

LEGAL AID IN THE ADMINISTRATION OF JUSTICE IN NIGERIA

*"Equal access to the law for rich and poor alike is essential to the maintenance of the Rule of Law. It is therefore, essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or representation who are not able to pay for it. This may be carried out in different ways"*¹³⁷

As, opined above, numerous ways exist to correct the problem identified by the International Commission of Jurists. Legal aid however constitutes the best mode of solving such problems. To this end, our discussion shall revolve around the role of legal aid scheme in the achievement or accomplishment of the underlying objective of the administration of justice. However, in the conservative way of legal write-up, the definition of the essential terms shall be our first pre-occupation.

1. INTRODUCTION:

Legal aid entails the provision of free or subsidised legal services to the indigent or the underprivileged litigants.

The idea of legal aids in the modern sense owes its origin to the account by MAGUIRE on the arraignment, of a litigant called Alice. The account shows that upon arraignment, Alice requested for assistance thus:

"Alice can get no justice at all, seeing that she is poor and this Thomas is rich".

Her further plea was:

"For God's sake, Sir, Justice, think of me, for I have none to help me save God and you".¹³⁸

¹³⁷ Observation of International Commission of Jurists. See p. 14 of the Report of the Proceedings of the International Commission of Jurists Conference on the "Rule of Law" in a free society, held in Delhi, India, 1959.

¹³⁸ Maguire: 'Poverty and Civil Litigation', 36 *HARV. L. REV.* 36, at 365-371 (1923).'

Expectedly, there were responses to this problem by the people of the earlier ages, for instance, the Roman Law provided for LEGIS ACTIO which was the corrective procedure put in place. However, with time, this proved to be more useful in defeating justice rather than upholding it.¹³⁹ This is because the parties themselves were not represented as a result, the ritual ceremonies characterising the secrets of patrician magistrates constituted barrier against claims of the plebeian class.

Access to legal services has attained growing importance the world over. It suffices to say that legal aid scheme is one of the devices aimed at ensuring easy access to legal services which is the cornerstone of achieving substantive justice in judicial proceedings.

The object of this paper therefore is to examine the scope of legal aid in the administration of justice in Nigeria. Efforts will be made to reveal areas of inadequacies in the legal aid scheme in Nigeria.

However, before proceeding to determine the rationale or basis for the development of legal aid scheme in Nigeria, it will be apt to consider briefly the term "justice".

MEANING OF JUSTICE

Justice in it's universal conception is nebulous and incapable of precise definition. According to C.K. ALLEN,¹⁴⁰ "no riddle is more difficult to solve, none has more persistently engaged the attention of thoughtful minds, and those who ignore the difficulties do so out of the abundance of their ignorance."

Notwithstanding the foregoing however, the writer still concedes that:

"Incalculable though the variations of subjective opinion may be, it needs no subtle dialectic to demonstrate that there is in man at least an elementary perception of justice, as a form of the right and the good, which in law, save under an irresponsible tyrant, dare flagrantly transgress."¹⁴¹

¹³⁹ See MAURO CAPPERLETTI - *Towards Equal Justice*, 1975 edition, pp. 16-18, for more discussion of the earlier responses to the problem of legal Aid.

¹⁴⁰ *Law in the Making*, 7th edition (Oxford) p. 386.

¹⁴¹ C.K. Allen, *supra*, p. 387.

In this context therefore, *BLACK's Law Dictionary*¹⁴² defines "justice" as "proper administration of the law which jurisprudentially, implies the constant and perpetual disposition of legal matters or disputes to render every man his due".

The question therefore is how can each man be rendered his due? The answer to this is not far fetched as the only means is through guaranteed access to the court of justice. The safeguarding of this access is through legal education and assistance. However, as KALU¹⁴³ puts it:

"In a developing country like Nigeria where the illiteracy rate may be as high as 80%, it cannot be doubted that the government and the community must come to the aid of the poor if the administration of justice must have a social relevance. Again, in a country like Nigeria where Decrees multiply daily like a deadly virus, where stiff penalties are imposed by retroactive and draconian legislation, and most laws are difficult if not incapable of interpretation, the question of legal aid is or seems inescapable."

Thus, for a meaningful administration of justice in Nigeria, the importance of legal aid cannot be over-emphasised. This unavoidably leads us to the basis of legal aid scheme in Nigeria.

II. RATIONALE/BASIS FOR THE DEVELOPMENT OF LEGAL AID

Firstly, it is an understatement to say that access to justice must be fairly and cheaply obtained. However, with the prohibitive cost of litigation either in terms of filing fees, counsel's fees or other ancillary cost, access to justice by many people, especially the indigents have been rendered illusory in Nigeria. This problem is not peculiar to Nigeria, it is of a universal nature. According to Frederick Zeamans¹⁴⁴ "there is yet to be any country that has socialised the Legal Profession to the extent that money constitutes no obstacle

¹⁴² 5th edition, p. 776, West Publishing Co. 1979.

¹⁴³ A.U. Kalu: 'Socio-Economic Considerations in the Administration of Justice'. Paper presented at the Jos Conference of NALT p.16

¹⁴⁴ Perspective of Legal Aid - An International Survey, Published by Frances Printer (Publishers) Ltd. 1979.

again". Hence, in view of the adverse effect of this on justice to the indigents, the development of legal aid becomes imperative. For instance, under the Nigerian Legal Aid Act,¹⁴⁵ indigents are exempted from payment of court fees.

This is also in consonance with the practice in America¹⁴⁶ except where the proceeding is under the Bankruptcy Act.¹⁴⁷

Secondly, there is the psychological barrier usually associated with the underprivileged due to the sense of fear, hopelessness and unfamiliarity with the legal system. It must be recognised that our imported system of justice is alien to the indigenous system and the people. The technical nature of the procedure and the attitude of our courts to it, has not helped matters. As observed by Fatai Williams; (former Chief Justice of Nigeria);

"In some cases, actions have been known to have been thrown out because the party has used the wrong forms? Some of the parties concerned cannot afford the luxury of an appeal to higher court, they have had to put up with what, to them, is a glaring travesty of justice."¹⁴⁸

Indeed in some cases, there is total avoidance of the judicial system and a preparedness to swallow whatever humiliation that comes the way of the people concerned.

Thirdly, the lack of awareness on the part of the beneficiaries as to either their rights, or the means of obtaining justice. This is simply due to lack of information. This lacuna can be reduced or eliminated where there is an effective legal aid scheme.

Fourthly, the language employed in the drafting of the laws are alien to substantial proportion of the underprivileged. This again borders on the technical nature of our laws. The adverse effect of this is succinctly captured by Fatai Williams, when he said:

"For any public or ethical accountability in the administration of

¹⁴⁵ CAP 205 of the Laws of the Federation, Section 9(5)

¹⁴⁶ *Boddew v. Connecticut*, 401 U.S. 371, 91 S.A. 780 26-2Ed. 2d. 788 U.S. Supreme Court.

¹⁴⁷ *U.S. v. Kras*, 409 U.S. 434, 93 S.A. 631. See Gen.: Legal Representation of the poor by JARNEL, 2nd edition pp. 12-20.

¹⁴⁸ Concept of public Accountability in the administration of Justice in Nigeria, p. 9, Paper presented at UNIJOS, 23rd N.A.L.T. Conference between 2nd-4th May, 1983.

justice to be effective or meaningful, any person who is aggrieved in Nigeria, whether rich or poor, must have access to our courts to air his or her grievance. The case should not be thrown out on a mere technicality."¹⁴⁹

To this end, His Lordship further cautioned that

"To make the administration of justice meaningful there should no longer be any reason for us to join the chorus line and say = "But the law is on his side". What we must always ask ourselves is - "Is justice according to Law on his side or Is it not rather on the side of the suffering and down-trodden aggrieved person who finds it hard, because of the inexperience of his counsel or his own unfamiliarity with the court's procedure to pursue his quest for justice in our courts?"¹⁵⁰

With the continued existence of these technical rules therefore, the maintenance of an efficient legal aid scheme is inescapable.

Finally, there is the problem of unification of the legal system. This alienates the underprivileged from the legal system. In most African States, the legal system is usually pluralistic. The received (English) law is expected to regulate transactions unknown to customary law while the customary law governs most aspects of the domestic affairs of the people. This law is known to the people and in accord with their culture. However, with the move towards modernisation and development, the African leaders are pursuing a policy of unification of both the National procedural Law and the Customary Law in order to remove the existing dichotomy in the legal system and in the substantive law.¹⁵¹ The adverse effect of this unification is the alienation of the underprivileged from the customary law that would have regulated their domestic affairs, amounting to an indirect deprivation of their rights. In this circumstance the need for legal aid in the administration of the integrated system becomes imperative.

¹⁴⁹ Fatai Williams *op. cit.* p.5

¹⁵⁰ *Ibid* at p.7.

¹⁵¹ A.N. ALLOTT "Towards Unification of Laws in Africa". *Inter. Comp. Law quarterly*, 1968, pp. 51-89. See also the Preface to "Towards a better administration of Justice system in Nigeria written by Bola AJIBOLA, S.A.N., then A.G. Federation, edited Yemi Osibajo, 1990 Fed. Min. of Justice Publication.

In summary, the highly technical substantive and procedural rules, the high rate of illiteracy, crushing poverty breeding hunger, ignorance and disease as well as physical barriers necessitate the introduction and development of legal aid scheme in Nigeria.

Quite apart from the foregoing however, ineffective legal services constitute a serious obstacle to economic development.¹⁵² This is so in view of the disability it cause the underprivileged which constitutes the larger percentage of the nation in identifying and/or enforcing their claims or rights. The resultant effect is the frustration of this class of people, culminating in low productivity or out put.

It is on the recognition of this fact, that HAROLD LASKI has observed that:

"In determining a nations rank in political civilisation, no test is more decisive than the degree in which justice, as defined by the law, is actually realised between one private citizen and another, and as between private citizens and members of the government."

It is in this context now understandable therefore that most Governments have embarked on legal aid scheme.¹⁵³

III. LEGAL AID IN NIGERIA

In Nigeria, legal aid scheme is in two phases. These are the Government implemented legal aid, and the legal aid projects of the non-governmental organisations.

GOVERNMENT CONTROLLED LEGAL AID SCHEME:

This is substantially codified in the legal aid Act¹⁵⁴ of 1990 which is an improvement on the 1976 legal aid Act.

The preamble to the said Act states:

"An Act to provide for the establishment of a legal

¹⁵² Harold of Laski: *A Grammar of Politics* (George Allen & Unwin 1982); reprint p. 557.

¹⁵³ See further Section 8(a) of the Legal Aid Act, CAP. 205, *Laws of the Federation 1990* as amended. EQUAL JUSTICE JOURNAL OF U.S. Legal Services. The Unmet Promise; P.1.

¹⁵⁴ CAP 205 of the *Laws of the Federation, 1990*

Aid Council which will be responsible for the operation of a scheme for the grant of Free Legal Aid in certain proceedings to *persons with inadequate means*"¹⁵⁵.

The above preamble creates the impression that legal aid scheme is designed only for the poor people. This is based on the faulty assumption that it is only poor people who lack access to the law. The preamble consequently would seem to equate poverty with income deficiency which to a large extent is erroneous. In fact, poverty in the context of legal aid should rather be seen from the perspective of inequality¹⁵⁶. In Fredrick Zeamans view, the word "underprivileged" include not only the poor but also all those who experience physical, psychological or financial difficulties in attempting to assert a right, make a claim, or present a defence¹⁵⁷.

The inability of the draftsmen of the legislation to appreciate this fact accounts for the exclusion of a larger percentage of the citizens that can be categorised as the underprivileged. Thus, the Act from its very inception appears self-defeating.

Section 1 of the Act establishes the legal Aid Council charged with the responsibility of regulating legal aid activities in Nigeria. The Act further provides for the composition of the Council in a manner suggestive of fair representation across board¹⁵⁸. The composition however excludes representative of the potential beneficiaries of the legal aid scheme. For instance, one would have expected the inclusion in the council of some members of the class whose interest the Council is to serve and protect. Both in America and Britain,¹⁵⁹ the various Boards of the legal advice and assistance councils reserve sizeable seats for the prospective beneficiaries whose interest are to be protected. This is important for two reasons, firstly, it makes it

¹⁵⁵ Underlining is mine for emphasis.

¹⁵⁶ See Barbara Brudon - *Of Poverty, Equality and the Law: Cases - Commentary, Analysis*. American case book series 1976 edition, p.4.

¹⁵⁷ *Perspective of Legal Aid - An International/Survey, Op.Cit.* p.5.

¹⁵⁸ Section 2 of the Act.

¹⁵⁹ EQUAL JUSTICE JOURNAL: America's Legal services program P. 4. See also ELAINE KEMPSON: Legal Advice and Assistance: Policy Studies series.

people oriented, thereby generating the required confidence for the patronage. Secondly, it facilitates the process of determining the eligible people as well as reflecting fairness in the application of the set criteria.

Section 3 of the Act deals with the appointment and remuneration of the Director-General and other staff of the Council that may be employed. In furtherance of this, the Act makes their services pensionable under the Pensions Act.¹⁶⁰

Section 5 of the Act provide for the establishment of the branches of the council in the states as may be directed by the Council of Ministers. In Nigeria today, branches of the legal aid council can only be located in the state capitals alone. This practise is retrogressive as it inhibits the accessibility of the prospective beneficiaries resident in places far away from the capital to the service.

Furthermore, the determination of the location of the branches by the council of Ministers in a scheme of this nature is self contradictory. The Ministers who are distant from the prospective beneficiaries, can never be the best judges of the location of the branches of the Council. In Britain, legal advice and assistance centres are controlled by the Local Authorities in the various areas.¹⁶¹ Similarly, the American Neighbourhood Law firm system is annexed to the neighbourhood¹⁶²

Thus, it is necessary that the legal aid scheme be localised instead of being controlled by ministers who are politicians, or appointed for political reasons.

For the same reason, section 6 of the Act which empowers the council of Ministers to make policy guidelines for the council is equally objectionable.

The scope of the legal aid in respect of both criminal and civil matters are as specified in the second schedule in furtherance of the provision of section 7.¹⁶³

The schedule covers:

¹⁶⁰ Section 4 of the Act.

¹⁶¹ Elaine Kempson *op. cit.*, p. 79.

¹⁶² *Neighbourhood Law Firms for the Poor* by BRYANT GARIN, Frances Printer Publications, 1979 edition, p.15.

¹⁶³ See Section 7 of the Act as amended by Decree No. 22 of 1994.

- A.** (1) **Murder of any degree under the criminal code and culpable homicide punishable with death under the Penal Code.**
- (2) **Manslaughter under the criminal code, and culpable homicide not punishable with death under the penal code.**
- (3) **Maliciously or wilfully wounding or inflicting grievous bodily harm under the criminal code, and grievous hurt under the Penal Code.**
- (4) **Assault occasioning actual bodily harm under the criminal code, and criminal force occasioning actual bodily hurt under the Penal Code.**
- (5) **Common assault.**
- (6) **Affray**
- (7) **Stealing**
- (8) **Rape**
- B** **Aiding and abetting, or counselling or procuring the commission of or being an necessary 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.**
 - 2. Civil claims in respect of breach of fundamental Rights as guaranteed under Chapter 4 of the Constitution of the Federal Republic of Nigeria 1979, as amended.**

The first deduction from the section is that for any claim or defence outside the foregoing, a person is not entitled to legal assistance except where the council of Ministers approves such.

While commending the expansion of the scope of the legal aid as done lately, the reform can still be described as half-hearted. It still leaves behind offences such as treason, sedition, armed robbery, obtaining by false

pretence and such other newly Decree-created offences under the present Nigerian environment. It should be remembered that the more serious an offence, the more protection the defendant should have.

Again, it is obvious that the areas where the under-privileged requires legal assistance mostly are basically domestic. According to JEROME E. CARLIN;¹⁶⁴

"The poor are frequently in market situations where illegal practice prevail, consumer fraud is widely prevalent and takes many forms including misrepresentation of price. of the identity of the seller The law of contract is a weak read for poor man. Slum Landlords are notoriously delinquent in fulfilling their obligation to provide services and repairs".

In America, legal services cases cover family Law-Child support, custody, divorce or spouse abuse; housing problems - Landlord and tenant law, evictions, and to families with dependence children, supplemental security, income, Health and employment problems, access to education, juvenile etc.¹⁶⁵ In Nigeria also, the pattern of cases which require legal assistance under civil claims are extraneous to those mentioned in the schedule. For instance, it can be conveniently asserted that of recent, legal aid is necessary for the Tenants who currently faces ejection threats from the Landlords due to rent increment. This has already led to the creation of the Tenant solidarity Association" by a group of legal practitioners to assist these poor people.

Thus, it is humbly submitted that the scope of legal aid as presently stands is largely unsatisfactory especially in the civil claims area.

Hence, it is advocated that if total restriction cannot be removed, offences and civil claims mentioned should be included to make the Act meaningful in the administration of justice in Nigeria.

Section 8 of the Act is another important provision establishing the legal Aid fund. There is no doubt that any legal aid project without fund is baseless. The sources of fund under the provision are the federal and state government subventions, contributions in accordance with the Act, and

¹⁶⁴ Civil Justices and the poor, 1967 edition, pp.2-4.

¹⁶⁵ *EQUAL JUSTICE JOURNAL* (Supra) p.3

subject to section 11(2), gifts under the various forms it may assume. Although the sources are similar to those obtainable elsewhere, the need to involve the various local government and community development associations in the funding is not out of place. In Britain, the level of services in an area will depend on the philosophy and generosity of the individual council.

By virtue of section 9 of the Act, only persons whose annual income do not exceed N1,500.00 are eligible to benefit from the scheme. However, by virtue of the relevant amendment¹⁶⁶ the annual income for qualification is now N5,000.00. This amendment is indeed almost meaningless in the light of escalation and inflation. If that amended provision is construed strictly and it is adhered to, one can confidently assert that no individual will benefit from the scheme.

Consequently, the legal Aid Council is hereby invited to review this statutory limit to a level that will make the scheme functional. On this note, the Green Form system under the legal advice and Assistance scheme of 1973 in England should be adopted. It is a means - tested method designed as a measure through which the members of the public are encouraged to consult solicitors about their legal problems before they become too complex. In spite of the Introduction of the new legal Aid Act in 1988 in England, the system is still retained.¹⁶⁷ In making this suggestion, we are not unmindful of the provision of sub-section 2 of section 9, towards mitigating the stiffness of the limit. Unfortunately however, this beneficial provision could be frustrated by the bureaucratic and administrative bottleneck, usually associated with ministerial decisions.

In summary therefore, the scope of the beneficiaries needs to be enlarged to include all those who can convincingly show that they are unable to prosecute their rights not only at first instance but also on appeal.

Section 10 provides for mode of ascertaining the means of an applicant for legal aid. While not quarrelling with the guidelines, we suggest that factors outside the financial requirement be included. These factors as earlier on discussed ranges from physical to psychological difficulties in defending a crime.¹⁶⁸ The acceptance of gift by the council is permissible by

¹⁶⁶ Decree No.22 - *Legal Aid (Amendment) Decree, 1994*

¹⁶⁷ Elaine Kempson (*op.cit.*) pp.66-67.

¹⁶⁸ Frederick Zeamans - *Perspective of legal Aid* (Supra)p.5.

the provision of section 11. However, such gifts must not be on conditions that will infringe the realisation of the objectives of the Act.

The need for accountability for the fund of the council demands for the auditing of the Account of the Council annually.¹⁶⁹

The Act further (in Section 13) requires the maintenance of panel of legal practitioners. Any legal practitioner may apply, and the enumeration shall be in accordance with the prescribed manner. The section forbids any legal practitioner engaged for a legal service from collecting any money from the beneficiary. Laudable as this provision may appear, the enabling environment for compliance is absent. Firstly, the fees payable to private legal practitioners engaged for legal aid left much to be desired. Secondly, a full time counsel with the council maybe required to travel for a case at his expense, after which he subsequently makes a claim which may not be paid over a long period. In a situation like this, where such a counsel is out of pocket, and he wishes to appear for the case, he may not have a choice other than to request for money from the beneficiary. One way of eliminating this ugly situation is to localise the scheme.

Section 14 empowers the council to utilise youth corp lawyer in its activities. Whilst this may be cost saving, the council should exercise restraint and caution in assigning these inexperienced class of legal practitioners to sensitive and serious cases like murder, manslaughter etc. This will avert such consequence as obtained in the case of *Udofia v State*¹⁷⁰ where a murder trial conducted by Youth Corp Lawyers was set aside. The Supreme Court in doing this opined as follows:

"Mr. Onu and Mr. Igika both of NYSC appear for the accused. To do what? One will naturally ask. To conduct a murder case? What is the country turning into when members of the NYSC will be sent to defend a man on trial for his life".

At best, their role should be restricted to legal advice and appearance at the court's of summary jurisdiction alone. In addition, it is suggested that the council should extend it's requirement to law students who can go a long way in assisting the council as well as initiating these Youths into legal services before their call to bar.¹⁷¹

¹⁶⁹ Section 12 of the Act.

¹⁷⁰ (1988) 3 N.W.L.R. Pt. 84, p. 541

¹⁷¹ See Louisiana Legal Services paper on producing Access to justice delivered by Jacklin at Democracy for Africa Programme held at Unilag. Guest House in April,

Section 15 reinstates the duty of secrecy impose on legal practitioners in their relationship with their clients, subject of course to the usual exceptions. The only other relevant provision to this discussion is that of section 20 which saves the provision of Section 32 of the Supreme Court Act on appointment of counsels by the Court for indigent accused persons.¹⁷² Similar provisions in the other courts laws are also preserved. The provision is not new¹⁷³ as it was first enacted in 1945 as statute of Henry VII.

The question however is can a conviction resulting from a trial without legal representation at the election of the accused person stand. The question has not arisen for determination in Nigeria, but in the United State case of *FARETTA v. CALIFORNIA*,¹⁷⁴ Justice Stewart observes as follows:

"The 6th and 14th Amendments of our constitution guarantee that a person brought in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment. This clear constitutional rule has emerged from or series of cases decided here over the last 50 years.

The question before us now is whether a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently able to do so. Stated another way, the question is whether a state may constitutionally Hail a person into it's criminal courts and thereof force a lawyer upon him, even when he insists that he wants to conduct his own defence. It is not an easy question, but we have concluded that a state may not constitutionally do so."

In this case, the accused person was charged with theft, he insisted that he would conduct his defence personally. He showed evidence of having done so successfully before, and also because he want's to permit the legal aid to face it's already tight schedule. The judge initially agreed, but later on

(..continued)

1995.

¹⁷² See *Nwabe v. State* (1995) 3 N.W.L.R., Pt. 384 p. 385

¹⁷³ See EARL JOHNSON JNR. *Justice and Reform - The Formative Years of the American Legal Services Programme.*

¹⁷⁴ 422 U.S. 806; 95 S.G. 2525, Ed. 2d 562 (1975).

make some further inquiry into the capability of the accused person by asking him some basic evidential rules. He then found him wanting and unintelligent enough to cope. He then reversed his stand and assigned a counsel. The conviction was eventually set aside on this ground at the appellate level.

In the subsequent case of *Adams v. U.S.*¹⁷⁵, the court had this to say:

"The right to assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. They rest on considerations that go to the substance of an accused's position before the law....." What were contrived as protections for the accused should not be turned into fetters..... To deny an accused a choice of procedure in circumstances in which he, though a layman, is as capable as any lawyer of making an intelligent choice, is to impair the worth of great constitutional safeguards by treating them as empty verbalisms. When the administration of the criminal law "...is hedged about as it is by the constitutional safeguards for the protection of an accused, to deny him in the exercise of his free choice the right to dispense with some of these safeguards ...is to imprison a man in his privileges and call it the constitution".

Implicit in this discussion is the fact that an accused cannot be assigned a counsel where he is not willing to engage one.

IV. NON-GOVERNMENTAL LEGAL AID SCHEME

As said earlier, if developed countries consider the burden of legal Aid scheme too heavy, how can developing countries especially the African countries like Nigeria, cope with such costs given the fact that they have extremely limited means for achieving their priorities.

This is even disregarding the fact that most African leaders do not consider it a vital priority. Hence, the emergence of various voluntary organisations on the scene of legal aid. Notable in Nigeria are the civil liberties organisation, National Association of Democratic Lawyers, Federation of Women Lawyers, Tenants Solidarity Association, Constitutional Rights Project etc.

Their activities in the country have been more beneficial than governmental scheme. The scheme owes a lot to these non governmental organisations. The problem however is that of co-ordination of the activities

of these bodies amongst themselves. Similar problem confronted England at the formative stage of its legal services. However, current surveys across Cornwall, Oldham and Newham presently reveals a coordinated and concerted network amongst the constituent parts.¹⁷⁶ If the structure of legal aid in Nigeria remains as it is, it is suggested that the council be reduced to coordinating body with its functions transferred to the Local Authorities.

CONCLUSION AND SUGGESTIONS

From the foregoing discussion, attempt has been made to explain legal aid and the rationale behind it. The essence of legal aid in the administration of justice was also considered. It is clear that the law regulating legal aid in Nigeria is undoubtedly in need of improvement. For that reason we will now consider some of the options to make the scheme effective.

Perhaps, one of the pressing problem of the scheme is shortage of fund.¹⁷⁷ However as the court is not a commercial venture and as the state is responsible for financing the judiciary, it is suggested that 50% of all filing fees be transferred to the maintenance of the legal aid scheme. In addition, the suggestion of Chief C. Ikeazor, S.A.N. that each lawyer should contribute a minimum of N100.00 per year to the scheme be considered¹⁷⁸ in view of the expectation from the profession.

Again, there is also the reluctance of private legal practitioners to participate effectively in the scheme.¹⁷⁹ This admittedly is due to the paltry fees being paid to legal practitioners under the scheme. For instance, for an appearance at the High Court, the sum of N450.00 is usually paid, while at the Court of Appeal, it is N550.00 and at the Supreme court N750.00. These fees undoubtedly cannot cover the out of pocket expenses of the Practitioners, let alone the cost of services rendered. It is clear therefore that an upward review in accordance with the inflationary trend in Nigeria must be quickly made; more so in view of the increased scope of the scheme.

¹⁷⁶ ... See Elaine Kempson (SUPRA) at p. 79

¹⁷⁷ See the Address by Chief Chimezie Ikeazor, S.A.N. Past Director of the Legal Aid Council. Presented at the Seminar on Legal Aid held at Kaduna between April 6 & 7, 1989.

¹⁷⁸ Former Director of Legal Aid Council. See *Law and Practice*, Vol. 1 No. 1 p.4.

¹⁷⁹ O. Bowen: "An operational assessment of the Legal Aid Scheme". See *Law & Development*, edited by J.A. Omotola & A.A. Adeogun, pp 259-276

However, notwithstanding the paltry sums payable, there is the moral challenge for the legal profession to be a part of the process of making justice available to all. One recalls the observation of S. SCHEINGOLD¹⁸⁰ that:

"This is not the first time that the winds of change have been detected. In the thirties legal Education underwent a searching re-examination and young lawyers with a mission began to emerge from the law schools. The profession, however, was equal to the challenge. Legal Education continues to respond to cases and doctrines and the newbreed of the thirties are the "Super-Lawyers" of the sixties and seventies. Will it be different this time?"

It is hoped that the younger generation of lawyers will accept the challenge and give all they can for the course of justice. In fact, the younger lawyers are already in the vanguard of the struggle. It is only the necessary encouragement and structure that is presently lacking.

As a follow-up to the above, it is suggested that the legal practitioner's Act be amended to compel all lawyers in private practice to handle a specified number of cases every year.¹⁸¹ The record of such an assignment shall constitute further requirement for the conferment of the status of Senior Advocate of Nigeria.

Finally, the Legal Aid Council should improve on its performance. Practically all legal Aid Council the world over are under-funded, yet most of them have recorded significant achievement.¹⁸² It is however not being suggested that government should not increase its financial commitment to the Council, realising that:

"Legal-aid is a postulate of the living law; it gives the legal system its humanitarian credentials, its social mission and a refreshing opportunity for self renewal by the incorporation of social knowledge and purpose into law. In terms of jurisprudence, legal aid is the result of the rising tide of instrumentalism which insists on the

¹⁸⁰ *The Politics of Rights - Lawyers Public Policy and Political Change*. New Haven (Yale University Press, 1974 p. 197).

¹⁸¹ A Bowen: "Contribution to the Legal Aid Fund": 4th issue of the Legal Aid Magazine. See also A Bowen: An operations Assessment of the Nigerian Legal Aid Scheme. *op.cit* pp. 259-276.

¹⁸² EQUAL JUSTICE (*op. cit*) p. 5

