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A CRITICAL EXAMINATION OF LEGAL AID  
IN NIGERIA

by

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**INTRODUCTION**

Under the judicial system in Nigeria, the State stands at a vantage position in a criminal proceeding. This is because right from the Magistrate Court (in some cases) up to the Supreme Court, the State is represented by seasoned lawyers. The accused person in a criminal case on the other hand, is left alone to consult a lawyer who will defend him in Court and invariably, the calibre of the lawyer consulted by him, is determined by how financially buoyant he is. Where an accused person cannot afford a lawyer because of his financial status, such indigent accused person stands at a disadvantaged position against a seasoned state counsel as he has no choice but to put up his defence personally. The disadvantaged position of such an accused person becomes more glaring when it is taken into consideration that it is a world wide trend, that legal language and Court procedure are such specialized and complex subjects.

The position is the same in civil cases where one party (either the plaintiff or the defendant) can afford a legal practitioner to represent him and the other party is unable to do so due to impecuniosity. According to Oputa JSC,

"the law is an equal dispenser of justice"<sup>1</sup>. Therefore, justice is and should be for all persons. The concept of justice has been central to civilization from time immemorial. It is only in this century that the concept of universal access to justice has not been taken seriously. Today, the problem of access to justice is seen to consist of a variety of issues including the scope of the legal aid scheme, the availability of other systems for financial assistance to those who need the services of lawyers. Persons who in one way or the other find themselves in conflict with the law, resulting in criminal proceedings against them, or who are interested in enforcing a right in a civil case, should not be denied justice because of the inability to afford the fees for the legal practitioner to represent them. Justice cannot be said to be done, where a party by himself faces another party who is represented by a seasoned and qualified counsel.

The Legal Aid Scheme in Nigeria, is geared towards equal dispensation of justice. The scheme affords legal aid to persons (as defined by law) who might have been denied justice because of their financial status. The extent to which this aim has been achieved, the category and number of persons who benefit under the scheme; and cases that come under the scheme are critical issues that need to be examined.

This paper analyses the law and structure of legal Aid in Nigeria, and comparatively examines the legal provisions and practices of other legal systems. This is to determine the potency and adequacy of the Nigeria Law. The problems of the Legal Aid Scheme in Nigeria are

<sup>1</sup> Per Oputa JSC in *Bello v. State* 1986 5 NWLR (part 45), p. 828 at 836.

identified and examined. Some recommendations to ensure more effective policies on the legal aid scheme and to promote the effectiveness of the administration of justice in Nigeria are given.

### **Socio-Legal Rationale for Legal Aid**

Legal aid is defined as an instrument whereby an aggrieved party who lacks financial means, is assisted by legal means to stand on equal footing with the opposing party in a court of law.<sup>2</sup> The rationale for legal aid in Nigeria, is that there should be equality of justice and no man should be denied of this, because of his economic status.<sup>3</sup> As far back as 1216, the idea that everyone should have equal access to justice and the Law has been enshrined under the English legal system and it is on this legal system that the Nigeria legal system is largely based. During this period in England, Magna Carta declared "To no one will we sell, to no one will we refuse or delay right or justice".<sup>4</sup> It was this ideology that prompted the legal aid scheme in 1949 which was designed to guarantee that those persons unable to afford legal advice or representation from solicitors should be given access to it. Legal aid is a development on the legal system of the world which has been brought about through underlying spirit of Law which has always tended though often most

<sup>2</sup> Achikeh, VCU. (1990) "Legal Aid and the Criminal Justice Process" Paper delivered at the National Seminar on the Administration of Criminal Justice in Nigeria held at the University of Lagos.

<sup>3</sup> For further discussion see Fagbohun, O. (1983) "Legal Aid, its basis and rationales" Nigeria Bar Journal, Vol. XIX NO. 2 p. 102.

<sup>4</sup> Lee, S and Fox, M (1992) *Learning Legal Skills* Blackstone Press, London. p. 178

imperceptibly to move in the direction of equality. The issue of access to legal aid is intrinsically linked to justice because access to legal aid is frequently equated with access to justice.

The legal aid scheme world wide is an enviable scheme to redress the hardship of the financially handicapped in the pursuit of their legal rights. Inequality of justice results if trial depends on a man's means. Justice in this sense is fairness or being equitable. Due administration of justice demands that everyone should have equal access to the law, to the courts and that justice should be done to all manner of men without distinction or discrimination as to class, social status or financial standing. Man being a social being needs to live in a society. It is the society that creates happiness or unhappiness in man. The country to which a man belongs contributes to his happiness.

In the Criminal case of UDO v. STATE,<sup>5</sup> Eso JSC (retired) whilst talking about the concept of fair hearing as an aspect of natural justice, said that the Court should give equal opportunities to both the prosecution and the defence. This statement should be applicable to civil cases.

As a signatory to the Universal Declaration of Human Rights, Nigeria adopts the rule of equality before the Law. A perusal of Section 13 of the 1979 Constitution of the Federal Republic of Nigeria<sup>6</sup> shows that there are fundamental obligations on the Government in this regard.

This Section provides that:

<sup>5</sup> 1988 3 NWLR (Part 82) p. 316

<sup>6</sup> Chapter II, 1979 Constitution of the Federal Republic of Nigeria Cap 62 1990 Laws of the Federation of Nigeria, Vol. IV

*It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of this chapter of the Constitution.*

Equally, Section 17(1) of the same Constitution emphasized the social objective of the Government by stating that

*The State social order is founded on ideals of freedom, equality and justice"*

Section 17(2)(a) goes further to state that

*Every citizen shall have equality of rights, obligations and opportunities before the Law*

To achieve the above objectives, Section 42(4) b(i) and (ii) of the Constitution provides that the National Assembly

"Shall make provisions -

- (i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim

and

- (ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.”<sup>7</sup>

The provisions of Section 17, imposes a duty on the state, and ensure that the independence, impartiality and integrity of courts of law and easy accessibility to same are secured by the state. The above Constitutional provisions presuppose that all Nigerians, no matter their status should equally be entitled to enjoy the peace of the nation and to have easy access to courts of law to seek redress, remedy and relief whenever there is a transgression of their legal right. The financially handicapped person therefore needs assistance to employ the service of a legal practitioner.

#### **Advent of Legal Aid in Nigeria**

The Conference of the International Commission of Jurist held in New Delhi in 1959 on “The Rule of Law in a Free Society” heralded the legal aid scheme into Nigeria. After the Conference, a legal aid Bill was introduced into the Nigerian parliament but was not passed into Law until 1976, when the first Legal Aid Decree of 1976 was passed by the Obasanjo administration. Prior to the 1976 Decree, there were drives for the establishment of a legal aid scheme in Nigeria, as it was being operated in other civilized countries. This was by eminent Nigerians championed by Chief C. Ikeazor, a Senior Advocate of Nigeria. At this time, there were statutes which made provision for a form of legal aid to be made available to certain categories of accused persons. Such statutes are,

the Criminal Procedure Act,<sup>7</sup> applicable in the Southern States of Nigeria, the Criminal Procedure Code,<sup>8</sup> applicable in the Northern States of Nigeria, the Federal Supreme Court Act<sup>9</sup> and the Federal Court of Appeal Act”.<sup>10</sup>

Under the provision of the Criminal Procedure Act, the court is empowered if it is practicable, to provide or assign a counsel for the defence of an accused person charged with a capital offence. In practice, this provision is adhered to because the courts ensure that the accused person is represented by counsel before the case is heard. On the other hand, Section 352 of the Criminal Procedure Code applicable in the Northern States of Nigeria makes it mandatory by the use of the word “must”, for an accused person facing a charge of a capital offence to be assigned a counsel by the Court and the mandate is without qualification as it is provided for in the Criminal Procedure Act.

The above sections are provisions on legal aid for an accused person facing a charge of capital offence. The above provision in the Criminal Procedure Code is clearer and more in tune with the principle of Natural justice and such a provision will enhance proper administration of justice. The function of courts has been said to be “to uphold the right of both the citizen and the

7 Section 352, Criminal Procedure Act, Cap 80 1990 Laws of the Federation of Nigeria Vol. V

8 Section 186 Criminal Procedure (Northern States) Act Cap 81 1990, Laws of the Federation of Nigeria Vol. V

9 Section 32, Supreme Court Act Cap 424 1990 Laws of the Federation of Nigeria Vol. XXII

10 Section 26, Court of Appeal Act Cap 75 1990 Laws of the Federation of Nigeria Vol. V

State",<sup>11</sup> therefore the provision of counsel for an accused charged with a capital offence should therefore be a sine qua non.

Furthermore, the provisions in the Supreme Court Act<sup>12</sup> and the Federal Court of Appeal<sup>13</sup> empower the Supreme Court and the Court of Appeal respectively to give legal assistance to appellants appearing before these courts by assigning counsel to such appellants in appeals or proceedings, preliminary or incidental, to an appeal where in the opinion of the courts it appears desirable in the interest of justice that the appellants should have legal aid that he has not sufficient means to enable him obtain that aid. These provisions under the Supreme Court Act and The Federal Court of Appeal Act are similar to the position in England, where legal aid is provided for an accused person by the Court, once the Court is satisfied that it is desirable to do so in the interest of justice and the means of the accused are such that he requires assistance in meeting the cost. In practice, legal aid is only given by the Supreme Court in capital offences.<sup>14</sup> However under the English legal system, the "means test" is not strictly adhered to and legal aid is granted by the English Courts on liberal terms.

It suffices to mention that other forms of legal aid exist in Nigeria which are not provided for in any statute. One of such is the "State briefs". The State brief is a form of

11 Per Akpata, JCA. (as he then was) in *Williams v. Dawodu* [1988] 4, NWLR Part 67 p. 189 at 197

12 Section 32 *Supra*

13 Section 26 *Supra*

14 Cotrell, J. "Legal aid perspective and Prospect" in Adeyemi A.A. (ed.) *Nigeria Criminal Process*

legal assistance whereby the Court firms out cases of indigent accused persons appearing before it to a legal practitioner registered with the Court to handle such cases. It is worthy of note and commendable that some private legal practitioners offer free legal services to clients who are unable to afford legal fees charged for such services. Private Organizations, like the Civil Liberties Organizations (CLO) are known to complement the legal aid services provided by the government in Nigeria by taking up cases involving individual rights.

### **Legislative Track**

The Legal Aid Decree No. 56 of 1976 formally introduced the legal aid scheme into Nigeria with the creation of the Legal Aid Council. The 1976 Decree has been amended by several other legislations. The first of such amendments was The Legal Aid (amendment) Decree No. 34 of 1978 and later by The Legal Aid (amendment) Decree No. 18 of 1979. The 1979 amended legislation was later amended by The legal Aid Decree No. 10 of 1986. In 1988, The Legal Aid Regulation which is subsidiary legislation to the main Legal Aid Act was made.<sup>15</sup> This Regulation (hereinafter referred to as The Regulation) is for the better carrying on of the purposes of the Legal Aid scheme as provided by the Act. The regulation as will be seen shortly is now contained in the 1990 Laws of the Federation which contain the main

15 Subsidiary Instrument 21 of 1988. Supplement to Federal Republic of Nigeria Official Gazette extraordinary No. 82 Volume 75 of 13th December, 1988.

legislation on legal aid in Nigeria. The power to make this regulation is given to the Federal Attorney-General.<sup>16</sup>

In 1990, there was a revision of all the Laws of the Federal Republic of Nigeria. The Law regulating the legal aid scheme in Nigeria is now contained in The Legal Aid Act, Cap 205, 1990 Laws of the Federation of Nigeria.<sup>17</sup> The 1990 Act (hereinafter referred to as The Act) is the main legislation on legal aid in Nigeria. In 1994, The Act, was amended by the Legal Aid (Amendment) Decree No. 22 of 1994. The 1994 amendment was to further expand the scope of the legal aid scheme to cover more offences and increase the income bracket.

### **The Structure of the Legal Aid Scheme in Nigeria**

The legal aid scheme in Nigeria is carried out by the Legal Aid Council established by the Act.<sup>18</sup> There are legal aid offices in all the thirty States of the Federation including Abuja. Under the 1976 Decree, the scope of legal aid was limited to a few criminal offences under the Criminal Code only. These offences specified in schedule 2 of the 1976 Decree were murder, manslaughter, malicious or willful wounding, assault occasioning actual bodily harm, aiding and abetting or counseling or procuring the commission of, or being an accessory, before or after the fact, or attempting or conspiring to commit, any of the offences listed above. However, in 1979, the amendment in Decree No. 18 of that year widened the scope of offences under the legal aid scheme to cover corresponding offenses mentioned above in The

16 Section 18 Legal Aid Act (1990)

17 1990 Laws of the Federation of Nigeria. Vol. XI

18 Section 1(1) and (2) 1990 Act.

Penal Code applicable in the Northern States of Nigeria. The scope of the scheme was further widened in 1986 by Decree No. 10 of 1986 to cover civil cases but such civil cases was limited to personal accident cases. This extension of the scope to cover such cases was significant and a welcome idea because such cases were common occurrences in Nigeria. Moreover, a very significant aspect of the inclusion of such cases into the scheme is that, the council will entertain the complaint of a victim, even if at the time of lodging his complaint, he is not sure of who is at fault for the injury caused to him, but he can prove that someone else is to blame. The Council in such a case will assist in determining against whom he can take action. Furthermore, compensation may be paid to a victim, if the accident happened three to six years before the claim was brought.<sup>19</sup>

A further amendment was made in 1994 in respect of offences covered by the scheme. By Decree No. 22 of 1994, more offences were added to the categories of proceedings in respect of which legal aid may be given. These new offences are assault, affray, stealing, rape. In the case of civil cases, this was widened to include breach of fundamental Right as guaranteed under Chapter 4 of the Constitution of the Federal Republic of Nigeria as amended.<sup>20</sup> Each of these amendments enumerated above, show a remarkable development in the Law on legal aid in Nigeria.

The regulation states that free legal advice shall be given in any office of the Legal Aid Council, courts, police

19 Legal aid Magazine, (1989) Fourth issue; Seminar Issue published by the Magazine Committee of the Legal Aid Council

20 Section 3(2) 1994 (Amendment) Decree



stations or prison in any civil or criminal matter by legal practitioners appointed by or in the service of the Council.<sup>21</sup> Section 7(4) of the Act provides that "legal aid shall consist on terms provided for in this Act

- (a) the assistance of a legal practitioner including all such assistance as is usually given by a legal practitioner in the steps preliminary or incidental to any proceedings.
- (b) representation by a legal practitioner before any court; and
- (c) such additional aid (including advice in civil causes and matters) as may be prescribed".

From this provision, it is clear that legal aid is not limited to only representation by a legal practitioner before a Court of Law, but it extends to all the steps that would be taken by a legal practitioner to enhance the effective administration of justice—from the moment an accused person is arrested for an offence, up to the final determination of the case. There appears to be a conflict between the provision of Section 7(4)(b) stated above and Section 7(3). Section 7(3) of the 1990 Act provides that

*Notwithstanding the provision of this Act, or any regulation made there under, legal aid shall not be provided in connection with proceedings before any Court or tribunal before*

*which persons have no right to be defended or represented by a legal practitioner.*

The wordings of Section 7(3) excludes legal aid representation for an indigent accused person in a proceeding in a Customary Court. This is because legal practitioners are prohibited from appearing in certain Customary Courts by laws creating such Courts in Southern Nigeria.<sup>22</sup> The same position operates in Northern Nigeria, where the Law excludes legal practitioners from appearing in Area Courts.<sup>23</sup>

Happily, this conflicts in the two sections above has been resolved by the Supreme Court in UZODIMA v. STATE<sup>24</sup> where it was decided that legal practitioners have a right of audience before any Court established by Law in Nigeria. Since the Customary Courts are established by Law as seen above; legal practitioners can therefore represent an accused in the Customary Court.

It is not every Nigerian that is entitled to benefit under the legal aid scheme. The categories of persons have been subject to review over the past years. Under the 1976 Decree, only persons whose income did not exceed seven hundred and twenty Naira (N720) was entitled to legal aid. The above stated category of persons was however reviewed in 1986. Under Decree No. 10 of 1986, the income bracket was widened to One Thousand, five hundred Naira (N1,500). This was also the position when the laws of the Federation was reviewed in 1990 and the

22 Section 23, Customary Courts Law, 1980. Supplement to Oyo State of Nigeria Gazette No. 1 Vol. 6 1st January, 1981 - Part C.

23 Section 390 Criminal Procedure Code

24 1982, Nigeria Criminal Law Report p. 27.

1990 Act retained the income bracket as N1,500. With the enactment of the 1988 regulation, the category of persons who are eligible under the scheme was further reviewed and enlarged to include; the following persons.

- (a) those who do not have any income
- (b) those whose income do not exceed N1,500
- (c) a person whose case is referred by the Court in the form set out in the schedule of the regulation
- (d) a person whose income exceeds N1,500 but the obtaining of legal services outside the scheme would place him in the same position as an applicant in the first two categories afore-mentioned, or
- (e) a person who when considered, it is reasonable in all the circumstances to provide him with legal aid.<sup>25</sup>

This position was maintained with the review of the laws of the Federation in 1990. However, the position has now changed with the 1994 amendment and this is only with regards to the sum of money stated in the above Section. The amount has been reviewed upwards to N5000.<sup>26</sup> From the provisions of the regulation, it is clear that a person's income is not the only factor to be considered in determining whether a person is eligible to

<sup>25</sup> Section 3, (1) a-e.

<sup>26</sup> Section 2, 1994 Decree.

the legal aid scheme or not. The legal aid Council has a discretion to decide if a person is entitled to legal aid.

There are some guidelines that the Council must follow in exercising this discretion. These are set out in Section 4 of the regulation. To determine the applicant's income, the Council must consider the applicants' salary, wages, pension, royalty, business income, income from dividend, debenture and rent from landed property. In the case of an applicant whose income exceeds N5000, other factors will be taken into consideration in determining the means and needs. These include the following: allowance, deduction, income tax payment, superannuation, one half of any sum paid by the applicant for lodging, rent, mortgage, maintenance of spouses or children and so many other factors. Such category of persons where income exceeds N5000 may be required by the Council to make contributions towards the cost of the legal services rendered on his behalf. The contributions to be made by different persons in this category are set out in the regulation.<sup>27</sup> It must be noted that the scale showing the contribution has not been reviewed after the 1994 amendment which widened the Income bracket to N5,000, the scale is still based on the old income bracket of N1,500. This requirement for contribution by persons benefiting in the scheme is laudable because it assists in the funding of the scheme and at the same time alleviates the financial burden of such a beneficiary of the scheme. Moreover, if it is taken into consideration that currently the charges made by legal practitioners outside the legal aid scheme are so high, the small contributions demanded

<sup>27</sup> Section 6, (1)

from beneficiaries of the scheme brings so much financial relief.

Legal practitioners who handle legal aid cases for the Council are classified into 3 groups. These are:

- (i) Private legal practitioners registered with the Council.<sup>28</sup>
- (ii) Salaried lawyers employed as permanent staff of the Council.<sup>29</sup>
- (iii) National Youth Service Corp Lawyers on National service assignment.<sup>30</sup>

These different classes of legal practitioners are however bound by the provisions which stipulate that they cannot act as legal aid Counsel in connection with proceedings before any Court or tribunal before which persons have no right to be defended or represented by a legal practitioner.<sup>31</sup> Private legal practitioners willing to act for persons under the legal aid scheme are requested to register with the Council and they are paid professional fees for any legal aid case handled in accordance with a fixed scale approved by the Council. The salaried lawyers are permanent staff of the Council, employed to render legal aid services in the legal aid offices of the state where they are employed. National Youth Service Corp lawyers play a prominent role in the scheme although the Act

28 Section 13, (1) 1990 Act.

29 Section 34, 1990 Act.

30 Section 14, 1990 Act.

31 Section 7(3), 1990 Act.

provides that such category of lawyers are not paid for services rendered. The duties of Corp lawyers under the legal aid scheme come under what is known as the "duty lawyer services". The duty lawyer service, entails visits by the Corp Lawyers to the police stations, to visit and interview persons arrested by the police, who are detained in police cells and have not engaged the services of a lawyer to represent them. The Corp Lawyers are supposed to interview such detained persons to know the facts of the case for which they are arrested, ascertain if the accused person intends to plead guilty or not guilty, appear in the Court of first instance, arrange for bail for the accused by filing and signing of bail forms and arrange for the release of the accused person on the bail term stipulated by the Court.<sup>32</sup> This service by the Corp Lawyers is commendable but, presently the operation is not effective and functioning as it should. This is due to financial constraints as the Council cannot maintain the services of sufficient number of youth Corp lawyers to perform such duties throughout the Country. Even though youth Corp lawyers are not paid for cases handled by them, the National Youth Corp directorate demands that employers of youth corps pay some allowances to such youth corps.

On the issue of funding of the legal aid scheme; the scheme is mainly financed by the Federal Government in practice although the Act provides<sup>33</sup> that funding shall be from the state governments too. Other sources of funds are the contributions of beneficiaries of the scheme as discussed above, gifts and contributions from

32 Achikeh, VCO (1990) *Supra* p. 4

33 Section 8 1990 Act.

philanthropic persons or organizations.<sup>34</sup> Section 11 of the Act gives power to the Council to accept gifts of land, money or other property upon such trust and conditions as may be specified by organization or the persons making the gift. There is an exception that such gifts must be consistent with the functions of the Council.

### Comparative Analyses

The legal aid scheme is not peculiar to the Nigeria legal system. Most civilized countries today have established schemes that enable the poor to have access to justice through legal aid. Such countries recognize the rule of Law which is based upon the liberty of the individual and has as its objects, the harmonizing of the opposing notion of individual liberty and public order. In many legal systems in the world, it is recognized that for the maintenance of the rule of Law, equal access to Law and justice must be made available for the rich and poor. Those threatened as to their life, liberty, property or reputation, but are not able to pay for such needed advice or representation should be provided with adequate legal service.

In the United States of America, right to fair hearing, implies a right to be defended by a legal practitioner. Under the American legal system, legal aid for an indigent citizen in a criminal proceeding is a Constitutional right, guaranteed right from the time of interrogation at the police station to the final appeal of the case or at whatever stage.<sup>35</sup> Legal aid cases in America, are handled by legal

34 Section 8(3) 1990 Act.

35 6th Amendment of the Constitution of the United States of America which provides that "In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial... to have compulsory process for

aid officers and in certain cases, senior law students are also given legal aid cases. Funding of the scheme are done by public and charitable organizations. Such organizations include the American Civil Liberties Union (ACLU) and National Lawyers Guild. The legal aid scheme in America was further strengthened in 1972, when the American Court decided in *Argersinger v. Hamlin*<sup>36</sup> that an accused person cannot be sentenced for any offence where he is not represented by any Counsel. The American position is indeed a welcome advance in the law, worthy of emulation.

Under the English legal system, there are Statutory provisions regulating legal aid for indigent members of the society. The principal Acts dealing with the subject of legal aid are as follows: the Legal Aid Act, 1974 is a consolidating Act which brings together the provisions relating to legal aid in both civil and criminal proceedings, legal advice and assistance. The Legal Aid Act, 1979 principally amended the 1974 Act extending the provision relating to advice and assistance so as to permit assistance by way of representation in certain circumstances.<sup>37</sup> The Legal Act, 1982 makes further provision with respect to the giving of legal aid, the provision of advice and assistance in criminal cases and amends the Legal Aid Act,

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obtaining witnesses in his favour, and to have assistance of Counsel for his defence."

See also *Gideon v. Wainwright* 372 US 335 (1963)

36 407 US 25 (1972)

37 (1) Principal Acts (2) Legal Aid Act, 1979, (3) Legal Aid Act, 1982 (4) Legal Aid Act, 1988

Legal Aid Act 1974, Section 21 Powers of Criminal Court Act, 1973; Poor Prisoners Defense Act, 1930; Legal Aid in Criminal Proceeding (fees and Expenses) regulation 1968 Administration of Justice Act 1985 part iii

1974. Legal aid is granted where it appears to the Court that it is desirable to do so in the interest of justice. The 1974 Act as supplemented by the 1982 Act makes provision for four kinds of legal aid. These are legal advice and assistance, legal aid for civil proceedings, criminal legal aid and advice and representation provided by a duty solicitor in a magistrate Court. This depends on the Court where the case is to be heard. All the Courts, from the magistrate and crown courts, to the Court of Appeal and House of Lords can exercise this discretion to grant legal aid. Under this system, lawyers are appointed to the scheme by a committee. They are called duty solicitor committee: Such lawyers have considerable experience of advocacy in criminal cases in magistrate courts, must show that their offices are accessible to the Court and willingness to act as duty solicitor personally. Such Solicitors must demonstrate an adequate knowledge of the procedure of the magistrate Court and laws relating to the common offences coming before that Court. Furthermore, the Law Society plays an important role in the scheme and the society is engaged in the proper functioning of the scheme.<sup>38</sup> There are Solicitors in the law society who give advice and assistance to persons receiving legal aid, representation in Court and other duties. The law Society also has salaried Solicitors. The law society is empowered by law to establish and administer a legal aid fund. Where an order for legal aid is made under the British legal system, the law provides that an accused is entitled to select any Solicitor or Counsel willing to Act and such

<sup>38</sup> The function of the Law society is to administer part 1 of the Legal Aid 1974.

Solicitor will be assigned accordingly. A similar practice to the Nigerian system is that a beneficiary of the legal aid scheme may be required to make contributions. The "means test" is a fact that may be considered by the courts in granting legal aid, but it is not strictly administered, because in most cases they exercise their discretion to grant legal aid where it is found that it is desirable to do so in the interest of justice.

In murder cases, as in the Nigerian situation, legal representation must be available for the accused person. Generally the solicitor must be paid his fees. Such fees are paid as the case progressed and the longer a case takes, the more the fees of the Solicitor. This is because apart from the basic fee, there are daily fees in respect of second and subsequent appearances. Under the British system, legal aid has never been considered a social service to be exclusively funded by the government. Independent voluntary organizations play a very important role in the funding of the scheme. Such organizations include poor neighbourhood Law centres.

Under the Canadian Legal system, legal aid is in general available only to those persons who are unable to afford to retain their own lawyers. Legal aid under this system is operated under many authorities, varying from one province to another. Unlike what operates under the Nigerian system, where the legal aid scheme is operated by the legal aid council in different states of the federation but with uniform laws regulating the scheme, in Canada, the legal aid scheme in some provinces are run by the government, while in others by the Law society or in some cases by both the government and the Law society and yet in other cases they are run by special societies

mandated by statute for that purpose.<sup>39</sup> Similar to the Nigerian system and the British system (to an extent), an applicant for legal aid in Canada must establish some facts as to his financial need and the fact that such a case is covered by the particular legal aid plan. If these two conditions are satisfied, the applicant is given a legal aid certificate and unlike the Nigerian system the beneficiary picks a lawyer of his choice. A fact similar to what obtains in Nigeria is that only certain items are covered by the legal aid plan. In such cases, a person though indigent cannot be assisted outside under the scheme. If the legal aid scheme developed to alleviate the concern of high charges of lawyers thereby making it impossible for many persons to afford legal fees, then the scope of the scheme must be widened. The funding of this scheme in Canada also varies from province to province. In some provinces, it is directly funded by direct government grant and in some by the provincial Law foundation. The Law foundation receives their moneys from the interest earned on lawyers trust account.

As a result of the inability of government and other agencies to adequately alleviate the problem of indigent persons, there is a trend directed at remedying the situation. Various Law Schools in Canada started legal aid societies which provide student legal services. In addition, Law Students in a University in Canada established what is referred to as "law line" where free legal advice can be given in common areas of law that affect the society such as Landlord and Tenant Law and Consumer Law. Some

39 Gall, G.L. (1977) *The Canadian Legal System*. The Carswell Company Limited. Toronto Canada.

other educational programmes are designed for the general public as enlightenment programmes. These educational and assistance programmes are to a large extent designed to assist those who cannot afford the legal fees.

As regards the legal aid schemes in Australia, Sharkey summed up the rationale of the scheme in that Country by stating that "justice like other commodities in the *laissez faire* system could be purchased only by those who could afford its cost... The possession of right is meaningless without mechanism for their effective vindication. Effective access to justice is, one of the most important human rights."<sup>40</sup>

A perusal of the legal aid scheme in the different Countries discussed above, show that the rationale behind the scheme is geared in the same direction to ensure that professional legal services are made available to poor persons who are unable to afford the fees charged for legal services rendered by practitioners.<sup>41</sup> The American Court in *Miranda v. Arizona* echoed the rationale of the scheme by stating that "need for counsel in order to protect the privilege exists for the indigent as well as a the affluent while authorities are not required to relieve the accused of poverty, they have the obligation not to take advantage of indigence in the administration of justice."<sup>42</sup> Justice Black in an earlier decision, had stated that there is

40 Sharkey, P.J. (1980) Legal aid Schemes in Australia and access to justice -Proceedings and paper of the Sixth Commonwealth Law Conference. 1980 p. 336 at 343.

41 Obaseki, JSC (1989) Opening Address at the seminar on legal aid, human rights and social justice in the evolution of a democratic society held in Kaduna April 6-7 1989

42 384, US. 342 (1966)

no equal justice, where the kind of justice a man gets depends on the amount of money he has.<sup>43</sup>

### **Perceived Operational Problem**

Law is technical and complex. Majority of the Nigerian populace are poor and are illiterates. The intelligent and educated layman has very little and sometimes no skill in the science of Law and is unfamiliar with the rules of evidence. Therefore, there is the need for a properly organized legal aid programme in Nigeria.

The Legal Aid Scheme in Nigeria has met with many problems in its operation. Some of these problems are enumerated below.

### **Narrow Scope**

The fundamental principle of the Council in the operation of the scheme is to facilitate equality of access to justice. This is through the provision of effective and efficient legal service to those who are unable to finance these services from their own resources. If the legal aid council was designed for such a purpose, it is submitted that the scope of the scheme is too narrow as it is presently because it is limited to a few criminal cases, accident claims in civil cases and civil claims to cover breach of fundamental human rights, guaranteed under Chapter 4 of the 1979 Nigerian Constitution as amended. There are many people that will qualify for the scheme yet the "means test" excludes them. This "means test" is too low and restricted. With the prevailing economic depression in Nigeria, the financial eligibility limit has not

43 Griffin v. Illinois 351 U.S 12 (1956)  
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been raised in line with increase in earning and prices. The amendment of the "income bracket" in 1994 to N5,000 has been taken over by inflation, in such a way that many Nigerians have been dropped out of the scheme. Moreover, the structural adjustment programme has taken its toll on the scheme and has made the reviewed sum of N5,000 as the income bracketed unrealistic.

### **Location of Council Offices**

A cursory look at the location of council offices in the different states in Nigeria, shows that many council offices are not properly located to facilitate accessibility to the public. Accessibility should not be restricted to making legal aid services available, but should include easy location of council offices. Such offices should be easy to locate and gain entrance into by the prospective beneficiaries who may be entitled to such facilities. The location of some council offices in Nigeria, shows that there is a restriction on the time and date when this privilege can be made available. This is so because in such states, the council offices are situated within state or Federal government secretariats. This fact, restricts the time to which the needy persons can enjoy the facilities available to between 7.30am to 3.30pm on Mondays to Fridays which is the official working hours of government parastatals.

### **Lack of Awareness**

Accessibility of the legal aid scheme can only be facilitated by awareness of the scheme. Lack of adequate publicity of the scheme has been a problem in Nigeria. It is

necessary that those who may need the services of the council be made aware that such service are available to them and also to know where these facilities are located. Nigeria has a high illiteracy population. Many people do not understand the law for reasons already stated, and are ignorant of their rights, and how they can be helped. A research work was carried out in 1994 in one urban community of Oke-foko in Ibadan, South West local government and in three rural communities of Kelepe and Ojoponde in Akinyele local government area; and Ayede in Egbeda local government area. All the communities are in Oyo state.

It was discovered, that none of the residents of the three rural communities who were mainly subsistence farmers and small scale hunters was aware of a legal aid scheme in Oyo State. The rural communities which have about one hundred residents each were very reluctant to talk about the police and would not want to have anything to do with the police because they are poor and to them, this status places them at a disadvantaged position because they can never receive justice as there is no money to pursue such in the Court of Law. In the poor urban community of Oke-foko which is situated right in the centre of the city of Ibadan, a few of the many residents claimed knowledge of the legal aid scheme. However, on probing about its relevance to them, it was discovered that, the knowledge about the scheme is too scanty to be meaningful to them.

### **Non-Commitment of Legal Practitioners**

Some problems are encountered with the registered legal practitioners who are engaged in the operation of the

scheme. Some of these practitioners do not show commitment in cases that are assigned and being handled by them. It is discovered that some legal practitioners give other briefs priority over legal aid cases. This may be attributed to the low professional fees paid by the Council. Such legal practitioners who indulge in such practices have been denounced by the supreme court in the case of Uzorukwu v. State.<sup>44</sup> Brett JSC (retired) expressed the court's dissatisfaction with such Legal Practitioners when he said "no more important duty, and we emphasize the word 'duty' falls to members of the Nigerian Bar than that of representing persons charged with murder and that once Counsel accepts instructions in such a case, he is expected to give it priority to all other engagements however important or lucrative they may be."

Salaried legal aid officers have also been found to indulge in displaying non commitment to the legal aid cases. Oputa JSC rightly observed this fact in Udofia v. State when he said "This case is important because it exposed the laxity and lack of seriousness of some younger members of the profession. It mirrors and reflects the general and steady decline in the standard of professional responsibility required of Counsel defending an accused person..."<sup>45</sup> (The Counsel in the above case was a legal aid officer). There is a general opinion that work done on legal aid cases are of poorer quality than cases done at the going rate. This should not be the case. Care must be taken that only committed, reliable and competent firms and lawyers are registered into the scheme. A two tier system of justice is not good for any legal system. Indiscriminate assignment of cases; and the use corp lawyers

<sup>44</sup> [1958] 3 FSC 14

<sup>45</sup> [1988] 3 NWLR Part 84 p. 533



for very serious cases in the operation of the legal aid scheme, is a matter that has caused great concern amongst some Nigerians. The reason for this is that Corp lawyers deployed to the Council carry out duties outside their duty lawyers which should be their main duty. It is of concern too see that Corp lawyers go as far as handling murder cases which involve a man's life. This atrocious fact was condemned by the Supreme Court when Oputa JSC said in *Udofia v. State* that:

*What is this country turning into when members of the NYSC. would be sent to Court to defend a man on trial for his life.<sup>46</sup>*

There is no doubt that Corp lawyers are useful within the scheme but they should be restricted to their duty under the duty lawyer service. This indiscriminate assignment of cases is not only limited to Corp lawyers, as cases are assigned to other lawyers (who have completed their youth service) without any consideration of their relative experience at the bar.

### **Police Hostility**

While in theory, the police and legal practitioners are partners in the progress and process of administration of justice, this is not always so in reality. In the operation of the legal aid scheme, legal aid officers encounter problems with the police. The problem is usually encountered during visitation by the legal aid officers to persons detained in police cells. This problem is not peculiar to legal aid officers alone, but it is known that some policemen, particularly the

<sup>46</sup> [1988] 3 N.W.L.R. (Part 84) 533

junior ones, are unfriendly to legal practitioners who go to interview a client detained in the police cell.

### **Lack of Adequate Funding**

The survival of any scheme depends on the fund available to carry out its functions. Funding is fundamental to the legal aid scheme and in Nigeria, the scheme is starved of funds. In practice, the federal government has been the main financier of the scheme in Nigeria whereas the Act provides that funding shall be by the federal government, state government and contributions from philanthropist and organizations. With the economic recession affecting the country, there has been a decrease in the subscription of the federal government to the scheme. In the year 1988, the federal government approved the sum off N1,339,760 for release. For the capital expenditure of the scheme, a sum of N219,720 was approved, but only the sum of N142,818 was released. The figures show money released by the federal government as at the end of August 1988.<sup>47</sup>

Some significant progress has been made by some state governments in assisting the legal aid scheme in their various states. Such assistance are in the form of provision of office accommodation to council staff, furniture, cars, office equipment like typewriters and even monetary contributions. It has been observed that the response to matters of financial assistance is slow and inadequate. Between September, 1990 and August, 1991. Only eleven (11) States out of the then twenty one (21) States made any contribution to the legal

<sup>47</sup> 1987/88 report of the legal aid Council presented at the 1988 Annual General Conference of the Nigerian Bar Association in Kaduna, 29th August to 2nd September, 1988.

aid fund. The State<sup>48</sup> are Akwa-Ibom (N17,000), Anambra (N65,955), Bornu (N20,000), Cross River (N100,000) Imo (N100,000), Kaduna (N50,000), Kano (N50,000), Lagos (N50,000), Niger (N10,000) Ogun (N10,000) and Oyo (N100,000). A pragmatic look at these contributions reveals that there is much more room for improvement in this regard. The problem of funding has spiral effect because it is the root cause of some of the other problems.

### **Inadequate Professional Fees**

The problem of inadequate fees paid to registered legal practitioners under the scheme has been attributed to poor funding of the scheme. On the other hand, the inadequacy of professional fee is said to be a reason for non-commitment on the part of registered legal practitioners handling legal aid cases and the lack of enthusiasm of such legal practitioners. If care is not taken, the inadequacy of professional fees may result in less qualified and less competent firms of legal practitioners taking up legal aid cases. This trend may result in a two tier system of justice emerging under the scheme. In a 1991 report of the Council, the Council's panel of registered private legal practitioners throughout the Federation showed an unimpressive figure of 945. This figure reflects an increase of 53 lawyers over the 892 legal practitioners registered with the council as at 1989.<sup>49</sup> It is not surprising that this number is very small, when the fees is paid to such legal practitioners are considered. Though the scale of such fees reviewed upwards periodically, in spite of

<sup>48</sup> Report of the operation of the legal aid scheme in Nigeria. 1991 Annual Bar Conference Owerri August, 1991.

<sup>49</sup> *Ibid* p. 2.

this, there is still a great disparity between the fees paid by the council and that charged by legal practitioners for outside cases.

### **Complexity of formalities**

The above problem is the practical difficulty encountered in the legal aid scheme. The mode of applying as a beneficiary under the legal aid scheme is tedious, long and complex. A study of the procedure to be followed, which is in schedule 1 of the Act, shows the complexity of the suggested. Realizing that many of the applicants are poor and non literate, it is submitted that a such a long procedure is cumbersome. It is appreciated that thorough scrutiny must be carried out, to ensure that within the limited funds available, only those who are really found to be in need benefit from the scheme but then the procedure must be less cumbersome.

From the above discussion, all those that are involved in ensuring the smooth running of the scheme, have one complaint or other. Complaints abound everywhere on the scheme from the government on the high cost of running the scheme under the prevailing economic depression affecting the Country, the legal practitioner complaining on the low professional fees, the Council on lack of adequate funding and from the beneficiaries on the narrow scope of the scheme-all point to the fact that there is an urgent need for a restructuring of the whole scheme.

### **Suggested Improvements of Present Policies and Practices**

While it is conceded that the legal aid scheme in Nigeria has gone a long way to alleviate the burden of an indigent

person, it is contended that there is still room for improvement. The following are a few of such areas that should be attended to urgently.

### **Scope of Scheme**

The scope of the scheme should be widened to include all criminal cases and such other cases where the council or the courts are of the opinion that it is desirable to include in the interest of justice. The position in England is commendable and worthy of emulation. Moreover, educational programmes and involvement of law school students in certain cases as part of a clinical program is suggested.

### **Proper Location of Council Offices**

All Council Offices should be located in places that are opened to the public seven days a week without restriction. It is also suggested that such offices should be in the centre of town, which will make transportation easy.

### **Public Awareness**

The law does not operate in vacuum but operates in context. The scheme should be well publicized and public enlightenment programmes intensified to reach the nooks and corners of the country. The Legal Aid Council presently engages in publicity through hand bills. This is commendable. However, considering the high illiteracy level in Nigeria, this method of publicity may not be too effective. It is therefore suggested that publicity should be extended to cover radio and television jingles in vernacular. Outdoor publicity is expensive but, support for this could be solicited from affluent persons in the community. In addition, the inclusion of educational programmes in the scheme as is

being done in Canada, by the creation of the community Law school in Toronto, will reduce the pressure on the Council. The programme in Toronto was designed to offer simple law courses which commonly affect the community such as landlord and Tenant, criminal law and legal rights in general. There is no doubt that the acquisition of such simple knowledge is consistent with responsible citizenship.

### **Involvement of the Nigerian Bar Association**

The Nigerian Bar Association has an important role to play in the improvement of the scheme. The Association must ensure that there are laid down rules and regulations and disciplinary measures for members who err in handling legal aid cases in a diligent manner as is expected. Moreover, experienced legal practitioners should be involved in the scheme. It is suggested that after a period of more than five (5) years of being called to the Nigerian Bar, every legal practitioner in Nigeria should be made to handle at least one legal aid brief free of charge. In such a case, areas of specializations and preference for Court appearances or Solicitors work have to be indicated to the Council to enable assignment of cases. The five years minimum standard is preferred especially in cases of homicide, to remove the erroneous idea that it is only incompetent practitioners that are involved in legal aid cases. This suggestion buttresses the point made by Omo JCA (as he then was) in *Osakwe v. Attorney General Bendel* where he said:

*The only comment that I wish to make is that, this appeal again emphasized the need for able Counsel with considerable experience at the bar to defend accused persons standing trial for homicide.*