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LIST OF CONTRIBUTORS

Aaron Olaniyi Salau	-	Olabisi Onabanjo University, Ago Iwoye
Abdullahi, M.H.	-	Federal Ministry of Science, Technology and Innovation, Abuja
Abdurrozaq Opeyemi Abdulazeez	-	University of Ilorin, Ilorin
Adegbite, Folashade Rose	-	University of Lagos, Nigeria
Adekilekun, M.T.	-	University of Ilorin, Ilorin-Nigeria
Akinyemi Abibu	-	Federal Polytechnic, Ilaro, Ogun State
Amos Aondonenge Akaa	-	Private Legal Practitioner Based in Makurdi
Andrew Ejovwo Abuza	-	Delta State University, Abraka (Oleh Campus), Nigeria
Aniefiok E.A. Okposin	-	
Anushiem, M. I.	-	Nnamdi Azikiwe University, Awka Anambra State Nigeria
Bright Eseosa Enorenseeghe	-	Hilltop Global Oil and Gas Solutions Int'l Ltd. – Energy House,
Caroline Mbafan Ekpendu	-	Benue State University, Makurdi.
Cynthia Chika Onwuka	-	Federal College of Agriculture, Ishiagu, Nigeria
Egbewole, W.O., SAN	-	University of Ilorin, Ilorin Nigeria
Eremwari Queen Kelsey		
Godwin G. Awah	-	Akwa Ibom State House of Assembly Commission
Ibijoke P. Byron	-	University of Ibadan, Ibadan, Nigeria
Ibrahim J. Ambali	-	National Judicial Institute, Abuja.
Igonoh J.	-	Salem University, Lokoja Kogi State.
Imam-Tamim Muhammad Kamaldeen	-	University of Ilorin, Ilorin, Nigeria
Ismael Funsho Yusuph	-	University of Ilorin, Ilorin
Iyadah John Viko	-	Nasarawa State University, Keffi, Nigeria
John Oluwatomisin Akinselure	-	Adekunle Ajasin University, Akungba-Akoko, Ondo State
Okuns Aihie	-	Okuns Ahie & Co., 2nd floor, 22, Dawson Road, Benin City

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Oluwafunmilayo Adesina-Babalogbon	-	Federal Polytechnic, Ilaro, Ogun State
Oniha, Osato Mabel	-	Edo State Polytechnic, Usen, Edo State.
Orji-Obasi, C.I.	-	Legal Practitioner based in Enugu State, Nigeria
Osazee David Egbenusi	-	University of Benin, Benin – City
Samuel E. Ojogbo	-	Delta State University, Oleh Campus, Abraka
So-Oriari George, I.M	-	Private Legal Practitioner
So-Oriari Jeremiah	-	Rivers State University of Science and Technology, Port Harcourt
Suleiman Nchi	-	Nasarawa State University, Keffi, Nigeria

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COVID-19 AND AFRICAN NATIONS: AN OVERVIEW OF THE LEGAL AND INFRASTRUCTURAL CHALLENGES TO REMOTE COURT PROCEEDINGS

M.T. Adekilekun*, M.H. Abdullahi & W.O. Egbewole, SAN*****

Abstract

Prior to the outbreak of the global health emergency caused by the Corona Virus Pandemic, the Administration of Justice in Africa was in deep trouble. Infrastructure inadequacies, dilapidated facilities, corruption, backlog of cases, lack of judicial independence, lack of judicial courage, poor budgetary allocations and lack of information technology (IT) skills have slowed down the justice delivery system. Overcoming these problems was almost becoming a mirage. Then comes the Corona Virus pandemic which practically locked down access to justice in almost all the African countries except very urgent matters. These matters remained largely undefined and left to the whims and caprice of the heads of courts. There have been efforts to design a sustainable global solution to the lack of access to justice triggered by this pandemic. Central to these efforts is the decision of some African countries to adopt the virtual or remote court proceedings method in order to dispose of their pending cases and arbitral matters. However, inconsistencies in the legal framework, dilapidated as well as inadequate infrastructure such as power, internet facilities and other necessary Information technology equipment in some courts in African are bound to hinder the legal and judicial institutions' efforts at using remote method to conduct court's proceedings. Therefore, provision of constant power supply, training of judiciary staff on how to deploy information technology (IT) for the use of the courts, upgrading and improving the courts' infrastructural facilities are some of the ways to improve legal and judicial practices across Africa.

Keywords: *Access to Justice; Corona Virus Pandemic; Infrastructure Development; Virtual Court Proceedings; Nigeria; Africa*

1.0 Introduction

Prior to the outbreak of the global health emergency caused by the corona virus pandemic, the administration of justice in Africa is faced with challenges such as Infrastructure inadequacies, dilapidated facilities, corruption, backlog of cases, lack of judicial independence, lack of judicial courage, poor budgetary allocations and lack of information technology (IT) skills especially on the part of judiciary staff among others have slowed down the justice delivery system. Overcoming the above mentioned problems facing the judiciary in Africa was becoming an insurmountable challenge. Then comes the novel corona virus which the World Health Organisation (WHO) declared a pandemic which has

* Senior Lecturer and Head of Department of Business Law, Faculty of Law, University of Ilorin, Ilorin-Nigeria Email: madekilekun@yahoo.com

** Barrister and Solicitor of the Supreme Court of Nigeria and Hon. Minister of State for Science, Technology and Innovation, Federal Ministry of Science, Technology and Innovation, Abuja. Former Attorney General and Commissioner for Justice, Nasarawa State. moh.abdullahi68@gmail.com

*** Professor of Law, Faculty of Law, University of Ilorin, Ilorin Nigeria. Email: wahabegbewole@gmail.com

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practically locked down access to justice in almost all African countries except those matters tagged ''urgent.'' What constitutes ''urgent matters'' has been left at the mercy and discretion of the heads of courts. This lack of access has been most profound in the vulnerable members of the society such as women and children. There have been global efforts to design a sustainable solution to the lack of access to justice[1] triggered by this pandemic. Central to these efforts is the decision of some African countries like Kenya,[2] Nigeria[3] and Uganda[4] to adopt the virtual court proceedings method in order to dispose of their pending and new cases in courts and arbitral institutions. This effort will cover filing of court processes, issuing of hearing notices, virtual court sittings, delivery of rulings and judgments.

However, inconsistencies in the legal framework, dilapidated as well as inadequate infrastructure such as power, internet facilities and other necessary information technology equipment in some courts in many African countries will hinder the legal and judicial institutions' efforts at effectively using remote court proceedings. Although, access to justice and the rule of law are some of the goals and priority areas of the African Union Agenda 2063.[5]

The current challenges being faced by the justice sector are profound on the women in light of the societal expectations where women are perpetually subjugated in the scheme of things. In a bid to curb the spread of covid-19, many countries ordered their citizens to stay at home. Women are at a heightened risk of intimate partner violence, domestic violence and other forms of sexual and gender based violence.[6] Unfortunately, gender related cases are not considered as part of urgent matters that can be heard expeditiously.[7] It is imperative for the heads of courts to take into account, the gender impact of the existing laws and administrative practices in all judicial administrative changes.[8] It is intended that the drive for solutions in the justice sector will be inclusive in a way that gender mainstreaming will be appropriately taken care of.

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[1] See OECD, Impacts of Covid-19 on access to Justice. Retrieved from https://www.oecd.org/gov/Impact_of_COVID19_on_Access_to_Justice_Draft_agenda.pdf. Accessed on 28th May, 2020.

[2] See Pandemic Prompts innovation by Kenya's Justice Sector. Retrieved from https://www.unodc.org/easternafrica/Stories/pandemic-prompts-innovation-by-kenyas-justice-sector.html. Accessed on 28 May, 2020.

[3] See Covid-19: NJC approves virtual court sittings in new Guidelines for use of technology. Retrieved from http://itedgenews.ng/2020/05/11/covid-19-njc-approves-virtual-court-sittings-in-new-guidelines-for-use-of-technology/. Accessed on 27th May, 2020.

[4] See Uganda launches virtual courts to ease hearing of cases. Retrieved from http://www.xinhuanet.com/english/2019-04/15/c_137979447.htm. Accessed on 27th May, 2020.

[5] See Goals & Priority areas of agenda 2063. Retrieved from https://au.int/en/agenda2063/goals. Accessed 29th May, 2020.

[6] See sexual and gender based violence during covid-19: Lessons from Ebola. Retrieved from https://theconversation.com/sexual-and-gender-based-violence-during-covid-19-lessons-from-ebola-137541. Accessed on 27th May, 2020.

[7] In most African countries, only time bound cases such as electoral matters are classified as urgent.

[8] Jarpa Dawuni, The Gendered face of covid-19: Women and Access to justice. Retrieved from https://www.unodc.org/dohadeclaration/en/news/2020/04/gendered-face-of-covid19-women-and-access-to-justice.html. Accessed on 28th May, 2020.

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This paper therefore critically examines access to justice generally in African courts and concludes that the provision of constant power supply, training of judiciary staff on how to deploy information technology (IT) for the use of the courts, upgrading and improving the courts' infrastructural facilities and improved internet services are some of the ways to improve legal and judicial practices across African nations.

2.0 Meaning and Concept of Access to Justice

Access to justice encompasses a variety of notions – the fairness with which litigants are treated, the justness of results delivered, the speed with which cases are processed and responsiveness of the justice administration system to those who use it. It is the equity with which those from differing backgrounds are able to gain from the justice delivery system.[9] It encompasses that there should be equality before the court; that the poor should not be excluded on the basis of poverty and that there should be no disparity between the provision of justice in rural and urban areas. The level of access to justice in a state can be vital to underpinning the roots of democracy and the development of that state. In the absence of such equality of access to justice, it would serve to undermine all efforts to establish a just, free and fair society in which the rule of law is upheld and democratic principles are followed. Lack of access to justice would promote corruption, lower criminal convictions, increase poverty and reduce confidence in government.

Access to justice in most African countries is below desired standards.[10] The current COVID-19 pandemic threatens to sink this standard even lower. Technology presents an opportunity to surmount this challenge through virtual and remote court hearings, with this solution however, comes with its own set of challenges which must be overcome if the goods promised are ever to be delivered. African countries generally battle with access to justice; this is even more pronounced in the criminal justice system. In Nigeria, 72.5% of detainees in prisons (not inclusive of those held in police cells) are awaiting trial,[11] the situations in Kenya[12] and South-Africa,[13] while better, is still nothing to write home about with 48% and 29.3% of their respective detainees also currently awaiting trial.[14] Civil cases suffer similar fate across most of Africa with Kenya recording a backlog of 549, 556 cases as at June 2018.[15]

[9] 'Access to Justice in Africa: Comparisons between Sierra Leone, Tanzania and Zambia' – Richard Bard

[10] See Afrobarometer Policy Paper retrieved from https://afrobarometer.org/publications/pp39-access-to-justice-in-africa. Accessed on 23rd February, 2021.

[11] https://www.acjr.org.za/resource-centre/three-quarters-of-nigerian-prisoners-awaiting-trial accessed May 20, 2020.

[12] See https://www.prisonstudies.org/country/kenya accessed May 20, 2020.

[13] https://www.prisonstudies.org/country/south-africa accessed May 20, 2020.

[14] https://www.premiumtimesng.com/news/headlines/387068-70-of-nigerian-prisoners-held-without-trial-prisons-chief-html accessed May 20, 2020.

[15] See https://www.judiciary.go.ke/here-is-the-judiciarys-solution-to-case-backlog/ accessed May 20, 2020.

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3.0 Historical Background of Covid-19 Pandemic

The novel coronavirus outbreak was first documented in Wuhan, Hubei Province in China in December 2019.[16] It is the latest in a family of zoonotic viruses – transmittable from animals to humans, and which cause illnesses ranging from common cold, cough, fever to severe respiratory diseases.[17] The COVID-19 infection is spread from one person to another through droplets produced from the respiratory system of infected people often during coughing, talking or sneezing.[18]

As of mid-February, 2021, more than about 111 million cases have been confirmed across the world with about 2, 466,639 deaths.[19] In Africa, reported cases have surpassed 2, 790,000 and every African country has recorded cases.[20] As of December 2020, different vaccines which have passed human trials were deployed and which are now being distributed to various countries.[21] However, physical distancing is one of the prescribed mechanisms for preventing transmission[22] the implementation of which has led to unimaginable changes in daily life ranging from nation-wide lockdowns to closure of businesses and nearly all other establishments,[23] including courts.

Covid-19 Pandemic has serious negative effects on the administration of justice. There were and are still restrictions and lockdown on access to justice. The lockdown generally affected the mental health and well-being of both the litigants and the judiciary. The measures used by the various governments to tackle the pandemic have also changed the way people access courts and lawyers. It has become more difficult to get legal advice in such a way that even in

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[16] 'The Continuing 2019-nCoV Epidemic Threat of Novel Coronaviruses to Global Health – The Latest 2019 Novel Coronavirus Outbreak in Wuhan, China' - Hui D.S., I. Azhar E, Madani T.A., Ntuomi F., Kock R., Dar O. et al. International Journal of Infectious Diseases. Retrieved from https://www.ijidonline.com/article/S1201-9712%2820%2930011-4/abstract. Accessed on 23rd February, 2021.

[17] 'The Proximal Origin of SARS - CoV-2' - Anderson KG, Rambart A, Lipkin WI, Holmes EC, Gary RF. April 2020 Natural Medicine.

[18] 'How COVID-19 Spreads' - Centers for Disease Control and Prevention (CDC) https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting -sick/how-covid-spreads.html accessed 18 May, 2020.

[19] COVID-19 Dashboard by the World Health Organisation retrieved from https://covid19.who.int/?gclid=EAIaIQobChMI79L94Pf_7gIVh7PtCh3zpwdFEAAYASAAEgJ9ZvD_BwE. Accessed on 23rd February, 2021. https://www.gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6 accessed May 18, 2020.

[20] See WHO Dashboard on Covid-19 Pandemic retrieved from https://covid19.who.int/?gclid=EAIaIQobChMItsPBkvr_7gIVE7LtCh3D8g9ZEAAYASAAEglay_D_BwE. Accessed on 23rd February, 2021.

[21] See. The Different Types of Covid-19 Vaccines retrieved from https://www.who.int/news-room/feature-stories/detail/the-race-for-a-covid-19-vaccine-explained. Accessed on 23rd February, 2021.

[22] 'Coronavirus (COVID-19) – 5 Things You Can Do to Protect Yourself and Your Community' - Public Health England, Government of the United Kingdom. https://www.healthmatters.gov.uk/2020/03/04/coronavirus-covid-19-5-things-you-can-do-to-protect-yourself-and-your-community/

[23] https://www.businessinsider.com/countries-on-lockdown-coronavirus-italy-2020-3%3famp (accessed 19/5/2020).

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the areas of fundamental rights, emergency laws were introduced in order to ensure that most people at risk are protected.[24]

4.0 Comparative Examination of the Current State of Infrastructure in the Justice Delivery Sectors of Nigeria and Kenya

This paper will examine the current state of infrastructure available in respect of justice delivery sector in Nigeria and Kenya. These are as follows:

4.1 Nigeria

Nigerian courts are plagued with poor infrastructure, this is even more so for state courts which constitute the majority of courts in Nigeria and which the various state governments are responsible for funding.[25] The situation is mostly due to poor funding of the justice sector and several years of neglect. It is common to find courts built in nondescript buildings with poor standard chambers for the judges, unkempt furniture and bad sitting arrangement for both lawyers and the general public. As is the case in the country at large, constant electricity eludes Nigerian courts, this problem is exacerbated by the fact that court design often fail to take into account the challenge of electricity supply in the country such that in the event of power outage, the condition in most courtrooms become uncomfortable and unconducive to the court personnel, counsel and litigants for any meaningful proceeding.[26]

The typically small courtrooms also mean that they are usually so filled up that lawyers would occasionally have no seats to sit. Amenities like adequate libraries, car parks, restrooms and lawyers' robbing rooms are largely non-existent.[27] Majority of judges still record in long hand due to lack of transcription machines and stenographers. Most importantly however, is the fact that court personnel and officials like judges, magistrates and bailiffs are grossly inadequate compared to the available workload of cases in Nigerian courts.[28]

The situation is not all grim though with notable advancements witnessed in federal courts and courts of superior record. In February 2018 for example, the Supreme Court launched its electronic mailing system (Supreme Court E-mail Communication System SECS) and gave an ultimatum of 18 July, 2018 as the last date for physical filing of court processes at the

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[24] See Law under Lockdown; the impact of Covid-19 Measures on Access to Justice and Vulnerable People. Retrieved from https://www.lawsociety.org.uk/en/topics/research/law-under-lockdown-the-impact-of-covid-19-measures-on-access-to-justice-and-vulnerable-people. Accessed on 23rd February, 2021.

[25] The situation becomes even worse in courts outside of the headquarters in these states. Magistrates often have to sit in rotation as a result of lack of court halls.

[26] A Tale of Nigerian Courts, Infrastructure Deficits http://m.guardian.ng/features/law/a-tale-of-nigerian-courts-infrastructure-deficits/ accessed May 19, 2020.

[27] http://www.premiumtimesng.com/news/135136-nigerias-chief-justice-blames-slow-administration-of-justice-on-poor-infrastructure.html accessed on 19 May, 2020.

[28] The Constitution of the Federal Republic of Nigeria and other relevant statutes make prescriptions for the number of judges to man courts in Nigeria, in reality, the active number of judges is usually below this prescribed threshold.

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Supreme Court.[29] The Court of Appeal and Federal High Courts also have generally good infrastructure and transcription machines and stenographers can often be found in these courts; relieving the judges of the burden of recording in long hands and leading to a faster and more effective justice dispensation.[30] These improvements notwithstanding, it is important to note that Federal Courts like the Supreme Court, Courts of Appeal, Federal High Courts and High Courts in the Federal Capital Territory and High Courts in Lagos State are a fraction of the courts in Nigeria and these developments, while good, are largely unfelt in courts in other parts of the country that constitute the larger proportion of Nigerian courts.

Recently, the Minister of State for Science, Technology and Innovation, Barr. Abdullahi Mohammed has said that the Ministry is developing an application to enhance virtual court proceedings in Nigeria. This, he said, will also allow for tendering of evidence electronically.[31]According to the Minister, the ministry of justice is working with its counterparts in Education and Justice to develop an application for seamless judicial processes and quick delivery of justice.

4.2 Kenya

Kenyan courts, like most other courts in the Eastern African Countries, experience massive backlog with some estimates of the backlog being as high as half a million cases.[32] The location of courts also means that litigants have to travel long distances to get to courts.[33] The physical infrastructure in courts is also deficient with poor conditions of service for judicial officers. Importantly, the courts are also grossly understaffed with ratio of judges to population being 1.4 judges per 100,000 Kenyans compared to 3.5 judges for the same population in the United Kingdom.[34] The World Bank and some other organizations recently embarked on a Judicial Performance Improvement Project in Kenya which is purportedly meant to result in a better judiciary particularly in relation to infrastructure.[35]

The situation in other African countries like Zimbabwe, Chad, Gambia are not dissimilar.[36]African courts are generally plagued with deficit in terms of essential socio-economic infrastructure that will aid in the dispensation of justice.

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[29] 'The Supreme Court of Nigeria Electronic Mailing System: A Step in the Right Direction' http://www.odujinrinadefulu.com/content/supreme-court-nigeria-electronic-mailing-system-step-right-direction?utm_source=Mondaq&utm_medium=syndication&utm_campaign=Linkedin-integration accessed on May 19, 2020.

[30] 'Stenographers and Court Congestion' http://www.thenationonlineng.net/stenographers-court-congestion/amp/ accessed on May 20, 2020

[31] See we are Developing Application for Virtual Proceedings in Court, retrieved from www.thenigerialawyer.com. Accessed on 26th August, 2020.

[32] See https://www.judiciary.go.ke/here-is-the-judiciarys-solution-to-case-backlog/ accessed May 20, 2020.

[33] 'Transforming the Courts: Judicial Sector Reforms in Kenya, 2011-2015' - Innovation for Successful Societies, Princeton University.

[34] European Commission for Efficiency of Justice (CEPEJ), European Judicial Systems Edition 2010: Efficiency and Quality of Justice (2010) p.117.

[35] Document of the World Bank. Report No: 72979-KE

[36] See for example, the situation of infrastructure in Zimbabwe's courts retrieved from https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Zimbabwe_Infrastructure_Report_2019_-_AfDB.pdf. Accessed on 22nd February, 2021.

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5.0 The Legal Guidelines for Remote or Virtual Court Sittings in Nigeria and Kenya

5.1 Nigeria

The sweeping effects of the physical distancing measure are unavoidably felt in the administration of justice arena. Courts are unable to conduct business as usual in typically small courtrooms where people are seated in close proximity. In reaction to this development, the National Judicial Commission, at its 91st meeting held on 22nd April, 2020 set up a Committee headed by Hon. Justice Olabode Rhodes-Vivour JSC, CFR to come up with guidelines for virtual court sittings during the COVID-19 pandemic. The Committee submitted its report on the 6th of May, 2020 and the NJC consequently released same as its Guidelines and urged the heads of both federal and state courts to be guided by same in the formulation of their rules, directives and guidelines.[37]

According to the NJC Guidelines,[38] physical sittings by courts in courtrooms are to be avoided as much as possible and thereby limited to time bound, extremely urgent, essential and contentious matters requiring calling of evidence that may not be held by the court remotely or virtually. The heads of courts are saddled with the responsibility of determining the matters that fall within these categories. Judicial officers, court officials and security personnel are to sit and be in regular courtrooms for remote sittings with the exception of appellate courts' Justices who sit in panels who are allowed to participate in virtual court sittings from their chambers where it is impossible to maintain the required 6 feet social and physical distances in the courtrooms between themselves and also between Their Lordships and the court registrars.

To facilitate online court sittings, the responsibility of providing fast and reliable internet, end-user hardware (desktops, laptops, tablets etc), collaborative platform (Microsoft Teams, Zoom, Google Meetings etc) and reliable electricity for the duration of the sitting is placed on the courts. Litigants and their counsel shall however be responsible for the provision of their own gadgets to join and participate in remote court sittings. The Guidelines also mandated that hearing notices are to contain information stating that the sittings are to be conducted virtually, that clients are not expected in the courtroom and the time for commencement of remote hearing and other details that would enable parties participate in virtual sittings. In a bid to satisfy the public hearing requirements, the Guidelines provide that live streaming of all virtual court proceedings are to be provided through a website or any other social media channel.

Notwithstanding the fact that hearing is being conducted virtually, control of the process lies with the court and the court is empowered to: allot time to counsel for making submissions or adopting addresses, record proceedings, provide Certified True Copies (CTCs) of record of

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[37] Ref No: NJC/CIR/HOC/II/660 May, 2020.

[38] See Solola & Akpana in Nigeria: A Review of the National Judicial Council Guidelines For Court Sittings And Related Matters In The Pandemic Period (Part One). Retrieved from https://www.mondaq.com/nigeria/operational-impacts-and-strategy/941464/a-review-of-the-national-judicial-council-guidelines-for-court-sittings-and-related-matters-in-the-pandemic-period-part-one. Accessed on 21st February, 2021.

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any virtual sitting on the party's application and grant access to counsel to record any virtual sitting from his/her own end-user device provided that when such access is granted, it shall apply to all other counsel in the case. It is the responsibility of counsel to ensure that their remote location and that of their client are devoid of distractions, disturbances or interference.

The Supreme Court of Nigeria affirmed the constitutionality of virtual hearings in the case of *Attorney General of Lagos State v. Attorney General of the Federation & Anor.*[39] The question for the determination of the court was whether remote hearings of any kind (whether by Microsoft Teams, Whats App, zoom, Skype or any other audiovisual or video conference platform) by the Lagos State High Court (or any other courts in Nigeria) in aid of hearing and determination of cases, is constitutional. The plaintiffs subsequently withdrew the case, however, while striking out the case, the Supreme Court stated that '*as of today virtual sitting is not unconstitutional*'[40]

5.2 Kenya

The Kenyan judiciary has embraced Information and Communications Technology to deliver services following the outbreak of the COVID-19 pandemic. The judiciary sent out notices to lawyers informing them that pending judgments and rulings would be delivered vide Skype video link and subsequently sent to lawyers' email accounts. It now also allows filing of cases electronically in a method referred to as the Electronic Case Management and hearing of parties through video links in matters certified as urgent.[41] The Registrar is responsible for looking at cases and determining their urgency, if urgent, the matter is then sent to the judge who hears it with parties and counsel notified of hearing. On Friday 3rd April, 2020, the Kenya Judiciary tweeted the picture of an appellate judge seated in the confines of her chambers delivering rulings and judgments via video link.[42]

6.0 The Situation in Other Jurisdictions

Three jurisdictions will be examined under this part. These are the United Kingdom, Singapore and the United States of America.

6.1 United Kingdom

The government stressed the importance of continued administration of justice and that the courts continue operating with adjustments. While most civil courts still remain open despite the COVID-19 outbreak, civil hearings are now being conducted remotely where possible and physical hearings are only to take place where remote hearings are not possible and

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[39] Suit No. *SC/CV/260/2020 Attorney General of Lagos State v. Attorney General of the Federation & Anor.*
[40] Felix Omohomhion, 'Supreme Court dismisses suits against virtual hearing' (Business Day Weekender, 14 July 2020), see https://businessday.ng/news/article/supreme-court-dismisses-suits-against-virtual-hearing/, accessed 12 October 2020.
[41] http://www.nation.co.ke/news/judiciary-warms-up-to-virtual-court-sessions/1056-5513704-view-asAMP-lpir753/index.html accessed 19 May, 2020.
[42] 'A Case for Virtual Hearings of Urgent Matters during the COVID-19 Pandemic… and Going Forward' SPA Ajibade http://www.spaajibade.com/resources/a-case-for -the-virtual-hearings-of-urgent-matters-during-the-covid-19-pandemic-and-going-forward/ accessed 19 May, 2020.

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suitable arrangements can be made to ensure safety. While civil courts in the United Kingdom have long permitted remote hearings in appropriate circumstances, a new 'Protocol Regarding Remote Hearings'[43] was issued on March 20, 2020 necessitating the use of remote hearings where possible, providing guidance including on the forms of remote technology offered and the use of electronic documentation, and prescribing that the mode of conduction of remote hearing is a matter for the judge in accordance with applicable laws, rules and practice directions amongst other things.[44] [45] The courts' technological infrastructure is also being rapidly scaled up to support expanded utilization of telephone, video and other remote technology (Zoom, Skype etc).[46]

In an interesting development in *Hyde and Murphy v. Nygate*, a case involving four factual witnesses and thirteen experts.[47] An application was brought against the usage of remote hearing. The judge rejected the application and upheld the usage of remote hearing in the case on grounds that; remote hearings are not contrary to but in line with government advice, the available technology is capable of delivering a remote trial of this complexity, safety concerns about witnesses and the risk of procedural unfairness affects both sides equally.[48] On March 24, 2020, the Supreme Court of England conducted its first ever remote hearing.[49] The Supreme Court building has closed and will be conducting all cases and delivering judgments through video-conferencing until further notice.

6.2 Singapore

Before COVID-19, there was an existing practice in Singapore Courts that enabled lawyers make applications by video link. Singapore courts are also quite used to parties or witnesses appearing in court by way of video link. As far as the Supreme Court of Singapore is concerned, hearings are continuing.[50] On 27 March, 2020, the Supreme Court of Singapore released a Guide on the Use of Video Conferencing and Telephone Conferencing which chose Zoom as the official platform. The Guide also explained and demonstrated the step-by-step usage of the platform. Counsel and parties are also required under the Guide to continue observing court dress and etiquette as if appearing in person except as it relates to standing and bowing. Unauthorized recording of audio/video of proceeding is prohibited. In cases where technical difficulties are encountered, the court has the option to adjourn, use the telephony option in Zoom, conduct the hearing via telephone or make any other direction as

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[43] See https://www.judiciary.uk/publications/civil-court-guidance-on-how-to-conduct-remote-hearings/. Accessed on 23rd February, 2021.

[44] https://judiciary.uk/publications/civil-court-guidance-on-how-to-conduct-remote-hearings/ accessed Ma 20, 2020.

[45] https://www.uk.practicallaw.thomsonreuters.com/w-024-6398?transitionType=Default&contextData=(sc.Default)&firstpage=true&bhcp=1 accessed on May 21, 2020.

[46] 'COVID-19 and the Global Approach to Further Court Proceedings, Hearings'. Norton Rose Fulbright. April, 2020. https://www.nortonrosefulbright.com/en-za/knowledge/publications/bbfeb594/covid-19-and-the-global-approach-to-further-court-proceedings-hearings accessed 20 May, 2020.

[47] Hyde [2020] EWHC 845 (Ch).

[48] https://www.simmons-simmons.com/en/publications/ck93zhbdv0m9o0925sj32lkxb/court-hearings-during-the-covid-19-lockdown--england-and-wales- accessed May 20, 2020.

[49] An appeal involving Friends of the Irish Government against The Government and various state parties.

[50] Supra, footnote 32.

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may be appropriate in the circumstances of the case.[51] Hence, while the Singapore Courts have taken further measures to implement virtual hearings, these measures are an extension of the preexisting use of technology prior to the COVID-19 pandemic.

6.3 United States of America

The United States Supreme Court in keeping with public health precautions recommended in response to COVID-19 that all oral arguments currently scheduled for the March and April sessions be postponed and intends to examine the options for rescheduling before the end of the term.[52]The May session is due to see the virtual hearing of a limited number of previously postponed cases with Justices and counsel participating remotely. The United States Court of Appeal for the Federal Circuit issued an advisory on April 21, 2020 that it would hold all oral arguments telephonically during the court's May 2020 session.[53] It also revealed that it would provide live video of same and audio recordings after each day on the court's website.[54]

Lower courts like the United States District Court for the Eastern District of New York have issued a number of administrative orders regarding administration of justice. One of such orders encourages judges to conduct proceedings by telephone or teleconferencing where practicable.[55] The United States District Court Northern District of Alabama also issued a General Order on May 4, 2020 stating that unless necessary to conduct in-person hearing, such should be conducted by teleconference or videoconference.[56] The Coronavirus Aid, Relief and Economic Securities Act signed into law on March 27, 2020 provided more than just the fiscal stimulus.[57] Importantly, S. 15002 allows for the use of videoconferencing in certain judicial matters upon satisfaction of some conditions.[58]

7.0 Challenges Facing Virtual/Remote Court Proceedings in Africa

While virtual or remote court proceedings anywhere would pose obvious challenges. The peculiar situation of African countries undeniably results in more serious obstacles.

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[51] Guide on the Use of Video Conferencing and Telephone Conferencing and Video Conferencing for Hearings before the Duty Registrar by the Supreme Court of Singapore. 27th March, 2020.

[52]See Public Advisory concerning the May 2020 court session made on 21st April, 2020 retrieved from http://www.cafc.uscourts.gov/announcements/public-advisory-concerning-may-2020-court-session-april-21-2020.

[53] Public Advisory Concerning the May 2020 Court Session_issued on the 21st April, 2020. Public access to court proceedings was made available to the public via http://www.cafc.uscourts.gov/public-access-arguments.

[54] Live video at https://www.cafc.uscourts.gov/public-access-arguments

[55] See Supra note 51.

[56] General Order No. 2020-07. Retrieved from https://www.alnd.uscourts.gov/general-order-20-0007-effective-may-4-2020. Accessed on 24th February, 2021.

[57] The Coronavirus Aids, Relief and Economic Security Act. Public Law No: 116-136 (the CARES Act. Signed into law on March 27, 2020 by the United States Congress.

[58] Four conditions have to be satisfied; the governor or Justice of the court must move for video or telephonic proceeding; the Judicial Conference, the Chief Judge and the assigned judge must make the respective findings of necessity; the Defendant must provide informed consent to use of video or telephonic proceedings after consultation with counsel and lastly, the use of video or telephonic proceedings must not obviate a defendant's right to counsel under the Sixth Amendment to the constitution of the United States.

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7.1 Lack of Comprehensive Legal Framework

In contrast to conventional courtroom practices with laid down, clear and unambiguous rules, the novel nature of virtual court proceedings in Africa means that law making and regulatory authorities are still struggling to firstly, fully understand the intricacies of the innovation and secondly, come up with solid legal framework to regulate the process. The effect of this is that judges, counsel, judicial officers, parties and the general public are uncertain and confused about the procedure. The result of this confusion and uncertainty due to a lack of comprehensive and wholesome framework is that the justice system as it relates to virtual court proceedings restricts access to justice in Africa thereby achieving the opposing objective.

7.2 Inconsistency of the Guideline with Provisions of the Constitution, Conventions and Statutes

The right to fair hearing is essentially a universal right. It has as one of its offshoots the right to be tried publicly. The African Charter on Human and Peoples' Rights provides for the right to fair hearing and explains that public trial is an inalienable part of this right.[59] Provisions mirroring this are also found under Sections 36 (3) and (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The Administration of Criminal Justice Act which generally guides criminal proceedings in Nigeria takes it even further by mandating physical presence.[60] The argument against virtual proceedings is that it violates these salient provisions as the public does not have access to the proceedings in the same manner they do in physical courtroom sittings. If this argument is upheld, proceedings conducted virtually stand the risk of being void.

However, it has been pointed out that in nearly all cases of virtual court proceedings, a streaming link is provided for the general public to view the proceeding. It has also been pointed out that a streaming link satisfies the requirement of publicity even more than courtroom proceedings as more people are able to view the proceedings from anywhere across the globe.[61]As true as this may be, the availability of resources to join in on the proceedings is an important element of publicity that must not be overlooked, internet penetration rate and economic power for procurement of broadband and hardware devices effectively cuts off a significant proportion of the African population that would otherwise have been able to simply walk into the courtroom and witness the proceedings. This presents a challenge to the constitutionality and lawfulness of virtual proceedings.

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[59] Article 7 of the African Charter on Human and Peoples' Right provides broadly for the right to fair hearing. The African Commission on Human and Peoples' Right went further to explain in 'Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa' https://www.achpr.org/legalinstruments/detail?id=38 (accessed on May 20, 2020) that public trial is an inherent part of the right to fair hearing.

[60] Section 26 of the Administration of Criminal Justice Act, 2015.

[61] This will allow others who may want to learn the way such proceedings are being conducted to benefit from it.

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7.3 Access to Power Supply

Power presents arguably the biggest challenge to virtual court proceedings as majority of African countries are yet to achieve uninterrupted power supply. Nigeria for example, is plagued with serious electricity crisis due to unreliable supplies, insufficient generating capacity and high tariffs being paid by consumers. While the installed capacity in Nigeria is 51,309 MW, only about 3500-5000 MW is typically available for onward transmission to the final consumer, this results in its electricity consumption being one of the lowest in Africa at less than 150 kWh per capita compared to Kenya with 167 kWh per capita.[62]The situation is significantly better in South-Africa with 4,197 kWh per capita but still dwarfed when compared to Germany and Canada with 7035.48 kWh and 15,588.49 kWh per capita respectively.[63]It is obvious that with power capacity below international global standards, power presents a major challenge to virtual court proceedings in Africa.

7.4 Internet Access

Internet penetration, quality and reliability present a challenge to the workability of virtual court proceedings in Africa. In Nigeria, internet penetration currently sits at 47.1% (92.3 million Nigerians) below the global average of 60%.[64] The situation is slightly better in South-Africa with an internet penetration rate of 63.8% and accommodations typically offering Wi-Fi options to residents.[65] Kenya has one of the best internet penetration rates in Africa and the world with 90% or 51.1 million users.[66] Advancements in internet technology typically arrives Africa late, and even then, the implementation of those technology still falls below global standards.

7.5 Cyber Security and Dearth of ICT Experts

Information and Communications Technology expertise is a valued skill anywhere, it is more so in Africa with very few experts. This presents the problem of handling technical difficulties and cyber-attacks/breaches when they unavoidably arise. The cost of hiring these experts is significant and is an additional strain on judiciary budgets that are already insufficient across most of the African continent.

7.6 Resistance to Technology by the Labour Unions

Adoption of technology across Africa will generally require massive training and retraining of judicial officers and workers as the current crop are not familiar with emerging technological trends like collaborative platforms that will host virtual court proceedings. An even bigger challenge is that judicial workers perceive technology as a threat to their job security and will resist any attempt at introducing same for fear of losing their jobs. In Kwara

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[62] https://www.usaid.gov/powerafrica/nigeria accessed May 20, 2020.
[63] https://www.indexmundi.com/facts/indicator/EG.USE.ELEC.KH.PC/map/africa accessed May 20,2020.
[64] https://www.technext.ng/2020/01/31/60-of-nigerians-are-still-not-connected-to-the-internet-and-only-about-10-are-active-on-social-media/ accessed May 20, 2020.
[65] https://www.statista.com/statistics/484933/internet-user-reach-south-africa/ accessed on May 20, 2020.
[66] http://www.amp.dw.com/en/internet-access-how-rural-kenya-is-keeping-pace/a-47071209 accessed on May 20, 2020.

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State, the Judicial Staff Union of Nigeria (JUSUN) embarked on a strike when asked to undertake training in using of technologies that have the potential of improving administration of justice with claims that they will be rendered jobless after adoption of same technology.[67]

8.0 Conclusion

Access to justice is an important element in the proper functioning of any state. The situation in Africa was already dire before the arrival of the COVID-19 pandemic with numerous detainees in prisons awaiting trial and huge backlog of cases generally. Efforts to contain the COVID-19 pandemic have left courtrooms shut across the continent. The critical nature of access to justice means despite the seriousness of the pandemic, Africa cannot afford to administer justice and with courtrooms shut. Technology and particularly videoconferencing presents an opportunity to fulfill this ever important mandate by holding virtual court sessions and thereby continuing justice administration. The state of infrastructure in Africa coupled with some other important factors however present a challenge to the adoption of this technology. African states will unavoidably have to look inward and resolve these challenges as soon as possible to ensure that everyone on the continent has unhindered access to justice.

9.0 Recommendations

The following recommendations are preferred to address the challenges facing the adoption of virtual court proceedings in Africa and enable the continent continue giving access to justice during the current global pandemic:

i. Implementation of a universal framework for the implementation and operation of virtual court proceedings to give clarity and eliminate confusion
ii. Amendment of relevant constitutional and statutory provisions to recognize streaming of virtual court proceedings as a method of holding public trials
iii. Improvement of power infrastructure and access in the long term. In the meantime, the provision of alternative and reliable power sources for our courts to power the virtual proceedings.
iv. Provision of top quality internet facilities in courts to ensure seamless running of the virtual proceedings. Counsel and parties should also be sensitized on the importance of procuring the best possible internet facility on their end to join in on the proceeding.
v. Increment in judiciary budgets generally to enable hiring of ICT experts to solve technical difficulties generally, secure the courts' network and connection and ward of cyber attacks

Sensitization of court staff on the advantages of these technological innovations and their potential to bring about massive improvement in justice delivery and subsequent training of staff to enable them operate and use technology.

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[67] See https://www.ilorin.info/fullnews.php?id=12758. Accessed on 23rd February, 2021.

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