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GAMBIA**

NIGERIA

LIBERIA

**THE IMPACT OF COVID-19 ON ACCESS
TO JUSTICE IN WEST AFRICA:
A CASE STUDY OF
THE GAMBIA, LIBERIA AND NIGERIA.**

July 2021



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The Impact of COVID-19 on Access to Justice in West Africa: A Case Study of the Gambia, Liberia and Nigeria.

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The Africa Judges and Jurists Forum (AJJF)

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This study is part of the implementation of a larger project on: “The Impact of COVID-19 on Access to Justice in East and West Africa,” implemented by the AJJF in 2021. I wish to extend my heartfelt gratitude to the colleagues at the Secretariat who coordinated this project. Their management of the project has contributed invaluable to its success.

I would like to acknowledge the Open Society Foundation (OSF) for their financial support which enabled AJJF undertake this Study. We are grateful for the supportive approach that their representatives took. The challenges revealed by the study remain substantial. The need for continued collaboration in order to mitigate the effects or COVID-19 on access to justice, speaks for itself.

I commend this study to all those interested in promoting access to justice in the region – from government ministries and agencies, civil society groups, donor agencies and to the academia, among others. The Study provides solid evidence for the multifaceted effects of COVID-19 on access to justice in the countries under study. It also inspires possible interventions for the immediate, medium and long-term.

Martin Okumu-Masiga
Secretary General
Africa Judges and Jurists Forum



Foreword

In January 2020, the World Health Organisation (WHO) declared COVID-19 as a Public Health Emergency of International Concern. Both the virus (COVID-19) and the restrictions imposed by States to combat the spread of the virus have had drastic effects on the way societies across the globe function or ought to function.

Access to justice is one of the areas which suffered serious regressive disruption. In order to enjoy access to justice, certain pre-requisites must be in place. Individuals and groups must have access to independent tribunals where their legal disputes are resolved impartially in accordance with the law. They must have access to legal services that are necessary for them to bring their legal cases before the tribunals. These services must be affordable and physically accessible. Legal disputes must be resolved timeously, and effective remedies must be given and enforced. Prior to the COVID-19 pandemic, some of these pre-requisites for access to justice were not available to some sections of society, particularly vulnerable groups who include women, children, persons with disabilities who are economically marginalized. For example, legal services were already inaccessible to many because legal fees are expensive, and many economically marginalized persons cannot afford them.

However, the outbreak of the COVID-19 pandemic further reduced access to justice. Both the virus and the restrictive measures undertaken by States disrupted public access to the systems and structures that had been established to facilitate access to justice. For example, public access to court buildings was severely restricted while court hearings were postponed during periods of national lockdowns. In some cases, judges and court staff contracted the virus and the courts had to shut down. The suspension of economic activity during national lockdowns further pushed many people into abject poverty and increased the number of people who can no longer afford the costs of legal services and litigation. Restrictions on human movement and public gatherings prevented many indigent persons from accessing pro-bono legal services from civil society. Like many other businesses, law firms are struggling financially because of the economic meltdown wrought by the pandemic.

In an attempt to evaluate and examine the full scope of these challenges, the Africa Judges and Jurists Forum (AJJF) commissioned a study on the impact of the COVID-19 pandemic on access to justice in West Africa, focusing on selected countries as case studies. The study has culminated in this report. We hope that this report will assist stakeholders in the justice sector to better understand the impact of this pandemic on access to justice in these countries, the challenges which have arisen and the solutions that are needed to address these challenges.

Justice Moses Chinhengo
Court of Appeal, Gambia



ACRONYMS AND ABBREVIATIONS

African Commission	African Commission on Human and Peoples' Rights
CCA	Customary Court of Appeal
FCT	Federal Capital Territory
FHC	Federal High Court
ICT	Information and Communications Technology
ITUC	International Trade Union Confederation
JP	Justice of Peace
NALA	National Agency for Legal Aid
NJC	National Judicial Council
NICN	National Industrial Court of Nigeria
SHC	State High Court
UNDP	United Nations Development Programme
US	United States of America



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1. Introduction

In February 2020, the African continent recorded its first case of the COVID-19 infection. However, it was until countries in sub-Saharan Africa began to record cases of infection that governments on the continent began to adopt measures to contain and manage the pandemic in their respective countries. A common pattern that emerged was the declaration of nationwide states of emergency or other similar mechanisms, the lockdown of social, economic and other activities, the closure of schools, places of worship and government and private offices and the restriction of movement among other measures. Effectively, whole countries were shut down.

Faced with such drastic nationwide measures, and seeing the need for urgent action to safeguard the health and lives of judicial officers, court workers and court users (including litigants and their lawyers), heads of national judiciaries (often the Chief Justices) found themselves compelled to suspend or shut down judicial activities for varying lengths of time. While such measures by the heads of national judiciaries can be justified, they came with consequences, such as the neglect of both existing and emerging justice needs. In these States, a number of which were already struggling with the quality of respect for the rule of law, the declaration of a state of emergency and the consequent accumulation of unchecked powers in the executive came with the threat of abuse of power without the possibility of judicial supervision or intervention. The interruption of access to the courts was believed to have effectively translated into a suspension of justice for some of those most in need of the protection of law - the poor, the powerless and the vulnerable.

The African Commission on Human and Peoples' Rights (African Commission) - the continent's apex quasi-judicial human rights body mandated to supervise the protection of human rights in Africa envisaged some of these challenges to access to justice that the COVID-19 Pandemic was likely to cause in Africa. In its Resolution 449,¹ the African Commission urged African States (state parties to the African Charter on Human and Peoples' Rights) *inter alia*, to ensure in their enforcement of COVID-19 regulations, that: i) 'Mechanisms are in place for independent, prompt, impartial and transparent investigations of all allegations of excessive use of force, extrajudicial killings, inhuman treatment, assault or arbitrary deprivation of liberty, gender-based violence, or extortion by members of law enforcement institutions and for holding perpetrators of violations accountable; ii) Those whose rights have been violated by members of law enforcement institutions are granted access to remedies, including

¹ 449 Resolution on Human and Peoples' Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts - ACHPR/Res.449 (LXVI) 2020, available at <https://www.achpr.org/sessions/resolutions?id=480> (last accessed 20 May 2021)



reparation and compensation; iii) No arbitrary arrest and detention are carried out and all arrests are carried out with judicial oversight.²

Further, the African Commission urged African States to ensure that within the framework of articles 7 and 26 of the African Charter,³ they ensure: a) that there exist mechanisms for accountability and access to justice in the face of possible violations of human and peoples' rights; b) that the right to due process of law is fully complied with; c) that detention as a measure of enforcing COVID-19 regulations and pre-trial detention are used as a measure of last resort to avoid congestion and spread of the virus in places of detention; d) (to) make special arrangements for enabling the judiciary to continue dispensing with justice (sic) with particular attention to issues of rights violations in the context of the pandemic and for enabling individuals and communities to receive legal assistance from civil society organizations and human rights defenders. Effectively, the African Commission has called upon African States to guarantee and ensure access to justice in the efforts to control and manage the COVID-19 pandemic.

Against the background above, this study examines the nature and scope of the impact of the COVID-19 pandemic on the administration of, and access to justice in three West African States: the Gambia, Liberia and Nigeria. In addition to assessing how the States and their judiciaries have guaranteed administration of and access to justice during the pandemic, this study also examines the effectiveness of the innovations applied to ensure access to justice during the pandemic. While various judiciaries have taken *ad hoc* measures to tackle some of the most obvious negative impacts of the suspension of legal services and judicial activities, there is a need for a comprehensive, calculated and well thought out strategy for engaging the challenges for the justice sector brought by the COVID-19 pandemic. This study aims to contribute in this regard.

1.1 Methodology and Scope of Study

This study is based on comprehensive desk-based research of a rich blend of general materials on the administration of, and access to justice; country specific reports, general and country-specific studies and commentaries on the subject-matter; news reports and related materials complemented by a number of carefully selected (largely informal) key informant interviews from the three target countries. As a result of the restrictions States put in place to combat the Pandemic, field visits to the focus country for this study were not possible, thereby limiting the options available for sourcing relevant materials. One effect was that reliance had to be placed

² See Resolution 449 above, paras 2 (e) (f) (I).

³ Art 7 of the African Charter guarantees the right to a fair trial while art 26 obligates state parties to ensure independence of the judiciary at the national level.



mostly on policy and other official documents that were already freely and publicly available online. Further, prospective respondents for the interviews were more difficult to find because private and public offices were closed and people were working remotely from their homes. Even among those who were reachable through private contacts, some were unwilling or unable to agree to any formal interviews. Accordingly, there is more reliance on a few unofficial sources, new reports and publicly available policy and other documents.

The study specifically focuses on three Anglophone countries in West Africa - the Gambia; Liberia and Nigeria. All the three are common law countries with slight variations in their respective systems for the administration of justice. Thus, the study is not necessarily representative. It is rather an in-depth study of the three case study countries. It highlights the COVID-19 response measures adopted by each country's executive, the consequential measures adopted by each country's judiciary, and the challenges associated with the measures with regards to impact on effective access to justice. While the challenges identified are specific to the case study countries, the recommendations made at the end draw from experiences around the globe.

2. The Court Systems for Administration of Justice

Despite the fact that all three countries in this study are part of the broader common law family, there are slight differences and variations in the structure of their respective judiciaries and their relations with other actors in the justice sector in the given state. These differences arguably result in a few, but important differences in the nature of the responses to the pandemic and indeed, in the nature and scope of the impact the response to the pandemic has had on access to justice in each country. This section of the study therefore, provides a basic context of the states and a general description of the court system in each of the three countries, setting out the hierarchy of the courts and the locus of responsibility for administration of the courts.



2.1 The Court System in the Gambia

The Gambia recognises itself as a secular⁴ republic which operates as a unitary state. With an estimated population of just under 2 million people (based on a 2013 census), the Gambia is a multi-ethnic State with a 95% Muslim majority.⁵ Although, English language is recognized as the official language and is used in official transactions (including in the justice sector), The Gambia comprises of a number of ethnic groups with their own languages and traditions. The most prominent of these ethnic groups (and languages) are the Mandinka (the largest followed in size by), Wollof, Fula, Jola, Sarahule, Serere, Manjago and Creole.⁶ The ethnic groups are spread across the five regions of West Coast; the Lower River; the Central River; the Upper River; and the North Bank. The population is largely rural although movement to the few urban centres has been increasing recently.

After it gained independence from British colonial rule in February 1965, the Gambia ‘embraced multi-party democracy’ as its preferred political system. However, multi-party democracy in the Gambia came to an abrupt end in 1994 when a military coup (led by Lieutenant Yahya Jammeh) terminated the civilian government of former President Dawda K. Jawara.⁷ The military junta that overthrew the Jawara Government transformed itself into a civilian regime in 1996 (still under the leadership of 1994 coup leader, Yahya Jammeh), promulgated a new Constitution in 1997 and remained in office until January 2017 when Yahya Jammeh was forced to leave after losing to current President Adama Barrow in elections that held in December 2016.⁸

Chapter VIII of the 1997 Constitution of the Gambia establishes the Courts and vests the judicial power in those courts. Section 120 of the Gambian Constitution lists the Supreme Court, the Court of Appeal, the High Court and the Special Criminal Court as superior courts and considers the Magistrates Courts, the Cadi Court, the District Tribunals and ‘such other lower courts and tribunals as may be established by an Act of the National Assembly’ as lower courts in the Gambia.⁹

By section 7 of the Gambian Constitution, the legal system falls within the Common Law family.¹⁰ Notwithstanding this fact, the Constitution provides for the co-existence of customary

⁴ In December 2015, former President Y Jammeh declared the Gambia an Islamic Republic but this was reversed by current President Adama Barrow after he took office in January 2017.

⁵ The Combined Report on the African Charter on Human and Peoples’ Rights for the Period 1994 and 2018 and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa (Combined Report), at 18

⁶ See page 18 of the Combined Report, fn 5 above.

⁷ See page 19 of the Combined Report as above.

⁸ President Barrow’s first term in office comes to an end on 2021 when fresh elections are due. President Barrow is generally expected to run for a second term in office.

⁹ Generally, see S 120 of the Gambian Constitution 1997 on the Courts and the Judicial Power.

¹⁰ Sec. 7(d) lists the Common Law and Principles of Equity as part of the laws of the Gambia.



laws (over members of the communities that accept such customary laws) and sharia law (in relation to matters of marriage, divorce and inheritance among members of communities that accept Islam). This pluralism means that some matters do not get to the formal legal system but end up in the informal system (often involving the application of customary law and or sharia law in settings other than those recognized by the state). With regards to the formal legal system, the courts and judicial office holders are constitutionally required to be independent in the exercise of judicial functions. Further, the Gambian Constitution confers power on the superior courts to ‘issue such orders and directions as may be necessary to ensure the enforcement of any judgment, decree or order of the court.’¹¹ With respect to human rights adjudication, section 37 of the Constitution confers jurisdiction on the High Court in matters alleging a violation or potential violation of the Bill of Rights (sections 18 to 33) in the Constitution. Constitutional provisions for jury trials exist in the Gambian legal system. However, there is no evidence that jury trials take place in practice.¹² In terms of the organization of the courts and the legal system, section 143 of the Gambian Constitution places responsibility for administration of the courts on the Chief Justice of the Gambia, who may ‘issue orders and directions for the proper and efficient operation of the courts’.

Apart from courts, the Gambian Constitution also provides for the involvement of other institutions in the administration of justice. Thus, section 84 of the Constitution creates the office of Director of Public Prosecutor and empowers it (subject to the approval of the Attorney General) to bear responsibility for the initiation and prosecution of criminal trials in the Gambia. Chapter XII of the Gambian Constitution provides for the Police Force and the Prison Service, both of which are under the direct control of their respective councils. The Police Force and the Prisons Services are important parts of the overall administration of justice in the Gambia. Although, section 163 of the Constitution provides for the establishment of the office of Ombudsman by the National Assembly, it is not involved in the day-to-day administration of justice. The Gambia has a National Human Rights Commission to which complaints of human rights violations are brought.

2.2 The Court System in Liberia

According to Article 3 of its 1986 Constitution, Liberia is a republican, ‘unitary ... state divided into counties for administrative purposes’. Established in 1822 by citizens of the United States as a colony for former slaves, Liberia claimed independence and became a sovereign State in

¹¹ See Ss 120(3) and 122 of the Gambian Constitution 1997.

¹² Key informant interview with Gambian Female Lawyer on 25 Apr 2021 (on file). Respondent stated that she has not seen any trial involving a jury in her years of legal practice. Virtually all respondents sought anonymity as condition for responding to questions. Accordingly, key informants are mostly described by their professions or such similar description.



July 1847.¹³ At independence, Liberia was made up of ‘colonists of African- American descent’ (many racially mixed and of European descent with distinct education, religion and culture on the one hand) and indigenous people on the other hand (‘with whom they did not identify’).¹⁴ From independence in 1847 to 1980, Liberia was governed by a small minority of colonists whose political party ‘permitted no organized political opposition’. Until 1980, the indigenous people responded with ‘unremitting uprising, rebellion and riots’.¹⁵ In 1980, former President Willian R. Tolbert Jr. was overthrown and assassinated by members of the Armed Forces of Liberia in a military coup leading to the emergence of a military government under the leadership of Master Sergeant Samuel K. Doe who became the first indigenous President of Liberia. Following complaints of misrule by the Doe administration, rebellion started in Liberia, resulting in a civil war that culminated in the overthrow of the Doe government in September 1990.

In spite of the successful ouster of the Doe government, violence raged in Liberia as the various sectional war lords failed to agree on who was entitled to form a government, leading to the appointment of Dr Amos Sawyer as head of the Interim Government of National Unity. Despite the outbreak of a series of other conflicts in the country, elections were successfully held in July 1997 culminating in the emergence of Charles Taylor as President. Charles Taylor remained in office as President of a troubled nation until August 2003 when he was forced into exile in Nigeria by the unending insurgencies in the Liberia. A period of further unrest and fighting led to the establishment of another transitional government backed by the United Nations and headed by Charles G. Bryant. In 2005, fresh elections led to the emergence of Ellen Johnson Sirleaf as Liberia’s first female president. At this time peace was finally restored in Liberia after years of war and violent unrest that negatively affected all aspects of public and private life in that country. After Ellen Johnson Sirleaf’s two terms as President, elections were held in 2018 leading to the emergence of current President George Weah.

Article 65 of the Liberian Constitution vests the judicial powers of the republic ‘in a Supreme Court and such other subordinate courts as the legislature may from time to time establish’. Even though it makes reference to courts other than the Supreme Court, the 1986 Constitution of Liberia does not have a list of courts authorised to exercise judicial powers alongside the Supreme Court. Nonetheless, in Article 67 dealing with the composition and quorum of the Supreme Court, the Constitution mentions ‘a circuit judge’. Similarly, in Article 34 dealing with powers of the Legislature, the Constitution also recognises the power of the Legislature to ‘constitute courts inferior to the Supreme Court, including ‘circuit courts’ and ‘claims courts.’ This constitutes further evidence that the Constitution recognises a justice system comprising of the Supreme Court of Liberia and a number of courts subordinate to the Supreme

¹³ See Liberia’s General Report on the Human Rights Situation in Liberia submitted to the African Commission in September 2012 (General Report).

¹⁴ Page 4 of the General Report as above.

¹⁵ As above.



Court. The absence of a comprehensive list of courts in the Constitution arguably creates difficulty for members of the public who may need guidance as to the competent court to approach in order to meet their justice needs.

Notwithstanding the information gap in the 1986 Constitution of Liberia, a comprehensive list of courts can be found in Liberia's Judiciary Law - Title 17 - Liberian Code of Law Revised (Judiciary Law 1972).¹⁶ Acknowledging Tribal Courts in a separate (customary law) category, the Judiciary Law 1972 makes provision for the Circuit Court (with general jurisdiction, arguably equivalent to the High Court in The Gambia, Nigeria and most countries). The Law also provides for a Debt Court (with jurisdiction over civil actions for debts), a Monthly and Probate Court (to oversee Probate matters), and a Tax Court (with jurisdiction over taxation matters). The Judiciary Law further provides for the Magistrates Courts (with jurisdiction over minor matters), the Justice of Peace Courts (also with jurisdiction over minor matters),¹⁷ the Traffic Court (with jurisdiction over Vehicle and Traffic Law), the Juvenile Court (with jurisdiction over juvenile matters) and the Labour Court (with jurisdiction over labour matters). Two additional courts with special criminal jurisdiction have also been established since the 1990s, both of which are generally understood to be specialized divisions of the Circuit Court. The Criminal Court D is established and authorised to exercise 'Exclusive Original Jurisdiction over the Crimes of Armed Robbery, Terrorism and Hijacking Respectively,'¹⁸ while the Criminal Court E is established to exercise 'Exclusive Original Jurisdiction over the Crimes of Rape, Gang Rape, Aggravated Involuntary Sodomy, Involuntary Sodomy, Voluntary Sodomy, Corruption of Minors, Sexual Abuse of Wards and Sexual Assault Respectively'.¹⁹ The Liberian legal system belongs to the Common Law family²⁰ (albeit tilting far towards the American model) but has allowance for customary or tribal law to operate alongside the formal legal system both formally and informally. Constitutional provisions for jury trials exist in the Liberian legal system and jury trials actually do take place in practice.²¹

¹⁶ Approved May 10, 1972 and published June, 20 1972.

¹⁷ Two separate Key informant interviews with two Liberian human rights defenders suggests that not all Liberians are aware of the existence and operations of the JP Courts,

¹⁸ See the Act Amending Title 17 of the Revised Code of Law of Liberia, Known as the New Judiciary Law of 1972 Adding Thereto, a new Chapter to be Known as Chapter 24, Establishing Criminal Court "D" to have Exclusive Jurisdiction over the Crimes of Armed Robbery, Terrorism and Hijacking Respectively, Approved Dec 6, 1994

¹⁹ See the Act Amending Title 17 of the Revised Code of Laws of Liberia, Known as the Judiciary Law of 1972 By Adding thereto a new Chapter 25 Establishing Criminal Court "E" of the First Judicial Circuit, Montserrado County and Special Divisions of the Circuit Courts of the Republic to have Exclusive Original Jurisdiction over the Crimes of Rape, Gang Rape, Aggravated Involuntary Sodomy, Involuntary Sodomy, Voluntary Sodomy, Corruption of Minors, Sexual Abuse of Wards and Sexual Assault Respectively.

²⁰ See for instance, U-Jay WHS Bright, 'Increasing Confidence in the Liberian Judiciary: A Shift in the Dispensation of Justice' (2020) 21 Oregon Review of International Law', 155 at 158.

²¹ The actual existence and continued operation of jury trials in Liberia is evident in official documents from the judiciary and confirmed by two key informants in separate interviews that took place on 28 Apr 2021. The present researcher had also previously, in the context of a different study, personally observed jury trials taking place in Monrovia, Liberia.



With regards to the structure of the courts in Liberia, a Crisis Group Africa Report of 2006²² states that Liberia's 'statutory law system includes the Supreme Court headed by the Chief Justice; Circuit Courts headed by Circuit Court Judges; Magistrates Courts headed by stipendiary Magistrates and Justice of the Peace Courts headed by Justices of the Peace.'²³ However, in recent addresses presented by the Chief Justice of Liberia to mark the opening of the legal year (in 2019, 2020 and 2021), reference is only made to the Supreme Court, the Circuit Courts along with their Criminal and Civil divisions, the 'Specialized Courts in all judicial circuits' and Magistrates Courts.²⁴ While the omission of courts such as the Justice of Peace (JP) Courts in the addresses of the Chief Justice may not be an indication that those courts are no longer in operation, it might be evidence that the State has lost control of those courts as suggested by the Crisis Group Africa Report.²⁵ Overall, the court structure in Liberia is not clear to the casual observer and certainly not for the uneducated populace.

2.3 The Court System in Nigeria

Section 2 of the 1999 Constitution of the Federal Republic of Nigeria (Nigeria) affirms that Nigeria is a republican federation consisting of 36 (listed) states and a federal capital territory. Its 1999 Constitution also recognizes seven hundred and sixty eight (768) local government areas and six area councils of the Capital Territory. The English language is the official language despite the fact that there are over 250 recognized different ethnic groups in the country. Nigeria became an independent political entity in 1960 but only claimed a republic status (and therefore complete sovereignty) in 1963. Between 1960 and 1966, Nigeria was a budding democracy with a parliamentary system modelled after the Westminster system in place. However, following a military coup in 1966, a three year civil war (from July 1967 to January 1970), one more successful coup and an unsuccessful coup, democratic rule was only restored in 1979 on the basis of a new (1979) Constitution that replaced the parliamentary system with the American model presidential system of government. This was followed in 1983 by another military coup which was followed by other military coups that kept the country under various forms of military juntas until 1999 when General Abdusallam Abubakar handed over power to a civilian administration headed by Chief Olusegun Obasanjo (himself a former military head of state). From 1999 to date, Nigeria has had three successful transfers of power from one democratic administration to another. Current President Muhammed Buhari who assumed office in 2015 is currently in his second term in office.

²² Crisis Group is an international non-governmental organisation. See 'Liberia: Restructuring the Justice System', Crisis Group Africa Report no 107 of 6 Apr 2006.

²³ As above, pg 3.

²⁴ Opening addresses of His Honor, Francis S. Korkpor Sr, Chief Justice, Supreme Court of Liberia (on file).

²⁵ See fn 22 above.



As a Federation, governmental powers (including judicial powers) are shared between the federal (central) and the state tiers of government. Section 6(1) of the 1999 Constitution of Nigeria vests the judicial powers of the Federation in the courts established for the Federation, while section 6(2) vests the judicial powers of a state in the courts established for that state. The courts established for the Federation in the Constitution are the Supreme Court of Nigeria (headed by the Chief Justice of Nigeria); the Court of Appeal (headed by the President of the Court of Appeal); the Federal High Court (FHC) (headed by a Chief Judge);²⁶ the High Court of the Federal Capital Territory (FCT), Abuja (headed by a Chief Judge);²⁷ the Sharia Court of Appeal of the FCT (headed by a Grand Kadi); and the Customary Court of Appeal of the FCT (headed by the President of the CCA). By section 254(A), the Constitution also established the National Industrial Court of Nigeria (NICN) (under the headship of the President of the NICN).²⁸

For each of the 36 states, the Constitution establishes a High Court of the State or State High Court (SHC). A Sharia Court of Appeal is established for each state with majority (or a sizeable number of) Muslim citizens while a Customary Court of Appeal is established for each state with a majority (or a sizeable number of) Christian or non-Muslim citizens. These courts enumerated in the Constitution are recognised as the superior courts of record. This means for instance, that the Sharia Courts of Appeal and the Customary Courts of Appeal are of coordinate jurisdiction with the High Courts.²⁹ Apart from the courts listed in the Constitution, judicial powers in Nigeria are also exercised by subordinate courts established for the Federation or the FCT by the National Assembly of Nigeria and for a state by that State's Assembly (the legislative body in the states).

By the constitutional arrangement elaborated above, the Nigerian judicial system is federal at the lower level of original jurisdiction (exercised by the SHCs, the FHC and the High Court of the FCT or the subordinate courts such as Magistrates Courts, Sharia Courts and Customary Courts) and the lower appellate jurisdiction over Sharia and Customary courts (exercised by the Sharia Courts of Appeal and the Customary Courts of Appeal). This also means that the FHC, the SHC and the High Court of the FCT each exists as a separate system of courts with their own head of court (usually a Chief Judge) and their respective Rules of Courts and styles of administration. At the higher appellate level (appeals emanating from the High Courts, the Sharia Courts of Appeal and the Customary Courts of Appeal), the exercise of judicial powers in Nigeria becomes unitary. This is in the sense that there is only a single (common) Court of

²⁶ The FHC is a federal court with a clearly defined and specific jurisdiction over matters of mostly federal concern. FHCs can be found in all states of the federation so that residents and citizens of each state can access a FHC without having to travel to another state.

²⁷ This court is the equivalent of the High Court of each State which is empowered with jurisdiction over the laws of the state. In the case of the High Court of the FCT Abuja, it exercises jurisdiction over the laws of the Capital Territory that are not necessarily laws applicable to the entire federation.

²⁸ Divisions of the NICN are found in all or nearly all states of the Nigerian federation.

²⁹ Sec 6(3) of the Nigerian Constitution 1999.



Appeal and a single (common) Supreme Court to which appeals progress. No state has its own Court of Appeal or Supreme Court. This further means a matter can proceed from a Magistrate Court through the High Court of a State or from the Sharia Court through the Sharia Court of Appeal of a State to the Court of Appeal and from there to terminate at the Supreme Court. A consequence of this structure is that a matter can take several years to make the journey from the Magistrate court to terminate at the Supreme Court of Nigeria. With regards to human rights guaranteed in the Constitutional bill of rights (in Chapter IV of the Nigerian Constitution) and in the African Charter on Human and Peoples' Rights (domesticated as national law in Nigeria), the High Courts - FHC, SHC and the High Court of the FCT - are endowed with jurisdiction by the Constitution,³⁰ with a possibility of appeal to the Supreme Court through the Court of Appeal. The Constitution empowers each head of court to make rules 'for regulating the practice and procedure' before the affected court notwithstanding that the Chief Justice of Nigeria (who is also head of the Supreme Court of Nigeria) is the overall head of the judiciary in Nigeria.

Although a number of other agencies and institutions are involved in the administration of justice in Nigeria, the Constitution mentions the Attorney General of the Federation and the Attorneys General of the states who bear responsibility for instituting and undertaking criminal proceedings against any person before any court in Nigeria (with respect to the Federal Attorney General) and before any court in their respective states (with respect to the Attorneys General of the States). The Constitution equally mentions the Nigeria Police Force (under the control of the President of Nigeria through an Inspector General of Police). In addition to the investigation of crimes, the Nigeria Police Force prosecutes offenders especially before Magistrates Courts. The Nigeria Corrections Services which also plays an important role in the administration of justice is established by law and supervised by the Minister of Internal Affairs. Nigeria also has a National Human Rights Commission with its headquarters in Abuja and branches in all states of the Federation.

3. Pre-Pandemic State of the Administration of, and Access to Justice

To properly understand and appreciate the impact of the COVID-19 Pandemic on access to justice in the case study countries, it is important to have an idea of the state of access to justice prior to the Pandemic. This section provides an overview in that regard.

³⁰ Sec 46(1) of the 1999 Constitution of Nigeria.



3.1 Pre-Pandemic Administration of Justice in the Gambia

The administration of justice and access to justice, like other issues of human rights and the rule of law are considered to have improved significantly in The Gambia since the successful conduct of elections in 2016, and the inauguration in 2017 of current President Adama Barrow. Prior to the election of President Barrow, former Military Dictator turned President/Strongman, Yahya Jammeh (who had been in power from 1994 to 2017) is reported to have held the Gambian judiciary in some sort of iron grip, and applied a combination of tactics including the appointment of ‘hand-picked foreign judges’ to undermine the administration of justice and by extension, deny citizens and residents of the Gambia effective access to justice.³¹ In its Combined Report to the African Commission, The Gambia admits that in spite of favourable national legislation, ‘the enforcement of these rights has been a challenge during the reporting period. The former National Intelligence Agency (NIA) was notorious for arbitrary arrests and incommunicado detentions of both nationals and non-nationals.’³² Relevant to this study/report is the state of administration of justice and access to justice in the era immediately preceding the onset of the COVID-19 Pandemic.

In a 2018 evaluation of the rule of law in the Gambia, ROLE UK, a United Kingdom based rule of law organization documented the major challenges that the Gambia’s justice sector faced. These included: ‘inconsistency in the sentences delivered by magistrates due to a lack of training and guidelines,’ ‘high number and backlog of appeals,’ ‘judges over-burdened by extremely large caseloads,’ ‘regular occurrence of power cuts and a lack of material resources.’³³ The 2019 Preliminary Working Report of a fact-finding mission (by students of the University of Pennsylvania under the supervision of a faculty member) found that a legacy of the Jammeh regime was the lingering lack of trust in the Gambian justice sector, as the administration of justice under that regime became so bad that ‘some independent attorneys and judges began advising Gambians to steer clear of the courts and to use alternative or informal conflict resolution mechanisms.’³⁴ For its part, the United Nations Development Programme (UNDP) held the view that ‘one of the main challenges facing the Rule of Law sector [in the Gambia] is case backlog, particularly for remand prisoners and the consequential impact on the Prisons Services.’³⁵ The government of The Gambia also admits to some of these challenges in its Combined Report to the African Commission. For instance, the Combined Report records that Gambia’s National Agency for Legal Aid (NALA) has faced ‘budgetary,

³¹ For instance, see B Holman *et al*, Access to Justice in the Gambia, (Sept 2019), Preliminary Working Report Presented to the International Development and Law Organisation, University of Pennsylvania Law School, 10.

³² See page 35 of the Combined Report.

³³ ROLE UK, ‘Improving the Rule of Law in The Gambia’, (available at <https://www.roleuk.org/cases/improving-rule-law-gambia>) (last accessed 17 May 2021).

³⁴ Holman *et al*, n 31 above.

³⁵ ‘UNDP’s support to the establishment of Virtual Courts in Response to COVID-19’, UNDP report available at <https://www.gm.undp.org/content/gambia/en/home/blog/2020/undp-support-to-the-establishment-of-the-virtual-courts-in-respo.html> (last visited 28 July 2021).



logistical and staffing challenges. In 2018 alone the Agency is handling a total of 160 cases in the five regions of The Gambia with a staffing of only five lawyers.³⁶ Thus, it is concluded in the Combined Report that ‘These challenges are also among the causes of backlog of criminal cases in court. The Agency has the mandate to handle civil cases but since its inception it is yet to handle any civil case.’³⁷ Effectively, the government of the Gambia conceded that there were challenges to both access to justice and the administration of justice in that country.

In its 2019 Country Report on Human Rights Practices in the Gambia, the United States Department of State recorded that although there was a general improvement of respect for human rights by the Barrow administration in the Gambia, ‘case backlog hampered the right to a timely trial.’ However, it noted further that ‘Defendants enjoyed the right to be present at trial and to communicate with an attorney of their choice or if indigent and charged with a capital crime, to have a lawyer at public expense.’ The US Department of State also documented that ‘Defendants had adequate time and facilities to prepare a defense [and] officials provided free interpretation in defendants’ local languages as necessary from the moment charged through all appeals.’ Although it observed that ‘gross overcrowding was a problem, particularly in the remand wing of the state central prison ... in Banjul where detainees were held pending trial’, and that ‘there were numerous instances of detentions exceeding the 72-hour limit’, the US Department of State Report observed that ‘there was a functioning bail system ...’ The 2020 Gambia Country Report of the US Department of State (covering 2019 when the pandemic was declared) basically repeats the 2019 reports. All of these various independent reports on the state of administration of, and access to justice in the Gambia lead to the conclusion that although the Yahya Jammeh administration had severely undermined the administration of justice and obstructed access to justice, things had significantly improved since the inauguration of the Barrow administration. Thus, in the immediate era before the onset of the pandemic, despite the lingering situation of a relatively heavy backlog of cases, both the administration of, and access to justice had recorded some improvement. In fact, the Freedom House in its 2019 World Freedom Report sums it up in the observation that ‘Constitutional guarantees of due process remain poorly upheld, but the situation has improved significantly under President Barrow.’³⁸

3.2 Pre-Pandemic Administration of Justice in Liberia

A critical contextual point to highlight with regards to the administration of, and access to justice in Liberia is the fact that the Republic of Liberia emerged from a civil war in the 1990s. Consequently, the country had been in a transitional justice situation in the initial years of the first two decades of the current millennium. A result of the Liberian conflict was that the justice

³⁶ See page 39 of the Combined Report.

³⁷ Ibid.

³⁸ Freedom House World Freedom Report 2019.



sector was in disarray in the aftermath of the conflict. In the words of Christiana Tah, former Minister of Justice of the Republic of Liberia, ‘legal institutions barely functioned, as many of the well-educated and well-trained citizens in law enforcement and the law fled the country in the 1990s.’³⁹ As a result of this and other reasons, ‘the formal justice system essentially collapsed and, consequently, most citizens ... resorted to the informal justice system as a viable alternative,’ because of ‘concerns and distrust of a public that for so long has been alienated from the formal justice system,’ while ‘the number of people in the population who now resort to the customary justice system ... in their quest for justice has increased, rendering perplexed a government that is still struggling to provide justice institutions such as court houses, prisons and police stations throughout the country, especially in the rural areas.’⁴⁰

The former Minister’s assessment of post-conflict Liberia’s formal justice sector in 2011 appears to have remained largely unchanged by 2016 when the UNDP made its own observations on the system. According to the UNDP, ‘public confidence in the ability of the justice system to uphold the rule of law is limited’ and ‘for ordinary Liberians, it is often difficult to access, let alone achieve, justice ...’⁴¹ For the UNDP, ‘the majority of Liberians who come into contact with the law do not know the laws applicable to their case, do not understand legal processes and terminology and do not have access to legal aid and assistance.’⁴² In addition to these access to justice issues, the 2016 UNDP document also highlights a number of issues relating to the administration of justice. It identified the issue of case backlogs and delay in court proceedings as problems. Nevertheless, it observed that ‘the deployment of additional prosecutors, judges and public defenders helped reduce case backlogs and increase the speed of trials,’ just as ‘newly deployed probation officers managed to reduce the number of prison inmates, while a government-led pre-trial detention task force worked on reducing the number of remanded detainees awaiting trial for minor offences.’⁴³ Notwithstanding the interventions mentioned in the document, the UNDP still concluded that lingering obstacles in the Liberian justice sector included ‘the slow speed of judicial decision-making, legal pluralism and the lack of legal aid and legal literacy.’⁴⁴

The government of Liberia also admits to some of these challenges in its initial Periodic Report to the African Commission. For instance, the government concedes that ‘one major consequence of the civil conflict of Liberia was a substantial destruction of the judicial system infrastructure and a breakdown in the security apparatus.’⁴⁵ The Initial Periodic Report documents further that ‘At the end of the civil conflict, Liberia was faced with the challenge of

³⁹ Christiana Tah (2011) in Justice Development Programming in Fragile and Conflict-Affected Areas: Perspectives of Two Leaders in Justice Administration, Justice and Development Working Papers Series, 8.

⁴⁰ As above, p 9.

⁴¹ UNDP, n 35 above, 6.

⁴² As above.

⁴³ UNDP, n 35 above, 11.

⁴⁴ As above.

⁴⁵ See page 10 of the Initial Periodic Report.



rebuilding a substantially broken down judicial system with negligible budgetary allocation, corruption, low level of accountability, and key positions filled with individuals lacking the requisite level of legal training.⁴⁶ The government stated further in the Report that it ‘understands that citizens could face problems accessing justice because citizens were not aware of their rights, justice institutions in the rural areas are remote, slow and unaffordable, or because they are biased and discriminatory.’⁴⁷

The US Department of State’s 2019 Human Report on Liberia identified gross overcrowding in the prisons as an ongoing problem in Liberia. The report considered the ‘bail system’ in Liberia to be ‘inefficient and susceptible to corruption.’ Notwithstanding, it notes that ‘detainees have the right to prompt access to counsel, visits from family members, and if indigent, an attorney provided by the state in criminal cases.’ The US Report noted that ‘lengthy pretrial and pre-arraignment detention remained serious problems’ as ‘pretrial detainees accounted for approximately 64 percent of the prison population across the country.’ Also highlighted were the ‘lack of a functioning bail system, poor court record keeping and missing files, failure of judges to assign court dates ... and a lack of resources for public defenders.’ In a January 2021 article on the Liberia legal system, one local commentator observed that ‘even before the outbreak ... justice actors were already facing a huge gap between demand and supply of justice services. The courts across the country are barely functioning and jury trial has been suspended.’⁴⁸ Effectively, while the state of justice delivery in Liberia has also greatly improved as compared to the early post conflict years, there were still valid concerns around the quality of administration of, and access to justice in the pre-pandemic period.

3.3 Pre-Pandemic Administration of Justice in Nigeria

Official records of the government of Nigeria from 2016 indicate that out of a total of 61, 527 inmates in Nigeria’s 240 prisons and detention centres, only 17, 663 were convicted persons while 43, 864 were unconvicted persons (often awaiting trial).⁴⁹ The 6th Periodic Report acknowledges that there is a lack of ‘adequate funding to meet its obligations for ensuring access to justice to the indigent Nigerians scattered in 36 states of the federation including the Capital Territory.’⁵⁰

⁴⁶ As above.

⁴⁷ Page 11 of the Initial Periodic Report of Liberia.

⁴⁸ See A Rogers, ‘Liberia’s Court System Needs to Adopt the New Normal’, *Front Page Africa Newspaper* of 5 Jan 2021, available at <https://frontpageafricaonline.com/opinion/letters-comments/liberias-court-system-needs-to-adopt-the-new-normal/> (last accessed 28 July 2021).

⁴⁹ See page 54 of Nigeria’s 6th Periodic Report - 2015 - 2016 on the Implementation of the African Charter on Human and Peoples’ Rights in Nigeria (6th Periodic Report) submitted to the African Commission in August 2017.

⁵⁰ See page 32 of the 6th Periodic Report.



The US Department of State in its 2018 Country Reports on Human Rights Practices in Nigeria observed inter alia that ‘lengthy pretrial detention remained a serious problem.’ Citing official figures from the Nigerian Prisons Service (now Correctional Services), the US Report noted that ‘approximately 70 percent of the prison population consisted of detainees awaiting trials, often for years.’ The US Report observed further that ‘the shortage of trial judges, trial backlogs, endemic corruption, bureaucratic inertia and undue political influence seriously hampered the justice system’ and that ‘multiple adjournments resulted in years-long delays.’ Also highlighted in the Report were the logistics challenges both the Nigerian Police Force and the Nigerian Prisons Service faced, resulting for instance in the lack of vehicles to transport detainees to court; the poor case management system resulting in the loss of the case files of some detainees; and the lack of effective prison case file management system such as comprehensive and reliable databases and cataloguing system. According to the US Report, generally, ‘the courts were plagued with inadequate, antiquated systems and procedures.’ The US Report claims further that the right of detainees to a fair and public trial without undue delay was not always respected ‘most frequently due to a lack of capacity and resources.’ It was also observed in the report that ‘insufficient numbers of judges and courtrooms, together with growing caseloads, often resulted in pretrial, trial and appellate delays that could extend a trial for as many as 10 years.’ Overcrowding in the Nigerian prisons was another challenge highlighted in the Report. The 2019 and 2020 US Country Reports on Human Rights Practices in Nigeria basically reproduced the contents of the 2018, leading to a conclusion that the administration of, and access to justice in Nigeria prior to the pandemic left a lot to be desired.

The US Reports are apparently corroborated by the Freedom House Annual Reports on Nigeria. In its 2018 Country Report on Nigeria, Freedom House identifies disregard for due process, as well as ‘prolonged pretrial detention of suspects even after courts ordered their release on bail’ as challenges associated with the justice system in Nigeria. Although, it considers that there is some level of judicial independence, the Freedom House Country Report 2018 on Nigeria still finds ‘a lack of funding, equipment and training’ as lingering problems in the justice sector. These observations appear in the same manner in the 2019 and 2020 reports. Thus, it is safe to conclude that the pre-pandemic state of access to justice in Nigeria was also less than ideal. It is with this contextual background that this study accesses the responses to the pandemic, and their impact on access to justice in the three case study countries.

4. Executive and Judicial Responses to the COVID-19 Pandemic

State response to the COVID-19 pandemic in West Africa has generally been similar to the response in the rest of Africa. Generally, governments in the West Africa region invoked constitutional and or statutory bases to impose a state of emergency (often by varying nomenclature) that commonly shifted the balance of governmental powers to the Executive



arm with little, if any Judicial or Legislative supervision or checks. This generally permits the Executive and its agents to derogate from a number of constitutionally and internationally protected human rights. This section gives an overview of the primary responses of the governments in the three case study States and describes the consequential action taken by national Judicial authorities in each country. This sets the stage for understanding the impact of the responses and the attendant restrictions on both the administration of, and access to justice in the three case study countries.

4.1 The Response in the Gambia

In response to the first case of COVID-19 in the Gambia reported on 17 March 2020, President Adama Barrow, relying on section 34(1)(b) of the 1997 Constitution of the Gambia signed a proclamation declaring the vulnerability of the Gambia that may lead to a state of public emergency. Published in the Gazette of 18 March 2020, the proclamation set the stage for the eventual declaration of the state of public emergency.⁵¹ This initial proclamation was followed by another proclamation signed on 26 March 2020, by which a state of public emergency was declared in accordance with section 34(1)(a) of the Constitution. In his address announcing the declaration, President Barrow instructed ‘all Heads of government institutions, parastatal, private enterprises and other institutions’ to ‘scale down their activities, with minimal staff to perform basic services.’ Barrow permitted staff of the various institutions to work from home where this was feasible. The judicial, as one of such government institutions was thus required to scale down its operations.

Invoking special powers under the Emergency Powers Act of the Gambia, President Barrow spelt out certain regulations to impose restrictions in the polity. Significantly, certain services considered or recognized as essential services were exempted from the lockdown imposed by the regulations. President Barrow listed essential services to include ‘banks, petrol stations, traders and vendors in food and basic commodities in the markets, supermarkets and corner-shops.’ The exclusion of judicial and legal services from the list of recognized essential services means that lawyers, court workers and judges were fully affected by the restrictions imposed by the COVID-19 regulations in the Gambia. Between 3 April 2020 and 17 September 2020, the Government of the Gambia declared the state of public emergency, on one occasion with the approval of the National Assembly. It is at the expiry of the various states of public emergency that President Barrow resorted to the use of the Public Health Act powers of the Ministry of Health. While the powers under the Act were not as wide as those contemplated under the State of Public Emergency, the general public were said to have been oblivious of

⁵¹ Key informant interview with Banjul based (male) lawyer on 4 June 2021. Also see Satang Nabenah, ‘The use of Emergency Powers in Response to COVID-19 in the Gambia’ available at <https://verfassungsblog.de/the-use-of-emergency-powers-in-response-to-covid-19-in-the-gambia/> (last accessed 29 July 2021).



this fact, and therefore considered themselves as restricted as they were under the State of Public Emergency.⁵²

In compliance with the presidential directives to heads of government institutions and agencies, on 19 March 2020, the Chief Justice of the Gambia directed that proceedings in all courts in the country be suspended or adjourned with effect from 23 March 2020.⁵³ During the suspension of court proceedings and activities, judicial officers were expected to ‘continue to hear and determine applications for bail and to attend to all urgent matters that can be dealt with in chambers’.⁵⁴ However, as a result of a dearth of credible information, it is not possible to confirm if any such bail or other proceedings took place before any courts in The Gambia. Notwithstanding the lack of confirmation, in theory, the allowance created room for bail and other urgent applications to proceed despite the lockdown is positive as it reduces the risk faced by persons arrested by law enforcement agencies for violation of COVID-19 restrictions among other things. By 30 April 2020, while the state of public emergency declared by the President remained in place, the judiciary began consultations aimed at reopening the courts ‘without compromising the health and security measures put in place to curb COVID-19. When the courts eventually resumed sitting in May 2020, the Chief Justice sometime towards the end of July 2020 directed the superior courts in the Gambia to cut down ‘their traditional two-month summer vacation to one month.’⁵⁵ The reduction of vacation time was ‘taken to make up for the time lost by all courts across the country during the unavoidable break caused by COVID-19 pandemic.’⁵⁶

It is significant to recall that while court sittings were suspended in the Gambia, it was understood (according to the office of the Chief Justice) that judicial officers were to ‘continue to hear and determine applications for bail and to attend to all urgent matters that can be dealt with in chambers.’⁵⁷ In the same vein, the office of the Chief Justice indicated that ‘offices of the judiciary’ were to ‘remain open and staff will continue to be available to deliver other services to the general public.’⁵⁸ While the fact of issuance of these directives are confirmed by staff of the Judiciary,⁵⁹ efforts to confirm if, and how many bail and other applications were actually made proved abortive. Further, even when it was considered necessary for courts to reopen partially at the end of April 2020, *the Foroyaa Newspaper* quoted a high court judge to

⁵² Key informant interview with Gambian female lawyer (on file).

⁵³ Y Jallow, ‘Chief Justice instructs courts to adjourn until further notice’, *Foroyaa Newspaper*, 19 Mar 2020.

⁵⁴ As above.

⁵⁵ See *The Point Newspaper*, 30 Jul 2020, ‘Superior courts cut vacation by half’, available at <https://thepoint.gm/gambia/headlines/superior-courts-cut-vacation-by-half>, last accessed 20 May 2021.

⁵⁶ As above.

⁵⁷ See Yankuba Jallow, (19 Mar 2020), ‘Chief Justice instructs courts to adjourn until further notice’, *Foroyaa Newspapers*.

⁵⁸ As above.

⁵⁹ Key informant interview with staff of the High Court of the Gambia, conducted on 4 June 2021.



the effect that ‘if they resumed’ a judge ‘may not take more than three cases a day’ and only a limited number of people were permitted to attend proceedings.⁶⁰

Significantly, the Chief Justice was also reported to have ‘ordered that priority be given to criminal cases, particularly of persons in custody.’⁶¹ Within the period, it was also reported that ‘thirty cases including criminal bail applications from Basse have been reassigned to three new judges to try.’⁶² The judge was further quoted to have said that ‘cases from the high court annexes including Banjul and Bundung will be transferred to the new judges to deal with.’⁶³ This was possible because one new judge was sworn-in February 2020,⁶⁴ while another two judges were sworn-in in April 2020, during the lockdown.⁶⁵ About the same time, the Chief Justice of the Gambia also announced that two judges had been assigned to ‘preside over the UNDP backed pilot virtual courts in the high court to hear bail applications using the Zoom platform with internet connection’.⁶⁶ To facilitate the virtual hearings, ‘lawyers representing applicants and those for the state and or police and other prosecuting agencies’ were required to participate in the proceedings, ‘using remote technology’, while ‘a television will be set up at the prisons to allow the detainees to follow the hearings’.⁶⁷ It is important to note that in preparation for the operationalisation of the UNDP sponsored Virtual Court project, ‘the Chief Justice established an Interagency Task Force to review legislative and constitutional impediments for establishing a virtual court’.⁶⁸ The records show that the Task Force comprised of representatives from the judiciary, the ministry of justice, the police force, the prisons services, the National Agency for Legal Aid, the Gambia Bar Association, the National Drug and Law Enforcement Agency and the UNDP. Effectively, the major players in the criminal justice system and the legal system generally were brought together to plan and prepare the ground for the resort to the administration of justice by use of technology. It is on the basis of the recommendations by the Task Force that the Chief Justice of The Gambia approved the establishment of two Virtual Courts for civil and criminal cases respectively, which were required to function on the basis of Practice Directions issued specifically for that purpose.⁶⁹

With the ground work set for the delivery of justice through the use of technology, it is reported that a first Virtual Court hearing took place on 10 June 2020. As at 15 July 2021, no less than

⁶⁰ See Yankuba Jallow, (30 Apr 2020) ‘Courts to resume sittings soon’, *Foroyaa Newspapers*. Also see, Omar Bah, (29 May 2020), ‘Barrow appoints new Judicial Secretary,’ *The Standard Newspaper*, available at <https://standard.gm/barrow-appoints-new-judicial-secretary>, last accessed 21 May 2021.

⁶¹ See Omar Bah above.

⁶² As above.

⁶³ As above.

⁶⁴ See The Digest Network (14 Feb 2020), ‘Justice Nguie Mboob bounces back. Sworn-in

⁶⁵ See Kerr Fatou, (16 Apr 2020), ‘Judiciary regaining confidence as 2 new judges sworn,

⁶⁶ See Omar Bah, n 56 above.

⁶⁷ As above.

⁶⁸ UNDP support, n 35 above.

⁶⁹ As above.



55 case comprising of 13 criminal matters and 42 civil matters were said to have been heard by the Virtual Courts.⁷⁰ Significantly, the UNDP documents that cases of persons in detention were heard daily by the two Virtual Courts.⁷¹ With the success recorded by the pilot project, the Chief Justice is reported to have considered the increase of access by the addition of two other Virtual Courts at the High Court level and a pilot Virtual Court at the Magistrate Court level.⁷² While the UNDP provided the required ICT infrastructure and technical support for the Judiciary and facilitated internet access for the Prisons Service and the National Agency for Legal Aid so that indigent detainees were assured of access and participation, It is not clear who bore the cost for the provision of remote technology for use by the lawyers for other applicants either not in detention or not qualified for the provision of legal aid by the State.⁷³

Apart from the resort to technology to aid access, efforts were made to decongest the prison population in The Gambia during the Pandemic. For instance, The Standard Newspaper reported that ‘ninety-six remanded prisoners whose cases are pending in various Magistrate Courts across the country are expected, with the assistance of the National Legal Aid Agency in collaboration with the Gambia Bar Association, to make applications for bail for their release from custody in an attempt to decongest the prisons’.⁷⁴ This is corroborated by staff of the National Human Rights Commission who stated that the Commission encouraged the Ministry of Justice to advise the President to exercise the Prerogative of Mercy to release prisoners convicted of non-violent and non-sexual crimes.⁷⁵ The Gambian Judiciary was thus, very much responsible for the administration of justice, in turn affecting access to justice in the Gambia after the lockdown. The impact of all of these will be assessed in the next section of this study.

4.2 The Response in Liberia

Although, the first case of COVID-19 on Liberian soil was reported and confirmed on 16 March 2020, Liberia’s response to the COVID-19 Pandemic effectively took off on 8 April 2020, when President George Weah declared a nation-wide state of emergency to take effect from 10 April for a period of three weeks.⁷⁶ President Weah’s declaration was preceded by the declaration of a national health emergency on 22 March 2020 by Liberia’s Ministry of Health and Social Affairs.⁷⁷ The presidential declaration of a state of emergency in line with article 88 of the 1986 Constitution of Liberia was tabled before the Liberian parliament and approved by

⁷⁰ As above.

⁷¹ As above.

⁷² As above.

⁷³ All effort to find a lawyer who participated in a virtual hearing in the Gambia proved futile.

⁷⁴ As above.

⁷⁵ Key informant interview with staff of the Gambia NHRC on 14 June 2021.

⁷⁶ See International Trade Union Confederation (ITUC), ‘COVID-19 - Response from Liberia’, available at <https://www.ituc-africa.org/COVID-19-Response=from-Liberia.html>

⁷⁷ As above.



that body for a period of 90 days. The state of emergency in the country was renewed several times by presidential fiat up until 21 July 2020.

By the regulations accompanying the declaration, a national lockdown was imposed with restrictions of movement in four of Liberia's counties (including Monrovia). Residents were prohibited from leaving their homes if they did not have access passes and such passes were only granted for essential journeys including for food shopping and for medical purposes. The restrictions required that only one person per household is permitted to move outside the house, and for a maximum of one hour. Judicial and legal services were not considered or recognized as essential services for the purposes of a grant of access pass. Schools, universities and places of worship were all required to shut down as part of the nationwide restrictions.

Under the leadership of the Chief Justice of Liberia, the Supreme Court of Liberia aligned with the presidential declaration of a state of emergency by announcing on 23 March, 2020 a resolve to restrict the number of cases heard by the courts in Liberia and to tackle overcrowding of the courtrooms. Measures approved by the Supreme Court included the 'temporary scaling down of the workforce of courts throughout the country' and the closure of 'classes at the Professional Magistrate Training Program at the ... Judicial Institute.' Under this scaling down arrangement, subordinate courts were allowed to operate with 'a maximum of five support staff, a clerk-typist, filing clerk, bailiff and sheriff,' while court security and maintenance staff were allowed to work normally. Other restrictions imposed by the Supreme Court of Liberia include the allowance of a maximum of five lawyers in court rooms at any given time and the shift of court focus to the writing of opinions in cases already heard by the relevant judicial officer(s).⁷⁸ Specific to Circuit Courts in Liberia, the Supreme Court COVID-19 Directives urged Circuit Court judges to 'encourage party litigants to choose bench trials instead of jury trials.' However, if a litigant insisted on their right to a trial by jury, the Directive required judges to 'suspend the hearing of the said matter, pending the improvement of the health situation in the country.'⁷⁹ Further, the Supreme Court Directive required Magistrates and Circuit Court judges to 'assign no more than two cases each day for trial, one in the morning and the other in the afternoon' with 'only party litigants and their lawyers ... permitted to attend a court hearing and the public ... asked to stay away to avoid overcrowding.'⁸⁰

In April 2020, the Supreme Court of Liberia issued its judicial order number 8⁸¹ by which it instructed 'all subordinate courts across Liberia to use appropriate means to prevent the

⁷⁸ Abednego Davis, 'Liberia: Supreme Court Tightens Restrictions to Tackle COVID-19', *Liberian Observer*, 24 Mar, 2020.

⁷⁹ As above.

⁸⁰ As above.

⁸¹ Judicial Orders 1 to 7 have nothing to do with the COVID-19 pandemic.



imprisonment of party defendants.’⁸² Judicial Order #8 further directed that unless offences are non-bailable by law, ‘all courts are to use available options under the law such as personal recognizance to avoid part defendant from being committed to prison.’⁸³ In the same vein, Liberia’s circuit courts and specialized courts were instructed to ‘give preference at the time primarily to petitions for writ of habeas corpus and other matters of alleged violations of the fundamental rights of citizens and residents growing out of the state of emergency.’⁸⁴ The Order prohibited the incarceration of a person infected or suspected to be infected with the corona virus. For its part, the Supreme Court of Liberia indicated that it will ‘concentrate more at this time on writing opinion in cases already heard and that only urgent cases of national concern growing out of allegations of violations of the rights under the state of emergency will be prioritized.’⁸⁵ In essence, the Liberian judiciary, through the Chief Justice, was responsible for its own response to the pandemic. No evidence of consultation or innovation.

4.3 The Response in Nigeria

On 27 March 2020, the Governor of Lagos State in South West Nigeria issued the Lagos State Infectious Disease (Emergency Prevention) Regulations 2020 in exercise of powers conferred on the Governor by the Quarantine Act and the Lagos State Public Health Law. The Lagos State Regulations restricted the movement and the gatherings of people within the state. Subsequently on 30 March 2020, Nigeria’s President Muhammed Buhari, relying on the same Quarantine Act of Nigeria (a colonial era law) signed the COVID-19 Regulations 2020 and brought them into effect. By these regulations, the Nigerian government imposed a lockdown on the FCT, Lagos State and Ogun State (by reason of its proximity to Lagos State). With the prohibition of all forms of movement other than those considered to be essential services, the Nigerian government succeeded in applying the Quarantine Act to place limitations on the enjoyment of rights, which limitations ought only to be possible upon the declaration of a state of emergency in line with the Constitution. Judicial and legal services were not classified as essential services for the purpose of the COVID-19 restrictions put in place.

The Nigerian judiciary first reacted to the COVID-19 situation on 23 March 2020 through a National Judicial Council (NJC) circular in which all heads of courts in Nigeria (state and federal) were ‘directed 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

⁸² See R Joycln Wea, (24 Apr 2020), ‘Supreme Court issues Judicial Order #8’, *New Republic Newspaper* of 24 Apr 2020, available at <https://www.newrepublicliberia.com/supreme-court-issues-judicial-order-8/> (last accessed 16 June 2021)

⁸³ As above.

⁸⁴ As above. Also confirmed by key informant (human rights defender) during telephone interview on 18 May 2020.

⁸⁵ Weah, n 82 above.



laws.⁸⁶ Before the expiry of the two weeks period, the Chief Justice of Nigeria, on 6 April 2020 issued another circular to extend the suspension of court sittings in Nigeria until further notice.⁸⁷ The 23 March 2020 Directives stipulated that: the general public will not be allowed into court premises unless in extreme urgencies for the filing of new matters or application; not more than 20 persons (inclusive of court staff, lawyers and litigants) were allowed into a court room at any point in time, including during the hearing of a case; only parties in a case, their lawyers and witnesses are allowed into the court room during proceedings; ex-parte and urgent applications and adoption of final Written Addresses will be accommodated; in criminal matters, only arraignment and bail applications were to be entertained; judgments and rulings will be delivered as and when due; and non-essential court staff are to stay away from their offices within the courts.⁸⁸

Based on the report of a committee set up by the NJC, recommending guidelines for ‘court sittings and related matters in the COVID-19 period,’ the Chief Justice of Nigeria issued another directive in May 2020 instructing all heads of all courts in Nigeria to ‘be guided by the attached Guidelines in adopting or formulating Rules, Directives and Guidelines as appropriate to the legal and material circumstances of their courts.’⁸⁹ The aim of the directive was to achieve ‘the goal of safely delivering justice in these unprecedented challenging times.’⁹⁰ Consequently, the President of the Court of Appeal, the Chief Judge of the FHC, the President of the National Industry Court of Nigeria, and a number of Chief Judges of the States’ High Courts issued Guidelines and Practice Directions for their respective courts to apply as the courts reopened to the public for normal delivery of justice services. Importantly, the heads of courts generally reproduced the NJC recommended guidelines with little or no variations. For instance, no more than twenty persons (including the presiding judicial officer, court staff, litigants and their lawyers) could be allowed in a court room at any time. Courts allowed only one or two lawyers to represent a party in any case and other COVID-19 Regulations were to be strictly enforced. Significantly, the Guidelines and Practice Directions made room for remote hearing of cases and electronic filing of processes without dispensing of the filing of hard copies (usually through a drop box process). The NJC Guidelines (and by extension, the guidelines and practice directions of all other courts) required that physical sittings be limited only to time bound, extremely urgent and essential matters that may not be heard by the court remotely or virtually. It fell on heads of courts to determine cases that met the criteria. Heads of courts were required to publish the list of qualified cases for the information of the necessary stakeholders. Thus, despite its hybrid (unitary and federal) structure, the Nigerian judiciary was

⁸⁶ See the circular with Ref. No. NJC/CIR/HOC/11/631. The National Judicial Council (NJC) is the apex body with supervisory powers over judicial officers in Nigeria. The NJC is chaired by the Chief Justice of Nigeria and is comprised of a variety of persons mostly with legal background. Among other functions, the NJC is responsible for recommending persons for appointment to judicial offices at the state and federal levels.

⁸⁷ Overview of the Guidelines issued by the Nigerian Courts for the conduct of court proceedings during the COVID-19 Lockdown period’

⁸⁸ See NJC Circular Ref. No. NJC/CIR/HOC/11/631.

⁸⁹ See NJC Circular, Ref No. NJC/CIR/HOC/II/660 May, 2020

⁹⁰ As above.



able to coordinate the operations of the various courts under the leadership of the Chief Justice of Nigeria. The critical question then becomes: how has or did all of these COVID-19-induced regulations and modifications impact on the administration of, and access to justice in the case study countries? The next section engages this question.

5. Impact of COVID-19 on the Administration and Access to Justice

In the previous sections, this study has described the structure of the court systems in the three case study countries, set out in broad terms the response of the respective governments to the COVID-19 pandemic and described the responses of the respective judiciaries to the pandemic and the consequent directives of the executive in each state. A major challenge in all three focus countries that also impacts this study is the lack of official data on legal and justice services. Notwithstanding the dearth of official data, informal interviews with key informants (especially from the Gambia and Nigeria) provides some in this section, the study analyses the impact that COVID-19 and the various responses has had on access to justice in the three countries. This section is approached on issue basis rather than on country basis.

5.1 Unplanned or inadequately planned down-scaling

The most obvious impact of COVID-19 on access to justice in all the three focus countries is the scaling down of legal and justice services. The scaling down of legal and justice services is both a consequence (impact) of the pandemic and a cause (trigger) of other impacts. From the impact (s against the impact-trigger) perspective, the sudden emergence of the COVID-19 pandemic resulted in unplanned or inadequately planned scaling down of legal and judicial services. As is evident from the description of the responses of the respective Judiciaries (and the heads of the judiciaries) in all three countries), justice services - formal services provided by courts and their registries - were all but completely shut down for brief periods without opportunities for judicial officers, court officials and court users to be sufficiently notified in advance.

The abrupt discontinuation of justice and legal services meant that the judiciaries in all three focus countries either did not plan or inadequately planned for the suspension of those services. Without prior information and therefore, without sufficient time to make any necessary arrangements to moderate the impact of the suspension, pending cases (whether criminal or civil) had to be adjourned suddenly. Generally, (except for the Gambia where an inter-



institutional task force was put in place by the Chief Justice), lock down measures in the Judiciaries were carried promulgated and implemented with little or no involvement of major stakeholders and actors in the justice and legal sector. Consequently, judicial responses were largely top-down and reactionary.

Without functioning court registries, new applications could not be filed just as every day court /legal services such as those provided by Commissioners of Oath and Notaries Public could not be accessed by those in need of such services. Although, the judiciaries in the Gambia and in Nigeria conveyed intentions to maintain minimal court services to meet situations of urgency, this study found no evidence that such minimal services were available in all areas where courts are located. For instance, a practising lawyer based in Lagos, Nigeria stated that ‘I needed to urgently compile records of proceedings from the High Court in order to meet the deadline for transmission to the Court of Appeal in Lagos but no court clerks was available to assist me.’⁹¹ In the Gambia, a respondent from the NHRC stated that ‘the receipt of complaint of human rights violations moved online.’⁹² Although, the respondent did not elaborate, it is suspected that only privileged and technologically aware victims could have taken advantage of this online possibility. By contrast, there was no indication that the possibility of online filing was immediately available in the courts of all three focus States in the initial few weeks. This meant that all legal disputes and violations of human rights (whether linked to enforcement of the COVID-19 (lock down) regulations that arose in the first to second or third weeks of the suspension of court services would have gone without a possibility of redress. Consequently, the unplanned or inadequately planned suspension and or scaling down of justice and legal service was a major impact on access to justice in all three countries.

5.2 Lack of access to information and effective services

A common feature in the executive’s response to the pandemic in all three countries is that neither the justice system nor the legal profession was considered to be involved in the provision of essential and critical services to society. Accordingly, in all three countries, the judicial and legal services sectors were not exempted from the operations of regulations introduced to contain and manage the Pandemic. The result of this non-exemption in all three countries was that even in situations of legal urgency or urgent legal need, neither victims (including potential litigants) nor lawyers (including other legal services providers) could meet face to face. In this regard, a respondent from the Gambia Bar Association noted that ‘direct engagement with potential clients was disrupted and it hit the weakest in the society most because they usually do not have other means of getting to legal services providers’.⁹³ Where

⁹¹ Key informant (telephone) interview with Lagos based lawyer on 23 May 2021. Respondent is a male lawyer who has been practising law for over 10 years.

⁹² Key informant interview with Gambia NHRC Staff on 14 June 2021.

⁹³ Key informant interview with staff of the Gambia Bar Association on 8 June 2021.



people are unable to meet with legal services providers and the latter are unable to immediately approach the courts, there is an inevitable strain on both the availability of precious legal information and effective judicial services. This is a major negative impact on access to justice in all three countries where the percentile of illiterate consumers of legal and justice services are found.

As generally recognized among stakeholders, justice needs during emergency situations such as the COVID-19 pandemic are at least of five different types - existing and on-going criminal cases, actions for the protection of rights during enforcement of emergency regulations, actions for the protection of human rights generally, existing and on-going civil cases, and criminal action brought against violators of emergency regulations. This study has shown that none of these justice needs were addressable when the courts were closed down completely. Although, in one case (the Gambia) the official position was that court officials were in place to offer other judicial services, it was not possible to verify if this indeed happened and what kind of other justices were on offer.

From the perspective of potential and existing litigants, new and existing defendants in criminal cases and those arrested for alleged violation of lockdown regulations, the study found that the closure of law offices and the offices of other legal services providers such as law clinics, legal aid services, human rights defenders and the offices of the national human rights commissions resulted in denial or at least very restricted access to legal advice and other legal services. For lawyers and other legal services providers as well as litigants and potential litigants acting on their own behalf, there was no evidence that justice services were available during the complete shut-down of the courts in all three countries. Even where courts partially reopened or adapted procedures to accommodate technology driven proceedings, there was no evidence that adequate and accessible information was available to court users. For instance, while the NJC Guidelines stipulate that certain information such as the list of priority cases be published for the benefit litigants, counsel and the general public, most courts lacked functional websites from which such information can be garnered. In situations where litigants act for themselves, access to such information is further complicated, sometimes by the fact that the litigants are more comfortable in languages other than English language which is the official language of the courts.

5.3 Loss of judicial oversight over implementation of lockdown regulations

According to the Nigerian National Human Rights Commission, a total of 105 complaints of violations of human rights in the course of enforcement of the lockdown were monitored or received from 24 out of 36 states in Nigeria between 31 March 2020 and 13 April 2020. These included eight document incidents of extrajudicial killing that led to 18 deaths. The Commission also recorded 33 incidents of torture, inhuman and degrading treatment along with



a number of other violations.⁹⁴ In the Gambia, *the Foroyaa Newspaper* reported in March, the arrest of several traders by the Gambian Police for ‘over pricing commodities.’⁹⁵ The report indicated that the traders were held in police custody and later released on bail as ‘men awaiting trial’. In all these cases, the victims and their families had no access to the courts as the courts were not sitting. The absence of courts meant that the law enforcement agencies could act with impunity in the knowledge that they were not subject to any oversight by the judiciary.

5.4 Increased delay in the delivery of justice and backlog of cases

Although, the inordinate delays in the delivery of justice and the huge backlog of cases have always been a feature of the legal systems in all three case study countries as indicated in the various reports considered in this study, it is on record that these challenges were amplified by the pandemic and the response to it. For instance, *the Daily Trust Newspaper* in Nigeria reported that authorities expressed concern ‘over a delay of 155, 757 court cases in the 2019/2020 legal year arising from the lockdown to contain the global COVID-19 pandemic in Nigeria.’ The closure of courts and the suspension of full operations further exacerbated the already precarious speed of justice delivery in all the case study countries. In the case of Liberia, one respondent suggested that a number of (mostly uneducated) potential litigants sought relief in the informal customary justice system in order to avoid the challenge of delay in the formal legal system.

5.5 Inequalities and reduced protection for vulnerable groups

Another significant impact of the pandemic triggered suspension of justice services is the reduction of protection available to minorities and other vulnerable groups. For instance, in all three countries, there were indications that issues of domestic violence, sexual assault and other similar violations targeted against vulnerable groups rose. With the closure of activities in the justice sector, including the support system for vulnerable groups, victims had no forum to turn to for justice. In some cases, victims were reported to have been trapped in the same accommodation with their violators, thereby aggravating the risk of further violation.

Further, in cases where remote proceedings were available, the poor and vulnerable suffered unequal access as they could not afford the facilities required for virtual hearings. For instance, the Gambian judiciary required lawyers to provide for their own hard ware and internet access while only television viewing options were available for litigants in prison custody in matters

⁹⁴ See the NNHRC Report on Human Rights Violations following the implementation of COVID-19 Regulations 2020 and Directives issued by Federal and State Governments from 31st March to 13th April 2020.

⁹⁵ Mustapha Jallow, (30 Mar 2020) ‘Police Arrest Traders for Over Pricing Commodities.’



concerning them. Similarly, in Nigeria, the NJC Guidelines clearly required litigants and their counsel to be responsible for ‘ensuring that they have the facilities stipulated ... that would enable them to join and participate in the remote court sittings from their respective locations.’ Clearly, this kind of stipulation meant that only the rich and privileged litigants could be assured of access to justice in those conditions.

5.6 Congestion of detention facilities

The closure or suspension of justice services also affected the population of detention facilities in all the case study countries. In addition to the removal of opportunities for bail and other applications necessary for reducing prison populations, the study showed that the partial or total suspension of justice services resulted in fresh detentions (both related and unrelated to the violation of COVID-19 regulations) resulting in the increase of population in prisons and other detention centres.

6. Recommendations

6.1 Judiciaries in the three focus countries (as well as others in the region) should endeavour to operate in an inclusive, transparent and democratic manner in the formulation of policies, revision of rules and in the adoption of new rules and regulations to meet challenges occasioned by health and other crises such as the COVID-19 Pandemic. In this regard, consultations should not only be horizontal (in the sense of involving other judges or judiciaries at other tiers of a state) but also vertical (in the sense of other actors in the justice sector such as the law enforcement, correctional services, Bar Associations and other service providers such as Legal Aid bodies and NGOs). A major common feature of the response to the COVID-19 crisis by the Justice sector in all three focus country is the fact that the heads of the respective Judiciaries (occasionally in collaboration with a few judges at the highest echelon of the judiciary) took decisions, revised rules and made regulations without consultation with stakeholders.

6.2 Judiciaries (as well as Legislative and Executive bodies where applicable) need to be conscious of the existing as well as new inequalities in the legal system and the disproportionate impact of policies and remedial strategies on the most vulnerable members of society including the poor, women, children, the disabled and other vulnerable groups. Such historical, structural and other inequalities must be taken into consideration by judicial and other policy makers in the formulation, revision and or adaptation of policies and strategies in health and other crises situations.



6.3 Judiciaries in the focus countries and the region are encouraged to recognize the need for constant review and adaption of policies, rules and regulations in the justice sector. In this regard, responses to crises need to be deliberate, proactive and meticulous rather than reactionary and ad hoc.

6.4 There is a clear and obvious need for improvement of Court infrastructure in all three focus countries. The need exists in relation to both physical structures (including but not restricted to the size of, and furniture in court rooms) and technological infrastructure. Long term plans for infrastructural improvement should be prioritized over ad hoc approach to infrastructural development of the judicial sector.

6.5 The communications strategies and capacities of the judiciary in all three focus countries and in the entire region need to be consciously and strategically improved. The delivery of information to court users including especially Bar Associations and their members, other legal services providers and litigants (especially litigants acting for themselves) must be improved drastically. The websites of judiciaries and specific courts need to be made user friendly and aim at improving information delivery.

6.6 In the selection of cases to be prioritized where necessary, judiciaries should have and communicate clear criteria to reduce arbitrariness in the process.



