the executive or any branch of the government (Nwokeoma, 2010).

However, in Nigeria, the extent to which the judiciary has lived up to this judicial responsibility leaves more to be desired because it cannot be said that the judiciary is the last hope of the common people, that approach is supposedly hallowed temple in view of the endemic corruption that has plagued the judiciary. Though an independent and democratic state access to justice has not featured prominently in the good governance agenda in Nigeria (Anderson, 1999).

Consequently, a renewed anti-poverty agenda is needed to include the majority of the poor in Nigeria in the systems of rights and obligations that foster prosperity and promote access to justice (UNDP, 2008). It is pertinent to point out that providing legal services to the poor will enhance development in general (Golub, 2004).

THE MEANING OF POVERTY AND LINKAGE WITH RIGHTS

Poverty is primarily a concept of economics (Ale, 2001). It is a phenomenon complex in origin as well as in its manifestation (Ganduli, 1970) because it is a state of the inability of a person, household, community or state to satisfy basic needs (New encyclopaedia Britannica, 1980). Being poor imply being excluded, living at the margins of society and potentially facing discrimination (Kaufmann and Grosz, 2007). It affects human dignity and thus the very core of human rights (Christine, 2001).

Only recently has a link been established between the understanding of poverty and human rights guarantees (Kaufmann and Grosz, 2007). Remarkably, on the 17th of October 2002, during the celebration of the International day for the Eradication of Poverty, the United Nations

Secretary General Kofi Annan for the first time explicitly stated that poverty is a denial of human rights (Sengupta, 2006). Poverty has also been explained from the inherent situation in a particular society or community.

Against this background, Dressler and Wills (1976) explain poverty on two premises: absolute poverty, which is a situation whereby an individual or household is unable to provide even the basic necessities of life and relative poverty as a situation in which an individual or household is unable to maintain the standard of living normal in the society in question.

Smith (1776) explains the concept of poverty thus:

“By necessities, 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 shirt for example is strictly speaking not a necessity 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”.

The United Nations Development Programme (UNDP, 1996) describes poverty as the inability to provide for physical subsistence to the extent of being incapable of protecting human dignity. The office of the high commissioner of human rights drafted the guidelines on human rights approach to poverty reduction. These guidelines include operational directives for a number of specific human rights in the context of poverty such as the right to adequate food, the right to portable water, the right to health, the right to education, the right to public transport and decent work, the right to adequate housing, the right to personal security, the right to appear in public without shame, the right to equal access to justice, political rights, freedoms, and the right to international assistance and cooperation (Kaufmann and Grosz, 2007).

Against the above guidelines, poverty is now widely defined in economic terms (low income), social terms (fulfilment 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. The two words read together now read extreme poverty. Consequently, in 1992 the United Nations general assembly recognized 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). That extreme poverty which violates human dignity is acknowledged in numerous statements of the United Nations high commissioner on human rights. 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 in the scheme of things, 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 where-withal to enforce or seek redress where their rights have been violated.

From the discussion in the foregoing, the common trend in all the various meanings, definitions and descriptions of poverty is lacking. Thus, poverty for our purpose shall 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.

Poverty, access to justice and human rights

Of all the social phenomena that have a significant impact on human rights, poverty probably ranks highest (Mubangizi, 2005). The United Nations Development Programme (UNDP) reports indicate that access to justice is crucial to human rights enforcement and is increasingly recognised as a component of poverty reduction programmes (UNDP, 2004).

It has been argued that poverty is in itself a violation of human rights (Mubangizi, 2005). The point is that fundamental rights are those rights that are inherent in a human being and they are jealously protected by the Constitution. Poverty and denial of access to justice are major obstacles to realisation of fundamental rights. Some positive actions should be taken by the government to act as they should in order to prevent or reduce poverty (Mubangizi, 2005).

Pursuant to the above background, most of the modern Constitutions have incorporated fundamental human rights with a firm resolute to guarantee the enjoyment of the rights. For instance, Chapter IV of the Constitution of

the Federal Republic of Nigeria 1999 guarantees fundamental human rights. Of utmost importance is the fact that the rights to access to court and legal aid to the indigent citizens in Nigeria are considered as fundamental rights and guaranteed in section 46 of the Constitution. The irony is that regarding the poor in Nigeria, access to justice for the enforcement of their fundamental human rights is the exception rather than the rule (Brems and Adekoya, 2010).

Interestingly, the people who are entrusted with the responsibility to protect the poor people against abuse are the major transgressors with impunity such as the courts, the law enforcement officers particularly the police and the executive are the major transgressors. The poor are vulnerable in all respect because they lack access also to various socio economic services like housing, food and water.

Sometimes, the realisation of these rights is meaningless to an illiterate society where the head of the family is unable to fend for his family. Also, the unemployed, supplicant and the hungry person could claim no right to dignity of the human persons until such person is gainfully employed. Also, the right to acquire and own immovable property is elitist and not applicable to the poor because there is no means to achieve such aspiration.

The right to a fair hearing which is guaranteed under section 39 of the Constitution of the Federal Republic of Nigeria 1999 is meaningless to the poor because there is no financial means to hire the services of a lawyer to enforce it and seek redress in case of violation. Hon Justice Oputa (JSC) puts this in the proper perspective when he said: "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 and so forth.

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 practise, 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 down trodden seem to be the right to suffer in silence, to be patient and wait for their reward in heaven (if they are believers)" (Oputa, 1989).

The same constitution provides in Chapter II for fundamental objectives and directive principles of state policy which is essentially non-justifiable. It guarantees certain social, economic and educational rights such as the right to gainful employment, free education and equal pay for equal work and so on. The rights enumerated here apply mostly to the poor but these rights are not justiciable. Furthermore, one of the most important tools for the poor to defend themselves against human rights abuses is court protection.

Paradoxically, even if this legal assistance is provided to the poor, in most cases they lack the capacity to assert themselves in court, hence precluding them from enforcing their rights. Worse still, the Nigerian situation is appalling because the legal system tends to intimidate the poor who feel alienated from the system and in most cases; they find the experience very traumatic (Desai and Muralidhar, 2001).

Does the mere enunciation of these rights in the Constitution presuppose that there is equality in the accessibility to these rights by the poor? The answer is no. But it is worthy to mention that in human rights doctrine, the concept of fair trial is used while access to justice is understood as a fundamental element of the right to a fair trial (Letto-Vanamo, 2005). Both concepts are mutually inclusive as they complement one another.

In Philippine, the Chief Justice of Philippine Reynato Reno observed that the playing field in the justice system is tilted against the poor while it is a noble endeavour to provide better access to justice to 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.”

Reynato Reno's observation above is very inspiring. Nigerian jurisprudence should emulate this by ensuring that the bill of rights in the constitution is not a mere paper guarantee but should be translated into reality through proper oversight and opportunity for the poor to access justice.

EXAMINING ACCESS TO JUSTICE IN THE NIGERIAN CONTEXT

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 by

Letto-Vanamo, It is pertinent to mention that equal access to the courts become 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 triumphed over (Letto-Vanamo, 2005).

From the previous backdrop, it is apparent that it is difficult to define the concept of access to justice precisely 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 from 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 is very corrupt is no news.

There have been many instances where citizens are shot dead at the police check-point just because they refused to give ₦20 bribe (Nigerian Naira - approximately 13 American cents) (The Guardian, 2009). The law enforcement officers extort money by insisting that some gratis should be paid even if no crime was committed at all. This usually happens when the victim is accosted or apprehended in the 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 ₦20 bribe (Nigerian Naira - approximately 13 American cents) bribe (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 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 wherewithal to bribe their ways or promptly use their connections by getting in touch with the superior officer who will order their immediate release.

A recent case is instructive; 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 (The Tribune, 2001). 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 yet she could not constructively access justice and seek redress. As a matter of fact, it is apt to say that the Nigerian Police could arrest for any reason or no reason 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 lacks information with regards 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 appropriate quarters but the latter due to *'esprit de corp'* inefficiency or corruption is unwilling to grant the relief. Majority of Nigerians particularly the poor are stack illiterates 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 reinvigorated in the 2006 periodic report to the Committee on Elimination of Discrimination Against Women (CEDAW Committee), where it was

observed that the use of the English language rather than the local languages as the communication medium in court, as well as 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). Compared with South Africa, the Constitution recognises the eleven official languages and it was 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 is unable to secure the services of a competent counsel to prepare and argue the case (Aguda, 1993) if he 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 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)."

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 cause 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 inevitably weighed in favour of the richest people, who can afford the best lawyers and advise, 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, 1980).”

It is noteworthy to mention that the filing fees in most courts are prohibitive. For instance, in the Federal High Courts of Nigeria (The Guardian, 2009). It varies 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 (Dyzehaus, 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 D, 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 (Bass, 2005). Confirming the adverse effect of the inefficient administration of justice in Nigeria, Aguda (1987) vehemently states that:

“The whole system of administration of justice is heavily weighed against the poor vast majority of the people, who are unable to afford the expense of any search after justice. If however, the poor is 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 fungible property rights, enforceable labour rights and a justice system that provides them real legal protection (Commission Document, 2006).

In South Africa, the government has taken a step in this direction, by offering free legal services to the indigent citizens. This has been made possible through the recently approved South Africa's Legal Practice Bill. A key feature of the bill is that it requires legal practitioners to provide legal services on a pro bono (Singh, 2005) basis to the indigent in rural areas or to applicants of the Small claims court (BuaNews, 2010).

Inordinate court delays

Unnecessary and protracted litigations are the major causes of inordinate delays in the Courts. This is further complicated by an unnecessary unwieldy hierarchy of courts and cumbersome procedural rules that serve as an incentive to unpardonable delays in judicial process (Aguda, 1987).

The court takes a lifetime to decide a case (Madison et al., 2002). Other reasons for protracted delays in litigation are few judges, some of them having a heavy work load. Some of the judges lack adequate equipment such as computers, assistants and workstation 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 in-ordinate 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 in prison awaiting trial (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 Igiwillo 2002) took 10 years before judgement. The plaintiff or 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) report, it was identified that 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 inefficiency 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 believed that justice is the preserved of the might 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 judgment 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 fulfil (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 leave 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.

Justice Kayode Eso 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). Eso 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).

Not too long ago, four judges serving on the panel of Akwa Ibom election petition tribunal were investigated found guilty of corruption and eventually dismissed (Nigerian Muse, 2006). In a related case two justices of the Court of Appeal received bribes of ₦15 million (Nigerian Naira-approximately \$98,039.216) and ₦12 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 by the so called affluent and wealthy litigants then, wither the case of the poor?

The effect of this on the poor is well articulated by Michael Johnston author of *Syndromes of Corruption* noted in his recent article, "Poverty and Corruption" in America's forbes magazine, "the links between corruption and poverty affect both individuals and businesses, and they run in both directions. 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 of its constitutional responsibility and allows corruption to excel. This automatically will destroy the fabrics of the society and make the populace lose confidence in the judiciary and the entire system of the justice processes whereby people will resort to self-help and this will promote anarchy. This has started manifesting. Judicial corruption now sends an unsettling message to an already demoralized citizenry that the judiciary is not the forum for seeking redress (transparency international). 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 resort to self-help and 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 less 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 must 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. There is not any legal assistance being rendered to indigents by the poor and in most cases, they resort to self help which in itself is a criminal act.

However, in South Africa, the government has realized that that the poor and other people in the society are unable to access courts in civil cases because of the exorbitant fees that discriminate against them. The cabinet of South Africa has taken a giant step and approved the terms of reference for the review of the civil justice system. The passage of this into law will enable all South Africans to enjoy equal access and protection of the law and where necessary through adjudication by the courts. This is in contrast to the practice before where resolutions of civil disputes continue to be an exclusive terrain for the rich and powerful only (BuaNews, 2010).

More importantly, in the case of *Airey versus Ireland*, the European court of human rights has extended the obligation of the state to provide legal aid in civil cases depending on the particular circumstances of the case.

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 any 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 19th December 2008, he was ordered to pay ₦3.5 Million fines (Nigerian Naira) (approximately \$22,875.82). The money allegedly stolen was ₦4.4 Billion (Nigerian Naira - approximately \$28.8 million dollars) (Ossai and Adewole, 2008).

Similarly, ex-governor of Bayelsa state, D.S.P Alamieyeseigha pleaded guilty was convicted and sentenced to twelve years imprisonment for fraud and false declaration of assets (Vanguard News, 2007). 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 ₦50 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. Contrast with the case of one Nathaniel Utoh (Aguda, 1978) who was sentenced to four month 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 reporter 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

Most often time 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.

South African judicial system is also facing these problems. However, the government has decided to take drastic action in order to ameliorate the problem of travelling long distance to the temple of justice. Towards this end, the government has initiated various reforms that will ensure that justice is brought closer to the ordinary people. Notably in this regard is the introduction of the Superior Courts Bill and the Constitution Amendment Bill, both calls for high courts with divisions in all provinces to be set up (BuaNews, 2010).

CONCLUSION

We have demonstrated that the poor are unable to access justice because of abject poverty and lack of means to access justice. We have also demonstrated that the concept of fundamental human rights is meaningless to the vast majority of the poor people if they are unable to fulfil their social economic rights.

We recommend that concerted effort be made to reduce poverty and reform the judicial institutions. There is an urgent need to reform, re-organise and re-orientate the law enforcement officers particularly the police force. Reacting swiftly to human rights abuses by the government will serve as an incentive to the indigent victims not to take the law into their hands and resort to self-help such as mob justice or lynching, ethnic militia and the likes.

It is noteworthy to state at this juncture that the Nigeria state has passed many laws to alleviate poverty and eradicate corruption, but due to lack of transparency the impact has been minimal so far.

Addressing the problems of inequality, equal access to justice require introducing policies and laws that specifically target the gaps and ensure that the poorest segments of the population are able to overcome their disadvantages (Lovell, 2005).

More importantly, there is a need to simplify the law which is one of the most difficult challenging efforts to promote access to justice in Nigeria. Similarly, there is also the need for law and regulatory reforms to replace laws that do not comply with international human rights standards, are outdated, contradictory or biased against the poor (Rekosh et al., 2001).

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