



## DEALING WITH THE COVID-19 PANDEMIC: THE CONSTITUTIONALITY OF VIRTUAL TRIALS IN NIGERIA

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### ABSTRACT

In December 2019 a hitherto unknown Coronavirus Disease (otherwise called COVID-19) was discovered in Wuhan China and the world as we knew it has not been the same ever since. In the wake of the outbreak of the disease, the world virtually went into a lockdown and almost all activities came to a halt. The courts were not spared. From the 4<sup>th</sup> day of May 2020 in Nigeria, a gradual easing of the lockdown was announced by the government and new guidelines were set by the National Judicial Council (NJC) to regulate proceedings post COVID-19 era. These new guidelines have introduced remote proceedings into the administration of justice and like most things new, a lot of dust is being raised as to the constitutionality or otherwise of the provisions of the guidelines. In particular, section 36(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) states that “proceedings in courts or tribunals for the determination of the civil rights of a person shall be held in public”. Does the stipulation by the guidelines that proceedings can be conducted remotely go contrary to the provision of the Constitution that proceedings shall be “in public”? By the guidelines, it appears correct to conduct virtual trials of cases without a prior amendment of section 36(3) and (4) of the Constitution. For more than two decades, judgements of superior courts in Nigeria have set aside many decisions of the lower courts for apparent violations of the constitutional requirement to conduct trials in public. In July 2020, the debate on the constitutionality of the virtual trial in the administration of justice in Nigeria finally reached the Supreme Court which eventually ruled that “as of today, virtual sitting is not unconstitutional.” It appears the matter has been put to rest. However, this paper argues that there are still outstanding issues. For instance, is the permissibility absolute? In other words, are there limitations to the permissibility of virtual trials in the Nigerian courts? At what point in time can the Nigerian courts revert to compliance with the constitutional requirement to compulsorily conduct all trials in public?

**Key words:** covid 19, constitutionality, virtual, trials, Nigeria.

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## 1.0 INTRODUCTION

This paper examines the implication of the Coronavirus Disease (COVID-19) on the administration of justice in Nigeria. Like many other countries of the world, Nigeria witnessed a lockdown of all activities for more than three months. Administration of justice was also affected because the courts were also shut down. However, there was ease of the lockdown from the beginning of May 2020 even though COVID-19 did not end. The government had to take measures to control its spread while activities gradually return to normal. The National Judicial Council (NJC) in Nigeria therefore issued Guidelines to regulate court sittings after the lockdown. Remarkably, the Guidelines permitted virtual trial of cases. The problem which this initiative raises is the constitutionality or otherwise of the permitted virtual court proceedings. It is a problem because by section 36(3) and (4) of the Constitution of the Federal Republic of Nigeria 1999, all court proceedings are required to be conducted in public. Can virtual proceedings satisfy the public hearing requirement? In July 2020, the Supreme Court of Nigeria ruled<sup>2</sup> that “as of today, virtual sitting is not unconstitutional.” By this judgement, it appears the matter has been put to rest.

However, this paper argues that there are still outstanding issues. For instance, is the permissibility to conduct virtual trials in our courts absolute? In other words, are there limitations to the permissibility of virtual trials in the Nigerian courts? Is there time when the Nigerian courts can revert to compliance with the constitutional requirement to compulsorily conduct all trials in public? What is the implication of the lockdown on other pre-trial (e.g. limitation period) and post-trial procedures (e.g. enforcement of judgements).

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## 2.0 METHODOLOGY

The methodology adopted for this research is doctrinal, otherwise known as library-based research. The work simply studied and analysed data and came up with its findings. The data is in the form of the National Judicial Council Guidelines 2020 as a subsidiary legislation, the Constitution of the Federal Republic of Nigeria 1999 (as amended), decisions of courts of record in Nigeria and other relevant material on the subject.

## 3.0 COVID-19 PANDEMIC IN NIGERIA

COVID-19 is an infectious disease caused by a newly found coronavirus.<sup>3</sup> It causes respiratory illness to an infected person but older people and those with underlying health conditions are more particularly likely to experience serious illness as a result of the virus infection. It reportedly started spreading from Wuhan, China in December 2019.<sup>4</sup> Today, no country has been spared. It spreads mainly through droplets or discharge from the nose.<sup>5</sup> It spreads quickly and can be deadly depending on the pre-existing health situation of the patient. As of 8 December, 2020, over 66 million confirmed cases were reported, over 1.5 million people died from the disease and 220 countries and territories reported confirmed cases of the virus.<sup>6</sup> The virus registered its presence in Nigeria in February, 2020. On 11 March, 2020, the World Health Organisation declared the COVID 19, given its rapid spread across the world and its deadly nature, a ‘pandemic’.<sup>7</sup> The DG of the WHO observes:

<sup>3</sup> WHO, About COVID-19, available at [https://www.who.int/health-topics/coronavirus#tab=tab\\_1](https://www.who.int/health-topics/coronavirus#tab=tab_1) visited December 2020

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020 11 March 2020.



Pandemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death. We have never seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus.<sup>8</sup>

It spreads like a wildfire. Indeed, it was the mode of its spread that forced almost the entire world into a 'lockdown'. The impacts of this have been incalculable. Throughout 2020, global attention turned dramatically to the COVID-19 pandemic and its impacts on lives and livelihoods.<sup>9</sup>

The UN captures the impacts thus:

Over the course of 2020, the coronavirus disease or COVID-19, has taken [over a million] lives, infected millions of people, upended the global economy and cast a dark shadow across our future. No country has been spared. No population group remains unscathed. Nobody is immune to its impacts.<sup>10</sup>

Like in other parts of the world, Nigeria was literally upended and silenced by the pandemic.

Lives were lost.<sup>11</sup> Livelihoods were destroyed. All sectors of the economy were shattered. Governance stood still for months. All the states and the Federal Capital Territory were directly affected.<sup>12</sup> The judiciary, and the administration of justice, literally went into hibernation. It was the first time that the entire judicial system was forced into a complete lockdown. It has never happened before. The consequences of this can only be imagined.

On March 23rd 2020, the Chief Justice of Nigeria, Justice Tanko Muhammad directed the suspension of judicial activities in courts nationwide for two weeks. Muhammad, in a statement by the spokesman for the Supreme Court, Dr. Festus Akande, said the need to urgently halt court sittings was informed by the glaring threat of the COVID-19 pandemic. On April 6th, 2020, and following expiration of the initial 14-day closure directive, the CJN extended the closure of the courts indefinitely, save "to dispense matters that are urgent, essential or time bound in line with our extant laws."<sup>13</sup>

Without a doubt, the above-stated decreed closure of the temple of justice in Nigeria has raised multiple concerns and issues concerning administration of justice in Nigeria. These concerns have been further goaded by the lockdown of some major states and cities by the Federal Government of Nigeria. Almost all state governments have also issued stay-at-home orders to civil servants and private employees alike in their respective jurisdictions.

<sup>8</sup> Ibid.

<sup>9</sup> United Nations, Comprehensive Response to Covid-19: Saving lives, protecting societies and recovering better, available at <https://www.un.org/sites/un2.un.org/files/un-comprehensive-response-to-covid-19.pdf>.

Visited December 2020

<sup>10</sup> UN Comprehensive Response to Covid-19: Saving lives, protecting societies and recovering better 5

<sup>11</sup> Nigeria Center for Disease Control, COVID-19 Nigeria, available at <https://covid19.ncdc.gov.ng/>. visited December 2020

<sup>12</sup> Ibid.

<sup>13</sup> Dayo, A. COVID-19 and the Nigerian justice sector: A case for virtual dispute resolution April, 14<sup>th</sup> 2020



#### 4.0 ADMINISTRATION OF JUSTICE DURING COVID-19 PANDEMIC

Following the easing of lockdown after the first wave of the pandemic, the numbers quadrupled triggering the second wave.<sup>14</sup> As scientists were struggling to understand the virus and to come up with the appropriate vaccines and therapeutics, world leaders and societies felt that defeating the virus requires learning to live with it. This forced many countries, including Nigeria, to begin easing lockdowns. Societies began to return to normalcy. Courts began to reopen. A balance between health and economic imperatives was needed.

Amid this pressure to re-open the economies, courts and judicial administrators started thinking outside the box to enable smooth return to administration of justice without exposing litigants, judges, lawyers and other court-users to the danger of COVID-19. Litigation has been put to a serious test.<sup>15</sup> The effects of the pandemic on administration of justice covered pre-trial issues (e.g limitation of action), trial issues (e.g constitutional/human rights during trial) and post-trial issues (e.g insolvency and enforcement of judgement).

#### 5.0 WHAT ARE VIRTUAL TRIALS ?

Virtual proceedings are simply proceedings that are conducted using electronic means without the need for participants to be physically present. The main issue is whether proceedings of a Court of Law conducted virtually can be said to have been conducted in public and as such in compliance with Section 36(3) and (4) of the 1999 Constitution.

According to the Meriam-Webster dictionary, Public is defined as “of relating to, or affecting

all the people or the whole area of a nation or state or place accessible or visible to the public.”

The Black’s Law Dictionary<sup>16</sup> defined the word “public” as “open or available for all to use, share and enjoy”.

A combined definition of the above when read alongside the definition of ‘public’ in **Edibo v. STATE**<sup>17</sup>, His Lordship Nikki Tobi (Justice of the Supreme Court) gave as follows; “By Section 33(3) of the 1979 ( Now section 36 (4) 1999 constitution ), the proceedings of a Court or tribunal shall be held in public. Public means for the use of everyone without discrimination, anything, gathering or audience which is not private is public”.

The rationale behind this is the Open Court Principle that carries a presumption that the public, inclusive of the media, has a free and fair access to court hearings and proceedings; the foundation of this, being in freedom of expression and freedom of the press that is guaranteed by Section 39 of the 1999 Constitution. The principle is to protect a wide scope of activities that enable the public to attend court hearings as a partaker, spectator or a reporter and also importantly to discourage trials conducted in secrecy especially one that has to do with a civil right and obligation matters.

The debate on whether virtual court hearings are permitted by the Constitution emanates from Section 36(3) and 36(4) of the Constitution which provide thus: (3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the Court or tribunal) shall be held in public. (4) Whenever any person is charged

<sup>14</sup> WHO op cit.

<sup>15</sup> O.O Sofowora ‘Covid 19 and the Future of Litigation in Nigeria’ available at <https://www.irglobal.com/article/the-covid-19-pandemic-and-the-future-of-litigation-in-nigeria-2/>. Visited December 2020

<sup>16</sup> 9th ed @ PG 1348

<sup>17</sup> (2006) 13 NWLR (Pt 1051) 306.



with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:" The questions that would subsequently need determination are;

- 1.) What would amount to a public hearing?
- 2.) Does a Virtual Court hearing qualify as public hearing?

### 6.0 Adjustments in Foreign Jurisdictions

Several initiatives have been adopted across the world. For instance, the IBA litigation Committee has found over 100 jurisdictions across the world have shifted towards an administration of justice system that is conscious of the virus.<sup>18</sup> In Australia, for instance, court sittings except in few exceptional cases, were initially suspended but in June, 2020 appearance was allowed through video-conference and attendance was allowed through audio-visual link.<sup>19</sup> The same obtained in Canada.<sup>20</sup> Limitation periods for the purpose of litigation were suspended until September, 2020.<sup>21</sup> In France, the government, by order, also froze limitation periods called 'legally protected period' defined to start from 12 March 2020 to one month after the end of the COVID 19 public health emergency. For civil matters, all 'acts, appeals, legal actions, formalities, registrations, declarations, notifications or publications' which by law must be carried out within a certain time period expiring during the Legally Protected Period "shall be deemed to have been accomplished in time if it is done within a period which may not

exceed the time period legally prescribed for taking action, up to a limit of two months".<sup>22</sup>

In India, the Supreme Court, in exercise of its powers under of the Constitution of India (Articles 141 and 142), extended the period of limitation applicable in all Indian laws.<sup>23</sup> In the US, although federal courts did not halt proceedings or issued an extension of statutes of limitations, many states have issued orders suspending or relaxing deadlines and statutes of limitations 'until the states of emergency declared by their governors expire'.<sup>24</sup> Virtual proceedings were however allowed in federal courts.

Resolution of civil and commercial disputes, which are central to economic survival, must also not be consigned to the background at this time. Following initiatives in some other jurisdictions, there have been repeated calls for greater use of technology in the courts – in particular, the use of video conferencing. This will no doubt require funding and there are likely to be developments in this regard. The English civil justice system has demonstrated itself to be capable of rapid change as it adapts to the new reality caused by COVID-19. The clarion call from the English courts is that they are open for business, driven by the need to maintain the access to justice, which is fundamental for the functioning of civil society. Nigeria courts should emulate this.

### 7.0 Adjustments in Nigeria

Nigeria has a centralized judicial administration in terms of appointment, discipline and removal of superior court judges. There is a single Supreme Court, Court of Appeal, National Industrial Court and Federal High Court, the latter three have divisions across the country. However, Nigeria operates a federal system

<sup>18</sup> International Bar Association's Litigation Committee, Impact of COVID-19 Pandemic on Courts Operation and Litigation Practice, June 2020, available at <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUId=07c06625-4752-480f-bacc-33fe585df46d>. visited December 2020

<sup>19</sup> Ibid 5.

<sup>20</sup> Ibid 22.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid 39-40.

<sup>23</sup> Ibid 50.

<sup>24</sup> Ibid 110-111.



with constitution establishing for each state a high court, Shariah Court of Appeal and Customary Court Appeal and reserved the powers to establish and administer lower courts in the states. The same obtains for the federal government. Unfortunately, lawmakers did not respond to issues outside the control of judicial administrators (e.g limitation period and post-trial procedures). Nor did they enact laws to address the concerns in trials as required by the 1999 constitution.

However, in response to the COVID 19 pandemic, the National Judicial Council adopted a Guideline in May 2020 to complement the Rules of the various courts.<sup>25</sup> It requires that:

Court-related business that can be transacted without physical visits to the court premises must be transacted through available alternative channel.<sup>26</sup>

It further stipulates thus:

...Physical sittings by courts in courtrooms should be avoided as much as possible during this COVID-19 period. Such physical court sittings must be limited only to time bound, extremely urgent and essential matters that may not be heard by the court remotely or virtually...

2. Virtual court sittings (alternately referred to as “remote court sittings” or “online court sittings”) should be encouraged and promoted by the courts and Counsel; the courts should insist on such remote hearings for matters that do not require taking any evidence. All judgments, ruling

and directions may be delivered and handed down by the courts in and through remote court sittings.... Save for extremely urgent and time bound matters, contentious matters that require the calling of evidence in a physical courtroom setting should not be called up by the courts...

4. As the courts and Counsel become proficient in virtual court sitting arrangements, the courts may, on a trial-run basis gradually experiment with taking witnesses and evidence virtually. This is important given the fact that no one can estimate with any degree of certainty how long the COVID-19 pall will hang over humanity...

5(1) Except with the leave of court, only the judicial officer(s) and the court officials and security personnel shall be the ones in the courtroom for any virtual court sitting.<sup>27</sup>

It is instructive to note that heads of courts have constitutional powers to enact rules of procedure for their respective courts. This power enables them to regulate pre-trial, trial and post trial proceedings. The Chief Justice of the Federation and the Chairman of the National Judicial Council used this power to regulate COVID-19 issues on administration of justice. indeed, the Guideline under consideration draws its constitutional flavor, among others, from this power.

<sup>25</sup> NJC, Guideline, May 2020.

<sup>26</sup> Ibid para 5(c).

<sup>27</sup> Ibid para E (1)





With respect to hearing in public, the guideline stipulates thus:

In instances that the Awaiting Trial Persons (“ATPs”) must inevitably be physically taken to court for courtroom sittings/hearings, the Nigerian Correctional Service should have prior engagement with the courts so the judicial officers exercise discretion in the number of cases that are fixed for those days and holding bays would be provided at the court premises (in substitution for a cell) for the detention of the ATPs in conformance to social distancing requirements. Such prior engagements would also enable the courts to take all other required and necessary precautionary steps for the protection of every person in court, including the ATPs, in the context of COVID-19 transmission.<sup>28</sup>

This seeks to address the constitutional requirement for trial in public as guaranteed under the 1999 constitution. The constitution provides:

36 (3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.  
(4) Whenever any person is charged with a criminal offence, he shall... be entitled to a fair

hearing in public within a reasonable time by a court or tribunal.

Provided that –

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defense, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.<sup>29</sup>

<sup>28</sup> Ibid para F(2)(n)

<sup>29</sup> Constitution of the Federal Republic of Nigeria, 1999, s 36 (3)(4).



The constitution of the Federal Republic of Nigeria 1999 recognizes that a public health emergency such as the COVID 19 can render some of the fundamental rights inoperative during such period. It provides thus:

An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency.<sup>30</sup>

Interestingly, no COVID-19-based legislation has been enacted to support the courts to water-down the power of the constitutional guarantee on 'hearing in public'. The lawmakers focused only on legislation that will support the economic recovery. Arguably, administration of justice ought to be part of this package. The position of the law is that derogation of fundamental rights must comply with the exceptions contemplated by the constitution and this has to be done by way of legislation to ensure legality, proportionality and legitimacy. It has been observed that

During a state of emergency, these ordinary limitations may not be sufficient for the state to attain its objectives, and as a consequence, it may be able to derogate from certain rights,

including the right to privacy. Legality, necessity and proportionality continue [must] be the key principles'.<sup>31</sup>

In the same vein, Nigerian legislators did not enact any law to freeze or expand the statutory limitation periods necessary for many litigations. Post-judgement procedures also suffer similar faith.

### **8.0 Judicial Pronouncements on Constitutionality of Virtual Trials in Nigeria**

As the push for Nigeria to adopt virtual court sitting, especially in the wake of the lockdowns occasioned by COVID-19, gathers momentum, many judges are not convinced such practice is legal under the 1999 Constitution, as amended. Investigation reveals that many judges, particularly at the high court level and the Court of Appeal, are of the view that there are constitutional hurdles to cross before Nigeria can adopt a system of remote hearing of cases. They cite section 36 of the 1999 constitution, which provides that court proceedings, including delivery of court decisions, shall be held in public.

Some of the judges expressed reservations about the adoption of the digital platforms of hearing cases. They reasoned that cases heard and determined under such arrangement were most likely to be set aside by the Supreme Court on the ground that such hearings did not meet the constitutional thresholds for determining cases. Some Judges however, do not hold this same view, they expressed their reservations about the adoption of means of technology for hearing cases. Their reasoning is that the constitution does not accommodate Virtual Court hearing as it is not public hearing and are quite sure that the Supreme Court

<sup>30</sup> Ibid s 45(2).

<sup>31</sup> Maria Pia Sacco et al, Digital contact tracing for the Covid-19 epidemic: a business and human rights perspective (IBA 2020) 3.





would set aside such number of cases that have been conducted via electronical means.

Senior legal practitioners who are also of this same view are relying on the Supreme Court case of **Nigeria Arab Bank Ltd. V. Barri Engineering Nigeria Ltd**<sup>32</sup> In this case, Judgment was delivered in chambers at the High Court in a claim for damages. On appeal, the judgment was declared a nullity and a retrial was ordered. The court further added that the right in section 33 (3) of the 1979 constitution (now section 36 (3) 1999 constitution) “is a public right of every citizen. The courts must be opened to anyone who presents himself or herself for admission or is so obliged to be so presented.”

Another case relied on is **Oviasu v. Oviasu**<sup>33</sup>. In this case, a hearing of the matrimonial case took place in the chambers of the trial judge. Neither of the parties nor their counsel requested for this. At the end of the hearing, the trial court dissolved the marriage. On appeal, the Supreme Court allowed the appeal, set aside the judgment and the matter was ordered to start *de novo*. It was added that a court is a public place where members of the public have unfettered ingress and egress.

However, in response to the apparent lack of legislative activities on the COVID-19 on the administration of justice as required by the constitution and the need to clarify the relevant constitutional provisions, Lagos and Ekiti states both in the southwest Nigeria, instituted action before the Supreme Court of Nigeria seeking determination of the constitutionality of virtual proceedings.<sup>34</sup>

In the suit brought pursuant to Order 3 rule 6, Supreme Court Rules (as amended in 1999), section 232(1) of the 1999 constitution (as

amended) and sections 1(3), 36(3) and (4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Attorney-General of Ekiti State was asking the Supreme Court to determine whether the directive issued by the Attorney-General of the Federation, vide its directive issued on the 20th of April, 2020 to the Head of Courts at Federal and States level, in conjunction with Guidelines, issued on the 7th May,2020, by the National Judicial Council specifically as it relates to the conduct of virtual proceedings in court is not only a violation of the federalism provisions of the 1999 Constitution but also in violation of the constitutional provisions on fair hearing specifically as it relates to the conduct of civil and criminal trials in public.

the Supreme Court was requested to set aside, or strike down so much of the said directive of the Attorney-General of the Federation and National Judicial Council Guidelines, as it relates to Virtual or Remote Court sittings to the extent that they purport to be binding on the Ekiti State High Court for being inconsistent with Section 1(3), 4(6), 5(2), 6(2), 36(3) and (4), 272 and 274 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

The issue of the constitutionality or otherwise of remote or virtual court hearing has dominated national discussion since the publication of the guidelines of the National Judicial Council which recommended virtual court proceedings for courts in response to the COVID-19 Pandemic.

Opinion has been divided among lawyers on the legality of the directive. A number of High Courts including those in Lagos, Ogun, and Borno States have proceeded to implement the guidelines while many States have been adamant in their opposition to the directive insisting that only a constitutional amendment or pronouncement by the Supreme Court can ensure the legality of virtual court hearings.

<sup>32</sup> (1995) 8 NWLR (PT. 413) 257 @ 273.

<sup>33</sup> (1973) 11 SC187

<sup>34</sup> E. Dennis, 'Supreme Court Okays Virtual Hearing of Cases' Guardian newspaper 14<sup>th</sup> July 2020



Hon. Justice Rhode-Vivor who led the National Judicial Council team on the Guidelines, delivered the judgement of the court. The court held that the suits by Lagos and Ekiti states were 'speculative' and 'academic' because 'virtual sitting is not unconstitutional'.<sup>35</sup> The judgement was, however, short of details.

### 9.0 Challenges

Virtual proceedings are bound to raise challenges to the proper administration of justice given the level of technological developments in Nigeria. Apart from challenges linked to technology, the rate of poverty would combine to potentially make justice inaccessible. Illiteracy is another challenge.

More fundamentally however, throughout the pandemic limitation periods prescribed by hundreds of federal and state statutes continue to run. There is no general legislation that freezes these periods in the light of the pandemic. The National Judicial Council Guideline is also completely silent on this issue. The guidelines is also silent in other vital areas in the administration of justice. For instance, is the permissibility to conduct virtual proceedings absolute? In other words, are there limitations to the permissibility of virtual trials in the Nigerian courts? Is there time when the Nigerian courts can revert to compliance with the constitutional requirement to compulsorily conduct all trials in public?

This is unlike what obtains in other jurisdictions as briefly examined above. In the same vein, issues relating to post-judgement procedures have not been dealt with by either the legislature or the judiciary. Curiously, the executive did not take any action in this regard. Not even an executive order was issued. These series of inaction might compound the administration of justice and can potentially

frustrate the legitimate expectations of litigants.

### 10.0 Conclusion

Although the COVID-19 pandemic has caused serious economic dislocation in Nigeria as in other countries, the level of policy-making inactivity is deeply concerning. The pandemic presents an extra-ordinary situation that calls for extra-ordinary measures. The action of the SC is commendable. The other arms of government have, however, paid more attention to monetary and budgetary issues ignoring the fact that administration of justice permeates all of these issues. Although the actions of the SC are commendable, it still leaves many questions unanswered: Can the Supreme Court adopt a guideline to address public health emergency concerns in the administration of justice? Has the National Judicial Council/Supreme Court not jumped the gun in adopting the COVID-19 Guidelines as the constitution requires 'an Act of the National Assembly' to derogate from the right to hearing in public'?

There is surely no violation of any right to hearing in public unless an actual, individual litigants complains of violation as such occurs. Nevertheless, Nigerian policy makers will do well to invoke their constitutional mandate to support the judiciary in the administration of justice. It is unhelpful to simply allow the judiciary to fill a vacuum created, not by the pandemic but by their inactivity. An Act of national assembly or an outright ammendment of the 1999 constitution to accommodate the new norms is recommended so that periods of limitation can be expanded, and post judgement matters. Similarly issues like the limitations, if any, to the permissibility of virtual trials in the Nigerian courts, when the Nigerian courts can revert to compliance with the constitutional requirement to compulsorily conduct all trials in public, if need be, can be

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<sup>35</sup> Ibid.



dealt with without potential legal questions hanging.

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