



KAMPALA INTERNATIONAL UNIVERSITY
LAW JOURNAL

KIULJ Vol.4 Issue 1,2022



**KAMPALA
INTERNATIONAL
UNIVERSITY
LAW JOURNAL**

(KIULJ)

KIULJ. VOL 4, ISSUE 1, 2022

KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL (KIULJ)

©KIULJ. 2022

Journal of School of Law, Kampala International University, Kampala, Uganda

All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the Editorial Board of the Journal except in the case of academic research and proper acknowledgement having been made.

ISSN: 2519-9501(Print)

ISSN: 2519-9528(Electronic)

Published by:

School of Law
Kampala International University
P.O. Box 20000 Kampala
Kampala
Uganda

ABOUT THE JOURNAL

KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL is the official journal of the School of Law, Kampala International University. It is a peer-reviewed journal providing distinctive and insightful analysis of legal concepts, operation of legal institutions and relationships between law and other concepts. It is guided in the true academic spirit of objectivity and critical investigation of topical and contemporary issues resulting from the interface between law and society. The result is a high-quality account of in-depth assessment of the strengths and weaknesses of particular legal regimes with the view to introducing reforms. In furtherance of the requirements of advanced academic scholarship, the Journal places high premium on originality and contribution to knowledge, plain and conventional language, and full acknowledgment of sources of information among other things. It is superintended by a Board of respected academics, lawyers, and other legal professionals.

The Journal offers useful reference material to legal practitioners, international organisations, non-governmental organisations and the academia. It also provides multipurpose policy guide for the government.

The Journal is a biannual publication. Calls for articles and submission datelines are determined by the editorial board.

All correspondences are addressed to:

The Editor-in-Chief

Kampala International University Law Journal,
School of Law,
Kampala International University,
P.O. Box 20000 Kampala,
Uganda.

valentine.mbeli@kiu.ac.ug

Tel: (+256) 0706970595

Website: www.kiulj.kiu.ac.ug

Scope

Kampala International University Law Journal (KIULJ) is the official Journal of the School of Law, Kampala International University, Uganda. It is a peer-reviewed Journal providing an objective and industry focused analysis of national and international legal, policy and ethical issues. The Journal publishes well researched articles that are in sync with sound academic interrogation and professional experience on topical, legal, business, financial, investment, economic and policy issues and other sectors.

Citation

This Journal may be cited as *KIULJ Vol 4, Issue 1, 2022*.

Disclaimer

Statements of fact and opinion contained in the *Kampala International University Law Journal* are those of the respective authors and contributors and are not necessarily those of the School of Law, Kampala International University, the editors or the institutions with which the authors are affiliated. Accordingly, the authors and contributors are responsible for the integrity and accuracy of the respective material contents and references. The School of Law, Kampala International University, does not make any representation, express or implied, with regard to the accuracy of the materials in the Kampala International University Law Journal and wishes to unequivocally disclaim any responsibility or liability for such materials.

FROM THE EDITORIAL SUITE

The primary objective of the **KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL (KIULJ)** is to provide a platform for a robust intellectual discourse, through the publication of incisive and insightful articles and other contributions from a variety of scholars, jurists and practitioners across jurisdictions. The desire to accomplish this objective guides the choice of the materials being presented to the reading public in every edition. The peer review and editing processes of the papers that are finally selected for publication are equally influenced largely by the pursuit of this goal.

To this end, articles from seasoned scholars and practitioners in each edition address a wide spectrum of issues from different branches of the law, such as, International Criminal Law, Law of International Institutions, Environmental Law, Human Rights Law, Medical Law, Oil and Gas Law, Constitutional Law, Corporate Governance to mention but a few. You will, no doubt, find these scholarly works a worthy contribution to knowledge in their respective fields.

On behalf of the Editorial Board, I wish to appreciate all our reviewers, internal and external, for their constructive criticisms, comments and suggestions. These go a long way to enrich the quality of the papers published in this Journal. The various contributors who painstakingly addressed the observations and suggestions of the reviewers, thus facilitating the achievement of the purpose of the review process also deserve our commendation.

We also, with a grateful heart, acknowledge the interest our teeming readers have continued to show in the succeeding editions of the journal just as we assure them of our readiness to give them the best always. We equally thank our editorial consultants for their useful advice and comments that have contributed to the continuous improvement of the quality of the journal. Legal practitioners and scholars are hereby informed that contributions to our journal are received on a rolling basis. They should feel free to send in their manuscripts and ensure they comply with the submission guidelines as spelt out in the Call for Papers obtainable from the journal's website (www.kiulj.kiu.ac.ug). All contributions should be addressed to the Editor-in-Chief and forwarded to the email addresses supplied in this edition.

VALENTINE T. MBELI (Ph.D)

Editor-in-Chief.

e-mail:valentine.mbeli@kiu.ac.ug

EDITORIAL BOARD

Valentine T. Mbeli (PhD)

School of Law, Kampala International University,
Kampala Uganda

Editor in Chief

Rosemary Kanoel

School of Law, Kampala International University,
Kampala Uganda

Secretary

Roberts A. Amade (PhD)

School of Law, Kampala International University,
Kampala Uganda

Member

Ifeolu John Koni (PhD)

Faculty of Law, Redeemer's University,
Ede, Nigeria

Member

Mahmud Sewaya

School of Law
Kampala International University

Member

TajudeenSanni (PhD)

School of Law
Kampala International University

Member

Gloria Shajobi-Ibikunle (PhD)

Faculty of Law, University of Abuja, Nigeria

Member

Gabriel Adeyunma (PhD)

Faculty of Law, University of Abuja, Nigeria

Member

Norman Mugarura (PhD)

School of Law, Kampala International University,
Kampala Uganda

Member

EDITORIAL CONSULTANTS

Prof. Tony Ijohor (SAN)

Faculty of Law, Benue State University Nigeria

Prof Elijah Adewale Taiwo

Dean, Faculty of Law Adekunle Ajasin, University
Akungba-Akoko, Ondo State.

Prof Olaide Abass Gbadamosi

Dean, Faculty of Law, Osun State University, Osogbo.

Leah Ndimiwrno (PhD)

Public Law Department Nelson Mandela Metropolitan University South Africa

Alex Bashasha

Principal Partner Alex Bashasha& Co Advocates

Professor Kasim Balarabe

Jinda Global Law School, India

TABLE OF CONTENTS	
LEGAL AID SERVICES IN NIGERIA AND UNITED STATES OF AMERICA: AN EPILEPTIC JUSTICE SYSTEM	
ABUBAKAR SHEHU AHMAD TIJANI, ABDULSALAM LUKMAN OLADELE (Ph.D) & AFOLABI MUTIAT ABISOLA	1
CEMAC AND OHADA INTEGRATION LAWS: COMPLEMENTS AND CONFLICTS IN THE RESCUE OF DISTRESSED BANKS IN CAMEROON	
DR. KWATI EVELYN BANINJOYOH.....	13
GAMBIA v. MYANMAR: ESTABLISHING THE CRIME OF GENOCIDE AT THE INTERNATIONAL COURT OF JUSTICE	
AISHA SANI MAIKUDI.....	31
OBSERVING CORPORATE GOVERNANCE ETHICAL BEST PRACTICES OF PRIVACY AND DATA PROTECTION IN THE COVID -19 ERA IN NIGERIA	
OLARIYIKE D AKINTOYE, Ph.D.....	47
A DECADE STUDY OF LOCAL GOVERNMENTS AND INTERGOVERNMENTAL FISCAL RELATIONS IN SOUTH AFRICA: A CASE STUDY OF LOCAL MUNICIPALITIES IN NORTH WEST PROVINCE	
OLADIRAN AYODELE, Ph.D.....	62
RAPE IN MATRIMONY: ADDRESSING THE CONFLICT BETWEEN STATUTORY AND CUSTOMARY LAWS WITH FOCUS ON ANGLOPHONE CAMEROON	
FON FIELDING FORSUH, Ph.D. & MBETIJI MBETIJI MICHEL Ph.D.....	82
A CRITIQUE OF EXTERNALLY DRIVEN MECHANISMS FOR ATTRACTING FOREIGN INVESTMENT IN WEST AFRICA	
OLUGBEMI JAIYEBO, LL.M.....	101
ANTI-MONEY LAUNDERING (AML) LEGAL FRAMEWORK: THE SHARIA PERSPECTIVES	
MARUF ADENIYI NASIR.....	116
INTERROGATING THE EFFECTS OF ARBITRATION AGREEMENT ON THIRD PARTIES	
JOHN FUNSHO OLORUNFEMI, Ph.D. & GODWIN MUSA OMALE Ph.D.....	134

**ISSUES IN APPRAISING THE IMPACT OF LEGISLATIVE ASSEMBLIES
IN EMERGING DEMOCRACIES**

OLAYIWOLA O. OLADELE & JACOB O. AROWOSEGBE.....150

**OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS IN WORK
RELATIONS UNDER OAPI: A BRIEF SURVEY**

KELESE GEORGE NSHOM (PhD) & NDUKONG MINETTE NFORKWE.171

**THE LEGAL FRAMEWORK ON DIGITAL COMMERCE IN NIGERIA:
THE BAN OF CRYPTOCURRENCY AND ITS EFFECTS ON HER
FINANCIAL SPACE**

OGUNWANDE, OMOLABAKE & OGUNDARI, ENOBONG.....189

**AGE PROFILES IN CHILD LABOUR LAWS AND THE QUEST FOR
INCLUSIVE DEVELOPMENT**

ADERONKE A ADEGBITE, Ph.D.....203

LEGAL AID SERVICES IN NIGERIA AND UNITED STATES OF AMERICA: AN EPILEPTIC JUSTICE SYSTEM

ABUBAKAR SHEHU AHMAD TIJANI*, ABDULSALAM LUKMAN
OLADELE (Ph.D)** & AFOLABI MUTIAT ABISOLA***

Abstract

Equal and efficient access to justice system is lacking among the citizens of Nigeria and United States of America due to economic problems, lack of appropriate mechanisms and avenues that could guarantee the right of access to court and access to justice and inadequate legal aid services. Therefore, there is need to eradicate or, at least, reduce the barriers militating against adequate opportunity to access courts and justice by the low-income persons. This paper seeks to examine the concept and effects of legal aid services in Nigeria and United States of America as it affects the right of access to court and right of access to justice of the citizens of the two countries under review. The paper adopted doctrinal approach which entails library – based analysis of the content of both the primary and secondary sources of information. The primary sources in this regard include the various international instruments such as the Universal Declaration of Human Rights, 1948, Canadian Charter of Rights and Freedoms 1985, African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Legal Services Corporation Act of 1974, the European Convention on Human Rights as well as national legislations such as the Constitution of the Federal Republic of Nigeria, 1999 (as altered), and the Constitution of the United States of America, Legal Aid Act, Cap L9, L.F.N; 2011 and case laws. The secondary sources on the other hand are textbooks, journal articles, law reports, newspapers and internet materials. The paper found that despite the provisions of the Laws mentioned above, viz-a-viz the Constitution of the Federal Republic of Nigeria, 1999, the Constitution of the United States of America 2007 and the European Convention on Human Rights, some problems are impeding the actual implementation of adequate legal aid services to the prospective beneficiaries in Nigeria and United States of America. This paper concluded that for people to enjoy effective and efficient access to court

* Lecturer, Department of Private and Property Law, Faculty of Law, University of Ilorin, Kwara State, Nigeria.
E-mail: asat2001ng@gmail.com Mobile: +2348035014962

** Lecturer, Department of Public and International Law, Faculty of Law, Al-Hikmah University, Adeta Area, Ilorin, Kwara State, Nigeria. E-mail: abduluk111@gmail.com, loabdulsalam@alhikmah.edu.ng. Mobile: +2348062608012

*** Legal Practitioner, Abubakar Ahmad Tijani Law firm, Ajufunbaya Chambers, No. 15, Lower Taiwo Road, Ilorin, Kwara State, Nigeria. E-mail: afolabimutiati01@gmail.com Mobile: +2348133569931

and access to justice through legal aid services, the government should establish a number of mechanisms and avenues that would guarantee the right to access to court and access to justice through legal aid services in civil and criminal cases alike to everybody, irrespective of their financial positions. This will further activate proper dispensation of substantial justice to all citizens on equal basis without any form of discrimination or bias.

Keywords: Legal Aid, Access, Court, Justice, Human rights,

Definition of Key terms

Legal Aid: This connotes free or inexpensive legal services provided to those who cannot pay full price or who cannot pay for legal services at all.

Access: This is the ability or opportunity to enter; approach; pass to and from or communicate with others.

Court: It is an organised body with independent judicial powers defined by law, meeting at a time and place fixed by law for the judicial public administration of justice.

Justice: Justice is the fair and proper administration of laws.

Human Rights: It is the freedoms, immunities and benefits that all human beings are entitled to claim as a matter of right in the society in which they live.

Introduction

Legal aid can be described as the provision of assistance to people who are unable to afford legal representation and access to the court system.¹ It can also be defined as “payment from public funds given to people who cannot afford to pay for advice”.² Similarly, Legal aid can be described as “free or inexpensive legal services provided to those who cannot pay full price”.³ It can be gathered from the above various definitions that the term legal aid means rendering of free legal assistance in whatever form to people who do not have fund or who do not have sufficient fund to engage the service of a legal practitioner.

In Nigeria and U.S.A., the Constitution provide for legal representation for any citizen who appears before a court of law for one case or the other.⁴ This paper is

¹ Regan, F., *The Transformation of Legal Aid: Comparative and Historical Studies* (Oxford University Press, 1999) pp.88-90 available at <https://en.m.wikipedia.org-legal> accessed on 19/06/2019. See also. Abubakar, S.A.T; et al., “Access to Justice Through Legal Aid Service in Nigeria: A Road with Pot holes” *Al-Hikmah University Journal of Public and International Law*, vol. 1, No. 1, 2017, pp.147-158.

² Catherrine, et al., *Oxford Dictionary of Current English* (10th ed.) (Oxford University Press, New York, 2006), p.518.

³ Bryam, A.G., *Black’s Law Dictionary* (8th ed.) (Thomson West, U.S.A; 1990) p.912

⁴ “Making Justice Equal” available at <https://www.americanprogress.org/issues/criminal-justice/.../12/making-justice-equal> accessed on 20/06/2019.

desirous of examining the effectiveness of legal aid services in Nigeria and United States of America as it affects the right of access to court and right of access to justice of the citizens. The paper also discusses the mechanism for legal aid services in Nigeria and USA, the scope of legal aid Act, CapL9, Laws of the Federation of Nigeria, 2011, the provision of legal aid services in United States of America, and the interface between the legal aid services in Nigeria and United States of America respectively.

Mechanism for Legal Aid Services in Nigeria and USA

One important agency that can be deployed to facilitate quick access to court is the Legal Aid Scheme which has been established in Nigeria to assist the indigent citizens to access court and justice when necessary, and to secure the services of Legal Practitioners to enforce their legal rights.⁵ However, a careful perusal of the provisions of the Legal Aid Act, Cap L9, L.F.N; 2011 indicates that the Act limits the grant of Legal aid services to certain subject matters or proceedings enumerated in the Act.⁶

The congress of the United States of America also created Legal Services Corporation in 1974 in order to respond to the necessity to provide equal access to the system of justice.⁷ The sponsors of Legal Services Corporation observed that provision of legal aid or assistance to those who face economic problems will reduce barriers militating against adequate opportunity to access court by the low-income persons.⁸ Today, the Legal Services Corporation appears to be the largest source of funding for civil legal aid for the low-income Americans.⁹ It funds programmes that provide direct legal services in every State in the United States of America.¹⁰ Legal aid Lawyers help Americans to meet their daily needs in terms of legal services including housing and health care. They also provide assistance to victims of Deep-Water Horizon Oil spill in the Gulf coast to receive benefits from government compensation funds.¹¹

⁴Section 36(6) (c), 1999 Constitution of the Federal Republic of Nigeria (as altered) and Article VI made in addition to an amendment of the Constitution of the United States of America proposed by the Congress and ratified by the Legislatures of the several States, Pursuant to the fifth Article of the Original Constitution.

⁵See the preamble to Legal Aid Act, Cap. 205, Laws of the Federation of Nigeria, 1990 which is now Legal Aid Act, No. 17, Cap. L9, Laws of the Federation of Nigeria, 2011. See also, Nlerum, S.O; "Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects" available at <http://dx.doi.org/10.1590/S1806-64452005000200007> accessed on 19/06/2019. General Olusegun Obasanjo was the first person to promulgate Legal Aid Decree in Nigeria on 26th November, 1976. See the Nation, vol. 11, No. 3773 of 22/11/2016, p.27.

⁶See the 2nd Schedule to the Act.

⁷See Legal Services Corporation Act of 1974, Pub. L. NO. 355, 88 state.378, (1974). See also Rebecca, B.P., "Making Justice Equal" available at <https://www.americanprogress.org/issues/criminal-justice/.../12/making-justice-equal> accessed on 20/06/2019.

⁸Ibid

⁹Legal Services Corporation "Who We Are," available at <http://www.lsc.gov/about-lsc/who-we-are> accessed on 20/06/2019.

¹⁰Ibid

¹¹Ibid

The European Convention on Human Rights also guarantees to person charged with criminal offence, the right to have legal representation including the right to access to free legal assistance if he has no sufficient means and the interest of justice so requires.¹² A person cannot benefit from this provision of the convention unless it is established that: the person does not have “enough means” (financial criterion) and free legal assistance is required” in the interest of justice” (substantive criterion).

Notwithstanding the provisions of the Laws mentioned above, the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Constitution of the United States of America 2007 and the European Convention on Human Rights, some problems are still impeding the actual implementation of adequate legal aid services to the prospective beneficiaries. For instance, in Nigeria, one of the major reasons why Legal Aid Act was promulgated is to ensure that indigent citizens have equal access to justice through legal representation or legal aid services. But the attempt to limit the subject matters or proceedings upon which legal aid or services can be granted to the citizens’ amounts to a clog in the wheel of administration and dispensation of justice. It also betrays the purpose for which the Act was promulgated. This position is in accord with the view of the International Commission of Jurists at its conference on the Rule of Law in a Free Society held in Delhi in 1959 where it was observed that:

*“Equal access to Law for the rich and poor alike is essential to the maintenance of the rule of law. It is therefore essential to provide adequate legal service and representation to all those threatened as to their life, liberty, property or reputation who are able to pay for it”.*¹³

The Scope of Legal Aid Act, Cap L9, Laws of the Federation of Nigeria, 2011

Pursuant to the Second Schedule of the Act, the proceedings in respect of which legal aid may be given in Nigeria under the Criminal Code and Penal Code are as follows:

¹²See Article 6 (3) (c) of the Convention. See also [web.worldbank.org/.../ O,, content MDK: 20760742~menuPK: 1990179~page PK:148 956 ~ ...](http://web.worldbank.org/.../O,,contentMDK:20760742~menuPK:1990179~pagePK:148956~...) accessed on 20/06/2019. See also Article VII (i) (c) of the African Charter of Human and People’s Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004 which provides that every individual shall have the right to have his cause heard. Which comprises the right to defence, including the right to be defended by counsel of his choice.

¹³Omidoyin, T.J. “Epileptic Legal Aid Scheme in Nigeria: A Breach of Right to Fair Hearing in Nigeria” Journal of Law and Constitutional Practice, Vol. 10, 2017, p.32.

A.

S/N	Criminal Code	Penal Code
1	Murder of any degree	Culpable homicide punishable with death
2	Manslaughter	Culpable homicide not punishable with death
3	Malicious or willful grievous hurt	Wounding or inflicting grievous bodily harm
4	Assault occasioning actual bodily harm	Criminal force occasioning actual bodily harm
5	Common assault	
6	Affray	
7	Stealing	
8	Rape	
9	Armed robbery	

B. Aiding and abetting, or counseling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit any of the offences listed in paragraph A of the schedule.

- C.
1. Civil claims in respect of accidents including employee's compensation claim (under the Employee's Compensation Act, (Act No.13 of 2010)
 2. Civil claims to cover breach of fundamental rights guaranteed under chapter IV of the constitution of the Federal Republic of Nigeria.
 3. Civil claims arising from criminal activities against person who are qualified for Legal Aid under this Act.

Flowing from the above, it can be said that the Legal Aid Act has defined its own scope or boundary with certainty without leaving anyone in doubt as to the matters or proceedings and the class of person(s) upon which legal aid service can be accorded. Those matters or proceedings do not include or extend to land matters, chieftaincy matters, recovery of debts, tenancy matters and the like.

It follows therefore that the indigent citizens whose cause of actions fall outside the items recognised by the Legal Aid Act may not have opportunity to access court or access justice through the mechanism of legal aid if they wish to be represented by legal practitioner unless the legal practitioner himself decides to render gratuitous services to the said indigent citizens. It is further submitted that the Legal Aid Act under consideration is a partial solution and not complete solution to the obstacles militating against efficient and effective implementation of right of access to court and access to justice of the indigent Nigerians.

Provision of Legal Aid Services In United States of America

Similarly, in the United States, Americans need lawyer's help for almost everything they do, from an unjust eviction to preventing wrongful conviction.¹⁴ In more than three-fourths of all civil trial cases in the United States, at least one litigant does not have a lawyer.¹⁵ Figures are even very clear when it comes to family law, domestic violence, housing and small-claims matters; such disputes that amount up to over 25, 000 dollars, depending on the State. In this class of cases, about seventy to ninety eight percent of the parties involved are indigent people and yet they are not entitles to legal aids¹⁶ whereas about ninety to ninety – five percent of the landlords in such cases are represented by lawyers before the Landlord and Tenant Branch of the D.C. At Superior Court, only about five to ten percent of the tenants have legal assistance.¹⁷ Unlike in criminal matters, in civil cases, parties do not have a generalized right to counsel. While all states provide a right to counsel for few criminal or civil cases, most parties in civil cases that involve basic human needs such as housing do not have a right to legal representation.¹⁸ Unlike other countries, United States places the burden on an individual to seek justice by accessing the Court.¹⁹ Other developed countries have enshrined the right to counsel in civil cases and devote about three to ten times more funding to civil legal aid than the United States of America.²⁰

¹⁴ Ibid, note 59

¹⁵ National Centre for State Courts, "The Landscape of Civil Litigation in State Courts" (2015) available at http://www.ncsc.org/~media/Files/PDF/Research/Civil_Justice_Report-2015.Ashx. See also Jessica, K.S., "Demand Side Reform in the Poor People's Court" Connecticut Law Review 47 (3) (2015): 741 – 807 available at <http://connecticutlawreview.org/files/2015/01/9-steinberg>. Pdf accessed on 20/06/2016.

¹⁶ Deborah R., "Access to Justice" (Oxford University Press, Oxford, UK, 2004).

¹⁷ Eric, S.A., et al., Testimony Before the Council of the District of Columbia Committee on the Judiciary hearing on B21 – 0879, "Expanding Access to Justice Act of 2016". 19th October, 2016 available at https://www.legalaiddc.org/wp-content/uploads/.../bharrison_son_B21_879_10.19.16.pdf accessed on 20/06/2019.

¹⁸ John Pollock, "The Case Against Case-by-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil cases" Drake Law Review 61 (2013): 763-815 available at https://civilrighttocounsel.org/uploaded_files/4/The_Case_Against_Case_by_Case_Pollock_Pdf accessed on 20/06/2019.

¹⁹ Ibid

²⁰ Earl, J., "Lifting the American Exceptionalism Curtain. Options and Lessons From Abroad", Hastings Law Journal 67 (2016) 1225-1264, available at https://www.hastingslawjournal.org/wp-content/uploads/John_son-67_5_Pdf. See also World Justice Project, "Rule of Law Index 2015" (2015), available at https://worldjustproject.org/sites/default/files/roli_2015_O.pdf accessed on 20/06/2019. The report ranks United States 65th out of 102 countries on access to Civil Justice.

In civil cases, the gap between legal needs and services available in United States has the greatest implications for the Americans. Those at greatest risk under the policies announced by the government²¹ (on the civil cases) are people of colour,²² women,²³immigrants,²⁴ the elderly,²⁵ people with disabilities,²⁶ lesbian, gay, bisexual and transgender people (LGBT) are more to live in poverty and also more likely to be in need of legal aid/assistance.²⁷

In criminal cases, those who cannot engage the service of a legal practitioner are at disadvantage notwithstanding the Constitutional provision on right to legal representation in criminal matters.²⁸

Defendants with publicly appointed attorneys or legal practitioners are more likely to be detained before the commencement of trial and are more likely to be jailed.²⁹

²¹Jane, C.T., "The 141 Stances Donald Trump Took During His White House". NBC News, November 28, 2016, available at <http://www.nbcnews.com/politics/2016-election/full-list-donald-trump-s-rapidly-changing-policy-positions-n547801>. Fortune; "Civil Rights Groups Sound the Alarm About the Trump Administration". November 15, 2016, available at <http://fortune.com/2016/11/15/trump-administration-civil-rights-groups> accessed on 21/06/2019.

²²National Poverty Centre, "Poverty in the United States" available at <http://www.npc.umich.edu/poverty>; accessed on 21/06/2019. See also Deborah, B.R; et al., "Low-income Working Families, The Racial/ethnic Divide" (The Working Poor Families Project, Washington, 2015) available at <http://www.Working Poor Families.org/wp-content/uploads/2015/03/WFPF-2015-Report-Racial-ethnic-Divide.Pdf>, accessed on 21/06/2019.

²³See National Women's Law Centre, "NWLC Analysis of 2014 Poverty Census Data" October 21, 2015 available at <http://nwlc.org/resources/nwlc-analysis-2014-Census-poverty-data>, accessed on 21/06/2019.

²⁴See Columbia Law School Human Right Institution and Northeastern University School of Law Program on Human Rights and the Global economy, "Equal Access to Justice: Ensuring meaningful Access to Counsel in Civil cases, including Immigration Proceedings" (2014) available at http://web.law.Columbia.Edu/sites/default/files/microsites/human-rights-institute/filed/equal_access_to_justice_cerd_shadow_report.Pdf accessed on 21/06/2019.

²⁵Juliette, C., et al., "Poverty Among Seniors: An updated Analysis of National and State Level Poverty Rates Under the Official and Supplemental Poverty Measures" (Kaiser Family Foundation, Washington, 2015) available at <http://kff.org/medicare/issue-brief/poverty-among-seniors-an-updated-analysis-of-national-and-state-level-poverty-rates-under-the-official-and-supplemental-poverty-measures/> accessed on 21/06/2019. See also Jeffrey, D., et al., "Increasing Access to Justice For the Elderly and Other: The Illinois experience". Experience 24 (1) (2014) available at http://www.americanbar.org/publications/experience/2014/spring/increasing-access-justice_the_elderly_and_others_illinois_experience.Html, accessed on 21/06/2019.

²⁶Palm, F., "Why Disability and Poverty Still Go Hand In Hand 25 Years After Landmark Law," National Public Radio", July, 23, 2015 available at <http://www.npr.org/sections/health-shots/2015/07/23/424990474/why-disability-and-poverty-still-go-hand-in-hand-25-years-after-landmark-Law>, accessed on 21/06/2019.

²⁷Legal Services NYC, "Poverty Is an LGBT Issue: An Assessment of the Legal Needs of Low-Income LGBT People" (2016) available at <http://www.legalservicesnyc.org/storage/PDFs/igbt%20report.Pdf>. Badgett, M.V.L., et al "New Patterns of Poverty in the Lesbian, Gay and Bisexual Community" (Williams Institute, IOS Angeles, 2013) available at <http://www.Williams Institute.Law.Uncla.edu/wp-content/uploads/LGB-poverty-update-June-2013pdf>; Nico, S.Q., "Poverty in the LGBT Community" (Centre For American Progress, Washington, 2009, available at http://www.americanprogress.org/wp-content/uploads/issues/2009/07/pdf/igbt_poverty.Pdf accessed on 21/06/2019.

²⁸State of New Jersey v. Terrence Miller, NO.A6243-07T4, Superior Court of New Jersey, Appellate Division, June 13, 2011 available at <http://caselaw.findlaw.com/nj-superior-court-appellate-division/1570547.html> accessed on 21/06/2019. Terrence Miller met his Legal practitioner (appointed for him by the court for his defence) for the first time on the morning of his first hearing on drug charges. The legal practitioner who had not handled a criminal case in seven years, was assigned to Miller's case about four days to the hearing of the case. He was only able to speak to Miller for a few minutes before the commencement of the trial, still, the presiding Judge denied Miller's lawyer's request for adjournment to prepare and Miller was convicted in just a few days. On appeal against the conviction, an appellate court in New Jersey affirmed the conviction on the ground that Miller failed to prove that the trial would have gone differently, had he met his legal practitioner earlier. See also Andrew, C., "How much does a Public Defender Need to Know About a Client", The Atlantic, October 23, 2013 available at <http://www.theatlantic.com/national/archive/2013/10/how-much-does-a-public-defender-need-to-know-about-a-client/280761/> accessed on 21/06/2019.

Most defendants who are represented in court by publicly appointed counsel resort to plea bargains while about ninety to ninety-five percent of them plead guilty to the allegation leveled against them.³⁰ Sometime in year 2015, the Bureau of Justice Statistics published detailed figures to the effect that more than eighty percent of defendants facing charges on felony offences and violent crimes in United States countries could not afford to hire counsel, the same thing happened to sixty six percent of such defendants in the United State District Courts.³¹

United States congress has not only placed restrictions on who can receive legal aid but it has also politicized how legal aid can be used. For instance, the Hyde Amendment bars the use of Federal Funds to pay for abortion.³² Similarly, the Legal Services Corporation Act bars beneficiaries from abortion – related legal proceedings.³³

Consequent upon the limitations placed by the Legal Services Corporation Act on legal aid services, legal practitioners are limited in what they can do to effect the overarching policies and institutions that foment and entrench injustice. Therefore, once a program accepts funding from the Legal Services Corporation, it must adhere to the restrictions in the Act in all activities, even if it receives money from other non-restricted sources.³⁴

Legal Aid Services in Nigeria and United States of America: The Interface

In Nigeria, unlike in the United States, legal aid services can be rendered to indigent citizens both in civil cases and in criminal cases.³⁵ In the United States, the indigent citizens enjoy legal aid services only in criminal matters.³⁶

²⁹See Bureau of Justice Assistance“Contracting for Indigent Defense Services: A Special Report (U.S. Department of Justice, 2000) available at <http://www.ncjrs.gov/pdffiles1/bja/181160.pdf> accessed on 22/06/2019.

³⁰Ibid. People of colour are disproportionately represented among those in poverty and in Criminal Justice System due in part to racial profiling and bias at stages from investigation to prosecution. See Rebecca, M., “Racism in Our Courts: The Underfunding of Public Defenders and its Disproportionate Impact Upon Racial Minorities”. *Hastings’ Constitutional Law Quarterly* 22 (1994) 219 – 267 available at <http://www.hastingsconlawquarterly.org/archives/V22/11/Marcus.pdf>. Marc, M., “Justice For All Challenging Racial Disparities in the Criminal Justice System” *Human Rights* 37 (4) (2010): 14-16, available at http://www.americanbar.org/content/dam/aba/publications/human_rights_magazine/hr_fall10_full.authcheckdam.pdf accessed on 22/06/2019.

³¹Caroline, W..H., “Defense Counsel in Criminal Cases” (Bureau of Justice Statistics, Washington, 2000) available at <http://www.bjs.gov/content/pub/pdf/dccc.pdf>; Alexandra, N., “Gideon’s Silence”. *State*, May 31, 2006 available at http://www.slate.com/articles/news_and_Politics/jurisprudence/2006/05/gideons_Silence.html accessed on 22/06/2019.

³²Heidi, W., et al; “The Hyde Amendment Has Perpetuated Inequality in Abortion Access for 40years” (Centre for American Progress, Washington, 2016) available at https://www.americanprogress.org/issues/women/report/2016/09/29/145009/the_hyde_amendments_has_perpetuated_inequality_in_abortion_access_for_40_years/ accessed on 22/06/2019.

³³See Legal Services Corporation, “About Statutory Restrictions on LSC – Funded Programs” available at <https://www.lsc.gov/about-statutory-restrictions-on-lsc-funded-programs>, accessed on 22/06/2019.

³⁴Brennan Centre for Justice, “The Restriction Barring LSC Funded Programs from Freely Using their – Non – LSC Money”, June 20, 2001, available at <https://www.brennancentre.org/analysis/fact-sheet-restriction-barring-isc-funded-programs-freely-using-their-non-isc-money>, accessed on 23/06/2019.

³⁵Ibid, see footnote 57

³⁶Ibid, footnote 56

In the case of *Gideon v. Wainwright*,³⁷ the Supreme Court of the United States held that in criminal case, any person that is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. The court clarified that by the 6th Amendment, right to counsel applies in all criminal proceedings where the loss of liberty maybe involved. Notwithstanding this decision, many defendants who cannot afford counsel in the United States go unrepresented or do not receive adequate and appropriate legal representation. The situation prompted the American Bar Association to publish a report titled: “Gideon’s Broken Promise” which revealed that indigent defence in United States remains in a state of crisis resulting to a system that lacks fundamental fairness and places poor people at constant risk of wrongful conviction.³⁸

Although, the United States Congress and the courts have made remarkable progress on civil rights of the citizens, their social welfare and criminal justice through constitutional provisions, state legislations and decisions of the courts, yet if the citizens in whose benefit the laws and decisions are meant to protect do not have access to civil legal aid or legal assistance or do not receive adequate defence representation, all these state and court protections become useless and irrelevant to their daily lives.

It has been stated earlier in this research, particularly under the conceptual clarifications that right of access to court and access to justice includes right to have one’s claims heard in court and right to have one’s claim defended in person or through legal representation. Therefore, by implication, a denial of right to legal representation is deemed to be a denial of right of access to court and right to access to justice.

The European Court of Human Rights through interpretation of the Article 6.3 (c)³⁹ has established a number of specific guarantees to the right to access to court and access to justice in civil cases and the right to free legal representation in criminal cases, which aim to ensure that the fair trial provisions will be applied equally to everybody, irrespective of their financial positions.⁴⁰

³⁷372, U.S. 335. See also Article VI, U.S. Constitutional Amendment (6th amendment). See also *Argersinger v. Hamlin* 407 U.S. 25, 37 (1972)

³⁸American Bar Association Standing Committee on Legal Aid and Indigent Defendants “Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice” (2004) available at https://www.americanbar.org/content/dam/aba/administrative/Legal_aid_indigent_defendants/is_sc/aid_def_bf_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf, accessed on 23/06/2019. The justice gap affects more people living in poverty in this United States. Providing attorneys/counsel for litigants in cases involving civil claims such as health care and domestic violence, saves government’s money and creates both social and economic benefits for the government. See Laura, K., et al., “Economic and Other Benefits Associated with the Provision of Civil Legal Aid; Seattle Journal for Social Justice, 9(1), 2010, pp.139-167 available at <https://www.Law.seattleu.edu/Documents/sjsj/2010fall/Abel.Pdf> accessed on 23/06/2019.

³⁹European Convention on Human Rights

⁴⁰Vessela, T., “The Right to Access to Court Under Case Law of the European Court of Human Rights available at web.worldbank.org/.../O,,contentMDK:20760742~menuPK:1990179~pagePK:148956~... accessed on

One of the major obstacles in accessing courts and justice nationwide is the cost of legal advice and legal representation. Legal aid programmes are therefore central components of strategies to enhance justice all over the world.

On December, 2012, the General Assembly of the United Nations unanimously adopted the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.⁴¹ It is the first international instrument on the right to legal aid to ensure access to effective criminal justice and it provides practical guidance on how to ensure access to efficient criminal justice.⁴² It is the hope of this work that the same principle will be expanded to accommodate grant of legal assistance to those who need it in civil cases as well. Thus, right to freedom from discrimination and the principle of equality before the law would be enhanced.

Conclusion

This paper has examined the effectiveness or otherwise of legal aid services in Nigeria and United States of America as it affects the right of access to court and right of access to justice of the citizens. The paper also discussed the mechanism for legal aid services in Nigeria and USA, the scope of legal aid Act in Cap L9, Laws of the Federation of Nigeria, 2011, the provision of legal aid services in United States of America, and the interface between the legal aid services in Nigeria and United States of America respectively. The paper observed that the Legal Aid Act (in Nigeria) itself does not define the term “Legal Aid;” it rather specifies the people that are eligible to the grant of legal aid service. The Act also highlights the type of actions or proceedings upon which legal aid service can be granted which is not all encompassing. The same thing applies mutatis mutandis to the American Legal Services Corporation Act, 1974. Therefore, there is need to amend the Acts in order to allow free legal aid services to reach every citizen who is in need of it in both civil and criminal cases without limitations of any sort.

This paper considers as reasonable the class of people who are eligible to legal aid services in accordance with the provisions of Legal Aid Act, under the Nigerian Laws but the causes of actions in which legal aid services can be rendered are not encompassing enough to cater for the poor citizens adequately.

23/06/2019. Vessel Terzieva is the Legal Officer, Public Interest Law Initiative, Columbia University. She can be reached at vterzi@law.columbia.edu. See also *Quaranta v. Switzerland*, judgement of 23 April, 1991, series A, NO. 25 and *Artico v. Italy*, judgment of 13 May, 1980, series A, No. 37.

⁴¹ Available at www.un.org/rul-of-law-and-human-rights; <https://www.un.org/rule-of-law/rule-of-law-and-human-rights>, accessed on 23/06/2019

⁴² Ibid. The United Nations assists in the development and reform of national policies and frameworks on legal aid and supports capacity building of state and non-state actors who provide legal aid services in civil and criminal matters. The U.N system also supports the provision of legal aid programmes empowering rights holders, particularly, the poor and marginalized groups, and supporting legal awareness and legal aid clinics including public outreach campaigns.

Recommendation

It is hereby recommended that the law makers should amend the second schedule to the Legal Aid Act No, 17, Cap L9, Laws of the Federation of Nigeria, 2011 to accommodate more causes of action upon which legal aid service can be granted to the indigent citizens of this great country, such as action premised on land and landed property, torts, recovery of debts, contract generally and the like. It is also recommended that the Congress of United States of America should amend the relevant law to cater for people who require legal aid services in civil matters in addition to the current rights in criminal matters. The implementation of these suggestions will eliminate enhance the rights of the indigent citizen to justice and their access to the courts.

There are indigent citizens who may intend to prosecute or defend those causes not presently covered by the enabling Acts, both in Nigeria and the United State of America, but whose financial position renders them handicap in the pursuit of their right in the courts; they are not ordinarily eligible to the grant of legal aid service under the law because their claims do not fall within the ambit of the proceedings or matters recognized by the Legal Aid Act or legal aid scheme available at the moment.

KAMPALA INTERNATIONAL UNIVERSITY
LAW JOURNAL

KIULJ Vol.4 Issue 1,2022



ISSN: 2519-9501