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religious or linguistic minorities, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, and to use their own language. This is subject to the qualification, contained in Art 18(3), that State are entitled to impose such limitations on the exercise of people's freedom to manifest their religion or beliefs as are necessary in the interests of public safety, order, health or morals, or for the protection of the fundamental rights and freedoms of others. In the western legal and political tradition, the right of minorities and assemble. Laws which single or religious practices which are particular to them violate the principle of equality before the law. Nonetheless, laws which are neutral on their face and apparently of universal application may in practice have a discriminatory impact upon particular groups by inhibiting the enjoyment of their culture or exercise of their religion.

The second dimension of multiculturalism which is expressed in international conventions and covenants is that governments should act to prevent discrimination based upon religion or ethnicity. Article 26 of the *International Covenant on Civil and Political Rights* prohibits discrimination on the grounds of race and national origin, as does the *Convention on the Elimination of All Forms of Racial Discrimination.* These international obligations are given effect in domestic law by legislation such as the *Racial Discrimination Act 1975* (Cth). State anti-discrimination laws are also consistent with the aims of the international conventions.

The third dimension is that the legal system should be accessible to people irrespective of their cultural background and first language. If people from a non-English speaking background are to be able to understand court cases in which they are involved, this means that they will need interpreter services both in court and in the earlier stages of the legal process, such as interview with police and legal representatives. The right to give evidence through and interpreter is enshrined in the law constitution of the Federal Republic of Nigeria and professional interpreters are used at public expense. Defendants who do not understand what is being said in the trail should also be provided with an interpreter. It is perhaps necessary that the expansion interpreter services in other branches of the legal system.

A fourth possible dimension of multiculturalism in relation to the law is that government officials and courts should take account of particular cultural factors in the application of the general laws of the land to individuals. Thus, in child custody and access cases involving children of ethnicity, account might be taken of such factors as the importance for the child's cultural development and sense of identity of maintaining

links with her or his extended family. The willingness or unwillingness of one parent seeking custody to allow contact with the family of the other parent might be an important factor in the ultimate decision. In criminal cases, officials or courts might take account of the cultural context in which the offences occurred in deciding whether to prosecute, whether to convict, or how to sentence. Specific exemptions, whether de facto or de jure, might be given to particular ethnic groups where the interference with their religious freedom out-weights any public benefit of the application of the law to them. For example, in a multicultural society, it would be consistent with good policy both to require the wearing of safety helmets by motorcyclists generally, and to take account of the objections of some communities who wear turbans for religious reasons, either by exempting them from the helmet requirement or by exercising discretion not to prosecute them.

A fifth potential dimension for pluralism is that the law should sufficiently reflect Nigeria multicultural estimative in order to allow different communities to be governed by their own laws on matters where cultural values differ significantly between different groups. This fifth claim for multiculturalism is controversial. Sensitivity premise of western conflicts with the principle, which is a fundamental premise of western legal system, that all members of society should be governed by the same laws. Apart from adherence to the fundamental precepts of the western legal tradition, there are other reasons for not allowing different communities to be governed by different legal norms. The recognition and enforcement of certain cultural norms and rules by the law of the country could, in certain instances, violate the principle that the government should protect the rights of vulnerable members of minority groups from practices which are regarded by the dominant culture as oppressive.

Imposing special laws on people because they belong to a particular ethnic group could introduce un-justified discrimination into the law, lead to unnecessary and divisive labeling of people, and possible be oppressive of individual members of the group.

The first four dimension of pluralism have gained support from federal government policy. Pluralism has there aspects; cultural identity, social justice and economic efficiency. The right to cultural identity means that all Nigerians have the right to express and share their individual cultural heritage, including their language and religion. This right is subject to carefully defined limits. Nigerians are required to accept the basic structure and principles of the Nigerians society, defined as comprising the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language and equality of the sexes. Social justice, in the

context of a multicultural policy means the right of all Nigerians to equality of treatment and opportunity, and the removal of barriers of ethnicity, culture, religion, language, gender or place of birth. The third aspect, economic efficiency, means the need to maintain, develop and utilize effectively the skills and talents of all Nigerians, regardless of background.

Nigerians domestic policy thus seeks to allow linguistic and cultural diversity within a framework of commitment to values which are seen to be fundamental to the Nigerian society. The notion of the rule of law is a protected principle, but individual rules are not. Nonetheless, the goal of having a multiculturally sensitive legal system is harder to realize in practice than it may sound in theory. The right to cultural expression may conflict with other tights in international conventions to which Nigeria is a signatory, such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. The protection of the rights of women and children may at times conflict with particular cultural practices which would otherwise have a claim to recognition. The competing rights contained within these various international covenants and conventions create a difficult balancing operation for governments in a multicultural society. On the one hand, they must respect the cultural practices of minority groups within the society. On the other hand, they must protect "minorities within minorities", that is, the vulnerable members of ethnic minorities, from cultural practices which are oppressive.

In resolving these conflicts, governments and courts have to steer between the twin dangers of cultural insensitivity and cultural relativism. There is scope for individual laws to be much more sensitive culturally than they are at present, but at the same time, there is a danger that culture will be used as an excuse for practices which should not be tolerated and which violate human rights.

Access to Justice: Making Legal Rights Effective

The challenge of inclusion is the challenge of making the law more representative of the character and composition of the population. But beyond the need for diversity is a need to lower the barriers to justice which inhibit a large proportion of the population from exercising their legal rights. Without access to justice, there is a gulf between the law on the books and the law in action.

In many legal systems, this gulf can be vast. Many totalitarian regimes, both past and present, offer examples of legal system in which fundamental human rights are guaranteed on paper, but are violated in practice. Yet even in countries with traditions of democratic

government, a similar discrepancy between theory and practice can occur. Laws can be passed which are presented as the solution to social problems, but which only provide rights on paper without changing institutions and practices in a way which will make those rights effective. Legislation is cheap. Government can point to the legislation when claiming compliance with international conventions or when responding to criticism. Yet sometimes the rhetoric of the law is not supported by the resources necessary to give effect to the stated intentions of the legislators. The law on the books justifies inaction, precisely because it gives the appearance of action.

A failure to provide proper access to justice is a major cause of the dichotomy because the law on the books and the law in action. Access to justice is a fundamental right which makes other rights effective. The formal conferral of a right is of no value unless adequate means exist to protect that right and to enforce corollary obligations. It is also an important aspect of the rule of law. As King CJ of the South Australian Supreme Court has said:

> "We cannot be said to live under the rule of law, in the full meaning of that expression, unless all citizens are able to assert and defend their legal rights effectively and have access to the courts for that purpose. Under our legal system, and indeed under the legal system obtaining in all complex modern societies, that requires professional assistance. If that professional assistance is denied to any citizen who reasonable needs it to assert or defend his legal rights, the rule of law in the society is to that extent deficient.

Many people do not so much need the means to go to court, as they need the capacity to make litigation a realistic threat if the other party continues to deny their legal rights. The vast majority of dispute ate settled informally between the parties or by negotiations which are conducted through lawyers. The threat of litigation is itself an important element in negotiations, for it gives an incentive for settlement.

For many people, the costs of access to justice, and the risks associated with litigation, are often too great for them to use the legal system to protect their legal rights. Perhaps it is an ideal that all citizens should be able to defend their legal rights effectively. It is tempting to contrast the existing situation with a historic golden age in which justice was available to all at moderate expense, and was meted out without fear or favour. It is doubtful that such a legal "garden of Eden" has ever existed in a developed western society. Yet it is vital if the law is to be effective at all, that a sufficient number of citizen are able to get access to justice to enforce their rights.

Bargaining in the Shadow of the Law

The significance of the courts does not lie only in their role as the final adjudicators of individual disputes when all other means of dispute resolution have failed. More than this, the decisions of the courts send message to the community at large. Marc Galanter has written that:

> "The principal contribution of courts to dispute resolution is providing a background of norms and procedures against which negotiations and regulation in both private and government settings take place. This contribution includes, but is not exhausted by, communication to prospective litigations of what might transpire if one of them sought a judicial resolution. Courts communicate not only the rules that would govern adjudication of the dispute, but possible remedies, and estimate of the difficulty, certainty and costs of securing particular outcomes".

Thus, courts send messages which allow people to bargain in the law's shadow. At a fundamental level, the message which the courts send to the community is that the law will be enforced, and that a person who resists compliance with the law and who violates the rights of others will be required not only to comply with the orders of the court, but also to pay the costs of the litigation. Furthermore, the cases which are litigation help to provide the legal norms against the background of which the negotiations take place. These norms confer "bargaining chips" on those engage in negotiation, and affect the outcome of those negotiations.

The role of the courts in sending messages is thus important to the resolution of disputes without the need for an adjudication. If only a few cases reach the courts, or only certain kinds of cases are adjudicated, involving plaintiffs who have the knowledge, means and will to litigate, then the law will be ineffective in providing the background of norms against which the rights of individuals can be protected through negotiation.

Pathways to Justice

There is consideration evidence that the legal system does not adequately provide means of giving redress for at least some of the legal wrongs suffered by citizens. In one Australian study, reported by Jeffrey Fitzgerald, a telephone survey was conducted in which members of households were asked to report on problems entailing injury, harm or loss within a three year period. The aim was to discover "middle-range" grievances of a variety of types, rather than to obtain an exhaustive

litany of problems. These respondents were asked about personal injuries and other tortuous damage where $1000 or more was at stake, consumer complaints over $1000, claims of discrimination, property disputes, grievances concerning landlords, claims against the government and post- divorce dispute, amongst others. The numbers of grievances reported varied from category to category-24 per cent of households reported grievances involving road accidents, accidents at work ad other damage caused by someone else; 16 per cent reported landlord and tenant problems; 77 per cent led to claims against the alleged wrongdoer; 56 per cent of claims were disputed in whole or in part.

Fitzgerald's study indicates that the chances of success in making a claim depends substantially on the type of injury of loss suffered. Ninety four per cent of tort claimants got all part of what they claimed. By contrast, only 65 per cent of consumers received total or partial satisfaction, compared with only 55 per cent pf those in property disputes and only 38 per cent of those complaining of discrimination. The high rate of recovery in tort cases is not surprising. There are well understood procedures for making claims against insurers in the case of road traffic accidents, and lawyers do not often need to be involved even if there is for a time some dispute about the amount the insurer will pay. Motorists often belong to associations which can assist them in such claims. Those who suffer injuries at work similarly have established procedures for claiming against employers under workers' compensation schemes and frequently have access to union assistance if need be. It may well be that these advisory organizations also play a role in screening out cases which are unmeritorious so that the person does not reach the stage of making a claim.

In other sorts of grievance where the path to a successful resolution is not nearly so well marked, nor advice and assistance so readily available, the number of successful claims is likely to be much lower. There are established procedures for making claims against the government, and the Administrative Appeals Tribunal has been established to hear appeals from administrative decisions, a industrial accident claim against the government requires greater personal commitment and access to information for it to succeed. In some jurisdictions advisory organizations exist to assist employees who get injured in an industrial audient.

Obstacles to the Enforcement of Rights

Access to Information

There are a number of obstacles inhibiting access to justice. A fundamental one is that lack of information about the possibility of a legal claim. Before there can be a claim, the aggrieved person must be aware that a legal remedy is available and confident that it is worthwhile for a claim to be made, using lawyers if need be. Access to information about the law thus plays an important part in providing access to justice.

People with grievances need encouragement to pursue a claim from informed non-legal professionals before they take what is for them the major step of seeking legal advice. In one English study, only 26 per cent of those victims of accidents who were incapacitated for two weeks or longer considered claiming damages. Most who did claim did so because someone else first suggested it to them. In general these were people with some knowledge and understanding of the legal system – police, trade union officials, doctors and hospital personnel. Victims of accidents professionals even if blame could be attributed in law to a third party, and less likely to realize that the accident concerned might be grounds for a legal claim.

The major source of information about the law ought to be the large number of solicitors in private practice who are available for consultation by members of the general public. Yet numerous studies have shown that when lawyers are consulted, it is largely in regard to certain types of problem which are perceived as matters on which lawyers can give assistance. Conveyancing and other matter concerning property, the making of a will and the legal consequences of marriage breakdown are all matters on which lawyers are readily consulted. Landlord and tenant disputes and consumer problems are less likely to result in visits to lawyers. This is indicated by Cass and Sackville's study of recourse to lawyers in three relatively disadvantaged areas of Sydney. They asked 548 respondents whether they had experienced problem situations in the last five years where they might have needed legal assistance. Twenty four such situations were presented to them broadly classified into problems concerning accommodation, accidents, consumer matters, money, marriage and family matters and problems with the police. Sixty nine per cent of the sample claimed to have experienced at least one problem situation. Forty four per cent had consulted a lawyer, although if conveyancing is excluded, the proportion fell to 25.4 per cent. Possibly, some people who consulted a lawyer about a conveyance also had a consultation on a non-conveyancing matter. However, consultation with a solicitor was much more common in regard to certain injuries than others. Cass and Sackville commented.

> "The sample of 548 respondents reported a significant number of matters in respect of which, in our opinion, legal advice should have been sought but was not. Some respondents had failed to

> pursue claims that might have been of considerable material value to them, such as those for damages for personal injuries arising out of work-related accidents. Others had failed to seek advice when charged with criminal offences and found themselves convicted without having had the benefit of legal advice. In many cases the respondents who did not seek legal assistance had experienced accommodation, consumer and money problems which, although not involving large sums, were of some importance to the respondents themselves and were not resolved satisfactorily."

This tendency to see lawyers as relevant only to certain sorts of legal problems is not confined to disadvantaged social groups. The findings that people tend only to consult lawyers about certain kinds of legal problems are consistent with overseas studies drawn from surveys of the general population. While it is true that use of lawyers is more likely for those of higher socio-economic status and educational level, those with higher incomes are more likely to be involved in buying or selling property or in making a will.

Cost

A second obstacle to using the legal system is the cost. Indeed for individuals in need of legal advice and representation, this is likely to be the greatest obstacle to seeking legal services. A person's fear that the costs of taking legal action will be far beyond her or his reach is a strong disincentive even to take the first step of seeking legal advice. Often, such fears are likely to be misplaced. Where the person has a clear legal entitlement, as will often be the case, the cost of legal advice, and whatever action if necessary to pursue the claim further, may be only a small fraction of the amount recovered. Nonetheless, a person will only realize this once that advice has been obtained.

Another source of anxiety about legal costs is the fear that the matter will have to go to court. Not only will the litigant be liable for the court fees and the costs of legal representation, but he or she might be liable for some or all of the costs of the other party. In Nigeria, the normal rule is that the loser will bear the reasonable costs of the winning party. These costs are usually assessed by reference to a scale of fees set by the courts. The costs which are allowed to a successful litigant are known as party and party costs. Where the successful litigant has not been charged the scale fees by her or his lawyer, but has been charged higher fees, then the difference between the scale amount and the actual fees charged must be met by that litigant. These actual fees are known as the solicitors-client costs. While the normal approach in most jurisdictions and courts is to award party-party costs only, in some circumstances,

and in some courts, a successful litigant may be awarded costs on a solicitor-client basis as long as those costs were reasonable incurred.

The cost of legal services delivered by the private profession varies considerably from practitioner to practitioner, firm to firm and State to State. It also varies according to the nature of the legal work being done. Typically, in most law firms, some areas of practice are more lucrative than others, and those areas where higher charges can be sustained-in particular, in commercial work-subsidize other aspects of the practice. Charges are levied on a variety of bases. Frequently, solicitors charge in accordance with the number of hours spent in relation to that matter, and detained time sheets are kept in relation to each client. Another common way of charging is by reference to the court scales.

Where litigation is necessary in order to protect a person's legal rights, the costs of taking the matter to court may run into many thousands of naira. While much of this may be recovered from the other party in the event of success, the recovery of costs depends on the extent to which one's own solicitor-client costs are allowed, and the extent of the defendant's capacity to meet an order for costs. The costs of litigation may be such as to require the sacrifice of many years of savings or to necessitate extensive borrowing. It is thus not surprising that people only litigate when they have no choice in the matter (for example, when they are defending against an unjustified claim), where they are seeking compensation and realize that they have a strong protected or preserved which is greater that the costs of litigation. For many others, even those with watertight legal claims, a common response when the claim is resisted is to find other ways of dealing with the problem-changing jobs, moving house or finding other means of exit and avoidance as the case may be.

Improving Access to Justice

Providing Information and Advice

A starting point in improving access to justice and in making the legal system more relevant to people's lives to increase the levels of community education about law generally, so that people realize when legal advise may be necessary. The growth in popularity of legal studies courses in secondary schools is a positive development in this respect, but such courses have only become part of the school curriculum comparatively recently, and then only as an optional subject.

There is a need for general community education with respect to legal rights. For a large percentage of the population, the reticence about taking legal action is so strong that people need considerable

encouragement through education campaigns and by other means, to take the first steps necessary to enforce their rights. When governments bring in reforming legislation which gives extensive rights on paper, people need to be told in plain English not only what those legal rights are, but also the avenues through which they can make their complaints, enforce their rights and pursue their claims.

Education about the law is especially necessary for migrants. Migrants may need explanation of basic aspects of the legal process with which the majority of the population could expect to be familiar, for examples an alier familiar with jury system faced with legal matter is a non-jury system. Education about the law is also an aspect of overcoming the cultural gulf which inhibits members of ethnic minorities from having greater access to the legal system. Education is necessary not only to convey basic information to people about their rights and obligations under Nigerian law, but also to overcome misconceptions people may have about the requirements of Nigerian law, based upon their experiences in their countries of origin. A number of steps need be taken to improve community awareness of legal rights.

In addition to the private profession there are numerous other sources of legal advice. Legal aid solicitors and community legal centers (see below) provide legal advise, and advice on legal rights given by informed non-lawyers may also be provided by government departments, Law Society advisory services and advice bureaux.

Reducing Legal Costs

Many steps have already been taken to reform the legal profession and to remove restrictive practices which have a tendency to increase costs. Many of these practices were the product of traditions which had survived long after the reasons for them had disappeared. The pattern of reform in Western legal system recent years has been either to ensure a fused profession, or to eliminate most of the practical divisions between solicitors and barristers as in the practice in Nigeria.

Some of the reforms which have been made, and others which have been proposed, relate to the levels of consumer information about legal services which are designed to allow them to make more informed choices in deciding who should represent them. In some jurisdiction, legal practitioners are now permitted to advertise, but the various jurisdictions differ considerably in the extent to which restrictions upon advertising are imposed.

Another means of promoting consumer choice, as well as giving clients a greater degree of control over the costs of legal services, is to require that an estimate of costs be given or that there should be an explanation of the basis upon which costs will be charged.

Providing information on costs is important to help clients evaluate all the options available to them in pursuing a claim, and in deciding on legal representation intending a matrimonial cause for example a client need to be imposed possibly in writing about: approximate costs to the client up to and including conciliation conveyance, the estimated future costs of preparation for trial and the estimated costs of first day of trial. However, providing such information can only be a small part of providing access to justice. Consumers of legal services are not used to shopping around to obtain the most reasonably prices advice, and the nature of legal advice is that often only after a quite extensive interview can the legal problems be identified, and a preliminary assessment of the options available be made.

It has also been recommended that surveys be conducted of the fees lawyers charge for different kinds of services, with appropriate adjustments being made for the different levels of seniority of the lawyer and the size of the firm, so that consumers are able to make a more informed assessment of the estimated charges in their own cases.

Where lawyers preparing matters for litigation charge according to court scales, the costs may be assumed to be competitive with other practitioners. However, this can depend upon the way in which the scale is constructed. If the scale allows many of the costs to be calculated by reference to the time spent on a matter, then the actual cost of the legal representation will depend to some extent upon the efficiency of the practitioner.

Contingency Fees

A further reform which has been implemented in some parts of the common wealth, which is under consideration elsewhere, is the use of contingency fees. Contingency fees are widely used in North America and Australia. Typically, the arrangement is used when the claim is for a monetary sum such as damages. The lawyer agrees not to charge if the client losses, (other than court fees in some cases) but is allowed to charge more than her or his normal rate if the client is successful. In North American, it is common for the contingency fee to be calculated as a percentage of the sum recovered. However, this is not the only form of contingency fee arrangement. Australia allows “conditional costs agreements” by which lawyers may charge a premium on their normal fees of up to 25 per cent, if the litigation succeeds. Contingency fees