

**COURTS AND BUDGET:
IMPLICATIONS FOR ACCESS TO JUSTICE**

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ABSTRACT

The indispensability of courts in any given jurisdiction cannot be over emphasized as courts provide a forum to resolve disputes and to test and enforce laws in a fair and rational manner. In order to guarantee an effective court, funding becomes inevitable and the laws establishing courts; usually the Constitution ensures that particular allocation is appropriated to the court for its effective running. Adequate funding of the courts however still remains a challenge as evidenced in the condition of many courts in Nigeria today. This stands as an impediment to justice and it is against this background that this paper examines the effect of budget on access to justice. This paper focuses on Nigeria by examining court budget in terms of allocation to the National Judicial Council and juxtaposes the budget with the performance of the courts in the attainment of justice. The paper analyses the implication of court budget on access to justice and also discusses the ways lack of economic power affects access to justice. Besides advocating for an increment of allocation to the judiciary, it is recommended in this paper among others that more attention should be placed on Alternative Dispute Resolution and traditional administration of justice as these will lift some burden off the courts. Class action litigation is recommended to cut down the cost associated with litigation, representative action is recommended in the same vein as people without economic power will have their interests protected by those who do. It is also recommended that legal clinics should be made available in institutions and legal aid should be intensified.

INTRODUCTION

In Nigeria, the federal government under the Obasanjo administration in 1999 established the National Judicial Council NJC as a body responsible for disbursement of funds directly from the nation's funds. This move was to ensure the independence of the judiciary as appropriation will be made directly to the courts through the NJC. The courts are established to uphold public safety and are most vulnerable when they are weakened as the protections they give will be jeopardized. Courts are usually weakened through poor funding arising from low budgeting, and when this occurs, access to justice is endangered.

1. THE COURT SYSTEM IN NIGERIA

Courts in Nigeria are established by the Constitution.¹ According to the 1999 Constitution of Nigeria, 2 categories of court are in existence in Nigeria; these are the superior courts of record which are particularly established by the Constitution, and the inferior courts of record or 'other courts' which according to the Constitution can be established by the House of Assembly of each state. The Superior courts of record consist of the Supreme Court, Court of Appeal, State High Courts, Federal High Court, Sharia Court of Appeal, Customary Court of Appeal; Court martial and the National Industrial Court. While 'Other courts' consisting of Magistrate Court, Customary/Area Court and Sharia Court.

¹ Establishment of the Supreme court is contained in section 230, that of the Court of Appeal is in section 237, the Federal High court is contained in section 249, state High courts 270, Sharia Court of Appeal of states in section 275 and customary court of appeal is contained in section 280.

1.1. Hierarchy of Courts in Nigeria

The Supreme Court of Nigeria

This is the apex court in the hierarchy of courts in Nigeria. The court is presided over by the Chief Justice of the Federation who also heads the Judiciary. The court consists of the Chief Justice of Nigeria and such number of Justices not exceeding twenty one as may be prescribed by the National Assembly.² The Supreme Court, to the exclusion of any other court, has original jurisdiction in any dispute between the Federation and a state or between states if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends³. It has jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal.⁴ The Court is duly constituted if it consists of not less than five Justices of the Supreme Court⁵ except where it is exercising its original jurisdiction or a matter involves a question as to the interpretation or application of the constitution or whether any provision relating to the Fundamental Rights provisions of the Constitution has been, is being or is likely to be contravened. In this regard, the Court is duly constituted if it consists of seven Justices of the Court.⁶

The Court of Appeal

The next in the hierarchy of courts in Nigeria is the Court of Appeal. It is composed of the President of the Court of Appeal and other Justices of the Court of Appeal not being less than

² Section 230 (2) (a) & (b)

³ Section **232** (1)

⁴ Section 233 (1)

⁵ Section 234

⁶ Section 234

forty-nine⁷. Besides its original jurisdiction⁸ the court has an appellate jurisdiction to hear appeals from decisions of the High Courts of the States and the Federal Capital Territory, Federal High Court, the Sharia Courts of Appeal of the States or of the Federal Capital Territory, Customary Courts of Appeal of the States or of the Federal Capital Territory as well as from decisions of a court martial or other tribunals as specified by an Act of the National Assembly⁹. The court is duly constituted by not less than three Justices¹⁰ for the purpose of exercising any of its stated jurisdictions. For administrative convenience, the court is divided into Judicial Divisions which sit in various parts of the country namely, Abuja, Lagos, Enugu, Kaduna, Ibadan, Benin, Jos, Calabar, Ilorin and Port Harcourt.

The National Industrial Court

The National Industrial court was established as a court under the 1999 Constitution, by virtue of the Constitution of the Federal Republic of Nigeria (Third Alteration Act).¹¹ The National Industrial Court exercises civil and criminal original jurisdiction to the exclusion of other courts in civil causes and matters relating to or connected with, amongst others; labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matter incidental thereto or connected therewith. The court also has exclusive jurisdiction in civil matters relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's Compensations Act or any other Act or Law relating to labour, employment,

⁷ Section 237 (a) & (b)

⁸ Section 239

⁹ Section 240

¹⁰ Section 239(2), 247

¹¹ Notice No. 103, Federal Republic of Nigeria Official Gazette (Lagos- 7th March, 2011)

industrial relations, work place.¹² The court is headed by a President and currently has six divisions across the country.

The Federal High Court

There is a Federal High Court for the country, comprising of a Chief Judge and such number of Judges as the National Assembly may prescribe. The court has limited but exclusive jurisdiction in civil and criminal causes or matters as set out in the Constitution. It however has no appellate jurisdiction. In exercising its jurisdiction, the Court is duly constituted by one Judge of the Court. The Federal High Court is divided into Judicial Divisions for administrative convenience with plans to establish a Division of the Court in all the States of the Federation¹³.

The State High Court

There is a High Court in each State of the Federation and the Federal Capital Territory. Each Court is made up of a Chief Judge and such other number of judges as the State House of Assembly or the National Assembly (in the case of the High Court of the Federal Capital Territory) may prescribe. The High Courts of the various States have general original jurisdiction over civil and criminal matters except matters in respect of which any other court has been vested with exclusive jurisdiction, making them the courts with the widest jurisdiction under the Constitution.¹⁴

The Sharia Court of Appeal

¹² Section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010

¹³ Sections 249, 251 - 254

¹⁴ Sections 255 – 259, 270 - 274

There is a Sharia Court of Appeal for the Federal Capital Territory and any State that requires it. This Court has appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law, which the Court is competent to decide in accordance with the Constitution. The Court comprises of a Grand Khadi and other Khadis as the National Assembly or the State Houses of Assembly (as the case may be) may prescribe.¹⁵

The Customary Court of Appeal

There is a Customary Court of Appeal for the Federal Capital Territory and any State that requires it. This Court has appellate and supervisory jurisdiction in civil proceedings involving questions of customary law and is comprised of a President and such number of Judges as the National Assembly or the State Houses of Assembly (as the case may be) may prescribe.¹⁶

Magistrate courts, Area courts, Customary courts and Sharia courts

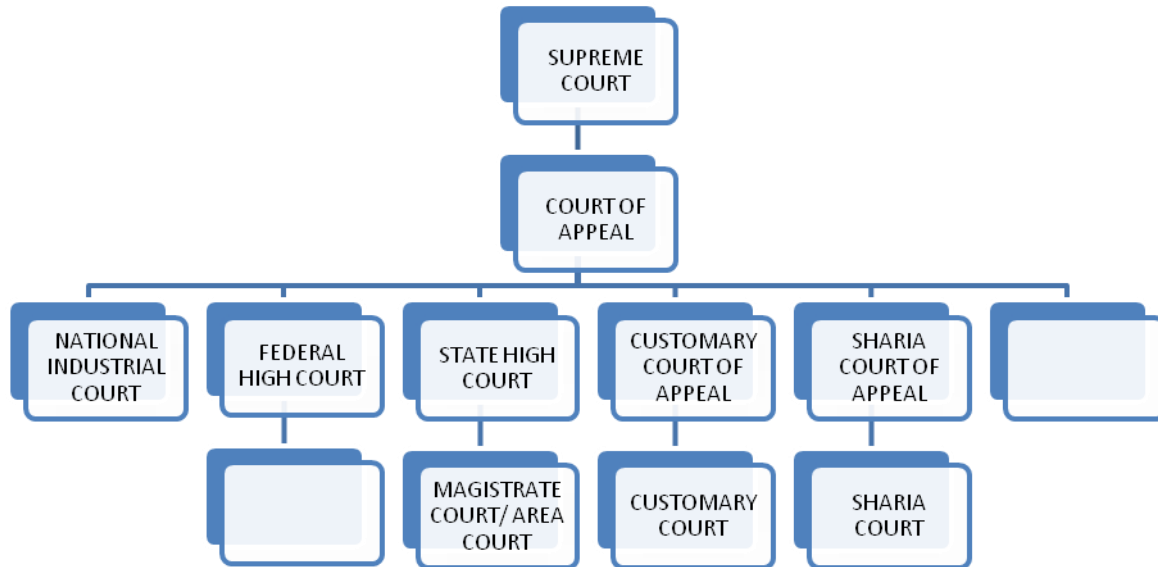
In addition to these courts created by the Constitution, the inferior courts of record or ‘other courts’ also exist by the names Magistrate Courts, District Courts, Area Courts and Customary Courts which are established by the National Assembly in respect of the Federal Capital Territory, and the State House of Assembly in respect of a state. These courts are of limited jurisdiction as specified in their enabling laws and appeals from them lie to the High Court, Sharia Court of Appeal or Customary Court of Appeal as the case may be.

¹⁵ Sections 260 – 264, 275 - 279

¹⁶ Sections 265 – 269, 280 - 284

Below is an illustration of the hierarchy of courts in Nigeria.

Figure 1



2. Budgeting Procedure for Courts under the 1999 Constitution

The 1999 Constitution provides how the Courts should be funded. The source of funding of each court depends on the category the particular court falls under, that is, whether it falls under the ‘superior courts of record’ or it falls under the inferior courts of record or ‘other courts’. The superior courts of record are funded by the federal government and state courts under this category in addition are funded by state governments.

2.1. Source of Funding

The constitution spells out three sources by which the Judiciary shall be funded. These are:

- a) The Consolidated Revenue Fund of the Federation.
- b) The Consolidated Revenue Fund of the State and
- c) The Federation Account.

a) Consolidated revenue fund of the federation

The 1999 constitution provides in sections 84(2) and (4) that the remuneration, salaries and allowances payable to judicial officers of superior courts are charged on the Consolidated Revenue Fund of the Federation. This position received an authoritative pronouncement of the Supreme Court in *A.G. Federation v. A.G. Abia State & Ors*¹⁷, where the court held thus:

"It is the Consolidated Revenue Fund of the Federation and not the Federation Account that is charged with the salaries of Judicial Officers in the Federation."

The recurrent expenditure of the offices of the judicial officers of superior courts of record as provided in Section 84(7) shall also be a charge upon the consolidated Revenue Fund of the Federation.

Flowing from the above provisions of sections 84 (2), (4) and (7), both the capital and recurrent expenditure of judicial officials of courts of superior record shall be taken from the Consolidated Revenue Fund of the Federation. Thus, the remunerations, salaries and allowances of judicial officers and overhead running cost will be funded by the Revenue Fund of the Federation.

¹⁷ (2002) 6 NWLR (Prt 764) 542 at 688

b) The Consolidated Revenue Fund of the State

Section 121 (3) of the Constitution provides that, any amount standing to the credit of the Judiciary in the Consolidated Revenue Fund of the State shall be paid directly to the heads of courts concerned. The combined reading of Section 124 (1), (2) & (4) shows that the remuneration, salaries and allowances payable to the state judicial commission shall be charged upon the Consolidated Revenue Fund of the State.

c) The Federation Account

Section 162 (1) of the Constitution directs that the Federation shall maintain a special account to be called "the Federation Account" into which "shall be paid all revenues collected by the Government of the Federation, except proceeds from income tax of the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja." By subsection (9), any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Councils for disbursement to the heads of courts established for the Federation and the States established under section 6 of the Constitution (the superior courts of record).

2.2. Allocation to the National Judicial Council

Funding of the judiciary/court through the NJC is from the consolidated revenue fund of the federation and a particular sum is being allocated each year from this fund. The yearly Appropriation budget contains the allocation for each beneficiary of the fund as provided by the Constitution. An examination of appropriation to the NJC from the nation's budget in the last ten years shall be made in order to determine whether there has been an increase or decrease in court funding. Also, the ratio of the allocation to the NJC to the actual fund and to that of other beneficiaries will be made in order to ascertain the adequacy of court budget.

In 2004, there was an issue and appropriation of #1,302,523,844,588.00 from the Consolidated Revenue Fund out of which #30,000,000,000 was budgeted for the National Judicial Council¹⁸. This accounts for 2.3% of the Consolidated Revenue Fund.

In 2005, the Issue and Appropriation of #1,799,938,243,138.00 from the Consolidated Revenue Fund for 2005 was made with a budget of #33,000,000,000 to the NJC¹⁹. This accounts for 1.8% of the Consolidated Revenue fund.

In 2006 there was an issue and appropriation of #1,899,987,922,467 from the Consolidated Revenue Fund for and the NJC was allocated #35,000,000,000²⁰. This accounts for 1.8% of the Consolidated Revenue Fund.

In 2007 there was an Issue and appropriation of #2,266,394,423,477 from the Consolidated Revenue Fund of the Federation for 2007 and the budget to the NJC was #43,000,000,000²¹. This accounts for 1.8% of the fund.

¹⁸ Appropriation Act 2004

¹⁹ Appropriation Act 2005

²⁰ Appropriation Act 2006

In 2008 the sum of #2,647,492,865,643 (two trillion, six hundred and forty seven billion, four hundred and ninety two million, eight hundred and sixty five thousand, six hundred and forty three naira) was issued and appropriated from the Consolidated Revenue Fund of the federation with the NJC having a budget of #78,000,000,000.²² This accounts for 2.9% of the whole fund.

In 2009, the sum of N2,870,510,042,679 (2 trillion, eight hundred and seventy billion, five hundred and ten million, forty two thousand and six hundred and seventy nine naira) was issued and appropriated from the consolidated revenue fund of the federation with the NJC having a budget of #78,000,000,000. This accounts for 2.7% of the consolidated revenue fund.

In 2010, the sum of =N=4,079,654,724,257 was issued and appropriated from the Consolidated Revenue Fund of the Federation for 2010 with NJC having 91,000,000,000²³. This accounts for 2.2% of the total fund.

In 2011, there was an issue and appropriation of #4,226,191,559,259 from the Consolidated Revenue Fund of the federation. The budget accorded the NJC was #95,000,000,000.²⁴ This accounts for 2.2% of the fund.

In 2012, out of the #4,749,100,821,170 issued and appropriated from the Consolidated Revenue Fund of the Federation, a budget of #85,000,000,000 was made to the NJC.²⁵ This accounts for 1.7% of the total fund.

²¹ Appropriation Act 2007

²² Appropriation Amendment Act 2008

²³ Appropriation Act 2010

²⁴ Appropriation Act 2011

²⁵ Appropriation Act 2012

In 2013, a sum of #4,924,604,000,000 (Four Trillion, Nine Hundred and Twenty-Four Billion, Six Hundred and Four Million Naira) was issued and appropriated from the Consolidated Revenue Fund of the Federation. Out of this, #67,000,000,000 was budgeted for the NJC. This accounts for 1.3% of the fund.

In the last ten years, that is, 2004 to 2013, funding from the federal government has been on the increase from year to year except and there was a huge increase in the budget in 2008 from forty-three (43) billion naira of 2007 to seventy eight (78) billion naira. The budget was at its peak in 2011 with ninety five billion (95) naira but however dropped in 2012 to eighty five (85) billion naira and dropped again in the 2013 budget to sixty seven (67) billion naira.

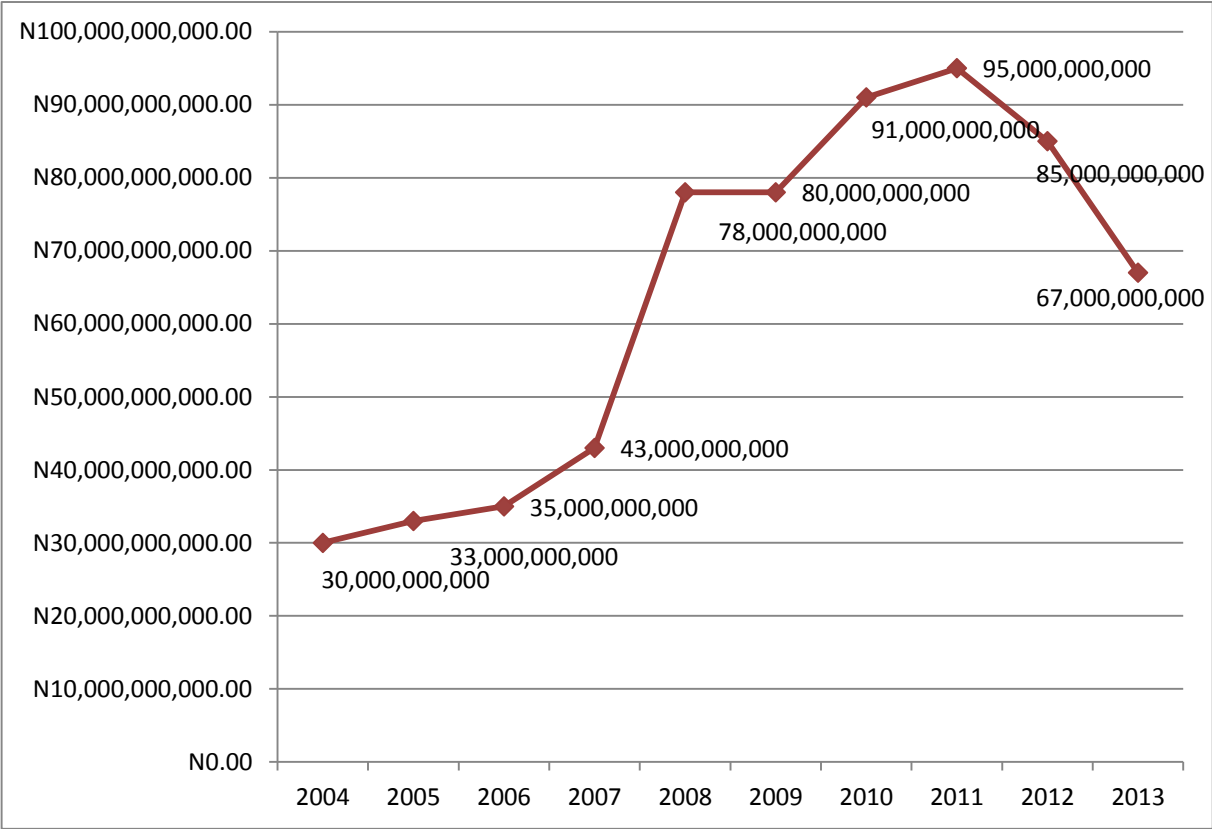
Tabular Illustration

| YEAR | NJC ALLOCATION (#) | TOTAL BUDGET (#) | PERCENTAGE |
|-------------|---------------------------|-------------------------|-------------------|
| 2004 | 30,000,000,000 | 1,302,523,844,588.00 | 2.3% |
| 2005 | 33,000,000,000 | 1,799,938,243,138.00 | 1.8% |
| 2006 | 35,000,000,000 | 1,899,987,922,467 | 1.8% |
| 2007 | 43,000,000,000 | 2,266,394,423,477 | 1.8% |
| 2008 | 78,000,000,000 | 2,647,492,865,643 | 2.9% |
| 2009 | 78,000,000,000. | 2,870,510,042,679 | 2.7% |
| 2010 | 91,000,000,000 | 4,079,654,724,257 | 2.2% |

| | | | |
|------|----------------|-------------------|------|
| 2011 | 95,000,000,000 | 4,226,191,559,259 | 2.2% |
| 2012 | 85,000,000,000 | 4,749,100,821,170 | 1.7% |
| 2013 | 67,000,000,000 | 4,924,604,000,000 | 1.3% |

Court funding from the Consolidated Revenue Fund from 2004 – 2013 is illustrated in the graph

Figure 2



below:

2.3. Allocation to the Heads of court concerned

The fund budgeted for the judicial officers in the Consolidated Revenue Fund of the Federation in respect of their remuneration, salaries, allowances and the recurrent expenditure of their offices is to be disbursed to the heads of the courts concerned. Section 81(3) provides that the amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the States under section 6 of this constitution.

In the same vein, section 162(9) is to the effect that any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Councils for disbursement to the heads of courts established for the Federation and the States established under section 6 of the Constitution (the superior courts of record). These provisions are there in order to guarantee the independence of the judiciary and to ensure its autonomy.

At the federal level, it will appear that funds are disbursed as budgeted but there is a departure from this at the state level where funding is at the whims and caprices of state governments. Proper funding here is affected by budget limitations and it is more visible in situations the judiciary depends on the state government to fund their capital expenditure and supplement their recurrent expenditure. It will appear however that the above provisions concerning funding of state courts is not strictly adhered to by state government. This is unfortunate as the courts are not funded as required. The situation with state courts was captured by the Chief Justice of Nigeria, Hon. Justice Dahiru Musdapher, GCON, in a paper delivered at the Nigerian Institute of Advanced Legal Studies 2011 Fellows Lecture²⁶ where he said as follows:

²⁶ Hon Justice Dahiru Musdapher GCON, CJN, *The Nigerian Judiciary: Towards Reform of Bastion of Constitutional Democracy*, 2011 Nigerian Institute of Advanced Legal Studies Press P. 13 to 14

It is regrettable that some State chief executives treat the judiciary as an appendage of the executive arm. While it is true that, in some cases, this is self-inflicted (because of the way some judges portray themselves), it does not invariably follow that a distinct arm of government should, because of the actions of a few, be treated with disdain. Sadly, the Judiciary in several States still goes cap in hand to executive begging for funds. By section 162(9) of the constitution, any amount standing to the credit of the judiciary in the Federal Account is paid directly to the National Judicial Council (NJC) for disbursement to the heads of superior courts, including those at the State level. However, a significant part of the funding requirements of the State judiciary, especially in the area of the provision of infrastructure and welfare of Magistrates and other lower Court Judges, remain the responsibilities of States. The plight of the State Judiciaries is compounded by the fact that, in spite of the best efforts of the NJC, the processes of appointment and removal of judges/security of tenure is the subject of political theatrics...”

The refusal of some state governors to release funds to the judiciary as provided in section 131(3) of the 1999 Constitution as amended has been criticized by judges and other senior officials of the judiciary who are no longer comfortable with this occurrence. This act of the state governors affects the independence of the judiciary as the law was designed to safeguard the judiciary from being teleguided by the state governors and guarantee its autonomy. According to the Chief Judge of Niger State, Justice Jibrin Ndajiwo, the breach of the constitutional provision by the governors had hampered the quick dispensation of justice in the country and the independence of the judiciary. The chairman of the Conference of Heads of Courts of Northern States, Justice Ibrahim Umaru also showed his misgivings on the issue. The two judges lamented that some of the state governors had reduced the status and prestige of the

offices of the heads of the judiciary in the state. According to them, the top officials now beg for money from state ministries of finance and justice before they can discharge their duties.²⁷

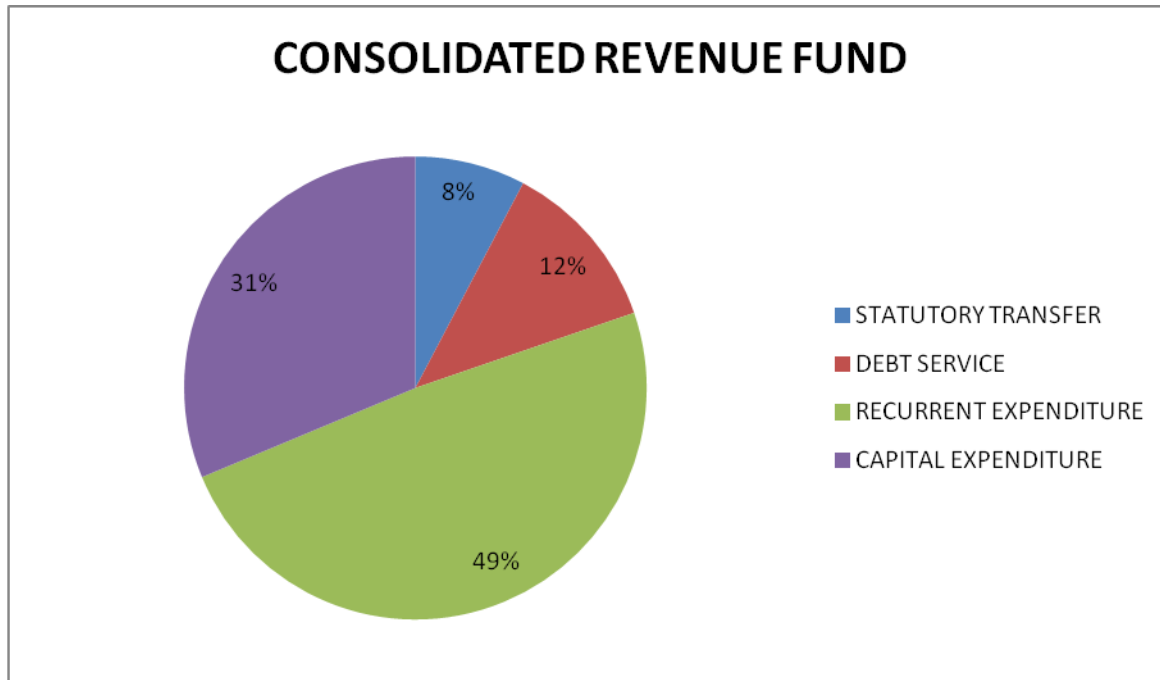
2.4. Analysis of The 2013 Budget

A total of =N=4,924,604,000,000 (Four Trillion, Nine Hundred and Twenty-Four Billion, Six Hundred and Four Million Naira) was issued from the Consolidated Revenue fund in 2013. Out of this fund, =N=380,020,000,000 (Three Hundred and Eighty Billion, Twenty Million Naira) is for Statutory Transfers. Statutory transfers are those transfers that must be released directly to the beneficiaries without being subjected to scrutiny by the legislature. =N=591,764,000,000 (Five Hundred and Ninety-One Billion, Seven Hundred and sixty-Four Million Naira) is for Debt Service, =N=2,412,046,000,000 (Two Trillion, Four Hundred and Twelve Billion, Forty-Six Million Naira) is for Recurrent (Non-Debt) Expenditure while the balance of =N=1,540,774,000,000 (One Trillion, Five Hundred and Forty Billion, Seven Hundred and Seventy-Four Million Naira) Only, is for contribution to the Development Fund for Capital Expenditure for the year ending on the 31st day of December, 2013.

Below is a chart analyzing appropriation from the Consolidated Revenue Fund for the current year 2013.

²⁷ A. Nmodu, S. Abubakar, A. Bimaje & Sadiq Abubakar "Governors' Non-release of Judiciary Funds Stirs Controversy" (Leadership Newspaper, Nigeria March 10, 2013 p. 4)

Figure 3



Analysis of Appropriation of Statutory Transfer

The constitution provides for some statutory transfers that must be released directly to beneficiaries. By the 2013 Appropriation Act, the beneficiaries of statutory transfer are the National Judicial Council (NJC), the Niger Delta Development Commission, Universal Basic Education, the National Assembly, the Independent National Electoral Commission (INEC) and the National Human Rights Commission.

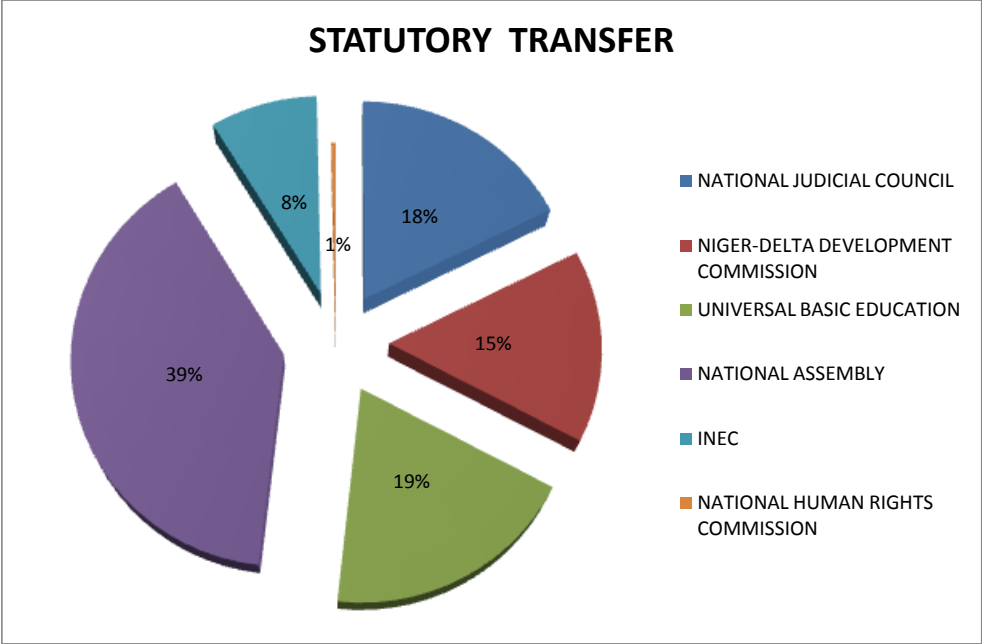
In the 2013 budget, #380,020,000,000 (Three Hundred and Eighty Billion, Twenty Million Naira) is for Statutory Transfers out of which #67,000,000,000 was budgeted for the NJC, #57,424,000,000 was budgeted for the Niger Delta Development Commission, #72,246,000,000 was budgeted for Universal Basic education, #150,000,000,000 was budgeted for the National

Assembly, #32,000,000,000 was budgeted for INEC and #1,350,000,000 was budgeted for the National Human Rights Commission.

The National Judicial Council was allocated 18% of the Statutory transfer, the Niger Delta Development Commission received 15%, Universal Basic education received 19%, the National Assembly received 39%, INEC received 8% and the National Human Rights Commission received 1%.

An illustration is provided below:

Figure 4



3. INFRASTRUCTURAL DEVELOPMENT ARISING FROM BUDGETING

Apart from payment of allowances and remuneration of judicial officers, budgeted allocation is utilized for infrastructural development. These infrastructures include the following:

a) **The court room:**

The court room encompasses the court building and amenities in the building such as Air conditioner, fans, writing pad, library and so on. A number of courts in Nigeria as a result of being badly funded evince decay and neglect of infrastructural amenities particularly at the state level. In some cases, the court building does not possess the required well equipped library for Judges to conduct their research. This may see Judges relying on information supplied by lawyers which should not be the case. The state of the courts at the state level was encapsulated by the Chief Judge of Bauchi State at the inauguration of the 2011/2012 Legal Year. He stated that the Bauchi State judiciary is in a very bad shape, the courts are in a deplorable state and there are no good furniture. According to him, the environment is not conducive at all, there is no standard library and most of the judges depend on the authorities submitted by lawyers to write their rulings and judgments. Even the paper to write the rulings and other working materials in the registry must be provided by the complaints and defendants.²⁸

A hearing session in a typical Nigerian court was described²⁹ thus:

²⁸ Alaba Omolaye-Ajileye "Funding the Judiciary under the 1999 Constitution: Matters arising" (The nation Newspaper 24/04/2012. <http://>

²⁹ Tosin Omoniyi "Nigeria's gloomy courtrooms published on Friday, 16 March 2012 05:00 Daily Trust Newspaper

The hot afternoon made matters worse for all the temporary inhabitants of the courtroom located not far away from the ever busy Maraba junction in Nassarawa state. The room was congested. Hands automatically turned to fans in the absence of a functioning electric fan or an air conditioner. The slits which served as windows failed to let in the needed amount of air to sustain the sweating men and women packed into the small courtroom. This inadvertently led to spirited movement in and out of the room, for those who could not withstand the scalding heat. For those who left their seats, slots in hard backed benches that bore the ravages of dilapidation and neglect, many more standing at the door and at the windows quickly took over the 'seats' in a jiffy, not minding the discomfort of both weather and the ageing furniture. Despite the harshness of the atmosphere, many could still not ignore the presence of the defendant who is in handcuffs. A young man of about 21 or so, he is dressed in tattered pants and singlet, and sits atop a short bench. Behind him is a wooden plank sprayed with red lettering paint which states that this is what serves as a defendants pod.

At last reprieve appears to come in a flash when the court clerk suddenly pounds the creaking desk in his front with his hands with astonishing strength, which startles a few that are not used to such court settings. 'Court' he subsequently screams, then adds, 'all rise.' All quickly scramble to their feet as a middle aged judge saunters in through a door that is cracked in several places, and which had stood out as a sore thumb for many discreet observers in the courtroom. He has to pass through a tight space in order to get to his wooden chair and classroom style desk, which will serve today again as his adjudication seat. In a matter of minutes his crisply pressed suit would soon be immersed in sweat, including his clean shaved face due to the scalding heat. He would equally have to squirm intermittently in order to assuage his aching back leaning against the wooden chair. Intermittently too he would have harsh words

for the different counsels appearing before him due to their inability to raise their voices over the din coming from the nearby bus stop.

The deplorable state of the courts is not exaggerated, many courts in Nigeria are housed in dilapidated and neglected buildings, this is not to say however that such is the situation all over the country. The state of the federal courts especially is a total deviation from this. The Supreme Court, the Court of Appeal, the federal high courts and some state courts located in big cities possess essential amenities. Some of these court buildings also enjoy exquisite and impressive architecture; for instance the Supreme Court and the Court of Appeal FCT division both have spectacular views.

b) Information & Communication Technology (ICT)

There is no gain saying that the world has become computerized as we are in the 'jet age'. In all the sectors of the country, information technology is well appreciated and utilized to achieve maximum results. Sadly however, this cannot be said to be so in our courts as most courts are yet to maximize this innovation. Judges in many of the courts still write in long hand which is quite stressful and time wasting. A resultant effect of low budgeting for the courts is inability to fully embrace ICT as it does not come cheap. This has led to a situation where there are no automated recording systems which are capable of hastening note taking by the judges. In fact, in many magistrate courts across the country, the manual method of record keeping is still being used instead of computers where information from records can easily be accessible and retrieved. In

the time being however, Judges of lower courts on several occasions³⁰ have made calls for the use of ICT in their courts for quick dispensation of justice³¹.

c) Capacity Building for Judicial officers and Court staffs

This century is witnessing the emergence of new areas of law such as Maritime law, Air and space law, Sports law, Telecommunications law, Competition law, Oil and Gas law, ICT law and so on. It is pertinent that Judges are in line with these developments; hence, capacity building becomes imperative in order to ensure accuracy in judgment delivery. In the same vein, capacity building is necessary for court staffs. Staffs need to be continuously developed mentally to be able to face for instance, training on the use of ICT is important. Court budgeting should be able to accommodate capacity building for Judges and court staff.

4. ACCESS TO JUSTICE

According to the United Nations Development Programme (UNDP), access to justice is the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standard. Access to justice is viewed in the sense of normative protection which is the existence of a remedy, the capacity to seek the remedy and the capacity to provide

³⁰ A recent occasion was at the conference of All Nigeria Judges of Lower Courts on the 20th of November 2012 titled “Application of Information and Communication Technology in the Court: the Role of Court Employers.”

³¹ Osun defender newspaper available on <http://www.osundefender.org/?p=69338>

an effective remedy.³² The existence of a remedy will not be featured in this paper as it is legislative and not court related. This paper will focus on the capacity to seek the remedy and the capacity to provide effective remedy. Capacity to seek the remedy and capacity to provide effective remedy will include the awareness of the legal remedy, exposure to legal counsel or representation and capacity to access formal and informal justice services, effective adjudication and enforcement.³³ There must not be any hindrance whatsoever in approaching the law courts, whether physical or financial.

4.1. Limitations to Access to Justice

1. Poverty

Poverty is a challenge to the affordability of legal fees and other incidental fees such as filing fees. Access to court and legal aid to citizens are considered fundamental rights by section 46 of the 1999 Constitution of Nigeria. However, the high rate of poverty in the country has made this impossible. The poor in the society often have their rights encroached upon everyday but since they cannot afford legal representation, they resign to their fate and suffer in silence. There have been reports of police brutality and victims are unable to access the courts as a result of lack of economic power. Research shows that as it stands today, about 80% of the population in Nigeria is poor. It is unlikely that the poor who find it difficult to feed daily will be able to afford legal fees. A report released by the National Bureau of

³² Ramaswamy Sudarshan "Rule of Law and Access to Justice: Perspectives from UNDP Experience" Paper presented to the European Commission Expert Seminar on Rule of Law and the Administration of Justice as part of Good Governance, Brussels, 3-4 July 2003

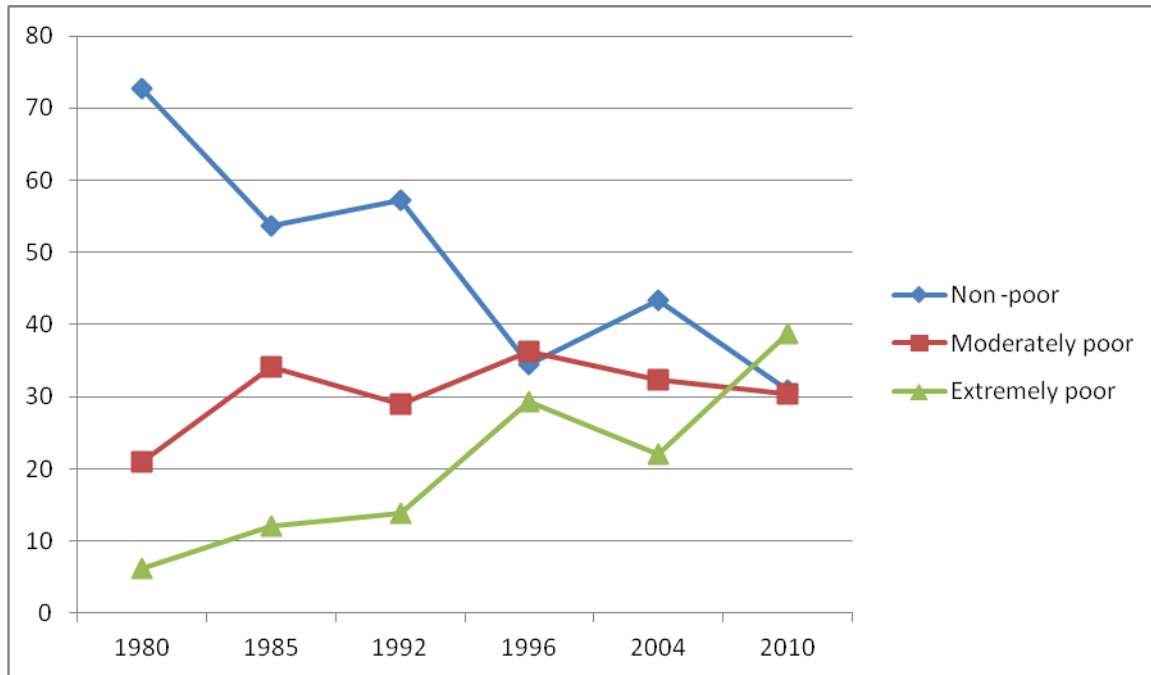
³³ Ramaswamy Sudarshan "Rule of Law and Access to Justice: Perspectives from UNDP Experience" Paper presented to the European Commission Expert Seminar on Rule of Law and the Administration of Justice as part of Good Governance, Brussels, 3-4 July 2003

Statistics (NBS) reveals an increase in poverty rate over the years, this is shown in the table below and represented in the graph that follows.

Figure 5

| Year | Non- poor | Moderately poor | Extremely poor |
|-------------|------------------|------------------------|-----------------------|
| 1980 | 72.8 | 21.0 | 6.2 |
| 1985 | 53.7 | 34.2 | 12.1 |
| 1992 | 57.3 | 28.9 | 13.9 |
| 1996 | 34.4 | 36.3 | 29.3 |
| 2004 | 43.3 | 32.4 | 22.0 |
| 2010 | 31.0 | 30.3 | 38.7 |

Figure 6



2. Illiteracy, lack of awareness and lack of legal knowledge.

Illiteracy and lack of knowledge prevents citizens from knowing the law and their rights as laws in Nigeria, especially the Constitution, are written in English language which an illiterate does not understand. Hence they are ignorant of when their rights are violated and what to do in such situations. An illiterate will find it challenging to understand proceedings in court as English language is employed during proceedings which in turn will be too complex and uninteresting to an illiterate. Illiteracy is thus an impediment to access to justice. A National Literacy Survey (2010) conducted by the National Bureau of Statistics in Nigeria estimates the adult literacy rate as 56.9% which means that about 43% of the population are illiterates.

3. Lack of access to services such as courts and police due to procedural complexities.

Access to courts for people living in remote areas may be quite challenging as courts are not be located in those areas.

4. Corruption

For proper administration of justice to take place in any country, the judiciary must be independent. Corruption relates to challenges of judicial integrity and alleged payment to court staff. The gratification is directed at influencing the outcome of a case in favour of a party which can come in numerous forms. Faking of court processes by corrupt court officials and malicious acts of court bailiffs in the service of court processes are also forms of corruption which stand in the way of justice.

5. Court delays

Inordinate delay is the order of the day in our courts as litigations are unnecessarily prolonged. The reasons for this include limited number of judges with heavy workload, lack of infrastructure, lack of adequate equipment such as computers, well equipped library and research assistance, and non-conducive working environment characterized by constant power outage. Justice delayed is justice denied, in the criminal administration of justice in Nigeria, delay has caused a number of accused persons to languish in prisons while awaiting trial. It is not strange to find cases being litigated over a period of ten years or more. For instance, cases such as *Wakino v Ade John (1999)* NWLR 9 619, took eleven years in the High Court alone due to series of adjournment. That of *Ariori & ors V Elemo & Ors (1983)* 1 SC 13 took twenty two years to reach the Supreme Court where unfortunately an order for trial de novo was made by the apex court. In many cases, parties are substituted for as a result of death of a party, such was the case

of *CBN & Ors v. Igiwillo* SC 83/2002 which took 10 years and the plaintiff / respondent died before judgment and had to be substituted by his wife.³⁴

5. NUMBER OF JUDICIAL OFFICERS AND THEIR APPOINTMENT

The 1999 Constitution of Nigeria provides for the composition of the courts. The Constitution provides that the Supreme Court shall consist of such number of Justices of the Supreme Court, not exceeding twenty-one, as may be prescribed by an Act of the National Assembly³⁵. Currently, there are fifteen (15) Justices of the Supreme Court including the Chief justice. The Court of Appeal shall consist of a President of the Court of Appeal; and such number of Justices of the Court of Appeal, not less than forty-nine of which not less than three shall be learned in Islamic personal law, and not less than three shall be learned in Customary law, as may be prescribed by an Act of the National Assembly³⁶. The Justices of the Court of Appeal are sixty-six (66) in number including the President of the court. The National Industrial Court shall consist of the President of the Court who shall have overall control and supervision of the administration of the Court; and not less than twelve Judges:³⁷ The court is presently manned by the president and nine other judges.³⁸

³⁴ **Kola Odeku and Sola Animashaun “Poverty, human rights and access to justice: Reflections from Nigeria”** African Journal of Business Management Vol. 6(23), pp. 6754-6764, 13 June, 2012
Available online at <http://www.academicjournals.org/AJBM> accessed on the 7th April 2013

³⁵ Section 230(2)

³⁶ Section 237(2)

³⁷ Section 1(2) National Industrial Court Act

³⁸ Information available on the official website of the National Industrial Court
<http://nicn.gov.ng/> accessed on the 6th of March 2013

The Federal High Court shall consist of a Chief Judge of the Federal High Court; and such number of Judges of the Federal High Court as may be prescribed by the an Act of the National Assembly.³⁹ There are however currently thirty-five (35) Judges at the court. The number of Judges in the other superior courts of record namely: the sharia court of Appeal, the Customary Court of Appeal, State High Courts, Sharia Court of Appeal of states and the Customary Court of Appeal of the states is left to the national assembly and state houses of Assembly respectively to determine. The composition of ‘other courts’ or inferior courts of record is determined by each state establishing them. There are approximately 871 judicial officers in Nigeria ⁴⁰.

The appointment of the required number of judicial officers especially at the state level will be dependable on the ability to fulfill the financial obligations such as remuneration and allowances, and also the ability to provide the required amenities such as court rooms and ancillary facilities. Thus, where there is a low budget, it may be impossible to appoint the required number of judicial officers needed for speedy dispensation of justice.

5.1. Distribution Of Courts At The Federal And State Levels

There is only one Supreme Court which is the Apex court in the country. It currently has a number of fifteen Justices. The Court of Appeal which is next in line has ten (10) divisions with each division serving an average of three states. The court has sixty-six (66) Justices

³⁹ Section 249(2)

⁴⁰ Oluwatoyin Badejogbin “The Judiciary under President Obasanjo's Administration: How Well So Far?” The Justice Observatory Journal Published by Access to Justice Publication and Subscription (TOJ) <http://acesstojustice-ng.org/toj2howell2.php> accessed on the 6th March 2013

nationwide.⁴¹ The Industrial Court has seven (7) divisions nationwide which is about one-fifth of the 36 states in the country. The court is presently manned by the president and nine other judges.⁴² The Federal High Court has 35 divisions across the country with Sokoto and Kebbi states sharing a division.⁴³ Each of the 36 states in the country has a High Court with a number of divisions. For instance, Lagos state has 4 Divisions with 50 Judges⁴⁴

6. IMPLICATIONS FOR ACCESS TO JUSTICE

i. Low court budget has a negative impact on the administration of criminal justice system in the country. The inadequacy of the courts and judicial personnel has been identified as responsible for delay in the administration of criminal justice. It is noticed that there is a preponderance of civil cases over criminal cases in our courts despite the high rate of arrest of accused persons. The civil cases which nature are usually political, matrimonial, chieftaincy, labour and commercial cases are instigated by persons having the required resources to do so. For instance, political cases are instituted by political parties or politicians and these set of people possess the required resources to gain access to justice. The same goes for matrimonial cases and chieftaincy cases, these are matters instigated by persons who already have access to justice. Labour and commercial cases are also often brought before the courts as they are instituted by persons or institutions having the economic power to do so. This cannot be said

⁴¹ This information is available on the official website of the Court of Appeal <http://lawnigeria.com/Judicature/CourtofAppeal.html> accessed on the 6th March 2013

⁴² Information available on the official website of the National Industrial Court <http://nicn.gov.ng/> accessed on the 6th of March 2013

⁴³ Information available on the official website of the Federal High Court <http://www.fhc-ng.com/root.htm> accessed on the 6th of March 2013

⁴⁴ see the official website of the Lagos state judiciary <http://www.lagosjudiciary.gov.ng/JIS/index.aspx/> accessed on the 7th March, 2013

of criminal cases as most people involved in criminal cases lack the economic resources to either obtain legal representation and there have even been instances where accused persons plead guilty as a result of persuasion by scrupulous police personnel.⁴⁵

Persons accused of committing one crime or the other often find themselves in prisons awaiting trial longer than necessary instead of being charged to court. According to the Abuja - The Minister of Interior, Mr Abba Moro, 38 000 of the 54 000 prison inmates across the country were awaiting trial. He stated that out of the 54 000 prisoners that we have across the country, 38 000 of them are awaiting trial and only about 16 000 have actually been convicted⁴⁶. This situation is caused by high level of poverty as a substantial number of inmates often languish in prisons because they cannot afford payment of legal fees. This amounts to a denial of access to justice.

ii. **Corruption of court officials as a result of low court budget is an obstruction to access to justice for many people who as a result have lost confidence in the system.**

According to crime victimization surveys⁴⁷, the findings of the survey revealed that most crimes are unreported. Only about 21% of people who suffered crime victimization reported to the police. In a 2011 survey only 16% of victims report to the police revealing an increment by 5% in 2012, which is still far below expectation. When analysed by States, the least reports were made in Sokoto (6%), Oyo (6%), Nasarawa (7%), Kaduna (8%), Plateau (9%) and Niger States

⁴⁵ N.J. Aduba "Overcrowding in Nigerian Prisons: A Critical Appraisal" 1993

⁴⁶ "38 000 inmates are awaiting trial- Minister" (News 24 Newspaper) 14 March 2013, 15:06
<http://www.news24.com.ng/National/News/38-000-inmates-are-awaiting-trial-Minister-20130314> accessed on the 6th of April 2013

⁴⁷ CIEEN Foundation "Summary of Findings of 2012 National Crime and Safety Survey" 24th July 2012
<http://cleenfoundation.blogspot.com/2012/07/summary-of-findings-of-2012-national.html> accessed on the 7th April 2013

(9%). The highest reports were made in Yobe (50%), Benue (43%), Zamfara (41%) and Cross River (38%).

Those who reported were asked if they were satisfied with police handling of their cases. Slightly less than one half of them were satisfied (48%), 39% were not satisfied and 14% were neither satisfied nor not satisfied. Satisfaction of victims has however increased from 29% in 2011 to 48% in 2012. Those who were not satisfied were asked to state the reason. Nearly 2 in 3 of them (66%) sighted police ineffectiveness. Other reasons were corruption (17%), inadequate feedback (12%) and police insensitivity (5%). The 2012 survey also showed that bribery and corruption among public officials including police officers, court personnel, and anti corruption agencies were higher in States like Kebbi (61%), Ebonyi (50%), Kwara (45%), Ondo (43%), Edo (42%), Bauchi (39%), FCT (37%), Ekiti (34%), Sokoto (34%) and Gombe (34%) which data is far above the national average. The lowest were recorded in Taraba, Adamawa and Kaduna, which were all 10% respectively.⁴⁸

iii. Challenges of accessibility

Lack of infrastructural development as a result of low budgeting will bring forth challenges of accessibility as people at the remotest part will be disadvantaged to go to court at the earliest convenience. Most courts are situated in cities which may be a great distance from some small towns and low budget will make it impossible for court divisions to be set up in those small towns.

⁴⁸ CIEEN Foundation "Summary of Findings of 2012 National Crime and Safety Survey" 24th July 2012 <http://cleenfoundation.blogspot.com/2012/07/summary-of-findings-of-2012-national.html> accessed on the 7th April 2013

iv. Insufficient number of courts

The number of courts in Nigeria is too small when compared with the population of the country. Nigeria can be said to have approximately 871 courts and the population currently stands at 170 million so, the ratio of the number of courts to the population is 1:195177. This means that for a court, there are 195,177 people; this does not guarantee accessibility to justice.

v. Lack of research assistance for Judicial officers

Low budgeting for courts results in the non-availability of ICT in and research assistance for judicial officers. This is capable of causing delay in administration of justice as judges will have to take their time to write in long hand, also, judges will have to look for necessary materials themselves as there is no research assistance available to them.

vi. Hike of legal fees

The delay encountered in the disposal of a case affects legal fees. Legal practitioners will necessarily charge higher fees based on the knowledge of the time frame a case is likely to take. Also, in situations where legal representation is charged based on the hours spent in court, the fees tend to be higher because longer hours are spent in the courts as a result of lack of ICT facilities in the courts. Affordability of legal fees thus becomes challenging.

vii. Hike of filing fees

Low budgeting affects the cost of litigation from the perspective of filing fees and other fees incidental to institution of actions in court as litigants will be required to pay for all services

rendered to them since there is no subsidy from the government. Affordability of litigation costs becomes a challenge to a number of people.

viii. Challenges arising from state governance

Other challenges of state governance such as poor power supply, stuffy court rooms, high cost maintenance of court system militate against speedy dispensation of justice. Judges are unable to write and conduct research in their homes as a result of discomfort in the homes due to lack of basic amenities such as power supply.

ix. Noticeable Constraints As A Result Of Poor Budgeting

Poor or low budgeting leads to poor performance of Judicial officers in dispensation of justice. As a result of lack of necessary amenities in the court rooms, cases allocated to courts Performance Evaluation are not disposed of on time which is a denial of access to justice. According to the Nigeria's judicial Performance Evaluation for the years 2008 - 2011⁴⁹ which was a performance evaluation of courts of superior record conducted by the Nigerian Institute of Advanced Legal Studies, Superior courts of record were not able to dispose up to 50% of the cases allocated to them.

The courts that were reviewed are the Court of Appeal, the National Industrial Court, the Federal High Court, the state high courts, the Sharia Court of Appeal and the Customary court of Appeal.

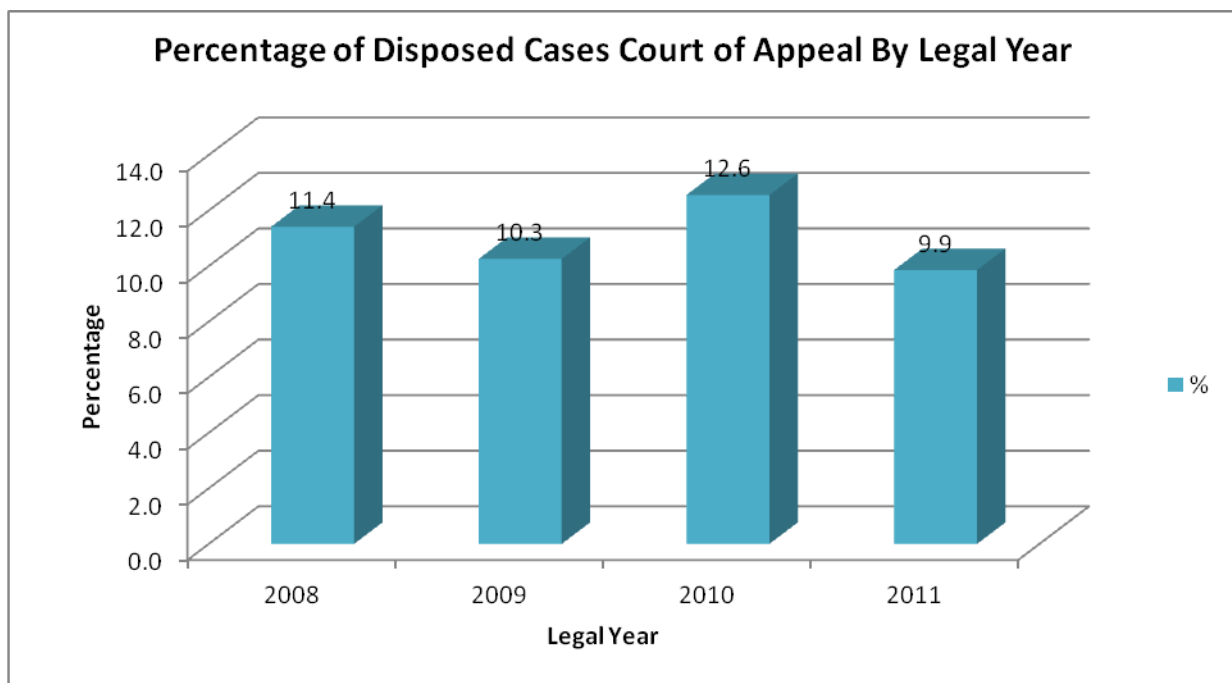
Court of Appeal

⁴⁹ NIALS, *Nigeria's Judicial Performance Evaluation 2008 - 2011* (2012 NIALS Press, Lagos)

In the year 2008, only 11.4% of the cases allocated to all the divisions of this Court was disposed of. 10.3% of the cases was disposed of in 2009, 12.6% of allocated cases was disposed of in 2010 and only 9.9% of the cases was disposed of in 2011.

Court of Appeal: percentage of cases disposed in the period 2008 - 2011

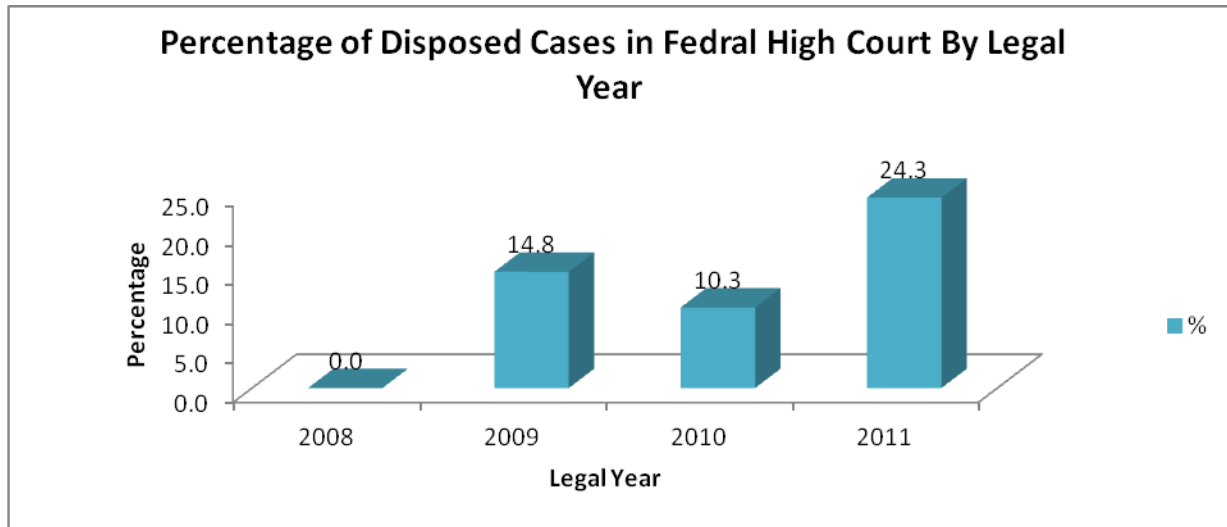
Figure 7



Federal High Court

In the year 2009, only 14.8% of cases recorded were disposed of. In 2010, 10.3% of the allocated cases were disposed of while 24.3% of the cases were disposed of in 2011.

Figure 8

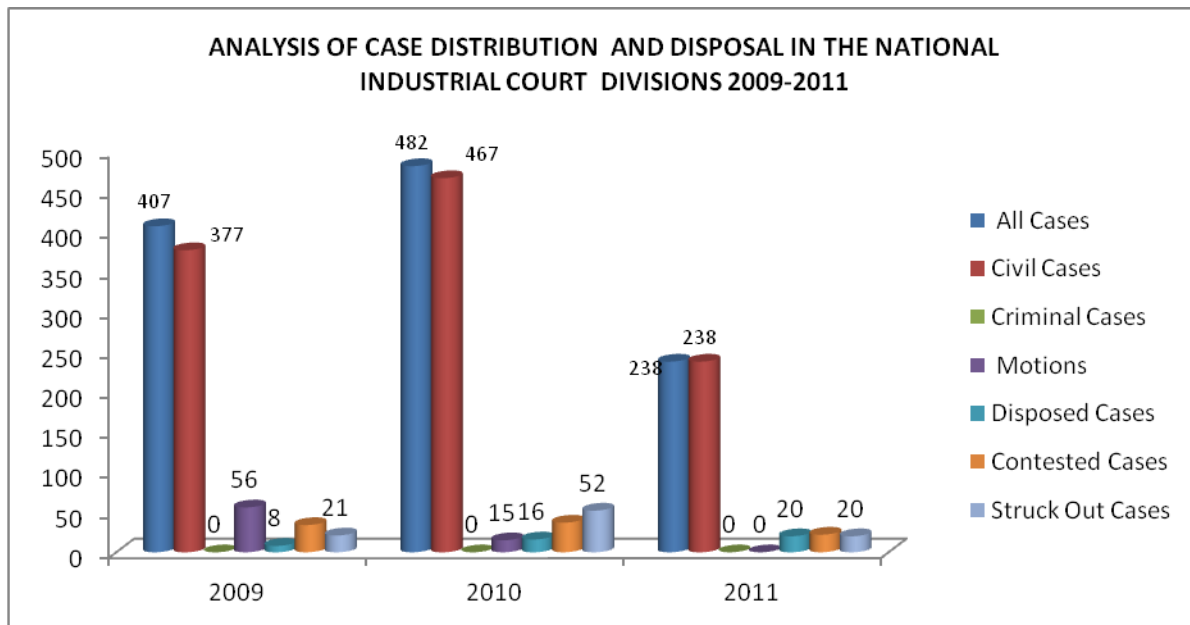


National Industrial Court

For the period that was period; 2009 – 2011, the court did not dispose up to 50% of cases allocated to it in any year.

National Industrial Court: percentage of cases disposed in 2008- 2011

Figure 9

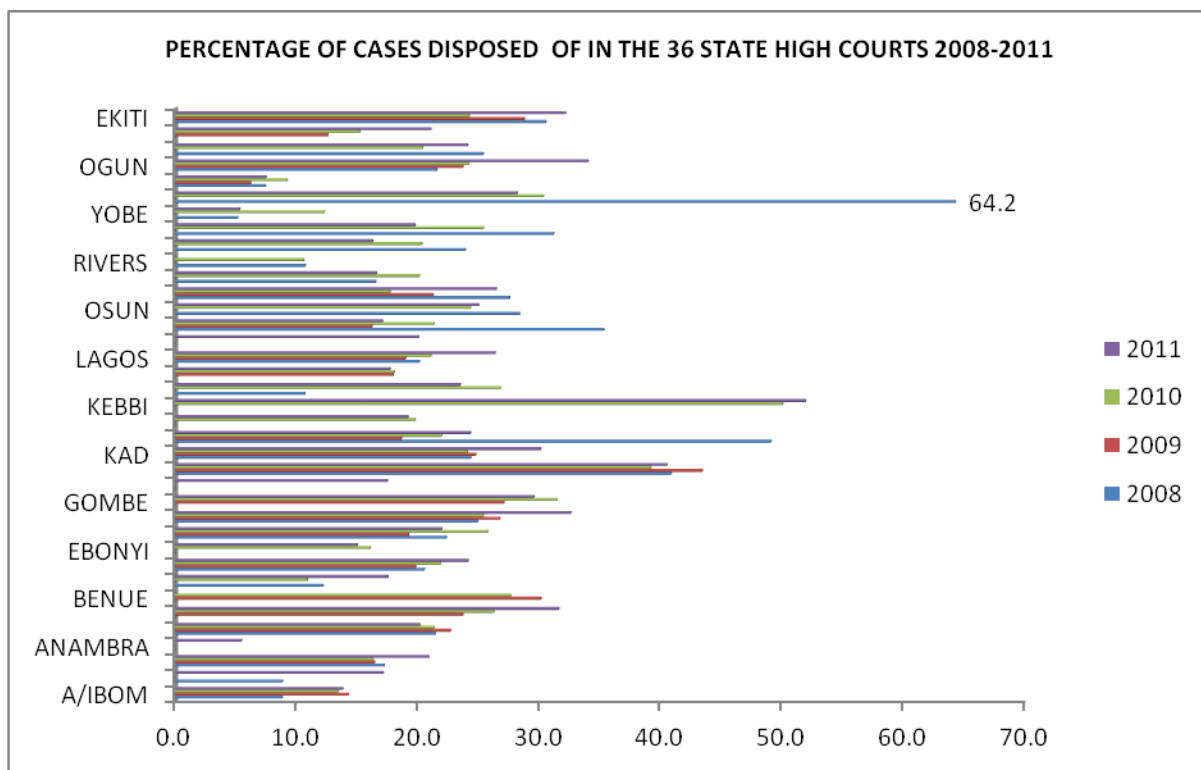


State High Courts

For the State High Courts, Most Courts disposed of less than half of the cases recorded per year, with the exception of Kebbi where 50% and 51.9% were disposed of in 2010 and 2011 and Zamfara where 64.2% was disposed in 2008 respectively. However, these states had fewer recorded cases compared to Courts in the Southern part of Nigeria.

State high Courts: percentage of disposed cases

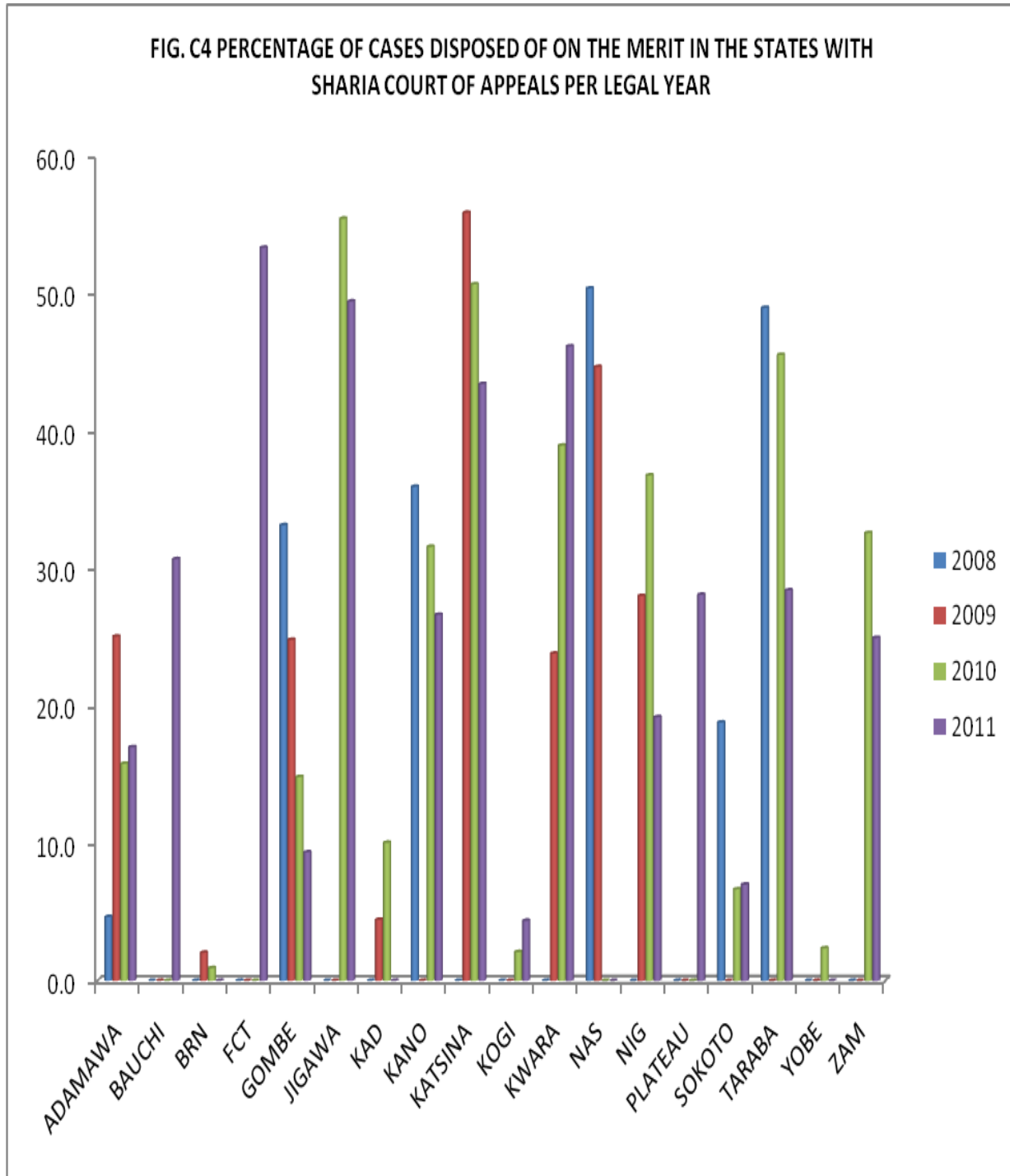
Figure 10



Sharia Court of Appeal

19 States from the NJC data have Sharia Court of Appeal. FIG C4 shows the disposal of cases on the merit in these states. Most states were able to dispose up to 50% of the cases recorded.

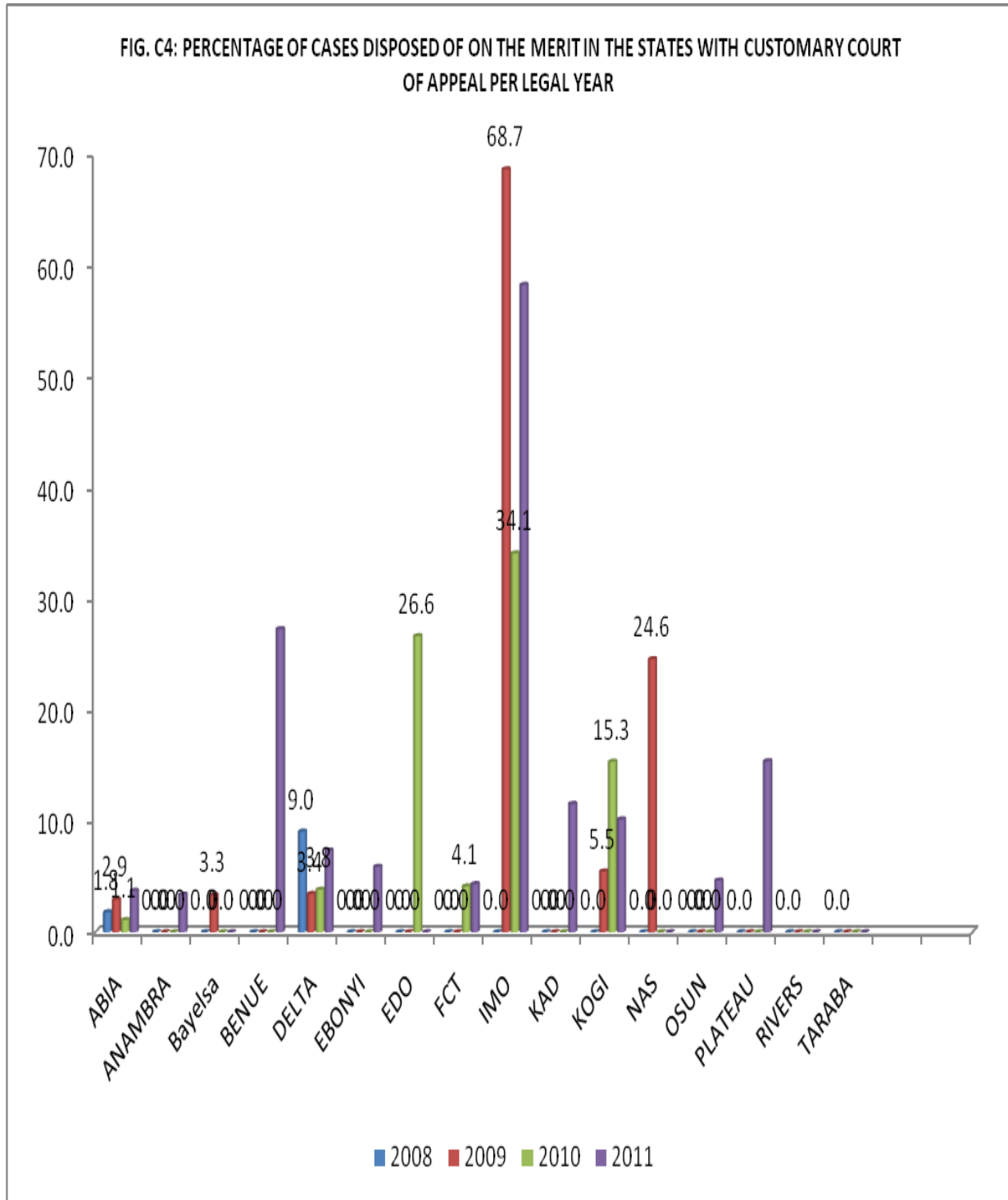
Figure 11



Customary court of Appeal

16 States from the NJC data have Customary Court of Appeal. Only Imo State was able to dispose up to 50% of the cases recorded.

Figure 12



Flowing from the above illustrations, almost all the courts both at the federal and state levels have not been able to dispose up to 50 percent of cases allocated to them in any of the years under review. A conclusion can thus be drawn that in the last 4 years, with particular reference to the periods reviewed above, the courts in Nigeria have disposed less than half of the allocated cases.

This situation is responsible for the spillover of cases to the following year, and then to the next. As a result, it is not strange to find a case which was initiated in 2003 still being heard in 2013.

7. WAY FORWARD FOR NIGERIA

- i. There should be an intensification of legal aid. The legal aid council should be empowered to ensure that more people gain access to justice. Its scope and mandate should be broadened and widened so as to enable less privileged people to have the benefit of legal representation.
- ii. Legal clinics should be available in various institutions in order to proffer advise before it is ripe for litigation. By this, a number of matters will already be resolved and there would not be any cause for court action. So also, legal advice will help determine which matter should or should not be instituted in law courts. This will reduce the burden on the courts.

- iii. The burden of dispensation of justice should not be wholly put on the courts and attention should be given to other ways by which disputes can be settled. Alternative Dispute Resolution should be encouraged as this will not only lift the burden off the courts, it will also ensure speedy dispensation of justice as the process is potentially far quicker than recourse to courts of law, it is cheaper than litigation, and it tends to maintain the relationship between the parties.
- iv. Traditional administration of justice should also be accorded recognition as research⁵⁰ shows that an average of 100 cases are brought before traditional councils each year and each case takes an average of 2 months to be disposed of amicably. People at the local level should be encouraged to make use of the traditional administration of justice instead of burdening the law courts with series of minor disputes.
- v. Court connected Multi door courts should be encouraged the more. These have the benefit of offering different “doors” for resolving disputes in respect of cases that may or may not already be within the court system. Since these are multi door courts which run and are managed independently of the government, the burden of funding is lifted off the shoulders of the courts. High court Judges and Magistrates should be encouraged to refer more existing cases that he/she deems suitable for ADR. In the same vein, people should be educated to apply directly to the Multi-Door Court for resolution of their disputes, with or without having first commenced court action.

⁵⁰ A research on the Traditional Administration of Justice in Nigeria conducted by the Nigerian Institute of Advanced Legal Studies

- vi. Legal practitioners should be sensitized to take more of pro bono cases as this will encourage and assist the less privileged in our society to have equal access to justice along with others who are economically empowered to do so.
- vii. In the same vein, cost of litigation in terms of filing fees and other fees besides the lawyers' fees should be made reasonably affordable.
- viii. There should be judicial integrity to make sure that justice is dispensed without fear or favour.
- ix. There should be an increase in the allocation to the judiciary. Looking at the 2013 budget in Nigeria, the NJC was given #67,000,000,000, ministry of health was given #279,533,895,955, ministry of youth development was given #85,429,970,319, ministry of foreign affairs was given #70,201,724,387, and ministry of education was given an allocation of #427,515,707,889. It is observed that the allocation to the NJC is low when compared to these other ministries. The allocation to the NJC in 2013 was less than that of 2012 which also dropped from that of 2011.
- x. Judicial officers should be highly motivated in terms of remuneration and allowances as this will go a long way in getting rid of corruption. Although remuneration is not a panacea for corruption but we will all agree that it goes a long way to reduce corruption to its barest minimum. The Chief Justice of Nigeria, Justice Aloma Mariam Mukhtar recently cried out that allegation of judges collecting bribes before granting bail to accused persons had become rampant while vowing to administer appropriate sanctions on those found wanting.⁵¹ It is

⁵¹ "Some Judges take bribe to grant bail –CJN" (Nigeria World News, November 21, 2012) <http://www.nigeria-news-world.com/2012> accessed on the 21st March 2013

submitted that the welfare of judicial officers should be well attended to in order to avoid corruption. The remuneration should be able to afford a very decent life expected of their status.

- xi. There is need for a steady improvement of court facilities accordingly to facilitate speedy dispensation of justice. The use of ICT should be embraced in order to guarantee this and automated systems should replace the existing manual technique. The court environment which houses the court rooms and judges' chambers should be made conducive for judicial officers, court staff, legal practitioners and litigants.
- xii. There should be an increase in the number of Judges so that cases can be disposed of timeously, hence there should be appointment of more judges.
- xiii. There should be sensitization of parliament and also a realization by the parliament of the need for the necessary budget for court in order to function effectively. The budget for the NJC should not be seen to be on the decrease as it is presently. It should be on the increase year after year.
- xiv. Class action litigations should be promoted. This kind of action gives access to the courts to those people who have been or would have been denied justice because of the high cost of taking action. The idea of class action itself is to create power in numbers which would be non-existent if claims were pursued individually. This mechanism makes it possible to pursue claims arising from mass wrongs which would not be addressed if pursued individually. This also reduces burden on the courts as a large group of persons who have suffered common injuries will collectively institute an action instead of multiple of actions.

- xv. Representative action should also be encouraged as only one or a few members of a class sue on behalf of themselves and other members of the same class. The interests of people who would have otherwise been denied justice as a result of lack of economic power will be protected by this since the legal action will be instituted on their behalf by those having the economic capacity to do so.