

Covid-19 and the Challenges of Access to Justice in Nigeria

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Abstract

There have been several complaints about the justice system's operations in Nigeria. However, the outbreak of Covid -19 in 2019 exacerbated the challenges of Access to Justice around the World and especially in Nigeria. Globally, states took several emergency measures to ensure that the impact of Covid-19 on their judicial system is alleviated. In Nigeria, the effects of Covid-19 adversely affected the justice system leading to diminished access to justice by both the litigants and lawyers due to the measures put in place to combat Covid 19 to reduce its spread, one of which was the lockdown for some months in the year 2020. The aim of this paper is therefore to investigate the challenges of Covid 19 on Access to Justice in Nigeria. In achieving the research objective(s), the doctrinal research methodology will be adopted, coupled with an analysis of the challenges of Covid 19 on the access to justice in Nigeria *vis a vis* other clime and the measures put in place to ensure Access to Justice despite the outbreak of Covid 19. This paper discovers that the judicial system in Nigeria is still unprepared to assuring Access to Justice and need to take a hint from other climes so as not to repeat the difficulty experienced in accessing justice.



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Keywords: Access to Justice, Challenges, Court, Covid-19, Justice System, Lockdown

1.0 Introduction

Coronavirus 2019, popularly known as Covid 19, is an infectious disease caused by an acute respiratory syndrome coronavirus 2. The acute respiratory syndrome coronavirus is also known as SARS-CoV-2. SARS-CoV-2 is a new virus first discovered in Wuhan, China, capital of Central China's Hubei Province, in December 2019, and it later manifested in other parts of the World. One of the significant measures to combat Covid -19 was the restriction of movement,

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which eventually led to a lockdown and different stages of easing the lockdown. During this period, there were pending cases in court while new ones also emerged. Still, all parties could not access the traditional means of justice, which is the court, cases suffered adjournments. At the same time, some indefinitely; court sittings became sparingly as the court sat on only very priority cases consisting of pending judgements and urgent matters. Only the counsel and the litigants/ parties were allowed to partake of the sitting at the sitting, and people spent more extended periods in custody as there was no access to the courts during the lockdown. In Nigeria, Covid 19 exacerbated the challenges of Access to Justice, whereas other climes took conscious measures to alleviate the impact of Covid 19 on Access to Justice of their citizens.

This paper considered the evolution and concept of Covid-19, Access to Justice as a concept, the challenges Covid -19 on access to justice in Nigeria, drew conclusions from its findings and made some recommendations.

2.0 Evolution and the Concept of Covid -19.

Coronavirus 2019, popularly known as Covid 19, is an infectious disease caused by an acute respiratory syndrome coronavirus. The acute respiratory syndrome coronavirus is also known as SARS-CoV-2.¹ SARS-CoV-2 is a new virus first discovered in Wuhan, China, capital of Central China's Hubei Province, in December 2019², and it later manifested in other parts of the world.

Covid-19 led to the death of more than 2.9 million people worldwide, emerging as the most consequential global health crisis since the era of the influenza pandemic of 1918.³ As of August 31, 2021, Nigeria has experienced 192,000 cases with 2469 deaths.⁴ It might be an error to consider these statistics in Nigeria as the perfect figure because Nigeria is rich in culture mixed with various beliefs and practices where health is concerned. Based on their religious faith for divine healing, some people would not take the test but would rather depend on divine healing even where they see the symptoms. Others will undertake traditional means of healing, and a vast majority worked on building their immune system through self-medication. Whether or not these worked is another topic worth researching. All these various attitudes towards the Covid-19 test are most likely to affect the statistics of Covid-19 in Nigeria. Another factor that may affect the demography of Covid-19 is the different types: symptomatic (shows symptoms of Covid-19) and asymptomatic (do not show signs); several people did not have symptoms, yet they were

¹ 1998-2021 Mayo Foundation for Medical Education and Research (MFMER) accessed on 18 August, 2021.

² Xiaolu Tang, Changcheng Wu, Xiang Li, Yuhe Song, Xinmin Yao, Xinkai Wu, Yuange Duan, Hong Zhang, Yirong Wang, Zhaohui Qian, Jie Cui, Jian Lu, On the origin and continuing evolution of SARS-CoV-2, *National Science Review*, Volume 7, Issue 6, June 2020, Pages 1012–1023, <https://doi.org/10.1093/nsr/nwaa036>

³ Marco Cascella; Michael Rajnik; Abdul Aleem; Scott C. Dulebohn; Raffaella Di Napoli. Features, Evaluation, and Treatment of Coronavirus (COVID-19) NCBI Bookshelf. A service of the National Library of Medicine, National Institutes of Health. StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2021 Jan-.

⁴<https://github.com/CSSEGISandData/COVID-19>

<https://www.google.com/search?q=covid+19+statistics+in+nigeria+today&oq=covoid+19+stat&aqs=chrome.5.69i57j0i1319.12774j0j7&sourceid=chrome&ie=UTF-8> accessed on 1 September, 2021.

positive with the Coronavirus and transmitting it; hence such asymptomatic patients may not be captured by the statistics.

World Health Organisation (WHO) on March 11, 2020, declared SARS-CoV-2 a pandemic.⁵ Research findings show a substantial genetic similarity between SARS-CoV-2 and a bat betacoronavirus of the sub-genus Sarbecovirus.⁶ The research finding confirms the several insinuations that the Chinese's diet caused the global pandemic of Covid-19 as they can eat many things that ordinarily other parts of the world would not add to their diet. The Chinese are known to eat strange things, bats inclusive, and there is a widespread assumption that the SARS-CoV-2 virus found its way into the body system of human beings through ingestion of bats by the Chinese.

The instant this virus infects a person, the infected person, can easily infect others through droplets from their respiratory organs. When the infected person coughs, sneezes, breathes, sings or talks, these droplets will be released, and any person close by the infected person can inhale these droplets. The virus can also spread through the putting of hands in the mouth, nose or eyes. Exposure to these droplets leads to the spreading virus, and such a person becomes affected. The aerosols of the droplets can stay in the air for several minutes to hours, thereby increasing the risk of transmission through a means known as airborne transmission⁷ Data has shown that it spreads mainly from person to person among those in close contact (within about 6 feet, or 2 meters).⁸

This virus spreads infection at an alarming rate. Hence, social distancing through restriction of movement and different stages of the lockdown is part of actions to curb the spread of the deadly virus. The belief is that social distancing will technically reduce the spread of the virus. However, research confirmed that some countries did not use lockdowns and still had the same COVID-19 outcomes similar to countries that used them.⁹ The implication is that lockdown and restriction of movement is not a solution to curbing the spread of Covid -19. States must look for other means of reducing the spread, and the more reason for this paper as the lockdown did more harm than good, one of which is the subject of this paper to appraise the impact of Covid – 19 on access to justice. The lockdown and restriction of movement had consequences on almost every aspect of life and sectors, including Access to Justice in the justice sector. However, new variants of the Coronavirus keep coming up, and some of them has raised concerns. According to the

⁵ Simon, J., Helter, T.M., White, R.G. *et al.* Impacts of the Covid-19 lockdown and relevant vulnerabilities on capability well-being, mental health and social support: an Austrian survey paper. *BMC Public Health* **21**, 314 (2021). <https://doi.org/10.1186/s12889-021-10351-5> accessed 1 September, 2021.

⁶ Ibid

⁷ Ibid @note 1

⁸ Ibid @ note 1

⁹ Oraby, T., Tyshenko, M.G., Maldonado, J.C. *et al.* Modeling the effect of lockdown timing as a COVID-19 control measure in countries with differing social contacts. *Sci Rep* **11**, 3354 (2021). <https://doi.org/10.1038/s41598-021-82873-2> accessed on 1st September 2021

recent epidemiological update by the WHO, as of June 22, 2021, four SARS-CoV-2 VOCs have been identified since the beginning of the pandemic: Alpha (B.1.1.7): first variant of concern described in the United Kingdom (U.K) in late December 2020 Beta (B.1.351): first reported in South Africa in December 2020 Gamma(P.1): first reported in Brazil in early January 2021 Delta (B.1.617.2): first reported in India in December 2020.¹⁰ The Delta variant has now found its way into Nigeria, and people have been warned not to relax but be more careful. All these evolutions have made it very important for everyone to plan for any emergency surge again hence this paper.

3.0 The Concept of Access to Justice

Scholars have used different concepts to discuss access to justice. According to the United Nations, Access to Justice is a fundamental principle of the rule of law. Where it is lacking, the voices of people will not be heard, exercising their rights, challenging discrimination or holding decision-makers accountable.¹¹ In establishing the importance of Access to Justice going a step further, United Nations makes available activities to support member states to ensure Access to Justice has roots in the rule of law.¹²

Access to justice as a right to appear in court means: appearance must be without any difficulty. In essence, mobility must not be impaired and even people in the rural areas in Nigeria must be put into consideration on the basis of the scarcity of means of transportation, advocacy for those who cannot afford it, Access to Justice for this category of people will be efforts or mechanisms put in place to ensure that people who cannot afford legal fees still have their rights protected and enforceable while making such legal aids easily accessible and not frustrating by reforming the justice system to address the inadequacies in the legal assistance, where irrespective of the status of Aboriginality, racialization, gender, disability, class and sexual identity of a party, there is an assurance of equality of outcomes and having in view a justice system developed in partnerships with communities and governments to advance more all-inclusive solutions to legal problems¹³ All these combined in summary is Access to Justice. It is an ongoing process, but there must be a combination of effort and action towards its achievement.

¹⁰ Features, Evaluation, and Treatment of Coronavirus (COVID
<https://www.statpearls.com/articlelibrary/viewarticle/52171/>

¹¹ [Access to Justice - United Nations and the Rule of Law](#)

¹² Multisectoral action to tackle antimicrobial resistance.
https://www.euro.who.int/_data/assets/pdf_file/0013/413014/Multisectoral-action-to-tackle-antimicrobial-resistance.pdf. Accessed 2 September, 2021.

¹³ ACLRC 2021 what is access to justice? Five Different Ways of Considering Access to Justice
<https://www.aclrc.com/what-is-access-to-justice> accessed 3 September 2021

The Senate Standing Committee on Legal and Constitutional Affairs¹⁴ Inquiry into Access to Justice based their focus on:

- (a) the ability of people to access legal representation;
- (b) the adequacy of legal aid;
- (c) the cost of delivering justice;
- (d) measures to reduce the length and complexity of litigation and improve efficiency;
- (e) alternative means of providing justice;
- (f) the adequacy of funding and resource arrangements for community legal centres; and
- (g) the ability of Indigenous people to access justice¹⁵.

This report carried out a thorough appraisal of each point and critically considered both the potentials and challenges. Still, the fact is that the above are recognized concepts of Access to Justice, and there is no way one can discuss Access to Justice without mentioning most if not all the above. Therefore the idea of access to justice is of great importance worth researching.

In *Hon. Justice Hyeladzira Ajiya Nganjiwa v The Federal Republic of Nigeria*,¹⁶ the Court of Appeal held on Monday, December 11, 2017, that "no judicial officer can be arrested or prosecuted by anti-corruption agencies for offences committed in the discharge of their functions until the National Judicial Council has first "stripped" the Judges of their "judicial standing". The decision, in that case, generated a lot of disapprovals. Access to Justice executive director Joseph Otteh also penned his strong disagreement to the decision as unconstitutional, which will lead to many officers using their office supposed immunity to commit fraud.¹⁷ The aim of this decision of the Court of Appeal is to establish the exclusive disciplinary powers of the NJC over its judicial officers. One of the concepts of Access to Justice is equality of the outcome, hence placing this judgement on the scale of access to justice whilst using the tool equality of the outcome, it falls wanting as a decision with Access to Justice in mind. If the law can prosecute ordinary citizens for corruption offences, nothing should prevent judicial officers from proving their innocence without affecting their status.

According to international standards, Access to Justice is a fusion of both a human right and a way of protecting other universally recognized human rights. Access to justice does not just stop listing the rights on paper, but enforcement is also vital. Most states have numerous rights listed in their constitution and then go ahead to distinguish an enforceable right from an unenforceable right. Of what use is a right that the recipient cannot enforce? An excellent example is the list of rights contained in Chapter Two of the 1999 Constitution of the Federal Republic of Nigeria. The

¹⁴ "Australia : Native Title Amendment Senate Report." MENA Report, Albawaba (London) Ltd., Mar. 2017, p. n/a.

¹⁵ Cannon, Andrew. (2009). Access to Justice. Senate Standing Committee on Legal and Constitutional Affairs. (PDF) [Access to Justice \(researchgate.net\)](https://www.researchgate.net/publication/312111111) accessed on 3 September 2021

¹⁶ (2017) LPELR-43391(CA)

¹⁷ [Court of Appeal's Judgment In Hon. Justice Nganjiwa v FRN undermines efforts to tackle abuse of judicial power, makes the judiciary a more accountable institution - The News Accelerator Network](https://www.newsaccelerator.com/news/court-of-appeal-s-judgment-in-hon-justice-nganjiwa-v-frn-undermines-efforts-to-tackle-abuse-of-judicial-power-makes-the-judiciary-a-more-accountable-institution)

likes of rights to education and health are listed but unenforceable. Therefore, the international community needs to ensure that states do not just have policies for access to justice but that there is the assurance that the guidelines are workable and enforceable. Access to justice is one of the fundamental rights of the citizens. The United Kingdom and the United States of America are also experiencing this unpalatable situation. Increased inequality and a reduction in state support have led to a decrease in Access to Justice in the two jurisdictions.¹⁸

Bob Glaves's description of access to justice appears to have said it all. According to him, there is access to justice where a person facing a legal issue has timely and affordable access to the level of legal help they need to get a fair outcome on the merits of their legal matter, and can walk away believing they got a fair share in the process.¹⁹

We cannot agree less with Glaves as the best yardstick of measuring access to justice is the recipient, the citizenry and not just the policies. In simple terms, therefore, access to justice encapsulates normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement and civil society oversight. In light of these terms, this paper will consider the impact of Covid -19 on access to justice in Nigeria.

4.0 The Impact of Covid -19 Pandemic on Adjudication in Nigeria

Sec 36 (6) (a-e) of the 1999 Constitution of the Federal Republic of Nigeria²⁰ provides for the right of Nigerian citizens to a fair hearing. Subsection c makes provision for the right of the accused to defend himself in person or use counsel. According to Hon Justice Aderemi, accessibility to court by the citizens is a fundamental key in any country's yardstick for access to justice.²¹ An Indian court also ruled that access to justice is a constitutional right.²² Nigeria is an African country and has an obligation under the African Charter on Human and Peoples' Rights (ACHPR). Article 7 of the ACHPR provides for the right of the accused to defend himself personally or by counsel.²³ Access to justice means that the state must provide an effective adjudicatory mechanism; the mechanism provided must be reasonably accessible in terms of distance; the adjudication process must be speedy, and the litigant's access to the adjudicatory

¹⁸ Fatos Selita 2019 Improving Access to Justice: Community-based Solutions, First Published July 31, 2019 Research Article <https://doi.org/10.1177/2322005819855863> *Asian Journal of Legal Education*.

¹⁹ Bob Glaves | CBF Executive Director September 20, 2018 What Do We Mean When We Say Access to Justice? The Chicago Bar Foundation.

²⁰ Section 36 of the Constitution of the Federal Republic of Nigeria 1999, CAP1 Laws of the Federation of Nigeria 2004, as amended

²¹ *Ojukwu v Yar'adua* (2009) 12 NWLR (Pt. 1154) Per Aderemi, J.S.C (P. 174. paras. C-E)

²² *Anita Kushwaha v Pushap Sudan* [2016] 8 SCC 509. Kumar Vaibhav, Access to justice during the Covid-19 pandemic: An Indian perspective

²³ Emmanuel E, Right of Access to Justice: The Role of Nigerian Courts. Published on LinkedIn on February 24, 2021.

process must be affordable.²⁴ Unfortunately, the advent of Covid -19 created a situation that hurt the adjudication aspect of access to justice worldwide and Nigeria inclusive.

President Buhari, relying on the powers conferred on him by sections 2, 3, and 4 of the Quarantine Act²⁵ and all powers enabling him on that behalf on Monday, March 30 2020, signed the Covid-19 Regulations 2020, which declared Covid-19 a dangerous infectious disease and authorized lockdown of activities in Federal Capital Territory Abuja, Lagos and Ogun states to aid the government to contain further spread of the Coronavirus.²⁶ As a result of this, on March 23 2020, the National Judicial Council, acknowledging the danger of the Covid-19 pandemic and its severe threat to human health, is circular with Ref No. NJC/CIR/HOC/11/631 directed all Heads of Courts in the country effective the 24th day of March 2020, to suspend Court sittings for an initial period of two weeks at the first instance, except in matters that are urgent, essential or time-bound according to our extant laws."²⁷ After this order came another one dated April 6, 2020, with Ref. No. NJC/CIR/HOC/11/656, where the suspension of court sittings was extended till further notice to curb the spread of the novel Covid 19 pandemic, except for matters that are urgent, essential or time-bound according to laws.²⁸ The Covid-19 Regulations gave legal backing to all the measures outlined by the President in his nationwide broadcast of Sunday, March 29, 2020, while providing exceptions to specific categories of persons and organizations regarded as essential workers and service providers.

This measure had a significant impact on both lawyers and litigants. The restriction of movement affected the finances of the litigants, thereby affecting the payment of the lawyers' professional fees and where the litigant has the means to pay. Still, the case is not listed or the court not sitting, litigants will not pay the lawyer's professional fees.²⁹ In developed countries, they had the same challenge with adjudication. They embraced it with alternative procedures, which reduced the impact of countries like Portugal, Greece, Latvia, Slovenia, Italy, Israel, Switzerland, Romania, Spain, Peru, Brazil, UAE, Poland, China, United Kingdom, and the US others went into online court sittings. However, with an exemption of some issues involving urgent protection of children, procedural acts and trial of imprisoned defendants³⁰ In Mexico, in-person cases have not been suspended for: i) family issues; ii) violence; iii) legal protection for minors, children and women; iv) any irreparable damage, amongst other legal issues considered as

²⁴ Ibid. at paragraphs 32 and 33

²⁵ CAP Q2 Laws of the Federation of Nigeria 2004

²⁶ Ibidolapo Olufade and Ismail Muftau, The Impact of Covid-19 on Court Proceedings in Nigeria. April 2020

²⁷ Ibid.

²⁸ Ibid.

²⁹ Samuel Oyadongha, Henry Ojelu, Demola Akinyemi, Egufe Yafugborhi, Bashir Bello, Davies Iheamachor, Harris Emanuel, Ibrahim HassanWuyo & Chinedu Adonu COVID-19: How pandemic is hampering justice — Lawyers, Litigants, Law and Human Rights. *Vanguard Newspapers* published on January 22, 2021.

³⁰ Access to Justice and the COVID-19 pandemic: Compendium of Country Practices 25 September 2020 Access To Justice And The Covid-19 Pandemic © Oecd/ Law & Justice Foundation Of New South Wales 2020

urgent, including several "Amparo" (constitutional rights) requests³¹ unlike in Nigeria where the restricted and virtual sittings were limited to pending judgements. Issues of overnight cases, matrimonial matters etc., were left unattended to as not being a priority.

5.0 Challenges of COVID 19 Pandemic on Access to Justice

As part of the introduction of virtual justice, there were considerations and provisions of electronic storage systems to file information about cases. Qatar engaged in increased use of the electronic and case management system, which allow access to documentation and information by both the parties and judicial staff. The United Arab Emirates had the same arrangement, while Mexico used electronic platforms to deliver the ruling, email and telephones to carry out remote investigations.³² The frontloading of process practice in Nigeria is a good step towards electronic filing since the law has done with the idea of parties springing up surprises on one another. There is no fear of the other party having access to the process. It will even aid filing and responses as there is no need to physically be in court to file or be waiting to be served by a court bailiff who may be saddled with many processes to serve, thereby delaying service to parties. In a bid not to allow the bailiffs to become redundant or out of work, there should be an organized training for the bailiffs to electronically keep a record of proceedings and follow up on the services.

The rural and remote areas of Nigeria were also affected by the Covid -19 pandemic. The rural areas were affected because most law officers in rural areas live in the city. With the restriction of movement and eventual lockdown, it became difficult for the law officers to get to their offices in the rural areas, and the possibility that the rural dwellers will benefit from virtual justice is slim due to their high illiteracy level. Other jurisdictions also had the same challenge. In solving the problem, Canada provided human support in the form of individuals and community librarians who can help parties unfamiliar with technology for virtual justice.³³ Portugal simplified virtual justice with regular telephones against smartphones and mobile vans to carry advisors to reach citizens who do not have access to technology in the country's small, impoverished rural areas.³⁴ The rural community in Nigeria can benefit from using some of these innovations to ensure access to justice is secured no matter the circumstances, even in emergency cases. The established mobile courts in Nigeria should be of great use to the rural communities, counsel for both parties can meet in court and move with the mobile court. At the same time, there can be an introduction of identification tags to enable free movement of counsel from their houses to the courts.

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ Ibid.

Legal documentation also had a fair share of the Covid-19 pandemic. All transactions needing legal documentation ceased, birth and death registration, endorsement and authentication of private documents became a challenge. To resolve this challenge, United Kingdom introduced an innovative technology of online or telephone public services for civil services erstwhile done in person; with this innovation, citizens can access and carry out civil registry procedures which include but are not limited to registration of death.³⁵ One good thing about this innovation is that it is handled individually by each constituency; we believe this will enable each constituency to confirm the deaths and births either by visiting the concerned people or working with the health facilities in the constituency where applicable. To aid access to justice for the citizens, Spanish law firm Milcontratos offered free access to over a thousand legal document templates reviewed by lawyers to ensure acceptable legal documentation reached customers during the pandemic.³⁶ As good as this action of the Spanish law firm is, we cannot but raise a caveat here, one of the significant sources of income for lawyers is legal drafting, in a situation where this has been demystified by making reviewed legal precedents accessible online free of charge, there is a high probability during post Covid period that people will start bypassing lawyers when they need to draft documents since they can easily access same online or worst still, draft and then approach lawyers to append their signatures for a token instead of the full legal fee.

Legal awareness and legal aid were also affected. Law offices were locked even though crimes continued; people could not enjoy their legal protection. People and the community keep having their disputes with no means to resolve them. Seeking redress for rights violation or counter discrimination on private issues like housing, employment etc., became a problem. Online Dispute Resolution (ODR) came to the rescue to resolve or mitigate this challenge in some jurisdictions. In Canada and Mexico, mediators carried out mediations through zoom to determine employment and civil matters. In Portugal, mediators used video calls, video conferences, email and telephone for all participants in the mediation. Conciliation and arbitration centres stayed open in Colombia to work remotely on family issues and support vulnerable groups, Small and Medium Enterprises and Entrepreneurs. Santiago's Chamber of Commerce established a free mediation centre in Chile for contract breaches related to Covid-19.³⁷

The Correctional Centres were not left out of the Covid -19 impacts either. Since courts were closed, prisons became overcrowded since the pretrial detainees could not go to court for the hearing of their bail applications, prisons became overcrowded. Police custody was also affected

³⁵ Civil Registries across the UK are dealt with individually by each constituency. For example see Plymouth, where death registrations are being carried out over the phone (<https://www.plymouth.gov.uk/birthsmarriagesanddeaths/coronaviruscovid19informationonbirthsdeathsandmarriages>) or in Sutton (https://www.sutton.gov.uk/info/200469/sutton_register_office/1294/more_about_the_register_office/10).

³⁶ Milcontratos (2020), Milcontratos.com, <https://www.milcontratos.com/como-funciona>, accessed 4 September, 2021.

³⁷ Ibid at note 29

as detainees in police custody could not go the court within the statutorily prescribed period as stated by the law,³⁸ not minding the consequence of a possible outbreak among the incarcerated people.³⁹ The U.S, for example, witnessed an explosion of COVID-19 cases in prisons; on May 13, the US recorded a total of 25,239 prisoners who tested positive for the corona virus.⁴⁰ This discovery made the US take steps to reduce jail and prison congestions. With the use of drones, the police were able to enforce social distance guidelines. The Executive issued orders to release chronically ill and elderly inmates, non-violent offenders and individuals due for release within a 30-day to 4-month period.⁴¹ Some police departments also established online platforms where citizens can lodge complaints that are not urgent.⁴² This development shows that pandemic or no pandemic, there will always be a need for people to enforce their rights or address a wrong. With online platforms, there is a possibility of assurance of access to justice.

There was an economic impact of the Covid -19. Both for the lawyers and litigants, lawyers were not paid for legal services, and litigants could not access their means of livelihood. This economic impact of covid -19 became a severe issue, especially for new wigs in Nigeria who are just coming into the legal practice; hence no financial reserve to fall back upon during this time. At both National and different branch levels, the Nigerian Bar Associations and some respected seniors at the bar came to the rescue with welfare packages in cash and foodstuff, provisions and toiletries, especially for the new wigs, in a bid to alleviate the economic impact of Covid-19 on them.⁴³ In France, the government made provision for additional support for lawyers who may be suffering a loss of income due to the crisis, NGOs and civil society organizations, were awarded

³⁸ Section 35(4) of the 1999 constitution states that: “Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of – (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.”

Subsection 5 states that: “In subsection (4) of this section, the expression “a reasonable time” means – (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and (b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.”

This implies that the detention of arrested suspects for more than 48 hours without being charged to court is against the provisions of the constitution. Section 61 (1) of the Nigeria Police Act 2020 agrees with the provisions of the constitution while stating that a suspect arrested without a court warrant, other than a capital offence, should be granted bail, where it is impracticable to charge to court within 24 hours.

³⁹ Successes and setbacks in protecting incarcerated people and those who care for them from COVID-19 Published 15 September, 2020 <https://publichealth.jhu.edu/2020/covid-19-in-jails-prisons-and-immigration-detention-centers-a-qa-with-chris-beyrer> Accessed 15 September, 2021.

⁴⁰ PartnersGlobal’s Director for SubSaharan Africa and Accountable Governance Muthoni Kamuyu-Ojuolo, Justice in the time of COVID-19: Innovations to preserve rule of law, rights & safety in Nigeria published May 26, 2020.

⁴¹ *Ibid*

⁴² *Ibid*

⁴³ <https://dnlegalandstyle.com/2020/covid-19-nba-lagos-branch-inaugurates-welfare-package-committee/> accessed 30/9/21

funds by the United Kingdom government while the United States through Coronavirus Aid, Relief and Economic Security Act (CARES Act) awarded an extra USD 50 million of emergency funding to the Legal Services Corporation (the most prominent legal aid funder in the country)⁴⁴

Covid -19 also had an impact on the computation of time in adjudication.⁴⁵ The reason for limitation laws is to ensure there is a limit to the time within which a litigant can bring an action to court; there are stipulated periods for different cases.⁴⁶ Unlike situations where counsel can seek the leave of court for an extension of time within which to do an act and the court has the discretion to grant the leave sought after payment of fees,⁴⁷ limitation laws have no provision for any remedy where the case has become statute-barred. The restriction of movement and the closure of courts made it impossible for some litigants to act within the period stated by the limitation laws, in this instance, where the litigant is not indolent but a victim of circumstances, it will be contrary to the rules of access to justice, if the cases are declared statute-barred hence unenforceable or parties made to pay default fees to cover the period of lockdown for failure to file processes within time. In the computation of time, there is a need to work on our laws that has to do with limitation and late fillings since the whole essence of these laws was not to victimize either party but to make sure everyone does the needful and that within time. The Supreme Court buttressed this fact in *Administrator and Executor of Estate of Abacha v Eke-Spiff & Ors*⁴⁸ where the Supreme Court Per Aderemi JSC held thus:

However, Section 31(5) (a) and (b) of the same Edict provides for the postponement of limitation period in case of fraud concealment or mistakes. It provides: ‘Subject to Section (E4) where in the case of any action for which a period of limitation is prescribed by the Edict either: (a) The action is based upon the fraud of the defendant; or (b) Any fact relevant to the plaintiff’s right of action has been deliberately concealed from him by the defendants. ‘The saying is that, ‘No prescription runs against a person who was hindered in bringing a court action’. Per ADEREMI, J.S.C. (Pp. 44-45)

The Supreme Court also departed from its agelong rigid position of giving the limitation law a narrow interpretation in *Sifax Nigeria Ltd & 4 Ors v Migfo Nigeria Ltd*.⁴⁹ In a bid to arrest the unforeseen impact of covid-19 on their computation of time, the province of Ontario, Canada,

⁴⁴ <https://www.investopedia.com/coronavirus-aid-relief-and-economic-security-cares-act-4800707> accessed 30/9/2021

⁴⁵ Oragwu and Abdulsalam, Impact Of COVID-19 on the Computation of Time under Nigerian Law 2020 PUNUKA Attorneys & Solicitors

⁴⁶ Circular Ref No NJC/CIR/HOC/11/656; Section 8(1) Limitation Law of Lagos State; Section 16(2) Limitation Law of Lagos State; Public Officer Protection Act.

⁴⁷ Order 48 Rule 4 of the High Court of Lagos State Civil Procedure Rules 2019

⁴⁸ (2009) LPELR-3152

⁴⁹ [2018] 9 NWLR (Pt 1623) 138 SC

passed Reg 73/20 pursuant to section 7.1(2) of the Emergency Management and Civil Protection Act. The Regulation suspends limitation periods under any provision of a statute, regulation, rule, by-law, or order of the Government of Ontario for the duration of the emergency.⁵⁰ British Columbia adopted the same principle with the issuance of Ministerial Order no. M086 titled Limitation Periods (COVID-19) Order. The Order suspends specific limitations periods in the province of British Columbia. It was to remain in effect until the state of emergency declared on March 18, 2020, expires or the government cancels it.⁵¹

Unfortunately, in Nigeria, Section 15 of the Interpretation Act, which deals with the computation of time in the statutes, does not anticipate the hazardous situation presented by Covid-19 and therefore does not address it. That notwithstanding, the court must ensure that justice prevails and is in line with the revered legal axiom *Ubi jus ibi remedium* (where there is a wrong, there is a remedy).⁵² The Supreme Court has made a precedent on the need to do substantial justice even with no supporting statutory provisions.⁵³ Since there are no laws on time computation in emergencies like the Covid 19 pandemic, the judiciary should step in with courts making practice directions on the issue.

Covid-19 also led to some countries using the criminal law to solve public health by making draconian laws to enforce compliance with the social distancing directives. Italy charged over 40,000 people for violating her quarantine rules. In Spain, over 7000 people were arrested or detained between March 15 and May 15, 2020, for not complying with the confinement rules of the state. Albanian government went overboard with the proposal of amending their criminal to include 15 years imprisonment for any violation of Covid -19 prevention rules.⁵⁴ Nigeria is inclusive as the soldiers who were used to ensure compliance with the restriction of movement became power drunk and assaulted people.⁵⁵

6.0 Conclusion

The reality of our times is that Covid 19 has given the global space a new normal in every facet of life. This paper posits that Covid 19 has given the justice sector in Nigeria an opportunity for innovations, developments and infrastructural facilities across the court system and detention facilities in the nation. Apart from online sittings, the developed countries considered some other ways apart from virtual court sittings. Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) techniques like Mediation, Conciliation, Arbitration etc. were used to settle disputes among citizens during the Covid 19 pandemic, and Nigeria can take a cue from these.

⁵⁰ <https://www.ontario.ca/laws/regulation/200073/v2> accessed 30 September, 2021.

⁵¹ https://www.bclaws.gov.bc.ca/civix/document/id/mo/mo/m0086_2020 accessed 30/9/2021

⁵² University of Calabar Teaching Hospital & Anor V Bassey (2008) LPELR-8553 CA

⁵³ Bello V A G Oyo State (1986) LPELR0 764 Sc

⁵⁴ <https://crd.org/2020/04/16/albanias-government-unconstitutionally-pushes-draconian-sentences-in-fight-against-Covid-19/> accessed 30/9/2021

⁵⁵ <https://www.premiumtimesng.com/news/headlines/422943-soldiers-force-doctor-to-swim-in-mud-for-violating-curfew-nma.html> accessed 29/9/21

The directive for virtual court sitting in Nigeria raised a lot of conversations even among lawyers. The Attorney General of both Lagos and Ekiti states filed different suits challenging the constitutionality of the virtual sitting prescribed in the guideline of May 7, 2020 issued by the Attorney General of the Federation to curb the spread of Covid 19. The Lagos State Government in the Suit had urged the apex court to determine whether having regard to Section 36(1), (3) and (4) of the 1999 Constitution (as amended), the use of technology by remote hearings of any kind, whether, by Zoom, Microsoft Teams, WhatsApp, 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 are constitutional. The suits were, however withdrawn and consequently struck out by the apex court for being speculative and preemptive.⁵⁶ This however does not preclude any party from invoking the provisions of the Rules of Court or any other practice direction made in furtherance of virtual court proceedings. In essence, access to justice is an inalienable fundamental rights that needs to be protected at all times irrespective of emergencies. Prison inmates should not be gagged from access to the courts during emergencies.

7.0 Recommendations

In the wake of the pandemic, some countries such as the United Kingdom and United States of America etc., switched to technology using Apps like zoom, skype, google meet, etc., to hold online Court sittings. Nigeria did the same, but not without hiccups. Nigeria has peculiar issues with electricity and network reception.⁵⁷ Nigerian litigants in the rural areas will also not be an advantage of this arrangement as very few may have phones with capacity to surf the internet and good telecommunication network. The majority of the few may not know the use of these apps and the bad network reception and intermittent electricity to charge phones poses serious challenge to this alternative. It is recommended that Nigeria should develop further capacity in this respect by providing strong and reliable telecommunication services in rural areas.

It is important to state that the apex court did not ban or discourage use of virtual court sitting. This practice should be sustained as it is done in Lagos and Borno States. However, we recommend training and re-training of court officials in this respect by bodies such as the National Judicial Institute among others.

On the challenge of variation in time zones, for cross country matters, efforts should be made to harmonise the time it requires for courts to sit and the information should be properly disseminated to all concerned. Parties who travelled outside the country and were not able to

⁵⁶ Premium Times, challenging courts' virtual sitting By Halimah Yahaya — July 14, 2020. SC/CV/260/2020 was filed by the Attorney General of Lagos State, Moyosore Onigbanjo while suit marked, "SC/CV/261/2020" was filed by the Attorney General of Ekiti state, Olawale Fapohunda

⁵⁷ Ogbuagu and Takuro Innovations for the development of remote justice in Nigeria

<https://www.ibanet.org/article/BA479B88-55BA-43EA-9DF6-80A0FB6C3668> accessed 30 September, 2021.

return from the different time zones due to the lockdown and cancellation of international flights should also be taken into consideration.

The Nigerian Police should create an online platform for complaints that do not need urgent attention. There should be a Department designed to monitor the online platform to ensure that online complaints receive attention within a reasonable time. The online platform will help the Nigerian Police even when there are no emergencies. It will enable them to look critically at the complaint and decide that the officer to be assigned to a particular case, and the level of preparedness needed by the police to attend to each complaint.

Knowledge of the use of Information Communication Technology is another barrier to online court sittings. Mexican mediators carried out employment and civil mediations through Zoom and considered expanding into small court claims. Digitizing our court system, training all judicial staff, members of the bar and bench on technology supported court sitting; encouraging the continued use of the digitalized court system even when there are no emergencies like Covid will reduce the physical appearance in the courts and remove the fear of covid 19 infections. Continuous use of the digitalized court system will allow judicial officers and stakeholders to practice and get used to technology-supported court sitting.

Electronic filing should also be encouraged and sustained. Judicial officers should electronically deliver rulings and judgements on less contentious matters. The digitalized court system will reduce the mobility of parties. Parties can domicile in different parts of the world with varying time zones; therefore, there should be flexibility with court sitting time to accommodate parties in different time zones.

With the advent of several Alternative Dispute Resolution (ADR) Online Dispute Resolution (ODR) outfits, ADR and ODR expertise should be encouraged with centres within Local Government areas and strategic locations to avoid overcrowding. Terms of agreement from these parties will be endorsed in the court and become consent judgements, thereby reducing the crowd in the courts and at the same, people and the community keep having their disputes resolved.

The use of mobile courts should also be encouraged, especially for the rural areas. Lawyers should be allowed free movement or identification tags or pass can be made available to enable them to get to these mobile courts and represent their clients during subsequent lockdowns.

Officials in juvenile homes and correctional facilities should be trained to connect the judiciary to the court facilities for easier access to justice. In this wise, more funding should be channeled towards the Judiciary, the law enforcement agencies and the Nigerian correctional service in order to aid access to justice.

The Nigerian Bar Association needs to be more proactive in coming up with technological innovations, adaptations and re-orientation by charting the way forward on the extent that

lawyers can go during emergencies. The worst that the health care professionals did was telemedicine, but they never endangered the relevance of their profession by creating an avenue for self-medication, a situation where legal precedents are available for free for the public is tantamount to endangering the legal drafting aspect of the legal profession. Nigeria in particular needs to be more careful where non-lawyers has hijacked almost all the legal practice, agents and touts now draft land agreements, banks drafts and processes wills, non-lawyers can sit over mediation, arbitration, and other ADRs leaving litigation for lawyers and the increased popularity of ADR too is threatening litigation.

There is an urgent need for our legislators and the judiciary to revisit our laws and make them applicable to unforeseen and emergency circumstances like the covid 19 pandemic: such rules should include measures to be taken as it affects every sector, judiciary inclusive, sanctions for defaulters, and the provision of a specified court officials specially trained for such situation.