

## **Legal Aid Services in Nigeria and United States of America: An Epileptic Justice System**

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### **Abstract**

*Equal and efficient access to justice system among the citizens of Nigeria and United States of America is inadequate due to economic problems, poor government policies and inadequate legal aid services. Therefore, there is need to eradicate or at least, minimise the barriers militating against adequate opportunity to access justice system through legal aid services by the low-income persons. This paper seeks to examine the concept and effects of legal aid services on the citizens of Nigeria and United States of America. It should be noted that the right of access to court and access to justice of the citizens of the two countries under review is constitutional. To achieve the above stated objectives, the research methodology employed in this paper is qualitative. Hence, 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, 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 (as amended), the Constitution of the United States of America 1992 (as amended) and the European Convention on Human Rights. Some bottlenecks are impeding the actual and efficient 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 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

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## **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.<sup>4</sup> It can also be defined as “payment from public funds given to people who cannot afford to pay for advice”.<sup>5</sup> Similarly, Legal aid can be described as “free or inexpensive legal services provided to those who cannot pay full price”.<sup>6</sup> 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 found or who do not have sufficient fund to engage the service of a legal practitioner. Legal aid service is meant to ensure that people have access to justice, most especially for the vulnerable individuals in both criminal and civil matters such as matrimonial causes, landlord and tenant issues, land disputes, debt recovery and the likes.

It should be noted that legal aid encompasses all lawful machineries that can be employed to access justice which include but not limited to rendering legal admonition, representation of indigent persons in criminal and civil matters alike at no cost.

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.<sup>7</sup> This paper is desirous of examining the efficiency and legal implication of the services being rendered as a free legal aid to the citizens of Nigeria and United States of America. The paper also sets out to analyse the extent to which individual person exercise his or her to ventilate or defend his or her grievance in a court of law. The paper further explains the procedure for rendering legal aid services in the two countries mentioned above, the scope and limitation of legal aid Act, Laws of the Federal Republic of Nigeria, 2011, the statute or law regulating legal aid services in U.S.A. The paper discusses the gaps that exist in the laws dealing with free legal services in the aforementioned countries respectively.

## **Procedure for free legal aid services in Nigeria and USA**

Many countries have developed some devices to mitigate high cost of litigation to assist the indigent citizens. One of the said devices is the Legal Aid Scheme which has long time been introduced in Nigeria to assist the indigent citizens to bring justice to their door steps. Thus, the less privileged persons can now access justice through litigation in the court of competent jurisdiction.<sup>8</sup> It is however observed that the Legal Aid Act, L.F.N; 2011 excludes some legal disputes upon which gratuitous legal services can be rendered from the Act.<sup>9</sup>

The Congress of the United States of America, in an attempt to respond positively to the yearnings of the people of the states, established Legal Services Corporation in 1974.<sup>10</sup> The proponents of the Corporation noted that the provision of free legal aid to those who are genuinely in need of it will ameliorate the obstacles that are preventing people from having equal access to justice.<sup>11</sup> Today, said Corporation is almost the biggest means of generating fund

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<sup>4</sup> 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>.

<sup>5</sup> Catherine et al., Oxford Dictionary of Current English 518 (10th ed. 2006).

<sup>6</sup> Bryan A. Garner, Black's Law Dictionary 912 (8th ed. 2004).

<sup>7</sup> Section 36(6)(c), Constitution of the Federal Republic of Nigeria (as altered 1999); U.S. Const. art. VI.

<sup>8</sup> See Preamble to Legal Aid Act, No. 17, Cap. A21, Laws of the Federal Republic of Nigeria (2011).

<sup>9</sup> *Id.* at 2d Sch.

<sup>10</sup> See 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.americamprogress.org/issues/criminal-justice/.../12/making-justice-equal>.

<sup>11</sup> *Id.*

for the civil legal aid for those who could not afford means to engage the services of legal practitioners in America.<sup>12</sup> The Corporation is responsible among other things for sponsoring programmes that make provisions for direct legal services in every State in the United States of America.<sup>13</sup> The Lawyers in the department of legal aid help Americans to solve their legal problems on daily basis which include housing and health care matters. The legal assistance is also extended to cover the victims of Deep-Water Horizon Oil spill in the Gulf coast. These set of people are entitled to receive benefits from the purse of the government directly by way of compensation.<sup>14</sup>

Similar assistance is being rendered by the European Convention on Human Rights. The Convention usually guarantees to the defendants charged with criminal offence(s), the right to be represented by legal practitioners. They also have the right to access free legal assistance in civil cases if they have no enough money and the interest of justice requires that they be granted such assistance.<sup>15</sup> It is a fundamental requirement for a person to benefit from this provision of the convention that: the person has been proved not to have “enough means” (financial criterion) and free legal service is required” in the interest of justice” (substantive criterion).

Notwithstanding 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. For instance, in Nigeria, one of the major reasons why Legal Aid Act was promulgated is to ensure that every citizen have equal access to justice through legal representation or legal aid services. But the attempt by the Act 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 submission 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”.*<sup>16</sup>

### **The range or boundary of Nigerian statute on legal aid**

- A.** The current statute on legal aid in Nigeria has defined its own boundary in respect of the proceedings upon which legal assistance may be given. Those proceedings or matters are identified under the Criminal Code and Penal Code as follows:
1. The case of murder of any kind, Culpable homicide with death penalty
  2. Manslaughter
  3. Malicious or intentional grievous hurt, that is to say, causing wound or causing serious bodily injury
  4. Assault or Criminal force leading to actual bodily injury

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See Convention for the Protection of Human Rights and Fundamental Freedoms art. 6(3)(c), Nov. 4, 1950, 213 U.N.T.S. 221.

<sup>16</sup> T.J. Omidoyin, *Epileptic Legal Aid Scheme in Nigeria: A Breach of Right to Fair Hearing in Nigeria*, 10 J.L. & Const. Prac. 32, 32 (2017).

5. Common assault
6. Affray
7. Stealing
8. Rape
9. Armed robbery
10. Aiding or conniving, or admonishing or procuring the commission of, or assisting, or attempting or conspiring with any person to commit any of the offences listed in paragraph A of the schedule to the Act/Law.
11. Civil claims in involving accidents concerning employee's compensation claim (under the Employee's Compensation Act, (Act No.13 of 2010)
12. Civil claims in respect of compensation for breach of fundamental rights specified under chapter IV of the Constitution of the Federal Republic of Nigeria.
13. Civil claims emanating from criminal activities against any person who is entitled to Legal Aid under the Legal Aid Act.

Going by the ordinary or literal rule of interpretation, the items or matters mentioned hereinbefore clearly shows that legal aid services can only be accorded to people whose claims or requests fall under land matters, chieftaincy matters, tenancy matters and other claims that are specifically and unequivocally highlighted in the schedule. This is because express mentioning of one thing excludes others not mentioned. This is simply put in a latin maxim "expression unius est exclusion alterius".<sup>17</sup> It is trite law that a court of law can only expound the law but cannot expand it.<sup>18</sup> In the case of *Fidelity Bank PLC. vs. Monye*, the Supreme Court held that: -

*"It is a cardinal principle of interpretation of statute that where its provisions are clear and unambiguous, effect must be given to them in their plain and ordinary meaning without the court resorting to any internal aid. It is the duty of the court to interpret the words of the lawmakers as used"*<sup>19</sup>. See also the case of *Kotoye v. Saraki*<sup>20</sup>.

In the case of *Opia v. I. N. E. C*<sup>21</sup>, the Supreme Court held that: -

*"Perhaps this is an appropriate place to remind the appellant the expression unius est exclusion alterius Rule. This means that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have been excluded by implication"*

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. Although, these matters are civil in nature, yet, an indigent citizen

<sup>17</sup> *F.M.B.N. v. Oloho* (2002) 4 S.C. (pt. II) 117 at 122–23 (Nigeria); *Black's Law Dictionary* 518 (8th ed. 2004).

<sup>18</sup> *INEC v. PDP* (1999) 11 NWLR (pt. 626) 194 at 195 paras. b–c (Nigeria); *NNPC v. Lutin* (2006) 1 S.C.N.J. 131 at 143–44 (Nigeria); *Gafar v. Govt. of Kwara State* (2007) 4 NWLR (pt. 1024) 375 at 408 paras. B–C (Nigeria); *Adetayo v. Ademola* (2010) 15 NWLR (pt. 1215) 169 at 190–91 paras. G–A, 198 paras. B–D, 205 paras. B–D, D–F (Nigeria); *Unipetrol (Nig.) Plc v. E.S.B.T.R.* (2006) 8 NWLR (pt. 983) 624 at 636 paras. A–C (Nigeria).

<sup>19</sup> *Fidelity Bank Plc v. Monye* (2012) 10 NWLR (pt. 1307) 1 at 31 (Nigeria).

<sup>20</sup> *Kotoye v. Saraki* (1994) NWLR (pt. 367) 414 at 460–61 (Nigeria).

<sup>21</sup> *Udoh v. Orthopedic Hospital Management Board* (1993) 7 NWLR (pt. 304) 1339 (Nigeria); *INEC v. PDP* (1999) 11 NWLR (pt. 626) 200 (Nigeria); *Buhari v. Yusuf* (2003) 14 NWLR (pt. 841) 446 (Nigeria); *Opia v. INEC* (2014) 7 NWLR (pt. 1407) 431 at 464 (Nigeria).

whose cases fall within the ambit of these matters cannot get legal aid because they are not part of the matters or cases enumerated under the Act for which legal aid can be rendered.

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 service 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 citizens in Nigerians through legal aid services. In the case of *I.N.E.C. v. PDP*<sup>22</sup> it was held that:

*“It is well settled that in constructing and interpreting the words of the Decree or any other statute, grammatical and plain meaning be accorded them provided the language used is clear and unambiguous. Consequently, it is not the business of the court to bring in, chip in or even interpose any language and or words which tend to alter or change the intention and meaning of statutory provisions.”*

Obviously, the Legal Aid Act is selective in its attempt to cater for the needs of the indigent citizens in accessing justice. This selective policy is inimical to the interest of the public at large. The Act did not state any reason for limiting legal aid to some subject matters of litigation or for excepting some classes of dispute from matters upon which legal aid can be rendered. It is not enough to state that legal aid cannot be accorded to citizens whose subject matters are not captured by the Act with out more. Justice demands that cogent and reasonable reasons be advanced to the citizens who are tax payers to know why they are exempted from benefitting from the government scheme established to aid adequate dispensation of justice.

### **Provision of legal aid services in United States of America**

In the United States of America, the Americans need lawyer’s help for almost everything they do, from an unjust eviction to preventing wrongful conviction.<sup>23</sup>In more than three-fourths of all civil trial cases in the United States, at least one litigant does not have a lawyer.<sup>24</sup> Figures are even very clear when it comes to family law, domestic violence, housing and small-claims matters, such disputes over amount up to 25, 000 dollars depending on the State, at least one party lacks legal representation in seventy to ninety eight percent of these cases.<sup>25</sup>While about ninety to ninety – five percent of the landlords are represented by lawyers before the Landlord and Tenant Branch of the D.C. Superior Court, only about five to ten percent of the tenants have legal assistance.<sup>26</sup> Unlike the criminal matters, in civil cases, parties do not have a generalized right to counsel. While all states provide a right to counsel for few types of cases, most parties in civil cases that involve basic human needs such as housing do not have a right to legal

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<sup>22</sup> *INEC v. PDP* (1999) 11 NWLR (pt. 626) 174 at 195 paras. B–C (Nigeria).

<sup>23</sup> *Supra* note 22.

<sup>24</sup> 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](http://www.ncsc.org/~media/Files/PDF/Research/Civil%20Justice%20Report-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](http://connecticutlawreview.org/files/2015/01/9-steinberg.Pdf).

<sup>25</sup> Deborah L. Rhode, *Access to Justice* (2004).

<sup>26</sup> 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”. 19 th October, 2016 available at [https://www.legalaiddc.org/wp-content/uploads/.../bharrison\\_son\\_B21\\_879\\_10.19.16. pdf.](https://www.legalaiddc.org/wp-content/uploads/.../bharrison_son_B21_879_10.19.16.pdf)

representation.<sup>27</sup> Unlike other countries, United States places the burden on an individual to seek justice by accessing the Court.<sup>28</sup> 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.<sup>29</sup>

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 government<sup>30</sup> (on the civil side) are people of colour,<sup>31</sup> women,<sup>32</sup>immigrants,<sup>33</sup> the elderly,<sup>34</sup> people with disabilities<sup>35</sup> and 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.<sup>36</sup>

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.<sup>37</sup>

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<sup>27</sup> 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](https://civilrighttocounsel.org/uploaded_files/4/The_Case_Against_Case_by_Case_Pollock_Pdf).

<sup>28</sup> *Id.*

<sup>29</sup> Earl, J., “Lifting the American Exceptionalism Curtain. Options and Lessons From Abroad”, *Hasting 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](https://worldjustproject.org/sites/default/files/roli_2015_O.pdf). The report ranks United States 65 th out of 102 countries on access to Civil Justice.

<sup>30</sup> Jane, 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

<sup>31</sup> National Poverty Centre, “Poverty in the United States” available at <http://www.npc.umich.edu/poverty/>; 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>.

<sup>32</sup> See National Women’s Law Centre, “NWLC Analysis of 2014 Poverty Census Data” October 21, 2015 available at <http://nwlc.org/recourses/nwlc-anaysis-2014-Census-poverty-data>.

<sup>33</sup> See 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](http://web.law.Columbia.Edu/sites/default/files/microsites/human-rights-institute/filed/equal_access_to_justice_cerd_shadow_report.pdf).

<sup>34</sup> Juliette, 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>. 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](http://www.americanbar.org/publications/experience/2014/spring/increasing-access-Justice_the_elderly_and_others_illinois_experience). Html.

<sup>35</sup> Franklyn Palm, *Why Disability and Poverty Still Go Hand in Hand 25 Years After Landmark Law*, *NPR* (July 23, 2015), <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>.

<sup>36</sup> Legal 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\\_contents/uploads/LGB-poverty-update-June-2013pdf](http://www.Williams-Institute.Law.Uncla.edu/wp_contents/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/up-content/uploads/issues/2009/07/pdf/igbt\\_poverty.pdf](http://www..americanprogress.org/up-content/uploads/issues/2009/07/pdf/igbt_poverty.pdf).

<sup>37</sup> *State 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>, 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

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.<sup>38</sup> 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.<sup>39</sup> 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 the largest 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.<sup>40</sup>

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.<sup>41</sup> Similarly, the Legal Services Corporation Act bars grantees or beneficiaries from most abortion – related legal proceedings.<sup>42</sup>

Consequent upon the restrictions placed by the congress on legal aid services, legal practitioners are limited in what they can do to effect the overarching policies including organisations that support and promote injustice. In a situation where a program accepts just one U.S. dollar of Legal Services Corporation funding, it has no choice than to comply with their limitations in all activities, even if it receives money from other non-restricted sources.<sup>43</sup> Accordingly, the said legal aid policy can be said to be discriminative. It is not all encompassing as required. Where a pregnant citizen is a victim of rape and decided to get rid of the unwanted pregnancy, the law should give her a conducive atmosphere and the necessary legal support to achieve her aim, especially, if she is an indigent citizen.

Consequently, the Hyde Amendment that prohibits the use of Federal Funds to pay for abortion and the Legal Services Corporation Act which prevents the grantees or the beneficiaries from most abortion – related legal proceedings ought to be revisited in order to accommodate those with genuine cases of abortion.

## **Legal aid services in Nigeria and U.S.A: the interface**

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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/>.

<sup>38</sup> See 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>.

<sup>39</sup> People of color are disproportionately represented among those in poverty and in the criminal justice system due in part to racial profiling and bias at stages from investigation to prosecution.

<sup>40</sup> Caroline Wolf Harlow, Bureau of Just. Statistics, U.S. Dep’t of Just., Defense Counsel in Criminal Cases (2000), <https://bjs.ojp.gov/content/pub/pdf/dccc.pdf>.

<sup>41</sup> Heidi Williamson & Jamila Taylor, Ctr. for Am. Progress, The Hyde Amendment Has Perpetuated Inequality in Abortion Access for 40 Years (2016).

<sup>42</sup> See Legal Services Corporation.

<sup>43</sup> Brennan 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>.

In Nigeria, unlike in America, legal assistance is available to every indigent citizen both in civil matters and in criminal matters.<sup>44</sup>

In the United States of America, civil legal aid is shrinking as a result of the congressional restrictions because the poor citizens can only enjoy legal aid services in criminal matters.<sup>45</sup>

In the case of *Gideon v. Wainwright*,<sup>46</sup> 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 6<sup>th</sup> Amendment, right to counsel applies in all criminal proceedings where the loss of liberty may be involved. It is necessary to state briefly, the facts of the case in order to appreciate the decision of the Supreme Court of the United States America referred to in the above.

Clarence Earl Gideon was a man with eight-grade education. He ran away from home when he was in middle school. He spent much of early adult life as a drifter, spending time in and out of prisons for non-violent crimes. He was charged with breaking and entering with the intent to commit a misdemeanor, which is a felony under Florida Law.

At the court, he appeared without an attorney. In the open court, he asked the judge to appoint counsel for him because he could not afford an attorney. The trial judge denied Gideon's request because Florida law only permitted the appointment of counsel for poor defendants charged with capital offences.

At the trial, Gideon represented himself. He made an opening statement to the jury, cross-examined the prosecution's witnesses, presented witnesses in his own defence, declined to testify himself, and made arguments emphasizing his innocence. Despite his efforts, the jury found him guilty and he was sentenced to five years imprisonment.

Premised on the above, Gideon filed a petition for writ of habeas corpus in the Florida Supreme Court seeking for relief from his conviction. He challenged his conviction and sentence on the ground that the trial judge's refusal to appoint counsel violated his constitutional rights. However, the Supreme Court of Florida denied Gideon's petition. Thereafter, Gideon filed a handwritten petition in the Supreme Court of United States of America against the decision of the Supreme Court of Florida.

The Supreme Court of the United States agreed to hear the petition in order to resolve the issue of whether the right to be represented by counsel guaranteed under the 6<sup>th</sup> Amendment of the Constitution applies to defendants in the state court. The Supreme Court of the United States stated that by the 6<sup>th</sup> Amendment of the Constitution, right to counsel applies in all criminal proceedings where the loss of liberty may be involved. The court further held that the Sixth Amendment's guarantee of counsel is a fundamental right essential to a fair trial and as such, applies to the states through the of the Fourteenth Amendment.

Notwithstanding this decision of the Supreme Court of the United States, 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

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<sup>44</sup> Caroline Wolf Harlow, Bureau of Just. Statistics, U.S. Dep't of Just., Defense Counsel in Criminal Cases (2000), <https://bjs.ojp.gov/content/pub/pdf/dccc.pdf>.

<sup>45</sup> *Id.*

<sup>46</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

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.<sup>47</sup>

It is to be noted that, the Congress of the United States including the Courts generally, have intensified serious efforts and commendable progress on the legal rights of the ranging from their social welfare and criminal justice. These positive steps were taken through the relevant provisions of the Constitution, other state legislations and amazing judgments of the courts. It is worthy of note that, if the citizens in whose befit the legislations and the decisions are meant to protect do not have access to legal assistance in civil causes or do not receive adequate defence representation, the entire protections from the government and the courts will be ineffective and irrelevant to their daily lives.

For avoidance of doubt, it has been mentioned earlier in this article, particularly, under the conceptual clarifications that, the right of access to court and access to justice incorporates right to have one's complaints heard in the court of law and right to have one's claim defended in person or through legal representation within the confines of the law of the land. Be that as it may, it can be submitted that, a denial of right to legal representation is equivalent to a denial of right of access to court and right to access to justice. This also amounts to a denial of the constitutional rights that have been promulgated to protect the citizens from all kinds of infringements; be it deliberate or an infringement arising from inadvertence.

It is on record that the European Court of Human Rights, through the interpretation and implementation of the Article 6.3 (c)<sup>48</sup> has established a number of specific guarantees to the right to access to court and access to justice in civil causes and the right to free legal representation in criminal causes or matters, with the aim to ensure that the fair trial provisions spelt out in the enabling laws will be applied on equal basis to every individual, irrespective of their financial positions.<sup>49</sup>

One of the major obstacles in accessing justice through court proceedings nationwide is the cost of legal advice and legal representation as can be gathered from the preceding paragraphs. 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.<sup>50</sup> 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.<sup>51</sup> 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**

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<sup>47</sup>American 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>.

<sup>48</sup>Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

<sup>49</sup>Vessela, T., "The Right to Access to Court Under Case Law of the European Court of Human Rights available at [web.worldbank.org](http://web.worldbank.org).

<sup>50</sup>Available at [www.un.org/rul-of-law-and-human-rights](http://www.un.org/rul-of-law-and-human-rights); <https://www.un.org/ruleoflaw/rule-of-law-and-human-rights>.

<sup>51</sup>Id.

This abstract or paper has examined the definition, nature, scope and effects of legal aid services in Nigeria and United States of America. The work further analysed the citizen's right of access to court in particular and their right of access to justice general. It further discussed the procedure or process for legal aid services in the two countries alike. It elucidates the focus and extent of the applicability of the Legal Aid Act and the provision of legal aid services in United States of America. The paper juxtaposed the difference and similarities between the legal aid services in Nigeria and United States of America respectively. The paper has been able to establish the fact that the Legal Aid Act itself does not define the term "Legal Aid" it rather specifies the people that are eligible to the grant of legal aid service as already discussed in this paper. 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 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 at all material times without unnecessary restrictions.

The class of people who are eligible to legal aid services in accordance with the provisions of Legal Aid Act, Laws of the Federation of Nigeria is reasonable enough but the causes of actions in which legal aid services can be rendered are not encompassing enough to cater for all and sundry.

## **Recommendation**

It is hereby recommended that the law makers in Nigeria should amend the second schedule to the Legal Aid Act No, 17, Laws of the Federation of Nigeria, 2011 to accommodate other causes of actions 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. The implication of this recommendation is that it will remove the barriers being encountered by the prospective litigants who are indigent citizens with genuine cases.

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 like their counterparts in criminal matters. The implementation of this suggestion will eliminate unlawful discrimination among the citizens. The tax payers should always enjoy the support of the government when their civil liberty is threatened to justify the tax they are paying to the government. Justice they say, must not only be seen, but it must manifestly be seen to have been done to all on equal basis.

There are indigent citizens who may intend to prosecute or defend one proceeding or the other but whose financial position renders them handicap in the pursuit of their right in the courts of law. 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. It is therefore necessary to cater for the needs of these category of persons through meaningful legislation by the law makers.

The legal practitioners should, as a matter of fact, ensure that they are diligent in handling their clients' cases. They should try as much as possible to avoid unnecessary delay in prosecuting or defending any case in the court of law. Justice delayed is justice denied. Legal practitioners have the obligation to protect the confidence reposed on them by their clients even when they render free legal services to their clients. They also have the duty to protect the fiduciary relationship between them and their clients notwithstanding the fact that they are rendering legal aid

services to any indigent citizen. It must be borne in mind that negligence on the part of counsel is actionable by the victim of such negligence.

It has been found that one of the major obstacles militating against right of access to court and access to justice nationwide (Nigeria and U.S.A inclusive) is the cost of engaging legal services or legal representation, consequently, Legal Aid Programme is a key component or strategies to enhance justice all over the world. It is therefore recommended that special and sufficient funds be set aside to cater for the necessary and relevant impetus that would be directed toward solving this problem.

It is also recommended that the Hyde Amendment which bars the use of Federal Funds to pay for abortion and the Legal Services Corporation Act which bars the grantees or the beneficiaries of funds from most abortion – related legal proceedings should be amended to accommodate those with genuine cases of abortion. Such people should be permitted to enjoy free legal aid services. The implementation of this recommendation will serve as a catalyst to effective and efficient dispensation of administration of justice through legal aid without unnecessary discrimination.