

REMOTE ACCESS TO JUSTICE IN LIGHT OF THE COVID 19 PANDEMIC: A NEW APPROACH TO DISPUTE RESOLUTION



4th May 2020

The COVID 19 virus has stunned the world and taken humanity by storm. And, it has accelerated the course of human history to a watershed. The desperate efforts to contain mounting fatality has manifested in draconian physical and legal restrictions and these have brought to a halt all forms of activities all over the world. The critical task of justice administration has felt the full impact. In Nigeria, on the 6th April 2020, the Chief Justice of Nigeria reacted with a letter directing that all court sittings in Nigeria be suspended till further notice “except in matters that are urgent, essential or time-bound according to our extant laws”. This last reservation has not been further expounded or facilitated.

When a global crisis makes abortive the conventional methods of our judicial system, it is inevitable that the mechanisms of an increasingly digital society will be activated. Remote operation of the critical system of governance has been made possible with the use of modern information and technology (ICT).

Today, online courts can handle litigation procedures online and by audio and video conferencing facilities hearings and judgments can easily be rendered.

Access to justice need not necessarily involve the physical access to a particular building and with technology, it would be made available just like every essential service. This holds the future for conducting activities in Nigerian Courts, considering its successful adoption and use in some other jurisdictions even before the COVID 19 pandemic.

ICT AND THE JUSTICE SYSTEM

The legal sector is a conservative industry where decisions are made by referencing past cases and legislation, some of which are centuries old.

This is why many lawyers and judges express reservations about moving from the traditional text-based approach to using technology to support their work.¹ However, with the rapid development of technology and this global crisis at hand, it seems rather imprudent to constrain the justice system within its existing structures. Our definition of a court and tribunal must include not only those using the physical facilities of the court but also in virtual court hearings.

For social order to exist, communication and information play a huge part and law, as an index of societal values, depends on networks of information. The form and content of the law change constantly to conform to the communicative devices available at the time. ICT, particularly the Internet, is essential for development because sharing information is one of the most valuable tools for aiding the developing world. Technology presents unlimited possibilities to empower people in developing countries to overcome social and economic problems.

The use of ICT in deploying an alternative method to dispense justice is one which does not only increase accessibility and efficiency but also promotes confidence in the justice system as seen in countries that have adapted such alternatives. For instance, the United Kingdom in light of the pandemic has conducted nearly 500 audio hearings and is in full favour of conducting full trials remotely. In Australia, the Federal courts are putting in place the necessary technology needed to hear all trials via videoconferencing facilities. In China, the Supreme People's Court has promoted the use of "mobile micro court" on the social media platform WeChat to help courts conduct trials on the Internet. As it stands today, there are three internet courts in China which handle litigation procedures online from filing a case to issuing judgment documents.

HOW WOULD ICT WORK IN OUR JUDICIAL SYSTEM?

Following our discussions above, it is clear that the use of ICT is the future of regaining access to justice but the big question is how would ICT be deployed in our judicial system ridiculed by illiteracy, insecurity, corruption, lack of training and lack of access to justice being that it is a fairly new concept.

It is widely believed that the efficacy of any judicial system is assessed by its capacity to provide timely and appropriate justice to parties in dispute. Unfortunately, our justice system is one incapable of such effectiveness as it takes too long and costs too much, with the average period between filing and concluding a case ranges from 7 to 15 years.

Another problem faced is the backlog of undecided cases which also affects the even flow and orderly disposition of cases because the cases keep piling up and the time between filing of a lawsuit to ultimate disposition keeps increasing. This backlog is worse in commercial cities like Lagos, Kano and Port Harcourt. And even though Lagos adopted the backlog elimination programme to deal with such, it does not seem to be enough. With all these problems, the last thing the judiciary needs is a suspension of all activities.

Should the judiciary embrace ICT, citizens may then be able to, as Internet access increases discover how to gain access to justice. With the use of ICT, there would be availability of web services, the possibility of consulting online legislation and case law, the use of electronic filing, and the electronic exchange of legal documents. From an access to justice perspective, it can enable individuals who would otherwise find it difficult to travel to a court or tribunal to beam in from a location convenient to them.

1. Halima Doma, Enhancing Justice Administration in Nigeria through Information and Communications Technology, 32 J. Marshall J. Info. Tech. & Privacy L. 89 (2016)

2. Jane Colston, Ravinder Thukral, Yes, we can. Remote Justice. The New Norm?

<http://www.brownrudnick.com/alert/yes-we-can-remote-justice-the-new-normal/> Accessed on 10/04/2020.

3. Ibid (no 2).

4. Velicogna, M (June 2007), Justice Systems and ICT: What can be learned from Europe? Utrecht Law Review, 3(1), pp.129 -147. DOI:

<http://doi.org/10.18352/ur1.41> Accessed on 8/04/20.

ICT is a veritable tool that can assist any judiciary to carry out its functions maximally by enhancing efficiency, increase accessibility and deliver quick dispensation of justice in a transparent and accountable manner.⁵ The automation of court systems and the use of Internet unlock the courts to the public, thereby increasing access to its services.

At the core of any efficient system is flexibility and as such, it is central to the success of remote justice.⁶ This would imply that court and tribunals must become more flexible to provide the standard of service required of it. Being that online courts are fairly new and unprecedented, there is a need for movement, versatility and the ability to reorganise the remote access simply and efficiently.

CONCERNS/ ISSUES WHICH MAY BE RAISED

- **The novelty of the Remote Access to Justice**
Some of the concerns which may be posed are that this process is fairly new with no precedent and being that our legal structure is one where decisions are made by referencing past cases and legislation, it may pose challenges. A good response to this is that although it is fairly new, there is so much to be learned from the ICT approach, both in software development and in the use of technical equipment, across the court system and so if employed, it would be necessary for the judiciary to be willing to build and replace often.

- **The Principle of Open Justice**
The principle of open justice is a common law principle that proceedings ought to be open to the public. This principle requires an open/public hearing, accessible to members of the public save in very limited circumstances.⁷ The requirement for an open hearing has been interpreted to mean physical presence in the courtroom however this is a rather conventional interpretation. In this digital age, our interpretation should not only involve physical presence in a courtroom but rather all virtual or physical court hearings

with the key point that such proceedings are public. In the case of virtual court hearings, a broadcaster may be present, or the use of a public link but whatever is used, an important aspect to the judiciary is for it to be fair and accessible.

- **Cyber Security**
As digitised processes would become the norm and more matters would be dealt online or remotely, cyber-security is one seen to be a major concern however it should not be as the appropriate cyber-security would be provided. Digital technologies have been relied upon by the private sector which included the transfer of confidential legal material still being safeguarded as well as cybersecurity laws that exist to ensure order.

- **Identity Authentication**
This may be a concern where there is no authorised party confirming the remote participant's identity or ensuring that they are not being coerced. On the issue of authorising party, the best way would be to hire case officers who know everything about the specific case and the need for parties, lawyers and witnesses to provide forms of identity and audio clips before being allowed to participate. On being coerced, one must note that this may happen be it a physical hearing or a virtual hearing and so necessary to take extra measures in the case of a virtual hearing.

- **Lack of IT Skills**
This poses a threat to the remote access to justice as most judges, lawyers, courts staff, did not have the opportunity to be trained in ICT when they were in the University. This is even worse with respects to the citizens where a considerable amount are illiterates. To deal with this, new staff focused solely on the IT needs of the

5. A report by JUSTICE (2016), What is a Court? <http://justic.org.co.uk/wp-content/uploads/2016/05/JUSTICE-What-is-a-Court-Report-2016.pdf> Accessed on 7/04/20.

6. Ibid.

7. Courts and Tribunals Judiciary, Coronavirus (COVID-19) Advice and Guidance, <http://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/> Accessed on 6/04/2020

To deal with this, new staff focused solely on the IT needs of the justice system should be recruited which would also allow lawyers, judges and court staffs the opportunity for ICT training as well as resource hubs located in other venues where deemed appropriate, and offer remote assistance either online or by phone.

- Unstable Internet Connection

Another major concern is the unstable access to the internet as great internet network is necessary for the remote hearings to function effectively. The situation of the internet network in Nigeria is such that even in the highbrow areas, one may not be able to get connected to the internet as a result of network fluctuation.

- Poor Electricity Supply

This is one concern which is not particular to the remote access to justice as physical courtrooms face this problem too. Although there seems to be some form of improvement in the electricity supply, its current state is not enough to ensure the success of the adoption of the remote method since most ICT infrastructures depend on the electricity to function.

The gravity of these concerns will largely depend on the gravity of the case and the nature of proceedings. These concerns form a huge part in ensuring the smooth running and effectiveness of the new system and must be taken seriously otherwise the introduction of the remote access to justice would undermine rather than benefit the system. Technology and alternative methods of dispute resolution, if used properly, can offer a quality of justice currently inaccessible to large portions of society.

RECOMMENDATIONS

It is not unknown that Nigeria, as a developing country, is not yet advanced in ICT innovations and there will remain a part of the population which struggles to adapt to digitised processes. It is imperative that the needs of this part are provided for, otherwise, the introduction to online courts and other digitisation projects obstruct access to the court system.

Lagos seems to be at the forefront of promoting the electronic method of justice with the adoption of e-filing. E-filing is a feature in the Lagos State Judiciary Information System through which cases may be filed from anywhere in the world as long as users have login credentials.

However, the successful implementation and adoption of electronic method may be challenged by epileptic electricity supply, network dysfunction, lack of IT skills, absence of relevant legal framework and other defects as earlier stated.

Therefore, the following are hereby recommended to facilitate the successful implementation and adoption of the remote access to justice;

- a) Set up a committee which would include IT professionals which can give their expert advice on how the system would work and the necessary infrastructures to be put in place to ensure smooth running and accessibility to everyone. Such committee would exist not only to advise on how the online courts would work but rather as it continues being that it is a novel subject that no country in the world has been able to perfect. The key thing to ensure its productivity is flexibility.

b) There would be a need to hire remote staffs who would work hand in hand with the judges, court registrars and the committee to ensure that the online courts are working effectively.

c) Where proceedings are conducted remotely, such proceedings must either be broadcasted, recorded or made accessible via public links so that the right of open hearing is safeguarded. Any recording and production of court session not made with the order of the court shall be regarded as contempt of Court.

d) Due to the novelty of this approach, cases should be considered in order of priority and at this time, the following proceedings may be conducted virtually;

- i. Cases on the cause list slated for mention
- ii. Cases in which there are pending applications
- iii. Trials conducted by affidavit evidence
- iv. Case management conferences

e) Enactment of laws and Practice Directions which would help regulate the use of the online court system open to frequent changes.

CONCLUSION

We must realise that we live in a digital society and respond accordingly. With the modern methods, effective use of IT, we would be able to create a justice system where many sizes fit all; not one size for all.⁸ With this global crisis, decision-makers ought to capitalise on what is truly a once in a generation opportunity to make our courts and tribunals work better for the people, they serve. Accordingly, we urge the Judiciary, the Government and the legal profession to give serious consideration to our recommendations.



Lagos
8 Tokunbo Omisore Street,
Off Wole Olateju Crescent,
Lekki Phase 1.

Abuja
Suite 311, 2nd floor,
Oakland centre, 48,
Aguiyi Ironsi Street,
Maitama, Abuja.

Phone: (+234) 805 174 7711

Linkedin: Strachan Partners

Twitter: @strachanlaw



Chioma Onwuzulike
Associate

8. Ibid (no 6).