THE NIGERIAN ATTEMPT TO SECURE LEGAL REPRESENTATION BY A BILL OF RIGHTS: HAS IT ACHIEVED ITS OBJECTIVE?*

On 24th October, 1959, Nigeria adopted a bill of rights whose primary objective was to protect individual rights and to allay the fears of minorities. The adoption of the bill of rights was not due to British initiative, but on the contrary when the question was first raised in the 1953 Constitutional Conference the then Colonial Secretary scorned the idea on the ground that he had "the prestige of Nigeria too much at heart to wish that general ethical aspirations should be attached to the laws of the country".[1]

Some provisions in the bill of rights are a re-statement of the existing law while others are new. The reason for the reproduction of the existing rights in the Constitution is to confer on them a measure of sanctity which a constitutional document enjoys. The Constitution has the force of law throughout the country and any other law inconsistent with it is void to the extent of the inconsistency.[2]

The fundamental rights are entrenched and they could only be altered or repealed before January, 1966, by a two-thirds majority of both Houses of Parliament and by majority vote of each legislature of at least three regions.[3] They could however be suspended during a period of emergency as defined in section 70 of the Constitution. Sir Abubakar gave the reason for their entrenchment thus:

> We felt so strongly on this matter that it was agreed unanimously that the whole of this chapter should be entrenched. Perhaps you would wonder at these precautions; it is not that we mistrust ourselves but that elsewhere we have witnessed all too frequently the ease with which Governments. . . have been able to twist and change the shape of their laws, and to deprive even a majority of their citizens of their rights. In some cases this deprivation of rights has been carried out methodically and in cold blood, but in other cases resort had been had to the excuse that Government security justifies the action.[4]

In the 1957 Constitutional Conference there were various demands for the creation of new states. The demands arose in part from the fears of minorities which were further aggravated by the fact that the main political party in each of the three regions was dominated by the largest tribe in each region, and consequently opposition parties usually came from the ethnic minorities. The regional governments had wide powers and in nearly all matters which concerned the ordinary citizen

* This article is based on a thesis "The Protection of the Accused under the Nigerian Law" submitted for the award of a Ph.D degree of London University.

1 *The Memoirs of Lord Chandos* (1962) p. 20.

2 S. 1 Constitution of the Federation No. 20 of 1963.

3 Nigeria was on 27th May, 1967, divided into twelve States by the States (Creation & Transitional Provisions) Decree No. 14 of 1967.

4 African Conference on the Rule of Law, Lagos (1961) p. 87.

it was the regional government that he was thinking about when he thought about government at all. It was realised by the Conference that it would be impossible, in view of the heterogeneous nature of the Nigeria Society, to meet all these fears by the creation of new states because irrespective of the number of states created, minorities would always remain. A Commission was therefore set up to ascertain the fears of minorities and to advise on the safeguards that should be included in the Constitution for the protection of minorities.[5]

It is interesting to note that no minority specifically requested for a constitutional bill of rights. Some minorities said that they would welcome the inclusion of such rights but doubted whether such provisions alone would provide an adequate safeguard for minorities. It was the association of Christian bodies only that specifically requested for the inclusion of the rights in the Constitution. In the end, the Minorities Commission did not recommend the creation of new states but recommended that fundamental rights similar to those in the European Convention on Human Rights should be incorporated into the Constitution.[6] The draft clauses prepared by the Colonial Secretary's legal advisers were considered and approved in the 1958 Constitutional Conference. The Nigerian bill of rights had been accepted as a model for other countries like Kenya, Uganda and others which had adopted a bill of rights in their constitutions.[7] The rights had not been suspended by the military government; however, a decree prevails over them, but an edict which is inconsistent with them is void to the extent of the inconsistency.[8]

At common law a person accused of a misdemeanour always had the right to be represented by counsel, but in all other cases, the accused had no such right. The general theory was that the judge would see to it that the accused had a fair trial, and the reason for this anomaly was the popular belief then current that the Crown would not charge the commission of a crime unless the evidence was so clear and manifest that there could be no defence.[9] This anomaly was corrected in stages but not without tears for Lord Maugham spoke of the long struggle which took place and which ultimately resulted in such persons having the right to be represented by counsel.[10] The concession was won in two stages, In 1695 section 1 of the Treason Act extended the right of representation by counsel to persons accused of treason and in 1836 section 3 of the Prisoners Counsel Act secured the right of representation to all persons accused of felony.

Section 22(5) (c) of the Constitution provides that a person who is charged with a criminal offence "shall be entitled to defend himself in person or by persons of his own choice who are legal practitioners". Many Nigerian statutes e.g. section 75 of the Magistrates Courts Act[11]

5 Report of the Nigerian Constitutional Conference 1957, Cmnd. 267, para. 27.
6 Report of the Commission appointed to enquire into the fears of Minorities, Cmnd. 505 of 1958, para. 39.
7 Parliamentary Debates (House of Commons) 1956/60 Vol. 626 para. 1793.
8 Constitution (Suspension and Modification) Decree No. 1 of 1966. Decrees are promulgated by the Federal Military Government while edicts are promulgated by State Military Governors.
9 D. Fellman, *The Defendant's Rights under English Law* p. 81.
10 *Gilos Hired* v. *R.* (1944) A.C. 149 at 155.
11 Cap. 113 of the Laws of the Federation and Lagos, 1958.

and section 32 of the Supreme Court Act, 1960 make provision for rights of audience by legal practitioners and it would appear that right from the establishment of courts on the English model, the accused had always had the right to be represented by counsel. If this right had always existed, why then was it still necessary to provide for it in the Constitution? The probable reason why section 22(5) (c) was entrenched into the Constitution was because of the tendency which was at one time prevalent in certain parts of the country to legislate for the exclusion of legal practitioners in certain courts. It was felt that unless some provision of this kind was inserted in the Constitution, the tendency, if persisted in, might result in lawyers being excluded altogether from many courts of the land.[12]

The right to be defended by counsel is a vital and indispensable aspect of the concept of fair trial. Mr. Justice Sutherland aptly summarised the vital role of a counsel in a trial thus:

> The right to be heard would be, in many cases, of little avail, if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with a crime he is incapable generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. He lacks both the skill and knowledge adequately to prepare his defence, even though he may have a perfect one. Without counsel though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.[13]

Mr. Justice Sutherland's observations are supported by the recent case of *Olasoji & Anor.* v. *Attorney General (W.N.).*[14] In this case, the appellants were convicted of robbery. They were not represented by counsel at their trial and a number of points which might have favoured them were not taken e.g. why Eko chose to go to the street to count the N80.00 given to him instead of doing it more privately indoors, and there was no evidence of light in the street by which he could have seen who his attackers were, and there was no other witness to the alleged robbery. The Supreme Court allowed their appeal and held that although the trial judge accepted the evidence for the prosecution on the strength of the demeanour of the witnesses there was no indication that he considered matters which were capable of casting some doubt on the prosecution's case. The High Court decision also explodes the myth that "in criminal trials, it is one of the recognised functions of a judge to assist an accused person who is not represented by counsel in putting his defence before the court".[15] After all the judge is not in a position to know every point which should be brought out for the defence, and there can be no certainty that everything which should be said on the accused's behalf is, in fact, said unless he is legally represented.[16]

The right of legal representation conferred by section 22(5) (c) does not apply to all courts, and there is a proviso to the section up-

[12] *Awolowo & Ors.* v. *The Federal Minister of Internal Affairs* (1962) L.L.R. 177.
[13] *Powell* v. *Alabama* 32 287 U.S. 45, 68 (1932).
[14] (1965) N.M.L.R. 111.
[15] *R.* v. *Gbadamosi & Ors.* (1940) 6 W.A.C.A. 84; *R.* v. *Ekalagu* (1960) 5 F.S.C. 217.
[16] Report of the English Departmental Committee on Legal Aid in Criminal Proceedings, Cmnd. 2934 of 1966 para. 145.

holding the validity of laws which prohibit legal representation in Native Courts.[17] In the Western State, lawyers have a right of audience before Grade 'A' Customary Courts which are always presided over by legal practitioners. The reason why legal representation is prohibited before Native Courts is because their personnel is largely laymen and it is thought that the end of justice will be well attained by hearing the parties themselves and their evidence "without that nicety of discussion and subtlety of argument, which are likely to be introduced by persons more accustomed to legal reasoning and questions."[18]

However, an authoritative ruling is still awaited on the provisions prohibiting legal representation in Native Courts. For instance, section 28(2) of the Customary Courts Law of Western Nigeria provides that "no legal practitioner may appear to act for or assist any party before a customary court". It is not clear whether the section prohibits only the physical appearance of counsel before a customary court or the rendering of any assistance by a legal practitioner to a party without appearing physically before the court. There are conflicting decisions of the High Court on the point. In *Opaleye* v. *Ajayi*,[19] the notice of appeal and the memorandum of the grounds of appeal from a customary court to a magistrate's court were signed by a legal practitioner. The magistrate struck off the appeal as being not properly before the court because the papers were signed by a legal practitioner. On appeal, the High Court held that section 28(2) prohibited only the physical appearance of legal practitioners before customary courts and that there was no objection to an appellant signing a notice of appeal and memorandum of grounds of appeal which were prepared by a legal practitioner. In *Ladosu* v. *Akano*,[20] Duffus, J. held that it was unnecessary to have a recourse to section 28(2) once an appeal came from a Customary Court to a Magistrate Court, because it was the appeal court that was seised of the matter and that by virtue of section 59 of the Magistrate Court Law, a legal practitioner was competent to sign the notice and grounds of appeal. But in *Adepoju & Ors.* v. *Lamina*,[21] Madarikan, J. held that the section prohibited not only the physical appearance of a legal practitioner before a customary court, but also prohibited the rendering of any assistance to a party in any proceedings before a customary court. It is submitted that the learned judge misconstrued the provision. The decision is untenable and can indeed lead to absurd results. There is nothing to prevent a party who has a case before a customary court from approaching a legal practitioner for advice, and it is difficult to believe that the other party can successfully impugn the proceedings on the ground that his opponent has sought legal advice. One is inclined to agree with *Opeleye's* case that what is prohibited before native courts is the physical appearance of legal practitioners and not the rendering of assistance to the parties behind the scene.

17 S. 31 Native Courts Law, Cap. 78 (North); S. 32 Customary Courts Law Cap. 32 (East); S. 28 Customary Courts Law, Cap. 31 (West).

18 *Collier* v. *Hicks* (1831) 2 B. & Ad. 663.

19 (1964) N.M.L.R. 5.

20 (1962) 2 All N.L.R. 167.

21 (Unreported), Suite No. IK/17A/59.

Section 22(5) (c) of the Constitution has been considered in a number of cases. In *Gokpa* v. *Police*,[22] the appellant first appeared in court on 27/9/60 but the case was adjourned to 25/10/60. It was not called then, but on 28/11/60 when it was mentioned neither the appellant nor his counsel was in court. A bench warrant was issued for his arrest and when he was brought before the court on 29/11/60, he asked for an adjournment to enable his counsel to appear. The Magistrate granted only a few hours adjournment, although the appellant's counsel and indeed any available counsel, resided in Port Harcourt which was 23 miles away. When the hearing was resumed the accused refused to take any active part in the proceedings — he did not cross-examine any of the witnesses and he refused to give evidence. He was convicted but his conviction was set aside on appeal on the ground that the action of the magistrate in refusing an adjournment to enable the appellant to be represented by counsel violated section 22(5) (c) of the Constitution.

In *Dimis* v. *Police*,[23] the appellant's counsel made a submission which was overruled. He applied for an adjournment which was refused and thereupon he withdrew from the case without the leave of the court. The accused's application for an adjournment to enable him to engage another counsel was rejected and he refused to take part in the proceedings. He was convicted. On appeal, the conviction was quashed and it was held that the trial judge erred in law in failing to allow the appellant to engage another counsel to prepare his defence and in delivering judgment without any defence. It was pointed out that it was a most unprofessional and improper conduct for counsel to withdraw from the case, and that a counsel had no right to withdraw altogether from a case and leave an accused unrepresented. But in *Shemfe* v. *Police*[24] the decision went the other way. In this case the accused's application for an adjournment to enable him bring his counsel was rejected because there was no explanation as to the failure of counsel to be present or to provide a substitute. The accused conducted his own defence and was convicted. The High Court upheld his conviction. It was held that he had not been deprived of his constitutional right to have counsel to defend him because the lack of assistance was occasioned by counsel himself. The court pointed out that it was the duty of counsel to see that some other member of the Bar held his brief, if for any good reason, he was unable to attend.

The only distinction between the *Gokpa's* and *Shemfe's* cases is that in *Gokpa's* case the accused refused to take part in the proceedings while in *Shemfe's* case the accused took an active part in the proceedings and cross-examined the prosecution witnesses. This distinction is untenable. The court in *Shemfe's* case overlooked the fact that a layman is almost never able to defend himself as effectively as a lawyer would. An accused whose counsel is absent is advised, if he intends to challenge the proceedings later, to maintain the *Gokpa* attitude of

[22] (1961) All N.L.R. 423. See *Muyimba & Ors.* v. *Police* (1969) E.A. 433. The facts are similar to Gokpa's and the nearest place where the accused could get a counsel was 80 miles to the place of trial. It was held that his trial violated section 15(2) (d) of the Uganda Constitution — equivalent of our section 22(5) (c).

[23] (1962) N.N.L.R. 45.

[24] (1962) N.N.L.R. 87.

non-participation and non-cooperation. Once he takes an active part in the proceedings he loses his right to impugn them.

The meaning of the phrase "counsel of his choice" was considered in *Awolowo & Ors.* v. *Federal Minister of International Affairs*.[25] In this case, the plaintiff briefed a member of the English Bar, who was also a member of the Nigerian Bar, though not a citizen of Nigeria, to defend him in some criminal charges. The plaintiff's counsel was prohibited from entering Nigeria by the defendant under section 13 of the Immigration Act.[26] The plaintiff sought a declaration that he was entitled to be defended by any British or Nigerian counsel of his choice and that the action of the defendant was *ultra vires* the Constitution. It was held that the defendant acted within the scope of his powers under section 13 of the Immigration Act when he prohibited the entry of the counsel in question or any other counsel not being a Nigerian; and that section 13 of the Immigration Act was not inconsistent with section 22(5) (c) of the Constitution.

In arriving at this conclusion, Udoma, J. said that the Constitution was a Nigerian Constitution meant for Nigerians, and it ran only in Nigeria and consequently the legal representation contemplated in section 22(5) (c) ought to be some one in Nigeria and not outside it. He went on to say that the framers of the Constitution never had any special reason to contemplate, at the time of the framing of the Constitution, that in ordinary course of events, Nigerians involved in criminal charges would normally engage counsel outside Nigeria; and that he did not believe that the provision was intended to be invoked in support of the expensive undertaking of importing lawyers whether British or otherwise into Nigeria. He concluded:

> I am inclined to believe that the provision is subject to certain limitations. It is clear that any legal representative chosen must not be under a disability of any kind. He must be someone who, if outside Nigeria, can enter Nigeria as of right; and must be someone enrolled to practise in Nigeria; for if the legal representative cannot enter Nigeria as of right, and he has no right of audience in Nigeria courts, then he is under a disability. Foreigners whether British or otherwise, cannot enter Nigeria as of right. If it was desired that a person charged with a criminal offence should be at liberty to choose legal representatives not only in Nigeria but elsewhere. . . it is my considered view that the words "whether in Nigeria or elsewhere" would have been inserted to subsection (c) of section 22(5) after the word 'choice'.

It is perhaps not correct to say that the framers of the Constitution did not contemplate that accused persons would invoke the provision to import lawyers from England. The framers of the Constitution possibly did not direct their minds to the problem which arose in *Awolowo's* case because before then, lawyers regularly came from England to defend prominent politicians and section 13 of the Immigration Act was never invoked to prohibit their entry. Since this right had been enjoyed over the years without any hindrance, it was understandable that it was not raised when the fundamental rights were being considered. The reason for the change of attitude on the use of section 13 of the Immigration Act was due to the fact that before 1960, the powers conferred by that section were exercised by the

[25] (1962) L.L.R. 177.
[26] The Act has been repealed and replaced by the Immigration Act No. 6, 1963.

Governor-General whereas, after 1960, they were vested in the Minister of Internal Affairs, a politician.

It is indeed difficult to resist the inference that the Minister's action and the wording of his prohibition order had some political undertones. His instruction was:

> No person, not being a Native of Nigeria, shall be allowed entry into Nigeria for the sole purpose of defending any of the accused persons in the treasonable felony charge.

The counsel concerned was a member of the Nigerian Bar and it was conceded by the defendant that he had a valid visiting pass to enter Nigeria. The inference that the Minister was politically motivated was strengthened by the fact that between 1961 and 1962 English lawyers were allowed entry into the country on three occasions to conduct criminal trials.[27]

On appeal, the Supreme Court held that the claims were misconceived and that the claims if upheld would have the effect that an accused person would have a unique privilege of being able to compel the government to admit into Nigeria a person who had no right of entry by virtue of section 27(1) of the Constitution as a citizen of Nigeria. It held further that section 27(1) necessarily implied that other persons might be refused entry or expelled in accordance with the legislation in force on the subject. It concluded:

> Section 22(5) (c) cannot be read in isolation . . . The right granted by this section is qualified by various considerations Various reasons may curtail the choice of counsel, for example the counsel of the accused's choice may be under lawful detention or lawfully confined and the like.

The purpose of section 22(5) (c) is to ensure that an accused person does not have a counsel foisted on him, but should be at liberty to choose his own counsel. However, an accused who fails to tell the trial court that he has his own counsel but accepts the counsel assigned by the court cannot complain that his right under section 22(5) (c) had been violated.[28]

There is yet no decision as to whether section 22(5) (c) applies to proceedings prior to a trial i.e. police investigation. In the United States, it was held in *Miranda* v. *Arizona*[29] that if the accused asked for counsel the interrogation must stop until counsel was available and that the accused must be informed of his right to counsel. The United States Supreme Court pointed out in *Massiah* v. *U.S.*[30] that to hold otherwise would deny the accused an effective representation by counsel at the only stage when legal aid and advice would help him. In Canada, on the other hand, it had been held that the right to counsel conferred by the Canadian Bill of Rights related to the trial itself and not to any proceedings prior to it.[31] The American approach

[27] *Awolowo & Ors.* v. *Minister of Internal Affairs* (1962) L.L.R. 177 at 182. Cf. *Johnson* v. *Zerbst* 304 U.S. 458 (1938) where it was held that the right guaranteed by the Sixth Amendment to have counsel had to be accorded by the trial court whether requested or not, and that the right could not be curtailed by implication.

[28] *Ezea* v. *R.* (1963) 1 All N.L.R. 245.

[29] 86 S. Ct. 1602 (1966).

[30] 377 U.S. 201 (1964).

[31] *R.* v. *Connor* (1966) 57 D.L.R. (2d) 12; *R.* v. *Sleeves* (1964) q C.C.C. 266.

is commended to the Nigerian Courts for adoption if and when the question arises, because:

> In many cases the real trial of the accused takes place in the police station and a court which limits the concept of fairness to the court of trial alone, recognises only the form of criminal judicial process and ignores its substance.[32]

The Adequacy and Effectiveness or otherwise of the Constitutional Provision.

We have seen the theoretical aspect of the provisions of section 22(5)(c) of the Constitution. The question to be answered is: "How effective is section 22(5) (c) of the Constitution?" In the absence of any widespread legal aid in the country, the provision does not provide enough protection for accused persons. The problem in this respect is mainly economic. The average per capita income in the country is still very low,[33] and the majority of accused persons cannot afford to avail themselves of the services of competent lawyers.

The African Conference on the Rule of Law held in Lagos, Nigeria, in 1961 pointed out that in modern circumstances, the declaration of rights in a constitution or their theoretical recognition in law may be rendered worthless, if the litigant is not able to enforce the right. His ability to enforce or protect these rights often depends on his ability to secure adequate legal representation, and it is common knowledge that the services of competent lawyers are costly and difficult to obtain.[34] On the peculiar problem posed by the existence of poverty in Africa it said:

> In many countries in Africa, there are large sections of the population which could never afford the normal charges made for legal services in court or out. To these persons the equality before the law would be an idle bit of philosophizing ...
>
> If the principle of equal access to the law and equal protection of the law is an essential ingredient of the Rule of Law; then it would appear that lawyers, particularly lawyers in Africa, should continue to study ways and means of giving real effect to this essential of the Rule of Law by ensuring that all who need legal representation shall not fail to get it. This need is more important in Africa where there are so many who are poor and ignorant and who may suffer unwarranted invasions on their rights either without realising it, or realising it are powerless to defend their rights.[35]

The Chief Justice of the Federation pointed out at the Conference that increasing costs in Nigeria were making the problem more urgent and that it was useless for the Constitution to proclaim the principle of free access to the courts if the financial aspect was overlooked.[36]

A miniature legal aid system, however, exists in the country. Under section 352 of the Criminal Procedure Act and section 186 of the Criminal Procedure Code,[37] the court must assign a counsel to an

[32] B.A. Grossman, *The Right to Counsel in Canada* (1967) 10 Can.Bar. J. 189 at 211.
[33] The average per capita income is N60.00 (£30); *Sunday Times,* October 15, 1972.
[34] *Report of the Proceedings,* pp. 78-79.
[35] *Report of the Proceedings,* p. 79.
[36] *Op. cit. p.* 147.
[37] The Criminal Procedure Act applies in the Southern States while the Criminal Procedure Code applies in the Northern States.

accused who is charged with an offence punishable with death if he is not defended by a legal practitioner. Furthermore, section 32 of the Supreme Court Act, 1960, provides that the Supreme Court may, at any stage, assign counsel to an appellant in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests or justice that the appellant should have legal aid, and that he has no sufficient means to enable him to obtain that aid. Unlike section 352 of the Criminal Procedure Act and section 186 of the Criminal Procedure Code, section 32 of the Supreme Court Act is not confined to appeals in capital cases only, and it has been the practice of the Court to assign counsel in capital and other serious offences like rape, etc. The effectiveness of these provisions lies not in their enactment but in how they are administered.

The responsibility for the assignment of counsel under section 352 of the Criminal Procedure Act and section 186 of the Criminal Procedure Code is that of the trial court. In a survey conducted by Jill Cottrell, she found that counsel of 7 years experience and more were not prepared to accept briefs under the present conditions because the remuneration was considered too low. The fees fixed in 1959 were N 14.70 for the first day and N6.30 for a subsequent day, with a discretion to award up to N42.00, and this had been interpreted to mean that N42.00 is the maximum payable on a brief. This is rather unrealistic. At the Supreme Court the task of assignment is carried out by the Chief Justice. Before 1961, the practice was to assign counsel in rotation, but the Chief Justice concluded that it was not satisfactory because some counsel did not devote enough time to assigned cases. Assigned cases in the Supreme Court are now dealt with by one counsel for a regular monthly payment.[38]

The operation of the miniature legal aid that exists in the country at present suffers from three main defects viz inexperience of counsel, inadequate remuneration and inadequate time for the preparation of the accused's defence.[39] There is no doubt that the root of the other defects is the inadequate and unrealistic remuneration paid for assigned briefs. Speaking about adequate remuneration for legal services, the 1959 Congress of the International Commission of Jurists held in Delhi, India, said:

> It is necessary, however, to assert the full implications of the principle in particular insofar as "adequate" means legal advice and representation by lawyers of requisite standing and experience, a question which cannot be altogether disassociated from the question of adequate remuneration for the services rendered.[40]

For the present legal aid to be worth its name and to mean anything to the accused, the defence should be undertaken by experienced barristers and not by beginners.[41]

[38] *Aspects of the Problem of Representation of Defendants in Criminal Proceedings* (1967) Nig. L.J. 32.

[39] For complaints from client's point of view against British legal aid, see Michael Zander, *Legal Advice and Criminal Appeals — A survey of Prisoners, Prisons, and Lawyers* (1972) Crim. L.R. 132 at 162-163.

[40] At p. 14.

[41] Ademola, Chief Justice of the Federation, *Report of the Proceedings of the African Conference on the Rule of Law* Lagos, 1961, p. 147.

Furthermore section 352 of the Criminal Procedure Act and section 186 of the Criminal Procedure Code are inadequate: they deal only with trials at first instance. There is no provision for legal aid for the purposes of lodging an appeal. Section 32 of the Supreme Court Act only comes to the aid of an accused after he has lodged his appeal. The decision to appeal is a critical one since it has to be taken when the appellant may still be affected by the shock of his conviction. Worse still, the appellant may be incapable of formulating his grounds of appeal since there may be some cases in which the appellant has grounds of appeal which do not appear in the transcript of the proceedings. For instance, there may be an irregularity in the proceedings which may vitiate the trial.

It has been argued that the responsibility for the grant of legal aid should be taken from the court on the ground that the courts are ill-equipped to estimate the actual cost likely to be incurred by the defence and are therefore, not well-qualified to decide whether the accused person's means are sufficient to pay these costs. In arriving at this conclusion it was contended that the grant of legal aid might require consideration, not only of the case for the prosecution but also that of the defence; and a court whose main function is to determine impartially the issue of guilt cannot go into the merits of the intended defence or into the applicant's previous record without prejudice to a fair trial. For similar reasons, it cannot probe into the applicant's finances without the risk of giving an impression that it is antagonistic to the accused, and consequently, when the court has to consider an application for legal aid, it generally knows no more than the nature of the charge, and in some cases the case for the prosecution.[42] It is recommended that when a more comprehensive legal aid is in operation in Nigeria, the responsibility for the grant of legal aid should be taken from the court and given to a committee.

In March 1972, the Law Society of Ahmadu Bello University, Zaria, announced that it had set up a legal aid and advisory committee for the purpose of providing free legal services for those in Kaduna and Zaria who could not pay for their defence. The committee said that it had secured the services of several lawyers for the purpose.[43] The establishment of such a committee is a welcome step but its usefulness and effectiveness may be hindered by the fact that its members are not legal practitioners, and subsequently they have to rely on others for the services they may wish to render. If experienced lawyers refuse to accept the present "dock brief" on grounds of inadequate remuneration, it is difficult to believe that they will be prepared to render their services for the same purpose free of charge. Time will tell whether these services will be forthcoming if and when required by the Society. On 2nd February, 1974, the Nigerian Legal Aid Association was set up by a group of lawyers to provide legal services to the poor. Incidentally, the Nigeria Bar Association, while agreeing in principle to the idea, does not support the association as presently constituted because it feels that a successful legal aid scheme must involve a measure of government participation. It is too early to judge the success or otherwise of the Association.

42 Report of the English Departmental Committee on Legal Aid in Criminal Proceedings, *Cmnd. 2934,* 1966, para. 61.
43 *Daily Times* 9th March, 1972.

At any rate, there is a sound objection to leaving legal aid to the initiative and benevolence of private organisations:

> There are many grounds why legal aid cannot be left to the initiative of private organisation Charity honours the giver but it humiliates the recipient. This is one of the reasons why voluntary legal aid can never cope with the demand for legal advice. They will not always be consulted even where voluntary workers in sufficient numbers are available. But such workers are in fact not always available in sufficient numbers. Nor are the funds sufficient to enable more than a few private legal aid organisations to engage capable full-time officials . . . It is true that voluntary legal aid whether charitable or not, will never be superfluous. It will always form a valuable supplement and an inspiring competition for such aid as public institutions can give. It will often be able to offer better services. But voluntary legal aid can never cope with the whole extent of the demand.... There is little that could be more pathetic than the discrepancy between the sincerity with which advice is sought and given and the insufficiency of the ways and means employed to provide it.[44]

CONCLUSION

Section 22(5)(c) of the Constitution provides adequate guarantee to ensure that an accused does not have a counsel foisted on him, but a full realisation of this objective is being hindered by poverty. The entrenchment of rights in a constitutional document without providing the financial means of enforcing them is illusory. What is required to make the rights effective is a full legal aid scheme operated jointly by the Federal Government and the Nigeria Bar Association. Pending the time that such a scheme can be evolved, it is recommended that the provisions of section 352 of the Criminal Procedure Act and section 186 of the Criminal Procedure Code be extended to cover serious offences like rape, burglary, manslaughter, etc.

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[44] E.J. Cohn, *Legal Aid for the Poor* (1943) 59 L.Q.R. 250 at 256-257.

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