ACCESS TO JUSTICE AND THE JUSTICE SECTOR REFORM IN NIGERIA

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Introduction

It is a paradox that Nigeria is a rich country inhabited by the poor. Her poverty profile in statistical figures according to a recent study[1] indicates that Nigerian people live in one of the twenty poorest countries in the world. For instance, Gross Domestic Product (GDP) per capita in 1998 was estimated at US Dollars 130, compared with US Dollars 950 in 1980-85. In other words, poverty has been rapidly increasing of recent rather than decreasing. The report has also revealed that two-thirds of the population (66 million) lived below poverty line in 1996 compared to one third (18.3 million) in 1980. Certainly, according to its analysis, per capita income at USDollars 310 is very low for a resource rich country like Nigeria. It also states that the average for Sub-Saharan Africa (excluding South Africa) is USDollars 315, meaning that Nigeria is even lagging behind the poorest African countries which do not have the kind of resource she has.

Other figures given in the report of the above mentioned study show that life expectancy at 50 years is 2 years less than the rest of Sub-Saharan Africa and this is even declining because of the scourge of HIV-AIDS; 70% of rural households have no access to sanitation; adult literacy averaged 56%. As for all school age children one third of them did not enroll in primary school in 1996. Finally, 64% of Nigeria's poor and 85% of the extreme poor live in rural areas with 35 of Nigeria's 36 states experiencing poverty levels above 50%. This is

really a gloomy picture of Nigeria as a poor state.[2] Nigerians deserve better governance than what they have been getting from their political leaders.

In 2004, Nigeria introduced the National Economic Empowerment and Development Strategy (NEEDS) within which greater transparency has been introduced into the conduct of government business through the institutionalization of the Budget Due Process, the war against corruption has been intensified, and greater fiscal prudence and budget discipline introduced among many other measures that are yielding positive results.[3]

The principal development objective of government as emphasized in the NEEDS document, is to reduce poverty along with associated problems of food security and hunger. Findings in 2004 show that poverty is more acute in rural areas and that some geo-political zones are particularly harder hit than others by the phenomenon. Unemployment is also a recurring issue, and over 70% of the unemployed are relatively unskilled people between ages of 13-25 years. The current policy environment and the strong political will to implement pro-poor programmes raise some hope about the likelihood of achieving the Millennium Development Goals (MDGs) by 2015.[4]

As result of the improvement in management of the economy, the growth rate of GDP has averaged 8.2% between 2003 and 2004 against the average annual growth rate of 3.5% in the last decade. For the first time in a decade, therefore, the growth rate of GDP has exceeded the rate of growth of population. The growth of the non-oil sector in 2004 was 7.5% as against 3.3% in the oil sector. This is the foreseen result from the new policy thrust of the Government.[5]

The growing awareness and recognition on the part of African governments, donor agencies/development partners[6] and Civil Society Groups, that poor people, particularly women, the powerless and the disadvantaged, are the most vulnerable to all forms of crime and discrimination; and that in very many cases, formal justice systems fail to protect them, is a step in the right

direction. This has recently necessitated the need for African governments to develop the capacity to ensure safety, security and access to justice for all.[7]

The importance of justice systems for improving the lives of poor people by ensuring that everybody has access to systems which dispense justice fairly, speedily and without discrimination cannot be over-emphasized.

Failure of states to provide citizens with protection from crime and access to justice impedes sustainable development.[8] All people have a right to go about their lives in peace, free to make the most of their opportunities. They can only do so if the institutions of justice and law and order protect them in their daily lives.[9]

States with poorly functioning legal systems and poor crime control mechanisms are unattractive to investors, so economic growth also suffers.[10]

Accordingly, this paper contends that in developing countries like Nigeria the law is often discriminatory[11] and legal processes are expensive, slow and complex. The result is that people, and particularly poor and disadvantaged people, have inadequate and unequal access to justice through the formal legal system. For these reasons they tend to rely much more on African Customary Justice Systems, but these can be discriminatory. Improving access to justice requires that both formal and customary systems be made to work justly and equitably.[12] It also means more than reforming legal procedures. It can also mean law reform, making courts more user friendly, improving African Customary Systems and improving the treatment of offenders.[13]

It is against this background that this paper seeks to realize the following objectives: -

1. To underscore the importance of justice sector reform for improving the quality of lives of poor and disadvantaged people in Nigeria;
2. To examine the role/contribution of development partners/donor agencies in realizing the objectives of accessible justice, safety and

security strategies, identified by developing countries like Nigeria as priorities within the poverty reduction strategy process.

3. The examine critically the wider challenges of legal pluralism, poverty and corruption in Nigeria;
4. To conclude with viable options for Nigeria.

This paper is therefore divided into four broad parts: -

1. Access to Justice and Justice Sector reform: - paradigm shift in Donor Policy and Practice in Africa;
2. Nigerian-led initiatives in Justice Sector Reform: - background and on going activities;
3. Wider challenges of poverty, corruption and legal pluralism in Nigeria;
4. Conclusion and recommendations.

PART I: - ACCESS TO JUSTICE AND JUSTICE SECTOR REFORM: - PARADIGM SHIFT IN DONOR POLICY AND PRACTICE.

This part of the paper seeks to clarify briefly the key terms: - "access to justice" and "justice sector," and to examine the rationale behind the paradigm shift in Donor Policy and Practice to justice sector reform in Africa.

1.1 "Access to Justice" and Justice Sector"

The term 'access to justice' means that people in need of help, finding effective solutions available from justice systems which are accessible, affordable, comprehensible to ordinary people, and which dispense justice fairly, speedily and without discrimination, fear or favour and a greater role for alternative dispute resolution.[14]

The term 'access to justice' refers to judicial and administrative remedies and procedures available to a person (natural or juristic) aggrieved or likely to be aggrieved by an issue. It refers also to a fair and equitable legal framework that protects human rights and ensures delivery of justice.

Without effective access to justice there is no effective legal protection of human rights. That is why the legislatures or parliaments, governments and courts of every country have a positive duty to translate the ideal of effective access to justice into practical reality. Effective access is not just an optional extra or a luxury of affluent and economically advanced societies. Everyone, everywhere, should enjoy the equal protection of the law if there is to be justice for all.[15]

In his recent report on the English civil justice system, the Master of the Rolls, Lord Woolf, identified a number of principles which the system should meet in order to ensure access to justice. The justice system should, he wrote, "(a) be just in the result it delivers; (b) be fair in the way it treats litigants; (c) offer appropriate procedures at a reasonable cost; (d) deal with cases with reasonable speed; (e) understandable to those who use it; (f) be responsive to the needs of those who use it; (g) provide as much certainty as the nature of the particular case allows; and (h) be effective, adequately resourced and organized.[16]

Those principles of access to justice are of general application to all systems of justice, civil and criminal.

The term "justice sector" is used here in a broad sense, comprising not just the judiciary, lawyers, and justice and interior ministeries, but also police, prosecutors, prisons system, human rights bodies, non-state mechanisms (e.g. traditional chiefs and traditional systems of justice) and civil society organizations involved in justice work.[17]

1.2 Paradigm shift in Donor Policy and Practice to Justice Sector Reform in Africa.

In an overview of justice sector reform aid in Africa, Laure-Helene Piron[18] indicates that Donor assistance to promote justice sector reform in sub-Saharan Africa has increased significantly over the last 10 years, from an estimate U.S. $17.7 million in 1994 to over $110 million in 2002. As total aid commitments

to the region remained stable during the period, this represents a shift in priorities toward legal and judicial reform, reflecting both an acknowledgement of Africa-specific developments – notably democratization and the prevalence of violent conflicts – as well as increasing interest in justice sector work globally.
That Donor support for justice sector reform changed focus from law reform to the rule of law with the end of the cold war and the growing trend toward multi-party democracy across the continent in the late 1980s and early 1990s. The new approach included support for domestic civil society organizations that demand better justice, monitor human rights, and provide legal assistance.

Further, Piron examines how the new poverty reduction agenda and legal reform was justified in 2000 when donors drew on studies to demonstrate the importance of functioning, fair, and accessible justice institutions in combating poverty. In assessing the new agenda in practice, Piron argues that the fundamental principle of the current "aid effectiveness" agenda is that donors should promote domestic leadership and ownership of reforms. Finally, Piron identifies the following five key challenges to improve donor support to justice sector reform in Africa: - 1) Sustainable interventions; 2) Adopting a sectoral approach; 3) Understanding the context for intended reforms; 4) Involving non-state actors by improving linkages between the formal and traditional or customary systems; 5) Improving donor habits and incentives.[19]

PART II: - JUSTICE SECTOR REFORM: - NIGERIAN LED INITIATIVES AND THE ROLE OF DONOR AGENCIES.

2.1 Background

In the aftermath of Nigeria's transition from military dictatorship to civilian rule and restoration of democracy, the newly elected authorities of Nigeria requested donor assistance in their quest to reinstate the rule of law and improve the functioning and performance of Nigerian legal and judicial systems.

Between May 1999 and June 2000, Nigerian justice sector officials have been attempting to restore the credibility of Nigerian institutions (including legal and judicial institutions) which had been seriously undermined under military rule. The judicial branch, along with the legislative branch of government, has asserted its right to independence, including budgetary and operational independence. A number of initiatives have been taken or introduced that could have a positive impact on justice sector performance. These include a proposed presidential panel on judicial and legal reform (discussed in June 2000 at a meeting between the President and human rights NGOs), activities planned under the ongoing Economic Management Capacity Building Progaramme (EMCAP), a five-year strategic plan for reform of the Nigerian police, prisons decongestion, penal and prisons service reform, a national constitutional review process, and a number of innovative initiatives taken by legal and judicial officials at the state level.[20]

Meanwhile Nigerian civil society organizations have been active in an informal process of developing a national justice sector agenda. A variety of Nigerian non-governmental organizations have engaged both within Nigeria and with donors about reform and improvement of the justice sector. While the NGOs have not yet produced a unified justice sector improvement strategy, they have asserted their interest in doing so, and in participating in the formulation of a national plan. There have been numerous conferences and both public and private meetings organized by these organizations, both in Nigeria and abroad. The joint donor mission contributed to this consultation process through roundtables organized by the Human Rights Law Service (HURILAWS) in Lagos, Abuja, Kaduna, and Enugu in June 2000. A wide range of civil society organizations, legal practitioners, judges and other officials attended. These roundtables resulted in a report prepared by HURILAWS titled "Legal and Justice Sector Reform in Nigeria", and a set of recommended next steps, including a comprehensive literature review of the legal and judicial systems;

support for technical resources (computers, internet access, etc.); a prison decongestion project; engagement of the private sector in justice sector reform; support for NGO capacity to develop legislation; and collaboration with the Federal Attorney General on the President's proposed judicial/legal reform panel.[21]

2.2 The Role of Donor Agencies in Reforming the Justice Sector in Nigeria.

It was against the above mentioned background that a joint-donor assessment mission on the Nigerian Justice Sector comprised of the European Union (EU), the UK Department for International Development (DFID), the US Agency for International Development (USAID), the United Nations Development Programme (UNDP), and the World Bank (WB) visited Nigeria from June 20 through June 30, 2000.

The purpose of the joint donors' mission was to faster a coordinated approach and a common understanding of issues affecting the Nigerian Justice Sector among donor agencies providing developing assistance in the sector. Coordinated donor action in the rule of law and access to justice field in Nigeria will have several beneficial effects. It will allow donors to avoid unnecessary duplication of efforts in programming; enable the optimal use of resources, efficiencies of scale and the benefits of mobilizing respective comparative advantages and interests; and minimize the burden on Nigerian officials of dealing repeatedly with multitude of donor representatives.

The report of the joint donor assessment mission revealed the following core findings and possible areas of support as well as positive initial factors at play in Nigeria that will contribute to a successful reform process.[22]

2.2.1 Core Findings

Existing institutions in the justice sector do not, by and large, perform the functions they are designed to fulfil. This finding applies mainly to the police, the

lower courts, the legal aid system and the prison system. These are the institutions which impact mainly on the poor and vulnerable.

The DFID mission found that people living in poverty do not get the quality of access to justice from the justice system which they need and deserve. Nor do they benefit from the form of safety which the state is expected to provide through its security institutions such as the police.

The key constraints preventing poor people form accessing safety, security and justice are found both within the formal justice system and outside it. The combined result of the existing constraints is that the public fear and mistrust the system and its institutions. If they do try to use it, access is very difficult. The situation is compounded by the impunity of those involved in malpractice or abuse of the system, and a high tolerance of violence in Nigerian society which leads people to take the law into their own hands (eg through vigilante groups) when the justice system is seen to fail.

2.2.2 Possible areas of support[23]

In light of the key constraints currently faced by poor people, the following aspects were identified as central to support by DFID to enhance safety, security and access to justice for the poor in Nigeria.

- opening up the justice sector in Nigeria to current thinking and best practice – within the country, elsewhere in Africa, and in other Federal systems;
- providing support to build constituencies for reform – including for example, at different levels (state and federal), multi-agency government, civil society constituencies, or a combination of both, complemented by support on strategy planning to government institutions interested in reform and new approaches, and possible support to build capacity in some of the leading justice sector CSO's;

- facilitating inter-agency working on increasing access to safety, security and justice in particular for the poor at state level, or on sub-sectoral issues (eg high remand levels) at Federal level;
- support to small scale pilots at State level to demonstrate successful alternative approaches either within the state or to Federal level;
- research on issues central to poor peoples access to safety, security and access to justice, so that interventions are informed by local needs – including perspectives of poor users of the system as well as by partner institutions in focal states.

An inception period could begin support for these components. In DFID focal states this would enable a clearer focus on local needs and facilities a flexible response to local conditions. At the Federal level, an inception phase could facilitate discussion and debate, and move forward a Nigerian agenda of improving access to safety, security and justice. The inception phase would also allow additional research and data to inform the decisions regarding longer-term DFID support to the sector (eg on poor people's perceptions of the justice system, and on the impact of the introduction of criminal sharia law).

Below are the key themes which have emerged from DFID research and consultations with Nigerian stakeholders, and provides examples of the kinds of activities which might be involved:

Purpose: To enhance access to, and the quality of, safety and justice in Nigeria
Theme 1: Support to the development of a Nigeria-led process for justice sector reform
Theme 2: Improved management and operation of justice sector institutions
Theme 3: Strengthened mechanisms to improve poor people's safety and security
Theme 4: Improved access to justice institutions and services for poor people

Theme 5:
Synthesis and dissemination of lessons and approaches

2.2.3 Positive initial factors

For justice sector assistance in Nigeria to succeed, it will require substantial and enthusiastic Nigerian participation and a full sense of Nigerian "ownership". Despite the many challenges facing the Nigerian justice sector, it is clear from interviews and various written sources that there are a number of positive factors at play in Nigeria today that will contribute to a successful reform process.

While political will is intangible and difficult to gauge, the unanimous enthusiasms of all the major governmental and non-governmental actors to accomplish justice sector reform is remarkable. The President himself has shown great interest in improvement in the security and justice sector by explicitly requesting donor assistance in this sector and has called for the establishment of a panel on the administration of justice consisting of senior officials, to help formulate a national justice strategy. Senior justice sector officials have also shown their resolve. Senior members of the judiciary recognize the need for a complete overhaul of the justice system and have requested for substantial donor assistance. Senior justice official at the state level, including both judges and prosecutors, agree.

In addition to government enthusiasms, justice sector reform will be aided by the fact that numerous articulate and committed non-governmental organizations are engaged in the national dialogue on justice sector improvement.

A very engaged civil society is playing the important role of questioning assumptions, expressing popular expectations, proposing a variety of alternative approaches to reform and improvement, and making the debate on such subjects a truly public debate.

Government and NGO officials at both the state and federal levels are energetic and impatient for reform and improvement. Many are initiating changes, and appear willing, at least in some cases, to risk testing their innovations in the court of public opinion. Given this political will and momentum, the joint donor team agreed that this period is promising in terms of the likelihood of successful reform and improvement. Assistance should be directed toward the most dynamic and promising initiatives particularly at the state level. Donors should also support the development of a national justice sector reform strategy.[24]

2.2.4 Nigerian-led Initiatives[25]

In order to maximize Nigerian "ownership" of justice sector reform, it is important to identify and build upon the best Nigerian initiatives in this sensitive area. Some of the most notable include the following:

a) Formulation of a judicial/legal reform program[26]

The joint donor mission team took note of efforts of Nigerian authorities since March 2000, aimed at organizing a participatory stakeholders conference for the purpose of formulating a comprehensive legal and judicial reform program. The team was also informed of the President's recent meeting with key human rights advocates, at which meeting he pledged to establish a judicial/legal reform panel entrusted to move the national reform process forward. The President has asked the Federal Attorney General and Minister of Justice to coordinate the panel. Bringing judiciary leaders into this panel will be vital to its success. Depending on its mandate and composition, the panel may be able to play a leading role in the development of a national sector reform strategy.

b) Five year strategic plan for police reorientation

In August 1999, a strategic planning process for the reorientation of the police was initiated. A draft strategic plan is under consideration by the

Ministry of Police Affairs and the Inspector General of the Police. President Obasanjo has endorsed the strategic planning process. A bill is in the National Assembly to create a Police service Commission, which would strengthened the accountability of the police. A network of Nigerian civil society organizations (and including the National Human Rights Commission) has also recently been created to work with the police and assist the reform process.

c) Prison and Penal Reform

The Nigerian Prisons Service has submitted proposals for a second phase of reform, including the establishment of a Prisons Service Commission. In July 2001, the prison service was granted self-accounting status.

The Prisons Service has also been working with civil society organizations to improve treatment of prisoners and provide human rights training for prison officials (in particular with PRAWA – Prisons Rehabilitation and Welfare Action).

In area of penal reform, a national conference held in Abuja in February 2000 led to the establishment of a Working Group on Alternatives to Imprisonment to review penal policy, advocate for greater use of fines and probation, and develop a sentencing manual.

d) Legal aid initiative

On June 22, 2000, the Legal Resources Consortium held a forum on transforming the provision of legal aid services in Nigeria. The forum discussed the establishment of an effective legal aid fund, the creation of a permanent legal aid practitioner's forum and mechanisms to encourage private legal practitioners to take up legal aid cases.

e) State-Level initiatives

Lagos State has established a "Citizens' Mediation Center" for people who cannot afford to go to the formal courts. According to the Attorney General more cases are now being field in the mediation center than in the

courts themselves because they are resolved more rapidly there and at a lower cost. Other innovations of the Lagos State Attorney General include an Office of the Public Defender, which provides free legal services for the poor staffed by 10 full-time attorneys. There is also a Human Rights Protection Unit and a Consumer Protection Unit. All are under the newly created "Directorate of Citizens Rights".

The Chief Judges of Kaduna and Enugu States, also interviewed during the joint assessment mission, identified a number of problems faced by the judiciary in the states. Those that came out forcefully in the discussion were: inadequate remuneration and poor working conditions of officers of the judiciary, lack of modern technology and the problem of using longhand to record proceedings, in the courts, need for reform of rules of procedure in the courts and needs for training for budgeting officers for effective management of the judiciary.

2.2.5 REFORM INITIATIVES

Further, the capacity of the relevant government agencies have been enhanced by donor agencies, particularly DFID and USAID, resulting in the following reform initiatives, on-going activities and output: -

a) Safety, Security, Access to Justice and Non- Discrimination.

Between 2001 - 2006 the following reform measures have been put in place in Nigeria.

*** NATIONAL ECONOMIC EMPOWERMENT AND DEVELOPMENT STRATEGY (NEEDS): - (2004) NATIONAL PLANNING COMMISSION, ABUJA, pp. 95-99**

Chapter 9 of the NEEDS document under review is titled: - Improving security and the Administration of Justice". The overall policy thrust here is that NEEDS seeks to increase the level of security of life and property, reduce uncertainly, and improve the confidence in Nigeria by both Nigerians and investors. The strategy recognizes the role society must play in enhancing

security by imbuing the right values and attitude towards safeguarding life and property. It focuses on growing the economy to reduce unemployment; providing safety nets for vulnerable groups, including children; and fighting corruption and drug abuse. It pays attention to training and equipping security institutions and agencies (judiciary, police, prisons, immigration, customs, and other organs) charged with guaranteeing internal security. An important dimension of the NEEDS policy is achieving a paradigm shift and change of attitude of some of those involved in security matters to see themselves as public servants who should deliver high-quality services to their customers. Corrupt practices among security operatives will be vigorously fought; corrupt officials will not only be weeded out but severely punished. The quality of services delivered will be closely monitored as part of the ongoing reforms.

Society, schools, religious institutions, and families all have key roles to play in creating a disciplined and law-abiding citizenry with the right values. Teachers, parents, and people in positions of authority must recognize that children and youths see them as role models. They must provide young people with the right orientation and advise, especially with respect to using violence to pursue their rights or seek redress.

NEEDS plans to increase national security by increasing the effectiveness of the police, reforming the nation's prisons, improving the judicial system, promoting and protecting human rights, increasing women's rights, and ensuring the rights of people living with HIV/AIDS.

** **SECURITY, JUSTICE AND GROWTH: NIGERIA (2005): - BRISTISH COUNCIL/DFID, 6 PAGES**

The pro-poor and gender based 2001-7 Federal Government of Nigeria/DFID Access to Justice, Security and Growth project with Jigawa, Ekiti, Benue, Enugu, Kano and Lagos States as focal states.

DFID-Nigeria's Security, Justice and Growth programme (SJG) strives to improve access to, and the quality of, safety, security and justice for poor people and their livelihoods.

Through the SJG Programme, the United Kingdom's Department for International Development (DFID) and Nigerian partners are working to realize the values, principles and goals contained in the United Nations Millennium Summit Declaration: peace, security, development, poverty eradication, human rights, democracy, good governance, protecting the vulnerable and meeting the special needs of Africa.

The SJG Programme is organized into three components: security, access to justice and growth. It is rights-based; working to enhance all rights, but especially equality rights (gender); and is supporting those combating corruption. It promotes interagency and state civil society co-operation and sector-wide activities. It works at the federal level to support the National Economic Empowerment and Development Strategy (NEEDS) and, in specific states, the state equivalent (SEEDS).

The **security** component is supporting:

- the transformation of the culture and organisation of the Nigeria Police by the introduction of community-based policing;
- improved service provision to communities by the Nigeria Police through the introduction of community-based policing;
- improved service provision to communities by informal policy structures and partnerships in selected states;
- improved prevention, resolution and management of conflict by formal and informal systems.

The **access to justice** component is supporting:

- strengthening legislative and policy frameworks and funding at federal and state levels;
- increasing awareness among vulnerable groups of their rights
- strengthening the capacity of the justice system (formal and informal) to address rights;

- increased capacity for individuals to obtain redress for the breach of their rights.

The **growth** component is supporting:

- strengthening of the legal environment for the private sector to enable pro-poor growth;
- streamline of the regulatory environment to assist pro-poor growth;
- strengthening of institution to combat corruption.

Begun in 2002, the SJG Programme has contributed to the achieving of the Millennium Development Goals:

- by promoting strong partnerships among governments, civil society organisations and the private sector in pursuit of security, justice, the rule of law, development and poverty eradication;
- by promoting gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease;
- by promoting a legal and regulatory framework that encourages non-oil economic growth to give young people a real chance to find decent and productive work rather than become lost to a life of crime.

*** **REPORT ON THE DRAFT BILL ON ELIMINATION OF VIOLENCE IN SOCIETY (APRIL 2006): - FEDERAL MINISTRY OF JUSTICE, BRITISH COUNCIL/DFID, Abuja, pp. 63.**

The Draft Elimination of Violence in Society Bill is an outcome of the work of the national committee set up in September 2005 by the Attorney-General/Minister of Justice and charged with the responsibility of producing this draft bill. The purpose of this bill is to provide comprehensive legal framework that will provide the much needed institutional mechanism for effectively curbing violence in our society. It is a fact that violence of all sorts has become endemic and institutionalized in Nigeria today with enormous consequences for security of persons, Property, family life, public peace and indeed national security. Violence results in cumulative breaches of the rights of those affected

including rights to life, peace, bodily integrity and personal security. Violence affects all-men, women, children, elderly, and persons with disability in the private and public spaces and in peace and conflict situations and has been recognized internationally as the most pervasive form of violation of human rights.

This bill on Elimination of Violence is rich in contents and reach as it expansively covers in its sixteen chapters most recognizable forms and manifestations of violence and emerging forms of violence. We believe that it is the obligation of government to enact laws that will provide maximum protection and effective remedies to all victims of violence and to prohibit, prevent and punish all forms of violence when and wherever it manifests in Nigerian society.

****** REPORT ON THE DRAFT BILL ON ABOLITION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN IN NIGERIA AND OTHER RELATED MATTERS, 2006:- FEDERAL MINISTRY OF JUSTICE, ABUJA pp. 13**

This 13 page document is the result of the work of the national committee set up by the Attorney-General/Minister of Justice on 25th August 2005 to review discriminatory laws against women in Nigeria.

The draft bill is for an Act to abolish all forms of discrimination against women in Nigeria and other related matters. It contains 36 sections structured into 6 parts. It provides comprehensively for the fundamental rights of women in civil, political, cultural, social and economic contexts, as well as equality in marriage, divorce, succession, maintenance, education, health and family life in general. It prohibits also all forms of discrimination, inequality and gender-based violence against women and the girl-child.

This important draft bill is consistent with the policy thrust of NEEDS and Nigeria's international and regional obligations to promote and protect women's human rights and gender equality in our society.

******* 2005 NCWD/UNICEF/World Bank-IDF project on discriminatory laws etc.**

The completed 2005 NCWD/UNICEF/World Bank-IDF project on the comprehensive compilation, review and gender analysis of the Constitution, National and State Statutes and regulations, Local Government Bye-Laws, Customary and Religious Laws, policies and practices, and court decisions relating to the statuses of women and children, applicable in Nigeria.

When the above mentioned draft legislations are passed into laws, they will hopefully increase poor/rural people, especially women's access to justice and judicial capacity to respond favourably to women's rights to non-discrimination and to equality before the law.

****** **Presidential Commission on the Reform of Justice Sector, 2006.**

The March 16, 2006 7-member, Presidential Commission on the Reform of the Administration of Justice inaugurated by President Obasanjo, is charged with the responsibility of developing a strategic plan for the reform of the administration of Justice sector in Nigeria; propose modalities for the efficient coordination and functioning of the various agencies of the Justice system and evolve a national crime prevention strategy; develop a legislative framework for the protection of the rights of victims of crime and human rights violations, especially women and children; etc.

b) Crime and Administration of Criminal Justice

Between 2001-2006 the following reform measures have been put in place:

* **SUPPORT TO THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) AND THE NIGERIAN JUDICIARY**

  The European Commission funded over three years to the tune of $34 million USdollars to enhance the capacity of EFCC and Financial Intelligence Unit to effectively detect, investigate and prosecute economic and financial crimes and the judiciary's ability to effectively prosecute these crimes in court.

  As of September 11, 2006, the EFCC says its fight against corruption has yielded results as no fewer than 1,000 corrupt Nigerians have been

prosecuted in two years. The commission had also ensured the conviction of 82 persons for corrupt practices. The commission recovered assets worth more than five billion dollars and more than 500 billion Naira recovered from fraudulent persons and others. More than 200 million Naira was recovered from the failed banks. 30 billion Naira recovered as unpaid custom duties, and 242 million dollars from the celebrated Brazillian Bank scam.

** **ADMINISTRATION OF CRIMINAL JUSTICE BILL, 2005, PP. 177.**

The bill under review is for an act to make provision for speedy and efficient administration of criminal justice in all courts and by all agencies in Nigeria. This 177 page draft bill is qualitatively structured into 21 parts and has four schedules forming part of it. It contains matters: - that are preliminary and definitive; trial of all offences; of general authority to issue warrants of arrest; relating to escape and re-arrest, prevention of offences, public nuisance, attachment where a person disobeys summons or warrant, provisions relating to criminal trials and inquiries in general, place of trial and inquiry, powers of Attorney-General, institutions of proceedings; relating to search warrants, provisions as to bail and recognisances generally, provisions relating to property and persons, persons of unsound mind, remand and other interlocutory proceedings, presentation of cases by prosecution and defence, provisions relating to sentences of death, imprisonment and fine, summary proceedings in perjury, trials generally, sentencing generally other than capital punishment/sentence, procedure for trying child offenders and maters relating to probation and non-custodial sentencing alternatives.

*** **ASSESSMENT OF THE INTEGRITY AND CAPACITY OF THE JUSTICE SYSTEM IN THREE NIGERIAN STATES: - TECHNICAL**

ASSESSMENT REPORT, JANUARY 2006: - UNODC, Vienna, Austria in collaboration with NIALS, Lagos: - pp. 163

The main thrusts and objectives of the 163 page technical assessment report were to have a full understanding of the State of integrity and capacity of the various justice sector institutions in the three pilot states of Lagos, Delta and Borno. More specifically, the study assessed Nigeria's current levels of access to justice, timeliness of justice delivery, independence and impartiality of the judiciary, and corruption within the justice sector, as well as public trust in the judiciary. It also explored the institutional and legal framework to fight corruption and conducted a case audit, focusing in particular on the potential abuse o procedural or substantive discretion.

Based on the key findings, the report presents detailed policy recommendations for judicial reform measures aimed at increasing accessibility to the courts, making justice delivery more efficient, enhancing the public's trust in the justice system, increasing the independence, fairness and impartiality of the judiciary and curbing corruption within the justice sector.

c) Prison Reform and Decongestion in Nigeria

Between 2001-2006 the following reform measures have been put in place:

* **REPORT OF THE NATIONAL WORKING GROUP ON PRISON REFORMS AND DECONGESTION IN NIGERIA (FEBRUARY 2005), FEDERAL MINISTRY OF JUSTICE ABUJA, pp. 336**

This 336 page report contains very useful findings and recommendations of the committee set up by the Attorney-General/Minister of Justice on 10 February 2004 to provide a coordinated and coherent response to the problems identified with the prisons among key government agencies, institutions and the civil society.

The rationale, structure and contents of the report have been professionally and comprehensively put together and analyzed. More

importantly are the core findings of the report in terms of : - structure of the institutions visited, facilities audited, welfare of inmates and prison officials examined; legal representation of inmates, the plight of awaiting trial inmates, prisoners above 60 years, children, nursing/pregnant mothers, lunatics, sick and prisoners who committed minor offences were carefully and extensively reviewed; the issue of unavailability of prosecution witness or investigation police officers, worst cases and challenges were also critically examined. Based on the findings detailed in the report, major and specific recommendations as well as urgent interventions required were made. The report was equally enriched by 24 annexes and analysis of statistical data on the volume, trend and challenges in prison reforms and decongestion exercise in Nigeria.

** **ASSISTING THE PROCESS OF PRISON REFORM IN NIGERIA: - REPORT OF THE UNODC FACT FINDING MISSION (7-13 SEPTEMBER, 2005), Vienna, Austria, pp. 36.**

This 36 page report confirmed the earlier findings that one of the biggest challenges facing the prison system in Nigeria is the number of awaiting trial prisoners, which constitute 64 percent of those incarcerated, many of whom have been imprisoned for several years. This is the result of a number of factors, although an examination of the data on awaiting trial prisoners suggests that two particular elements should be highlighted. First, that the majority of awaiting trial prisoners are armed robbery suspects, a capital crime which is not bailable. Second, that on application from the police, magistrates who have no jurisdiction to hear capital offences such as robbery, confine suspects to prison on the basis of a “holding charge” while the police investigation is underway. The latter has now been ruled as unconstitutional by the Court of Appeal although the practice still apparently continues nationwide. Investigations and prosecutions are seldom effectively pursued or completed in a reasonable

space of time with a subsequent increase in the number of awaiting trial prisoners.

A key challenge to initiating a programme of assistance in such an environment is that the scale of the task is daunting within the context of limited resources. *Given this, those areas identified for possible technical assistance should be those which will have the widest possible impact across the penal system and act as critical levers for an overall programme of prison reform*

UNODC, as the custodian of the UN Standard Minimum Rules for the Treatment of Prisoners is ideally placed to make such interventions. The knowledge of the Standard Minimum Rules in Nigeria is high due to the work of several NGOs and UNODC could be an effective partner to the Nigerian Prison Service in both leveraging and assisting in any process of reform.

*** **THE DRAFT PRISONS BILL, 1983: - NIGERIAN LAW REFORM COMMISSION, LAGOS, pp. 61**

The Draft Bill is designed to update the law on prison as well as to implement certain proposals aimed at the improvement of both the organization and the image of the Nigerian Prisons Service. Because of the considerable amount of additional provisions and alterations required to be made in the Prisons Act in order to achieve our ends, it was considered expedient to entirely replace the Act with a new one instead of resorting to amending legislation. The Bill is however based on the Prisons Act and retains many of the provisions of the Act. In several cases, the necessary amendments have been embodied in the retained provisions.

The highlights of the Bill are however those new provisions which seek to implement the proposals for reform. There is for instance the new provision for the classification of prisons which is aimed at ensuring the separation of different classes of prisoners on the basis of sex, offence types, etc. It was felt that given the current trend in the country and the

need to prevent the contamination of persons who would otherwise turn out to be useful citizens, it would be worthwhile to distinguish a Prison *per se* (in which convicted persons are to be incarcerated) from a Detention Centre (to contain persons awaiting trail, having been formally arraigned before a court of law); this leaves us with a Police Custody which should continue to confine only arrested persons who have not been formally charged to court.

PART III: - WIDER CHALLENGES IN THE JUSTICE SECTOR REFORM

The reform of law and order and justice systems is only possible if governments-and the public at large - accept that reform is necessary and important. This will require debate on these issues. Such debate should be led within countries. But the International development community has a role to play in facilitating the dialogue and supporting civic awareness programmes, for example on penal reform.

Another related challenge is the chronic under-resourcing typically experienced by this sector. Affordable strategies to address these problems would be facilitated by effective systems relating budgetary allocations, and donor support, to sector reforms.[27]

An effective judiciary requires freedom from political interference to ensure impartiality in the delivery odd judiciary decisions. In some countries political patronage in judicial appointments and interference in judicial proceedings is a problem. Measures to buttress criteria for the selection, promotion and removal of judges administered by an independent body; professionalism in the judiciary.

Another serious challenge is to root out corruption in this sector which is often worse than in other area. In this regard, judicial independence can also be abused in order to deter investigation and action. Corruption is a denial of justice. Where it is prevalent, the integrity and impartiality and the whole legal

system is brought into disrepute. Commitment by the heads of the government, the police and the judiciary is essential to combat corruption.[28] Possible actions include:

- improving pay and conditions
- strengthening the transparency and accountability of the courts and police through court users committees, lay visitor scheme, etc.
- establishing and strengthening oversight mechanisms such as police complaints commissions
- removing responsibility for court administration from judges
- strengthening capacity to investigate and prosecute offenders.

Furthermore, poverty persists in Nigeria because of the historical and continuing mismanagement of resources and corruption, particularly but not exclusively in the public sector. The economy is highly distorted (oil receipt account for 40% of GDP, 70% of budget revenues and over 95% of exports), and inefficient. It has been badly undermined by military rule: poor governance has served to enrich the minority at the expense of an increasingly impoverished majority.[29]

Powerlessness results in material deprivation characterized by poor housing, food insecurity, poor access to services and utilizes and lack of dignity, security and hope. The causes of vulnerability vary regionally and with circumstance. They relate mainly to economic opportunity, for example, in rural area to reduced access to credit and markets and the declining productivity of natural resources. Local institutions, formed on the initiative of local people, are more important to poor people than governmental or non-governmental organizations. State and local governments are beginning to face up to the responsibilities for delivering services to poor people, and to overcome the mistrust of the people. Much greater effort is needed to benefit the poorest

groups by strengthening the capacity of local government and civil society groups.[30]

Moreover, there is the challenge of legal pluralism which impacts on the quality of administration of law and justice in Nigeria. This challenge is analysed below.

Nigeria is one indivisible and indissoluble Sovereign State consisting of thirty six states and Federal Capital Territory, Abuja. This legal entity is known by the name of the Federal Republic of Nigeria.[31]

The 1994 population census put Nigeria's population at 89 million, though is commonly held to be over 100 million today. These millions of people are made up of some 250 ethnic/linguistic groups, making Nigeria one of the world's most populous and ethnically diverse societies.[32]

Nigeria is undoubtedly one of the few countries in the world which experience conflict of law problems of every conceivable dimension that is, international, inter-state, inter-local (or inter-personal) and inter-temporal.[33]

First, there is a conflict between territorial systems of law arising from the co-existence of federal and state laws. This was brought about by the system of government introduced in 1954 with the creation of three Regions together with the then Federal Capital Territory of Lagos. Today, we have 36 states and the new Federal Capital Territory, Abuja. There are also separate State High courts, State Sharia Courts of Appeal, and State Customary Courts of Appeal constitutionally established. Appeals from these courts go to the Court of Appeal and from there to the Supreme Court both of which are federal institutions.[34]

On the other hand, there is also a conflict between the Received English Law/Common Law/Nigerian Statutes (i.e. the general Law) and the Customary/Islamic Laws, between Islamic and Customary Laws and between systems of Customary Law inter-se.[35]

Under our current constitutional democratic dispensation, the 1999 Nigerian constitution is supreme and its provisions shall have binding force on

all authorities and persons throughout the Federal Republic of Nigeria. If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void.[36] Further, if any law enacted by the State House of Assembly is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void.[37]

The introduction of British laws into Nigeria to co-exist with the indigenous systems of customary and Islamic Laws has produced a tripartite system of law. It is this type of multiple system of law that is often referred to as legal pluralism.[38]

The ethnically diverse groups that constitute Nigeria each has its own system of customary law.[39] Although the rules within one group are broadly similar yet there could be significant difference as to matter of details whilst as between the customary law of one ethnic group and another there could be wide divergence.[40]

A further problem is posed within this context by the existence of Sharia or Islamic Law which is administered in some Jurisdictions as a variant of customary law and in some others as a distinct and separate system while it is almost completely ignored in others.[41]

One of our major problems in Nigeria is that we do not have a single system of administration of justice but three systems. Admittedly the three systems merge near the very top of the Judicial hierarchy but if we are to develop, according to a writer, a truly Nigerian Common Law, it appears necessary to re-examine the position critically and see what changes that would be necessary for the attainment of the suggested goal.[42]

The constitution of Nigeria vests Judicial powers of the Federation and of the States in the earlier mentioned superior courts of record.[43] In addition to these both the Federal and the State Legislatures are empowered to establish

other courts by statute. It is under powers thus conferred that some of the States have established Sharia/Area/Customary/District/Magistrate Courts of various grades, powers and Jurisdiction.[44]

Now our system of administration of Justice is premised upon a hierarchy of courts along which a litigant can climb from the lowliest court to the highest court of the land by way of successive appeals.[45]

The effect of all these is that whereas at the state level we have in some states three systems of courts purporting to be administering three different types of laws, appeals from all these courts converge in the Court of Appeal established by the Federal Government. That Court is expected and indeed does make authoritative pronouncements in respect of the three systems and of all the sources of law.[46] Hence the constitutional requirement that the Judges of the court of Appeal must consist of at least three members learned in Islamic and Customary Laws respectively. It is intended that such Judges will constitute the Court of Appeal in deciding appeals from the Sharia or Customary Courts of Appeal.[47] Finally, at the very pinnacle of the courts hierarchy stands – the Supreme Court which has the final responsibility of piloting the course of administration of Justice, Judicial and Legal development in the country.[48]

The resultant tripartite system of law and of court has created uncertainty or lack of uniformity, at times, in the administration as well as in the teaching of the law, especially customary and Islamic family and Penal Laws and Jurisprudence.[49]

First, the frequent recourse to the received English Law in cases where the rules of the indigenous laws are objectionable, or inadequately developed or practically non-existent has often obstructed the need for a restatement or indeed for the necessary modification of the rules of these customary laws.[50]

Second, the ultimate recourse to customary law in cases of "injustice" has also created the need to effect necessary modifications on the exotic rules of the received English Law.[51]

Third, the choice of law rules are themselves so unsuitable to modern conditions that they are often misapplied or practically ignored by the courts.[52]

Attempts made by the courts to sanction a change of customary law within the context of the existing choice of law rule appears unconvincing if not altogether misleading.[53]

It is however clear that with the increasing fluidity and frequency of movement of individuals and groups, the penetration of Western education and culture into circles formally traditional and the resultant gradual breakdown of ethnic and even family cohesion, a wholly new situation is arising which demands the formation of new rules in the regulation of personal rights.[54]

It has been argued that "the idea of subjecting individual citizens to different laws within a single state is a mark of legal under-development. It is indeed absurd that different courts still exist to administer these different laws."[55]

The resultant problem here is not limited to conflict of Jurisdictional rules but also include the divergence in the quality of Justice obtainable in the various systems of court. This is so because of the different rules of procedure, and the marked differences in the quality of the Judicial personnel of these courts. Infact the point has been made that the greater defect of the arrangement is the possibility that a litigant may, on occasion, be left without a competent court to hear his complaint.[56]

One of the challenges of legal pluralism in Nigeria, according to a Legal Scholar,[57] is not the desirability of simply abolishing Customary and Islamic Laws and courts but our failure or neglect to explore the possibility of integrating the tripartite system of law and unifying the diverse systems of court which, in our view, is long overdue for the following reasons:-

i. **Economic consideration**:- Mounting separate system of customary, Islamic and general court is hardly a healthy way of utilising scarce

human and material resources within the context of the prevailing adverse economic situation of a developing economy like ours.[58]

ii. **Legal Certainty:-** The performance of the Judges in matters of internal conflict of law has made it almost impossible to tell in advance, in most cases, which particular system of law the court will apply to a given situation.[59]

iii. **Legal Simplification:-** An integrated system of law will not only simplify the teaching of law but also its administration. The courts will be spared the perplexing task (of which the law reports show more than ample evidence) of having to decide in any given case whether the general or customary law applies and to ascertain the particular customary law to be applied.[60]

iv. **Matter of Policy:-** There is the issue of policy as to whether it is right and proper that citizens of a sovereign state in modern times should continue to be governed by different laws in their legal relations.

v. **Social Convenience:-** An integrated system of law which takes account of contemporary social requirements will be more suitable to the needs of the time than either the inchoate and somewhat outdated rules of customary laws, the exotic rules of the received English Law or the excessive reliance on ossified and outdated fiqh literature, legal rules and procedures of a particular School of Islamic Jurisprudence, especially the Maliki.[61]

If we must for now content ourselves with the symbiosis of imported, customary or religious laws (as perhaps there is no other option in sight) we should at least ensure that the diverse systems of law are Judiciously applied. It should be stressed however that no single principle could cover satisfactorily the Juristic analysis of the process of choosing between two or more applicable systems of law.

It is the search for a Nigerian national identity that has led to a plea for the evolution of a Nigerian Common Law, by one of our distinguished Jurists.[62] As we would remember that great German Jurist, Von Savigny ties law strictly to the question of National identity. However much his Volkgiest theory may be criticised, and perhaps debunked, it appears clear that he has a lesson for countries like ours in dire need of a national identity, and for which we have sought for the past nearly half a century, but in vain.[63] It is Savigny's thesis that "Law grows with the growth, and strengthens with the strength of the people, and finally dies away as the nation looses its nationality"[64] Put in the reverse, if we must have a national identity we must have a Common law. In other words, that one way, and perhaps the best way in which we can forge a national identity is through the instrumentality of the law.

Two problems emerge at once in the search for Nigerian Common Law:-

(1) The problem of the existence of different substantive laws, and

(2) The problem of the existence of different systems of courts.

As we have seen there are three broad systems of laws operating in this country: (a) the customary laws, (b) the Shariah or Islamic Law, and (c) what we should call the general law.

The problem here is not really the fusing completely together of the customary law, the Shariah and the General Law, but, as aptly put by Elias,[65] one of synthesizing the three systems of law and in the process producing a Nigerian Common law.

As stated earlier, the second problem is that of having three systems of courts, namely the Customary Courts, the Shariah Courts, and the General Courts.[66]

The focus here is on the problem connected with the human angle of the present system by which you have a Chief Judge, a President of the Customary Court of Appeal and a Grand Kadi all of whom at least in theory head three

systems of judicial administration in any particular state which has established the last mentioned two. The irony of it is that in each of the States in which a Customary Court of Appeal has been established, the President has been either a Judge of the High Court of the State or a person qualified to be so appointed. He has no special certificate of competence in the knowledge of the system of law he is expected to administer or practise. Invariably his knowledge of Islamic law is practically nil. The Grand Kadi is invariably an Islamic Scholar of a high Standard, but his knowledge of the general law is not expected to be much. The Chief Judge is invariably a person of competent knowledge of the general law, but with very little knowledge of Islamic Law, if any. Today however, many Chief Judges in Northern States of Nigeria are learned in both the general law and Islamic Law. While many Kadis of States Sharia Courts of Appeal are persons of competent knowledge of both the general and Islamic Laws, only few Grand Kadis have such competent knowledge of the general law.

A distinguished Jurist has on many occasions suggested "as with the case of the Customary Law, Islamic Law should be taught in all our Universities as part of each of the subjects offered for basic degrees where applicable."[67] Over three decades ago Professor Coulson pleaded that the curricular of law faculties in this country should offer a general understanding of Islamic Law. However, he says that:-[68]

> "it would seem to me to be wrong in principle to introduce Islamic Law into the syllabus as a Separate subject. Rather than forming an isolated part of the curriculum it should be merged and integrated into the substance of two basic existing courses, namely those of Jurisprudence and family Law."[69]

It is quite obvious that the earlier suggestion made takes Coulson's suggestion much further. The stand herein taken is that Islamic Law or Sharia should be taught not only as part of the two subjects mentioned but of all other relevant courses. In effect it should be integrated into the general corpus of our

single system of law. This will ensure that the possession of an LL.B. degree from any of our Universities will be evidence of a minimum knowledge of the Sharia, of Customary Law and of the General Law.

It is such a certificate, according to Dr. Aguda, "that will be the requisite qualification for admission into the Nigerian law School with the ultimate aim of admission into a unified legal education/legal profession/administration of law and Justice.[70]

PART IV: - CONCLUSION

It is evident from the above analysis that in developing countries like Nigeria the need for a fair and equitable legal framework, courts which are accessible and dispense justice speedily, improved customary justice systems and a greater role for alternative dispute resolution mechanisms as well as penal reform cannot be overemphasized.

Hence, actions to improve the legal environment for poor people include:

- Law reform which remove discriminatory provisions and incorporates rights conforming with international standards
- Promoting the use of public interest litigation by advocacy groups and others to challenge the legality of discriminatory government measures
- Paralegal schemes offering assistance and advice
- Improved access to legal aid so that poor people can afford legal representation
- Practical, problem-based legal rights education which helps poor people to protect their livelihoods.

Courts are often inaccessible. They are usually located in towns away from the rural poor and use languages and proceedings which are difficult for them to understand. Many are run inefficiently. Criminal cases can take years to proceed from arrest to trial. The sheer volume of cases pending across the system can

bring it to a state of near paralysis. Courts can be made more accessible and provide a better service through:

- the use of local languages
- allowing people to give evidence in narrative form
- appointing people from the community to sit as lay magistrates
- establishing mobile courts to service rural communities
- providing information about the courts to the public
- improving case-flow management by computerization of court records and strengthening court administration
- awareness-raising for judges in new developments affecting juvenile justice, alternatives to prison etc.
- better co-ordination between courts and other agencies.

Customary justice systems will work more effectively if measures are taken to encourage:

- customary systems to operate more fairly e.g. by providing paralegal representation
- awareness-raising in human rights for traditional leaders
- customary systems to work more effectively with the formal systems, e.g. in some cases the formal courts could hear appeals from the customary courts
- measures to make traditional forums more representative of the community as a whole and to encourage participation of women in proceedings.

In some circumstances, it is necessary to go to court, but for most people, most of the time, litigation should be a last resort. There is also a range of alternatives to litigation which can be used to resolve disputes, for example in family or commercial matters. These include:

- arbitration, where the arbitrator's decision is binding, but the process is quicker and cheaper than going to court
- mediation, in which a mediator facilitates an acceptable agreement between the parties. This can also provide the basis for a more constructive relationship in the future
- tribunals, which decide cases brought before them on a less formal basis than the courts, free from strict rules of evidence and procedure.

Imprisonment is generally accepted to be ineffective in reducing repeat offending. In most developing countries 80% of the prison population consists of those awaiting trial, sometimes for many years.

Sentences which put reparation before retribution, and alternatives to prosecution and prison, are more humane and cost-effective. There is an urgent need to decongest prisons and improve conditions in line with minimum international standards. Imprisonments can be made by:

- reviews of sentencing policy so that people are not sent to prison for minor offences
- the use of community service, suspended sentences, cautions etc. for less serious offences and decriminalization of the most minor offences
- the use of approved schools for juvenile offenders and the segregation of children from adults in prison
- the use of bail for those awaiting trial
- improvements in prison conditions eg through prison farms, open prison and better disease control, including the spread of TB and HIV/AIDS.

Looking into the future, justice sector reform in Africa must be seen as a pro-poor, long term, developmental endeavor that contributes to the realization of human rights. However, significantly more effort needs to be put into providing aid in a manner that takes into account good development practice,

and in elaborating the tricky concept of national ownership, grounded in a proper understanding of African realities. If these approaches were carried out more fully, donors would truly be living up to the new agenda.

ENDNOTES AND REFERENCES

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3. See Federal Government of Nigeria: - Summary of Nigeria MDGs Report Card 2005, Information Kit, (2006) at p. 5.
4. Ibid.
5. Ibid at p.5.
6. See DFID, London, UK (2000): - Justice and Poverty Reduction: - Safety, Security and Access to Justice for All.
7. See Federal Ministry of Justice of Nigeria, Abuja, (2004): - Agenda for Reforming the Justice Sector in Nigeria, pp.3-18.
8. See Ladan M.T., "Human Rights as the benchmark for development policy", in Journal of Economic, Social and Cultural Rights (2002), Vol. 1 No. 6, October-December 2002, Shelter Rights Initiative, Lagos, pp. 1-26.
9. See Ladan .M.T., (ed.) Law, Human Rights and the Administration of Justice in Nigeria: - Essays in honour of Justice M.L. Uwais (2001): - Department of Public Law, Faculty of Law, A.B.U., Zaria, Nigeria, pp. 66-90.
10. See UN Office on Drugs and Crime, Vienna, Austria (2005): - Why Fighting Crime Assist Development in Africa: - Rule of Law and Protection of the most vulnerable: - Summary Report, pp. 1-88.
11. See National Centre for Women Development Abuja/UNICEF/World Bank – IDF Report (2005): - A compilation, review and gender analysis of the Constitution, National and State Statutes, Regulations, Local Government Bye-Laws, Customary and Religious Laws, Policies, Practices and Court decisions relating to the statuses of Women and Children, applicable in Nigeria, at pp.1-15.
12. See Ladan M.T., "Women Rights, Access to and Administration of Justice under the Sharia in Nigeria", in Ezeilo, Ladan and Akiyode (eds.) Sharia Implementation in Nigeria: - Issues and Challenges on Women's Rights and Access to justice (2003), Women's Aid Collective, Enugu, Nigeria, at pp.19-43.
13. See Otteh J., Fading Lights of Justice: - An Empirical study on Criminal Justice Administration in Southern Nigeria Customary Courts (1995), Civil Liberties Organisation, Lagos, and Danish Centre for Human Rights, Copenhagen.
14. See Ladan M.T., Supra note 12, at p.19.
15. See Ladan M.T., "Towards an effective African System for Access to Justice on Environmental matters", in: - Ahmadu Bello University Law Journal, Vols. 23-24, (2005-06), Faculty of Law, A.B.U., Zaria, Nigeria, at p.10.
16. Ibid, at p.11
17. See DFID Supra note 6 at p.20.
18. See Piron, L.H., "Donor Assistance to Justice Sector Reform in Africa: - Living up to the New Agenda?" in, Justice Initiatives (2005): - Open Society Justice Initiative, Open Society Institute, New York, USA, February 2005, at pp.4-11.
19. Ibid.
20. See UK DFID and USAID (2001): - Summary Report on Findings of the Joint Donor Assessment Mission on the Nigerian Justice Sector, June 2000, presented at a joint donor workshop in Abuja, 22-24 January 2001.
21. Ibid.
22. See DFID Nigeria (2001): - Background paper on Access to Safety, Security and Justice. Presented at a joint donor workshop, Abuja, 22-24 January, 2001.

23. The UK DFID Nigeria Access to Justice Safety and Security Programme approved in 2001 with 30 million British Pounds sterling for a period of five years, paying attention to research and the perspective of the poor.
24. Ibid.
25. See Supra note 20.
26. See Supra note 7.
27. Federal Ministry of Justice, Supra note 7.
28. See UN Office for Drugs and Crime, Vienna, Austria (2006): - Assessment of the Integrity and Capacity of the Justice system in three Nigeria States: - Technical Assessment Report, pp. 1-63.
29. See DFID Nigeria Country Strategy Paper (2000) t p.2.
30. Ibid.
31. Sections 2 and 3 of the 1999 Nigerian Constitution.
32. International Commission of Jurists (ICJ):- Nigeria and the Rule of Law – A Study, 1996, Geneva, Switzerland, p.30.
33. See 1.0 Agbede, "Towards Unification of Law in Africa", in Verfassuung and Recht Ubarsee (3/4 Heft) 1975, pp. 423 – 433.
34. See Sections 232 – 5; 260 – 4; and 265 – 9 of the Nigerian Constitution.
35. See P.N. Agu, "The Dualism of English and Customary Laws", in African Indigenous Laws, 1975 Chapter 12, p.251. This is a whole subject of independent study and outside the scope of this paper to discuss.
36. Section 1(1) and (3) Supra note 1.
37. Ibid, Section 4(5).
38. See Agbede 1.0, Legal Pluralism, Shaneson Publishers 1991.
39. See Ladan, M.T., "Effects of the Test of Enforceability of Customary Law on the Application of Islamic Law in Nigeria" in, ABU Journal of Islamic Law, Faculty of Law A.B.U., Zaria, Nigeria, Vol. 1, 1999, pp.41 – 74.
40. See Obilade, A.O., The Nigerian Legal System, Sweet and Maxwell, (1979) p.83.
41. Islamic law is applicable in some Northern States as a distinct system whereas in the Western States it is applied as a variant of customary law whilst it is almost totally ignored in the Eastern States of Nigeria.
42. See Elias, T.O., (a distinguished jurist) Law and Social Change in Nigeria , University of Lagos and Evans Brothers Ltd., (1972).
43. Supra note 4.
44. See e.g., Sharia Courts (Administration of Justice and Certain Consequential Changes) Law No.5 of 1999 of Zamfara State. See Section 4(7) of the Nigerian Constitution, 1999.
45. Supra note. 4.
46. The main sources of Nigerian Law may be classified as follows:- (a) The Received English Law (the English Common Law and Certain English Statutes made Applicable to this Country as part of the General Law); (b) Nigerian Statutes (enacted by both the Federal and State legislatures Since independence); (c) Rules of Customary Law deemed to be applicable in causes and matters between Nigerians, and between Nigerians and non-Nigerians, provided they are not repugnant to natural justice, equity and good conscience, nor incompatible with any law for the time being in force; (d) The rules of Sharia or Islamic Law has been introduced into the northern part of this country between the 14th and 15th century A.D. and in the nearly five hundred years Islamic observances and practices had more or less supplanted those of the customs of the people in the affected states. (see Spencer Trimingham, A History of Islam in West Africa, Oxford University Press, London, 1962). In all courts other than those applying Islamic law directly, it must be proved by oral and possibly documentary evidence (see Onibudo and others V. Akilu and Ors (1982) 7 SC 60 at 94); and

(e) decisions of superior courts of record of Nigeria, particularly of the Court of Appeal and the Supreme Court of Nigeria.

47. See Section 240 and 244 – 5 Nigerian Constitution, 1999.
48. See Ladan, M.T., (ed.) Law, Human Rights and the Administration of Justice in Nigeria, 2001, A.B.U. Press, Zaria, Nigeria, pp.1 – 404.
49. For example, the National Universities Commission of Nigeria prescribed minimum course content for a law degree (LL.B) in Nigerian Universities also includes two optional subjects:- Islamic Law and Customary Law. It is suggested that more time should be given/devoted to the study of Islamic Law and at least the customary laws prevailing in the state of location of every faculty of law and these courses should not be optional, but mandatory or core. See NUC Booklet on Minimum Standard for Law in Nigerian Universities, 1989.
50. See Ladan M.T., supra note 9.
51. Ibid, note 9.
52. See the following decided cases:- Yinusa v. Adesubokan (1968) NMLR97; Olowu v. Olowu (1985) 3 NWLR 378; See Agbede, "Legal Pluralism and the problems of Ascertaining Personal Laws:- A consideration of Yinusa v. Adesubokan 91971) N.B.J. pp. 69 – 73; Agbede, "Personal Law and Personal system of Law:- Synthesis or symbiosis" in Lawand Development, (ed.) Omotola and Adeogun (1987) Chapter 7.
53. Supra note 22.
54. Ibid.
55. Agbede, supra note 22. The Korah commission made this observation over a quarter of century ago. See Native Courts commission of Inquiry (gold Coast) Ghana 1951 at p.3.
56. The Brooke Commission's Report cited a case where the Native Court, the Magistrate Court and the Supreme Court all declined Jurisdiction. The unfortunate plaintiff was a Syrian who was claiming title to land subject to customary law. See Brooke Commission's Report at p.82. Established by the Governor of Nigeria under the Commission of Enquiry Ordinance Cap.37 Laws of Nigeria, 1948.
57. Agbede, supra not 22.
58. The arrangement demands setting up separate courts in the same locality without regards to the actual judicial work-load within the locality.
59. See Okoh v. Olotu 20 NLR 123; and Vanghan v. George 16 NLR 85.
60. The choice of law rules in this respect are not particularly helpful.
61. See Ladan, M.T., supra note 9.
62. T.A. Aguda (late), The Nigerian Legal System and the Problem of National Identity. University of Ife, 1985, Dec. 13, p. 15.
63. Over fifty years ago, Chief Obafemi Awolowo in his book, Path to Nigerian Freedom (London, 947) pp. 47 – 48 described Nigeria as "a mere geographical expression", whilst the first Prime Minister of Nigeria, Sir Abubakar Tafawa Balewa said that Nigeria "existed as one country only on paper and that its unity is only a British intention for the country". See the Handsard of March 20 – April 2, 1947.
64. Of the Vocation of Our Age for Legislation and Jurisprudence (1831) (translation by Haywood) p. 27.
65. See T.O. Elias, Law and Social Change, supra note 12, at pp. 254 – 271, especially at 271.
66. See T.A., Aguda, the Challenge for Nigerian Law and the Nigerian Lawyer in the Twenty-First Century (Federal Government Printers, 1988) at p.9.
67. Ibid.
68. N.J. Coulson, "Legal Education and Islamic Law" in Journal of the Centre of Islamic Legal Studies, A.B.U., Zaria., Vol. 1, No. 1, at p.5.

69. At the time he wrote his article, Coulson was Professor and Dean of Law of Ahmadu Bello University, Zaria.
70. Supra note 36. See also Ladan M.T., supra note 18.