

**ACCESS TO JUSTICE: SOCIO-CULTURAL, ECONOMIC  
AND GEOGRAPHICAL LIMITATIONS THERETO – A CRITIQUE**

**Delivered at the Chief Judge’s Annual Seminar/ workshop, Akure, Ondo State - 2017**

**Protocols,**

I will like to thank the Ondo State Judiciary and particularly my lord the Honourable Justice Akeredolu, the Acting Chief Judge of Ondo State for inviting me to participate in the 2017 Chief Judge’s Annual Seminar/ Workshop.

I commend the Acting Chief Judge Hon. Justice Olanrewaju Akeredolu and the Committee led by Honourable Justice Adegbehingbe for a job well done. I have listened to a number of thought provoking presentations at this Seminar/Workshop and suggestions which if implemented will improve the dispensation of substantial justice in the eyes of the law in Ondo State.

I will like to thank my learned brother silk Mr. Femi Falana SAN who has done a beautiful critique of the topic. The Committee could not have chosen a better person to deliver this paper.

This topic keys into this theme of this Seminar/Workshop because for substantial justice to be dispensed in the eyes of the law – it must be accessible to all citizens in all social strata in any given society.

According to **Chief Justice Hewart in R. v Sussex Justices Ex parte McCarthy [1924] 1 KB 256;**

*“It is not merely of some importance, but of fundamental importance that justice should not only be done, but should be manifestly and undoubtedly seen to be done.”*

Access to justice is an important barometer for assessing not only the rule of law in any society but also the quality of governance.

My learned brother silk has critically analyzed the topic and if this was a court room and I was asked to address the court after such an expose – I will simply say I concur with my learned brother silk.

But permit to share some of my thoughts on this topic.

**Access to justice is an immutable constitutional right.**

**Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 [As Amended]** guarantees access to justice by providing that:

*“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”*

Our superior courts have stated and restated in the cases of:

**See: Agbaso v. Ohakim (2011) LPELR-8812(CA)** where the Court of Appeal per Ogunwumiju JCA stated thus:

*“Right of access to justice is an immutable constitutional right.”*

The word **“Access”** means:

- 1) The ability, right, permission to approach, enter, speak with, use, admittance;
- 2) The state or quality of being approachable.

This effectively means that persons seeking justice must have the ability to seek justice and the justice institutions must themselves be approachable.

### **UNDP – Access to justice**

The United Nations Development Programme (UNDP) has described access to justice as the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining remedy through the justice system for grievances in accordance with human rights principles and standards.

**The term “Access to justice” can be looked at from the narrow sense and the wide sense**

#### **Narrow Sense**

The term “access to justice” is most commonly used in reference to various mechanisms by which an individual may seek legal assistance.

Such an approach tends to concentrate on issues of overcoming delays in the court process, efficiency, formality and cost of proceedings and the organization, structure and administration of courts and tribunals.

Equating access to justice with access to legal services ignores the barriers that exist for the individuals once they have made contact with the courts or tribunals.

## **Broader Sense**

In a broader sense embraces access to the political order and the benefits accruing from the social and economic developments in the state.

Access to justice encompasses:

1. A proper adjudicatory mechanism – strong and proper courts, tribunals or commission etc. where an aggrieved person can seek redress and justice for wrong done.
2. Such adjudicatory mechanism must be accessible.
3. The process of justice must be affordable
4. Speedy process – Justice delayed is justice denied.

## **What then are the Socio-Cultural, Economic and Geographical factors limiting access to justice?**

“**Limitation**” means a limiting rule, or circumstance or restriction

“**Socio-Cultural**” or social and cultural refers to different group of people in society and their habits, traditions and beliefs.

**Economic Limitations** we talk of lack of financial resources as a barrier to justice.

**Geographical limitations** we talk of accessibility to justice institutions by ordinary people due to road distances

**Socio-Cultural limitations** encompasses a variety of issues such as:

1. Disability
2. Cultural Issues
3. Religious Issues
4. Language
5. Age
6. Education
7. Gender

## **Disability:**



Disability can create a limitation. The Disability groups likely to face different barriers to access to justice include **Intellectual disability, Physical disability, Sensory Disability and Psychiatric Disability:**

### **Intellectual disability**

This has been defined to mean a person with a permanent condition of significantly lower than average intellectual ability i.e. mentally retarded people.

People with intellectual disabilities are more likely to have poor education and little knowledge of their rights, obligations or where to seek assistance. Limited access to employment opportunities.

### **Access to justice issues**

People with intellectual disability are significantly over represented in the criminal justice system, both as prisoners and as victims of crime.

There are some legal consequences of intellectual disability such as inability to make a Will or the presumed unreliability of evidence

Issues of capacity and guardianship are common for people with an intellectual disability.

### **Physical disability**

Physical impairment – loss or abnormality of body structure or function resulting in either a limitation on activities or social participation or both.

## Access to justice issues



1. Difficulty in gaining physical access for those with mobility problems.
2. Problems in accessing information online
3. Discrimination in employment and other areas
4. Problems with state government disability providers and need to deal with problems related to service delivery.





## **Psychiatric disability**

These include all types of mental disorders which cause distress and interfere with personal functions such as anxiety disorders, depression stress, etc.

## **Access to justice issues**

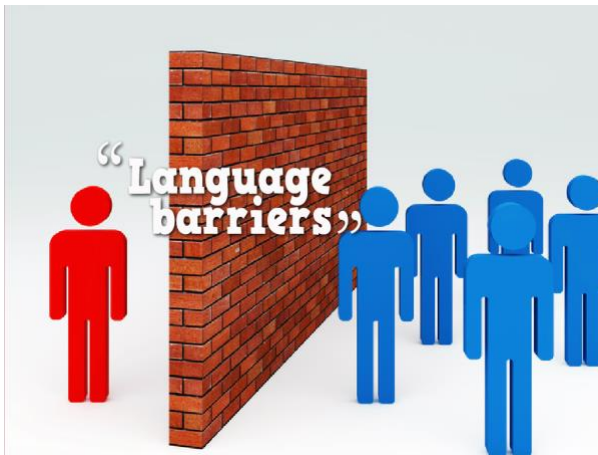
There is an established association between certain mental disorders (notably schizophrenia and severe affective disorders) and increased rates of violence.

People with Psychiatric disability can face significant communication and information barriers.

## **Cultural and Linguistic diversity**

There are many cultures or nationalities in Ondo State. Many of the people from the different cultures face several barriers in accessing a range of services including legal services.

Language is a barrier



## **Non-English speaking background**



### **Access to justice issues:**

An inability to communicate proficiently in English limits a person's ability to understand information or advice concerning legal rights, obligations and consequences of certain actions unless the information/advice is provided in their preferred language.

### **Cultural and Religious issues**

Culture and religion plays a significant part in the lives of people in Ondo State. Certain religions and cultural practices in some localities accept power inequality. In many have a high power distance culture and there is a dichotomy in social class. In many cultures women are subservient and the cultures do not give proper recognition to their legal rights.

Accessing legal systems is tailored along that of Western societies hence people who are not exposed to western education and have different cultural backgrounds in different geographical locations in the State will encounter different problems in accessing the legal system and be affected by different areas of law.

While access to justice issues often focus on language barriers, cultural and religious barriers to justice are equally significant for some people. Western legal system differs markedly from traditional justice systems.

Some people do not believe that the Western styled system of justice we practice will protect their interests.

- Lack of information about the law, including information in languages other than English
- Lack of access to suitable interpreters and lack of skill in those administering the legal system to identify the need for an interpreter in individual cases.



- Failure of courts, lawyers and others to acknowledge the role of culture in a person's behaviour

### **Age:**

Different legal issues and problems will be relevant at different stages of an individual's life. Similarly, different limitations/barriers to accessing justice may arise according to one's age.



### **Children and Young people**

- Young people may be more vulnerable to discrimination and disadvantage in the labour market, in some cases as a result of their lack of knowledge of their rights.
- Lack of capacity in contract issues
- Don't see that a problem or crisis may have a legal component.
- Adult legal processes do not lend themselves to young people seeking redress in legal related education issues, employment



## Older people

- Mobility difficulties and may have problems gaining physical access to basic institutions of justice.
- Older people are much less likely to be familiar with new technologies and cannot take advantage of the range of information available on the internet.
- Income falls with age and old people are being owed pensions for months thereby denying them financial ability to access justice

## Access to justice issues

- Unpaid pensions and gratuities
- Vulnerability to Financial scams
- Lack of specialist legal services for issues that specifically affect them and lacking confidence in generalist legal services

## Education



Those with poor literacy skills may experience difficulties on both accessing information about legal rights and obligations and in understanding any information that they do manage to access.

They are also hampered by poor verbal and oral communication skills.

## **Gender**



Women as a group suffer disadvantage in comparison with men.

- Women earn less than men
- Difference in labour market participation

## **Access to justice issues**

Gender bias can affect the drafting of legislations by parliaments, interpretation of legislation and development of legal principles by judges. It can also affect the treatment of women and their experiences in the court process, for example, leading to lack of credibility given to women as witnesses.

Discrimination may be unconscious based upon attitudes and stereotypes that have not been actively questioned rather than an active decisions.

Biased nature of laid down rules and operations in the judicial system

Inadequate women in law enforcement.

Adherence to customs in judicial rulings with women being disadvantaged.

Lack of Financial resources

## **People living in institutions**

- Prisoners
- Juvenile Corrective Institutions

- People released from Institutions

## **Economic Limitations**



A lot of people are living below the poverty line. Household incomes are very low.

Lack of financial resources is a barrier to justice.

High Cost of filing fees

High Cost of retaining a Lawyer

Non-availability of Legal Aid

## **Access to justice issues**

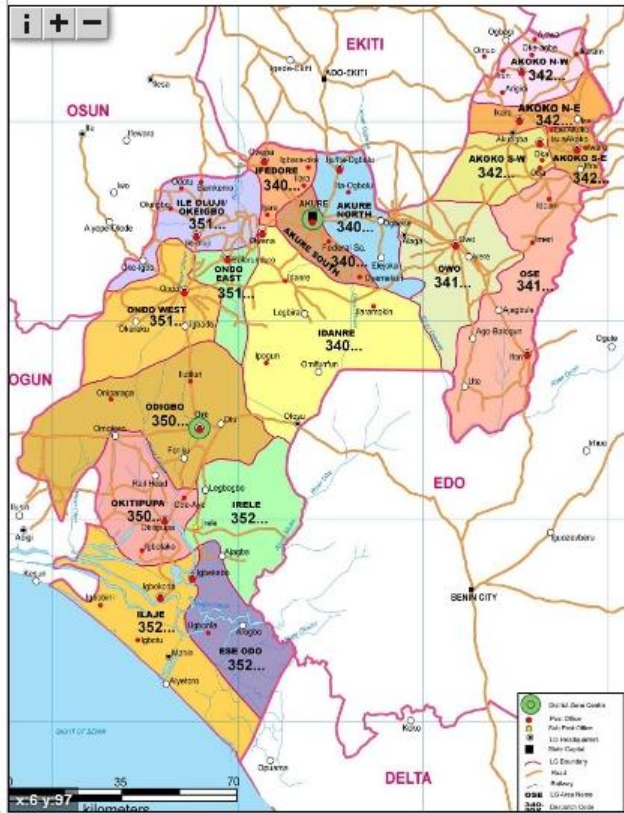
Economically disadvantaged people are less likely to have the skills or education to prevent escalation of a legal problem such as:

- Unserviceable debts
- Landlord and Tenant issues
- Employment and Labour issues

Effect: Some abandon their legal causes when the fees are unbearable thus allowing violators to go scot free even though they have viable causes of action or resort to self-help.

## **Geographical Limitations**

Ondo State is located in the south western region of the country. It lies between latitudes 5°45' and 7°52'N and longitudes 4°20' and 6°05'E. Its land area is about 15,500km<sup>2</sup>.



## Remote and rural areas

Remoteness is calculated based on accessibility to justice institutions by road distances. Accessibility can be looked at from five categories.

1. Highly accessible – relative unrestricted accessibility to a wide range of services and opportunities
2. Accessible – some restrictions to accessibility
3. Moderately Accessible – significantly restricted accessibility
4. Remote – very restricted accessibility
5. Very remote – very little accessibility

## Access to justice issues

Inadequate number of courts in rural areas.

People outside Akure face a range of physical access problems to courts such as the Federal High Court and the National Industrial Court. These courts have specialized jurisdictions and have only courts in Akure.

Accused person who commit offences which relate to the criminal jurisdiction of the Federal High Court in remote areas of the state may not be brought before the Federal High Court within a reasonable time.

People who also reside far away from the headquarters of the divisions of State High Courts also face a range of physical access problems to these courts.

Remote areas are also technologically poor and have little or no access to internet services.

### **Some suggestions on ways of overcoming these limitations and improving access to justice in Ondo State:**

1. Make our courts more-friendly to people with physical disability;
2. Make courts more friendly to persons with sensory disabilities;
3. Train staff to handle and assist people with disabilities
4. More support should be given to legal and non-legal groups and organizations supporting rights of Children, Young People, Women, Persons with Disability;
5. Implement fully all Gender and Children Sensitive law reform such as the Child Rights Law;
6. Put more women in law enforcement;
7. Invest in access to justice for Children, Young People, Women, Persons with Disability;
8. Train Judges and monitor their decisions
9. Mediation is a viable alternative dispute mechanism
10. Build more courts etc. in rural areas
11. Make filing fees more affordable
12. Plea Bargain;
13. Compensation for Victims of Crime
14. Increase the knowledge and professionalization of justice personnel to dispense justice
15. Improve Customer experience of litigants;
16. Employ suitable personnel and deploy technology to address improve services;
17. Strengthen civil societies and organizations as the foundation of promoting access to justice;
18. Access to appropriate intermediaries and assistance with advocacy, both legal and non-legal, is an essential step in achieving access to justice for this group.
19. Provide information in English Language as well as a local language predominant in the geographical location.
20. Understanding the need of Children and Young people in the legal system and giving them extra assistance to access justice;
21. Understanding the needs of older people in the legal system and giving them extra assistance to access justice.

22. Legal Aid and NGO's should be more effective. Governments should have agencies that can come to the aid of people who have economic limitations;
23. Disadvantaged people should be given extra assistance and assurance to establish confidence in our legal system; and:
24. Governments should invest heavily in education.

## **Conclusion**

In the words of **Mauro Cappellati** and Professor of Law and an Italian Jurist:

*“Effective access to justice can this be seen as the most basic requirement, the most basic “human right” of a system which purports to guarantee legal rights”*

Studies should be done on how these limitations affect access to justice in Ondo State so that concerted efforts can be made to reduce these limitations and remarkably improve access to justice for the ordinary citizen of Ondo State.

**I THANK YOU FOR LISTENING!**