



# THE IMPACT OF THE COVID-19 PANDEMIC ON ACCESS TO JUSTICE IN WEST AFRICA: A CASE STUDY OF BENIN, NIGER AND SENEGAL

**AUGUST 2021**

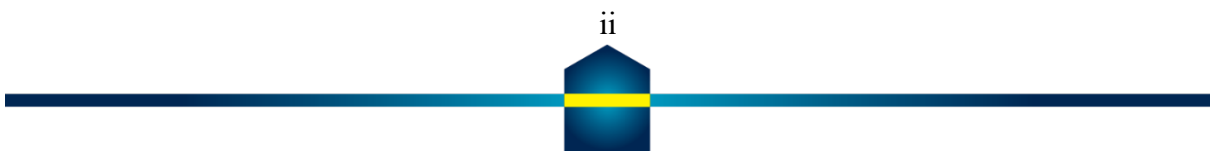


AFRICA JUDGES & JURISTS FORUM

**Africa Judges and Jurists Forum (AJJF)**

**THE IMPACT OF THE COVID-19 PANDEMIC ON  
ACCESS TO JUSTICE IN WEST AFRICA:  
A CASE STUDY OF BENIN, NIGER AND SENEGAL**

**August 2021**



## **Africa Judges & Jurists Forum (AJJF)**

Africa Judges & Jurists Forum (AJJF) is a network of judges and jurists across the continent. The membership of AJJF is inspired by the imperative to promote the rule of law in the context of Africa's development. The Headquarters of AJJF are based in South Africa. The Forum works with governments, Intergovernmental entities, non-governmental formations, and the private sector.



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Africa Judges and Jurists Forum



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## Foreword

Access to justice is one of the areas which suffered serious regressive disruption as a result of COVID-19. In order to enjoy access to justice, certain pre-requisites must be in place. Individuals and groups must have access to independent tribunals where their legal disputes are resolved impartially in accordance with the law. They must have access to legal services that are necessary for them to bring their legal cases before the tribunals. These services must be affordable and physically accessible. Legal disputes must be resolved in a timely manner, and effective remedies must be given and enforced. Prior to the COVID-19 pandemic, some of these pre-requisites for access to justice were not available to some sections of society, particularly vulnerable groups who include women, children, persons with disabilities who are economically marginalized.

However, the outbreak of the COVID-19 pandemic further reduced access to justice. Both the virus and the restrictive measures undertaken by States disrupted public access to the systems and structures that had been established to facilitate access to justice. For example, public access to court buildings was severely restricted, while court hearings were postponed during periods of national lockdowns. In some cases, judges and court staff contracted the virus and the courts shut down. The suspension of economic activity during national lockdowns increased the number of people who could no longer afford the costs of legal services and litigation. Restrictions on human movement and public gatherings prevented many indigent persons from accessing pro-bono legal services. Like many other businesses, law firms are struggling financially because of the economic meltdown wrought by the pandemic.

In an attempt to evaluate and examine the full scope of these challenges, the Africa Judges and Jurists Forum (AJJF) commissioned a study of the impact of the COVID-19 pandemic on access to justice in West Africa, focusing on selected countries as case studies. The study has culminated in this report. We hope that this report will assist stakeholders in the justice sector to better understand the impact of this pandemic on access to justice in these countries, the challenges which have arisen and the solutions that are needed to address these challenges.

Hon. Justice Ernest Sakala,

Retired Chief Justice, Zambia & Member of the Judicial Elders' Council, Africa Judges and Jurists' Forum (AJJF)

## ACKNOWLEDGEMENT

I am honoured to see this study has come to completion. This report is the result of collaborative efforts by a number of colleagues. Particular thanks must go to the team of two experts that conducted research and drafted the study: Charles M Fombad, Professor of Law, Head of the Department of Comparative Law, Institute for International and Comparative Law, Faculty of Law, University of Pretoria, South Africa; and Sègnonna Horace Adjolohoun, Extraordinary Lecturer and Visiting Professor of Human Rights and Comparative Constitutional Law, University of Pretoria and Central European University. The Study benefitted from comments made by prof. Chris Mbazira of Makerere University.

This study is part of the implementation of a larger project on: “The Impact of COVID-19 on Access to Justice in East and West Africa,” implemented by the AJJF in 2021. I wish to extend my heartfelt gratitude to the colleagues at the Secretariat who coordinated this project. Their management of the project has contributed invaluable to its success.

I would like to acknowledge the Open Society Foundation (OSF) for their financial support which enabled AJJF undertake this Study. We are grateful for the supportive approach that their representatives took. The challenges revealed by the study remain substantial. The need for continued collaboration in order to mitigate the effects of COVID-19 on access to justice, speaks for itself.

I commend this study to all those interested in promoting access to justice in the region – from government ministries and agencies, civil society groups, donor agencies and to the academia, among others. The Study provides solid evidence for the multifaceted effects of COVID-19 on access to justice in the countries under study. It also inspires possible interventions for the immediate, medium and long-term.

Martin Okumu-Masiga  
Secretary General  
Africa Judges and Jurists Forum

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## **LIST ACCRONYMS**

CSO, Civil society organisations

OLD, Online dispute resolution

ADR, Alternative dispute resolution

ICT, Information and communication technologies

## Executive Summary

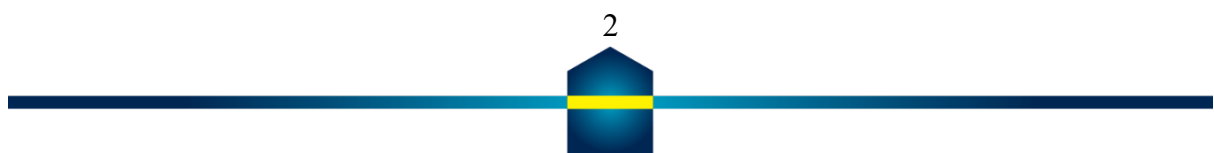
The objective of this Study was to examine the impact of the COVID-19 pandemic on access to justice in three Francophone countries in West Africa *viz* Benin, Niger and Senegal. The Study examines the impact the measures the governments in these three countries took to control the spread of the virus had on access to justice. Lessons that could be drawn from these experiences that could help towards a more effective response to similar crisis in the future are examined.

The information that forms the basis of this Report was obtained from three field researchers in each of the three countries, as well as the study and analysis of various reports dealing with issues relating to access to justice in the Study countries, both prior to and since the onset of the pandemic.

The legal framework for access to justice in each of the countries is examined. With the aid of a number of continental and global indicators, such as the Mo Ibrahim Index on African Governance Report, World Justice Project reports and the United States Department of State Human Rights Practices in the three countries, it has been possible to gain some valuable perspectives on the state of access to justice in these countries before the pandemic broke out. It is against this background that the Study examines the measures taken in each country to combat the spread of the virus and the impact these have had on access to justice.

It is clear from the background information for each of the three countries that each was not only unique in its geographical location, economic and social situation but also in the manner it responded and the challenges they encountered. Nonetheless, there are many common issues that have emerged. It is based on the overall commonality of the issues raised that a number of recommendations are made to the five main actors in the justice sector, namely the executive, judiciary, legislature and Civil Society Organizations (CSOs), as well as other justice sector stakeholders such as development and regional partners.

The main recommendation made to the executives in the three countries is that an inclusive consultative process involving justice sector actors is necessary in preparing an effective response. That such responses must pay particular attention to marginalized groups. It is also recommended that certain justice sector actors should be considered as essential workers. In



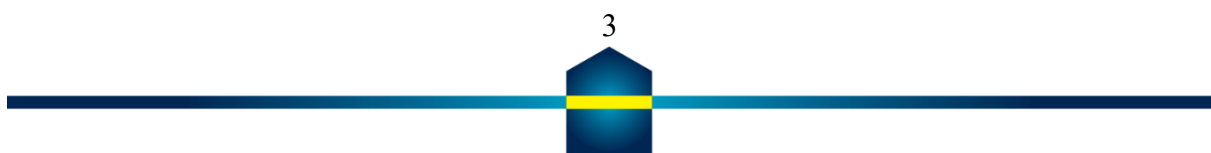
order to address the enormous challenges of backlog of cases, which have become worse during the pandemic, it is recommended that a study be undertaken to see how the formal and informal judicial systems could be made to complement each other.

With respect to the legislature, although it is noted that they are still able to operate normally, it is recommended that they need to be more robust in exercising their oversight functions at a time of executive aggrandizement and also need to prepare for the possibilities of remote sessions if the crisis worsens.

As regards the judiciary, it is recommended that courts should no longer regard themselves as places but rather as a service. As such, to cope with the problem of backlogs, which is aggravated by pandemics such as the COVID-19, there is need to prepare for virtual online dispute resolution (ODR). ODR should be complemented by more use of alternative dispute resolution (ADR) methods. It is also recommended that the judiciary must pay particular attention to the needs of vulnerable groups in society whose plight is worsened by such crisis.

In considering the important role that CSOs and other justice sector stakeholders play, it is recommended as follows: Firstly, that they should continuously create greater awareness of the different and less expensive forums that grant access to justice for different legal matters such as Human Rights bodies and Legal aid bodies. Secondly, they should be more proactive in monitoring the executive and in particular use strategic litigation to address any abuses of power by the state and government services such as the military and the police services.

Finally, the importance of the role played by partners and regional institutions was noted. It was accordingly recommended that these stakeholders develop programmes aimed at strengthening digitization of key justice services and institutions of the judiciaries in the concerned countries with a focus on effective access to users and efficient administration of justice by officers. It is also recommended that regional economic communities and other regional intergovernmental organisations put their normative and institutional frameworks to use in ensuring that practices are harmonized and the pandemic is managed in abiding with minimum standards provided for in international obligations undertaken by the states concerned.



In concluding, it is argued that the pandemic has provided an opportunity to review the justice systems in the case-study countries as a whole to see how new processes and procedures can be developed to modernize the inherited archaic justice systems that have become dysfunctional. The challenges of access to justice was just a symptom of a more profound problem that needs to be urgently addressed.

## **1. Introduction, background and objectives of the study**

### **1.1 Introduction**

The judiciary is one of the sectors that has seriously been disrupted by the extraordinary measures adopted by most countries in the world to combat the COVID-19 pandemic. The obligation to protect fundamental human rights in general, and to ensure access to justice in particular, is of critical importance. This among others is to ensure that governments do not abuse the additional powers that they are usually given to cope with crises such as COVID-19. It is an obligation which, under most national laws, as well as international law, is not eroded by the national emergency measures adopted by states.

This Study focuses on the impact the measures that were adopted by three Francophone countries in West Africa *viz*, Benin, Niger and Senegal have had on access to justice. Before looking at the background and objectives of the Study, a brief introduction of the three countries will be helpful.

Benin is the smallest of the three countries, with a land area of 112,760 Km<sup>2</sup>. it is located along the coastline on the Bight of Benin. Nearly half of its population of 12.4 million<sup>1</sup> is urban and is concentrated mostly in Cotonou, the country's largest city. The southern provinces make up one-fourth of the total area but are inhabited by more than two-thirds of the total population. The four most populated cities are Cotonou (780, 000), Abomey-Calavi (385, 755), Djougou (237,040) and Porto-Novo (34,168). Benin is known as one of the leading post 1990s democratization models in Africa and has since enjoyed political stability.

Unlike Benin, Niger is a vast, arid landlocked state on the edge of the Sahara Desert. It covers a land area of 1,270,000 km<sup>2</sup> and is the largest country in West Africa. Niger has a population

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<sup>1</sup> See, Worldometer, Benin population at July 2021, available at, <https://www.worldometers.info/world-population/benin-population/> accessed in July 2021.

of 25.1 million.<sup>2</sup> Although this is unevenly spread, most of the population is concentrated in the south and the four most populated cities are Niamey (774, 235), Zinder (191, 424), Maradi (163, 487) and Agadez (124, 324). Unlike Benin with an urbanization of 48.4% of the total population, that of Niger is only 16.5%. Rated by the UN as one of the world's least-developed nations, Niger has been politically unstable since independence and a rebellion in the north from the early 1990s has added to its political instability. In the last few years, Niger has become noted as a major transit route for migrants heading to Europe.

The third country in the Study, Senegal, with an Atlantic Ocean coastline, is home to 17,2 million people.<sup>3</sup> It has an urbanization level of 49.4%, with a quarter of its population living in the region of the capital Dakar. The total land area is 192,530 Km<sup>2</sup>. The four largest cities are, Dakar (2,476,400), Pikine (874,062), Touba (529,176) and Thies (320,000). Senegal is among Africa's most stable countries, with three major peaceful political transitions since independence in 1960.

## **1.2 Objectives, scope and methodology of the study**

The Study has been carried out as part of a Project to investigate the impact of the COVID-19 pandemic on access to justice and the administration of justice by courts in selected countries in East Africa and West Africa regions. This particular Study, as indicated above, focuses on three countries: Benin, Niger and Senegal.

The Study identifies and analyses the impact of the COVID-19 pandemic on access to justice, including the administration of justice by the courts in the three countries. The investigation is designed to find out, insofar as access to justice is concerned, what measures were put in place in the three countries and how these have impacted on the quality of justice. The overriding goal is to see how it can be ensured that the temporary measures taken to control the spread of the COVID-19 virus do not become permanent. This is in addition to how any errors that could have been made during this process could be corrected. Finally, the Study makes recommendations on how this crisis could be transformed into an opportunity for innovation

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<sup>2</sup> See, Worldometer, Niger population in July 2021, available at, <https://www.worldometers.info/world-population/niger-population/#:~:text=The%20current%20population%20of%20Niger,the%20latest%20United%20Nations%20data>. Accessed in July 2021.

<sup>3</sup> See, Worldometer, Senegalese population in July 2021, available at <https://www.worldometers.info/world-population/senegal-population/> accessed 27 August 2021.

and creativity in promoting access to justice in these countries. This is particularly important because the virus will not disappear overnight and has created a new normal that we must all adjust to.

## **2. An overview of the state of access to justice pre-COVID 19 in the three countries**

Access to justice incorporates the idea that there will be access to courts as well as other tribunals and forums that dispense justice, and to judges, without unreasonable delay. It is one of the fundamental principles of international human rights law and is integral to the rule of law. To this end it is required that access to justice be equal; the poor should not be excluded on the basis of poverty; women should not be silenced by the voices of men; the young should be protected by adults when necessary; and there should be equity between the provision of justice in rural and urban areas, and more generally. In addition, that the interests and needs of all marginalised groups in society must be catered for by the legal system.<sup>4</sup> At its core, access to justice means that individuals and communities with legal needs know where to go for help, obtain the help they need, and move through a system that offers procedural, substantive, and expeditious justice. Has this been happening in these three countries since the outbreak of the virus in 2020?

To fully appreciate what has been happening since 2020, it is necessary to briefly review the state of access to justice just before the beginning of the COVID-19 pandemic. In order to do this, it is necessary to briefly highlight the legal framework provided for access to justice and the pre-pandemic levels of access to justice in each of the three countries. In looking at the legal framework, two issues are important; firstly, the extent to which the right of access to justice is recognised and secondly, whether this right can be limited, especially in an emergency, such as that provoked by the COVID-19 pandemic. To appreciate the pre-COVID-pandemic quality of access to justice, several continental and global indicators on good governance and the rule of law, which also cover aspects of access to justice, are used as a guide.

Although the legal framework is usually laid down in the constitution and other pieces of legislation, this is often based on or influenced by regional and international human rights

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<sup>4</sup> See further, Center for Reproductive Rights, “Access to justice during the COVID-19 pandemic” available at, <https://reproductiverights.org/wp-content/uploads/2020/12/Access-to-Justice-During-the-COVID-19-Pandemic-Factsheet.pdf> accessed in July 2021.



instruments. It is therefore necessary to preface the discussion of the legal framework in each of these countries by a brief examination of the international and regional human rights instruments that may have influenced the approach adopted.

## **2.1 The regional and international context of the legal framework**

A number of regional and global treaties and practices under them, to which these three countries are committed, provide for access to justice and should in principle form the backdrop against which domestic law is enacted and implemented. At the regional level, one such instrument is the African Charter on Human and Peoples' Rights (the African Charter) 1981. The African Charter has several provisions which indirectly recognise and protect several aspects of the right of access to justice. An example of this is Article 3 which guarantees equality before the law and equal protection of the law. This is in addition to Article 7(1), which recognises the right of every individual to have his cause heard. This latter provision mentions the right to defence, which includes the right to be defended by counsel of one's choice and the right to be tried within a reasonable time by an impartial court or tribunal.

At the global level, the International Covenant on Civil and Political Rights (ICCPR) of 1966, which all three countries have ratified, contains several articles that deal with many aspects of access to justice.<sup>5</sup> The main ones are articles 2(3), 9, 14, and 26. Article 4 lays numerous conditions and restraints on the limitations that state parties could impose during a state of emergency. In General Comment No. 29, the United Nations Human Rights Committee affirmed the principle that states cannot suspend access to justice during a public emergency.<sup>6</sup> Whilst acknowledging the fact that states can limit or derogate rights, it makes it clear that states must allow the judiciary to monitor these restrictions and guarantee access to effective remedies, even during emergencies.

However, much of the current global momentum around access to justice derives from its inclusion in the United Nations 2030 Agenda for Sustainable Development (SDG 2030 Agenda). This marks the first time justice has been placed on the international development

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<sup>5</sup> Another example of an international treaties that recognize the right of access to justice is article 13 of the Convention on the Rights of Persons with Disabilities of 2008.

<sup>6</sup> See, Human Rights Committee, "General Comment No. 29: Article 4 : Derogations during a state of emergency," available at, <https://www.refworld.org/docid/453883fd1f.html> accessed in April 2021.



agenda. Goal 16.3 of the 2030 Agenda calls on governments working with civil society, citizens, and the business community to, “promote the rule of law at the national and international levels and ensure equal access to justice for all.” Under it, states aspire to, “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” The question though is one of the extent to which this has affected access to justice in these three countries?<sup>7</sup>

At the regional level, supranational judicial and quasi-judicial institutions also adopted various measures that may be seen as standards in informing how the balance should be struck between the need not to completely halt the administration of justice and the imperatives of guaranteeing the health and safety of stakeholders. In this regard, the African Court on Human and Peoples’ Rights on 20 March 2020 interrupted its ongoing 56<sup>th</sup> Ordinary Session in response to the rise of COVID-19 cases as part of the very first wave of the pandemic on the continent.<sup>8</sup> The President of the Court indicated in his statement that the decision came in a bid “to act decisively in the interest of health and safety of all Judges, Staff and residents of Arusha and beyond”. The Court has since conducted its judicial activities virtually, by holding its sessions online, including the delivery of judgments and holding of hearings.<sup>9</sup> Time limits were also suspended or extended for several weeks in cases still pending exchange of pleadings to allow the parties make submissions. The Court staff have been working from home and at the seat of the Court itself on a rotational basis. In some instances, the Court also decided *suo motu* to expedite the consideration of cases involving applicants who were incarcerated and faced the threat of contamination.

It is also important to note that, on 16 July 2021, the Court delivered an *Advisory Opinion on right to participate in the government of one's country in the context of an election held during*

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<sup>7</sup> It could also be noted that Agenda 2063 of the African Union includes Goals that speak to human rights and the rule of law, which state justice as a corner stone of achieving the objectives of the Union and the said Agenda 2063 <https://au.int/en/agenda2063/goals> (accessed 17 May 2021).

<sup>8</sup> African Court, ‘African Court suspends its 56th ordinary session because of outbreak of coronavirus’ <https://www.african-court.org/wpafc/african-court-suspends-its-56th-ordinary-session-because-of-outbreak-of-coronavirus/> (accessed 17 May 2021).

<sup>9</sup> African Court, ‘Suspension of time limits due to the measures taken in response to COVID-19’ <https://www.african-court.org/wpafc/suspension-of-time-limits-due-to-the-measures-taken-in-response-to-covid-19/> (accessed 17 May 2021).



*a public health emergency or a pandemic, such as the COVID-19 crisis.*<sup>10</sup> In the said Opinion, the Court found that states retain discretion as to whether to postpone elections during times of emergency under the African Charter on Human and Peoples' Rights read together with the African Charter on Democracy, Elections and Governance. The Court however advised that postponement should be an exception and when adopted, elections should be safe and inclusive even in circumstances where various restrictions are implemented which have to then abide by legality, proportionality and non-discrimination as well as public interest and health.

Similar measures were adopted by the Banjul-based African Commission on Human and Peoples' Rights. The Commission adopted several resolutions on the COVID-19 pandemic in Africa, in Cameroon, and with respect to refugees and migrants.<sup>11</sup>

It is now necessary to see whether and to what extent these regional and global instruments as well as the practices of their judicial or quasi-judicial bodies have influenced the legal framework adopted in each of the three countries.

## **2.2 Overview of the legal framework for access to justice pre-COVID 19 in Benin**

### **2.2.1 Pre-COVID -19 legal framework for access to justice in Benin**

As pointed out earlier, the framework for access to justice in most countries is usually laid down in the constitution and the details are spelt out in ordinary legislation. The advantage with such constitutional entrenchment is that it ensures that this framework is shielded from arbitrarily change at the whims of the government to suit is political convenience by being subject to special parliamentary majority needed to amend the constitution.

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<sup>10</sup> Request No. 001/2020 by the Pan African Lawyers Union <https://www.african-court.org/cpmt/storage/app/uploads/public/60f574/3a6/60f5743a61e75369142990.pdf> (accessed 23 July 2023).

<sup>11</sup> See African Commission, Resolution 449 on Human and Peoples' Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts - ACHPR/Res. 449 (LXVI) 2020 <https://www.achpr.org/sessions/resolutions?id=480> (accessed 17 May 2021), Resolution 442 on the Deterioration of the Human Rights Situation in Cameroon during the Covid-19 Period - ACHPR/Res. 442 (LXVI) 2020 <https://www.achpr.org/sessions/resolutions?id=473> (accessed 17 May 2021), and Resolution 470 on the Protection of Refugees, Asylum Seekers and Migrants in the fight against the Covid-19 pandemic in Africa <https://www.achpr.org/sessions/resolutions?id=500> (accessed 17 May 2021).



Surprisingly, the Constitution of Benin, widely regarded as one of the most progressive in francophone Africa, has a Bill of Rights which contains no specific provision guaranteeing the right of access to justice. This may only be inferred directly from Article 7 of the Constitution.<sup>12</sup> In this respect, article 7 states ; “The rights and the duties proclaimed and guaranteed by the African Charter of the Rights of Man and of Peoples adopted in 1981 by the Organization of African Unity and ratified by Benin on 20 January 1986 are made an integral part of this Constitution and of Beninese Law.” This therefore means that all the provisions in the African Charter which indirectly recognise and protect several aspects of the right of access to justice are an integral part of Benin domestic law. There are a few legislative instruments that are discussed below, which also regulate access to justice. This basically means that the legal framework for access to justice is essentially based on ordinary and other subsidiary legislation. In spite of the explicit stipulation in article 7 of the Benin Constitution that the African Charter is an integral part of the Constitution and of Beninese national law, the Benin Constitutional Court has referred to the Charter in several cases but “rarely finds any violation of the Charter as such.”<sup>13</sup> Instead, the Charter is used only as a means of enforcing the Constitution. There appears to be only two instances of direct application of the Charter by the Benin Constitutional Court. In one of these instances, it relied upon the Charter as a direct source of violation because the Constitution did not provide an adequate basis for dealing with the matter. The case involved an unreasonable delay in transmitting an appeal from a lower to a higher court.<sup>14</sup> The Court noted that the Constitution does not contain provisions dealing with fair trial and therefore relied on the provisions in article 7(1)(a) and (e) of the Charter. In the second example, the Court also directly applied a provision of the Charter but the impression given was that the particular provision was considered to be “self-executing.”<sup>15</sup>

The Benin Constitution deals with declarations of a state of emergency in an obscure manner. Such declarations are required to be made by the Council of Ministers According to article 101 of the Constitution, “... state of siege and the state of urgency are decreed in the Council of Ministers, after the opinion of the National Assembly.” It is an approach that raises more questions than it answers. For example, what will happen if the Council of Ministers or the

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<sup>12</sup> For example, in a case that involved an unreasonable delay in transmitting an appeal from a lower to a higher court, the Benin Constitutional Court after observing that the Constitution does not contain provisions dealing with fair trial relied on the provisions in article 7(1)(a) and (e) of the African Charter. See Constitution of 1990 as amended by Law No. 2019-40 of 7 November 2019.

<sup>13</sup> See Frans Viljoen, *International human rights law in Africa*, op. cit. at p.520.

<sup>14</sup> See, Decision DCC 05-114, 20 September 2005.

<sup>15</sup> See *Okpeitcha v Okpeitcha* (2002) AHRLR 33 (BnCC2001) para 11.



National Assembly are unable to meet? The failure to define the circumstances under which it can be invoked leaves considerable room for potentially partisan and self-serving legislation on the matter.

### **2.2.2 Pre-COVID-19 access to justice levels in Benin**

As pointed out earlier, several continental and global indicators on good governance and the rule of law, which also cover aspects of access to justice, have been relied upon to give us some indication of the level of access to justice in the three countries before the outbreak of the pandemic. One of the most important of these indicators, is the Ibrahim Index on African Governance 2020 Report. This Report shows that there has been a deterioration of judicial processes in African countries over the last decade. This is due to less access to and affordability of justice, due and fair process being less of a guarantee, as well as more delays and less effectiveness in the enforcement of justice. However, the Report notes that within the last five years, there has been some progress made in the access and affordability of justice, resulting in a small positive trajectory in judicial processes between 2015 and 2019.<sup>16</sup>

Generally, the quality of justice in Benin is significantly undermined by the limited scope for judicial independence. Judges are appointed and can be removed from office by the President of the Republic ostensibly based on the “advice” or “opinion” of the Higher Council of the Judiciary.<sup>17</sup> The President himself not only presides over this body and his minister of justice acts as his assistant, but he also convenes it and determines its agenda. As a result, genuine judicial independence is an illusion. Besides this, as other reports state, due process in civil and criminal matters in Benin is inhibited by judicial inefficiency, corruption and shortage of attorneys in certain parts of the country. Lack of resources often contributes to lengthy pre-trial detentions and arbitrary arrests and detentions are common place.<sup>18</sup> Other reports not only confirm these challenges but add that in many places, overwhelming caseloads, lack of adequate space and equipment and inadequate transportation have been major impediments to access to justice.<sup>19</sup>

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<sup>16</sup> See, Mo Ibrahim Foundation, “Ibrahim Index on African Governance 2020 Report,” available at <https://mo.ibrahim.foundation/iiag/downloads> at p.52.

<sup>17</sup> See, articles 127-130 of the Benin Constitution.

<sup>18</sup> See, Freedom House, Freedom in the World 2020, report on Benin 2021, available at <https://freedomhouse.org/country/benin/freedom-world/2021>. Accessed in July 2021..

<sup>19</sup> See for example, US Department of State, Country Reports on Human Rights Practices, Benin available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/benin/>.. Accessed in July 2021..



One of the most comprehensive studies on access to justice has been carried out by the World Justice Project. The latest is its 2018 General Population Poll survey module on legal needs and access to justice.<sup>20</sup> According to this survey, only 58% of Benin citizens knew where to go when faced with a legal problem, only 19% were able to access help and 41% of the citizens experienced hardship with their legal problems. This is basically the legal scenario in Benin before the COVID-19 pandemic hit the world.

## **2.3 Overview of the legal framework for access to justice pre-COVID 19 in Niger**

### **2.3.1 Pre-COVID -19 legal framework for access to justice in Niger**

Unlike the Benin Constitution, although the Niger Constitution has elaborate provisions recognising and protecting several fundamental human rights, it only refers to access to justice in an indirect manner in its preamble.<sup>21</sup> In this respect, the preamble provides *inter alia* that the Nigerien people:

“Proclaim our attachment to the principles of pluralist democracy and of human rights as defined by the Universal Declaration of Human Rights of 1948, the International Pact Relative to Civil and Political rights of 1966, the International Pact Relative to the Economic, Social and Cultural Rights of 1966, and by the African Charter of the Rights of Man and of Peoples of 1981;

Proclaim our attachment to the regional and international juridical instruments of protection and of promotion of human rights as signed and ratified by Niger;”

It ends with an indication that the “preamble is an integral” part of the constitution. Even if this were so, which is in itself doubtful, this is not enough to make any of the regional and global instruments referred to in the preamble, part of national law in the absence of explicit domestication. As a result, the basic principles of access to justice depend on those that appear in national legislation and other subsidiary legislation.

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<sup>20</sup> Available at, <https://worldjusticeproject.org/sites/default/files/documents/Access-to-Justice-2019-Benin.pdf>. Accessed in July 2021.

<sup>21</sup> See for Niger, Constitution of 2010 with amendments through 2017.



The constitutional framework for declaring a state of emergency to deal with situations such as those posed by the COVID-19 pandemic is also weak. All article 68 states is that, “the President of the Republic, after deliberation of the Council of Ministers, proclaims the state of emergency within the conditions determined by the law.” Couched in such loose language, it requires just a simple parliamentary majority to adopt legislation that might give the president sweeping and potentially unchecked powers to deal with emergencies.

### **2.3.2 Pre-COVID-19 access to justice levels in Niger**

As a result of its fairly weak legal framework for access to justice, it is not surprising that the pre-COVID-19 standards of access to justice in Niger, from all the indicators mentioned earlier which were consulted pointed to serious problems.

The scope for judicial independence is limited by the wide-ranging presidential powers in the appointment and removal of judges due to his control over the Higher Council of the Judiciary.<sup>22</sup> Besides this, the judiciary has for years been grappling with problems of judicial inefficiency, corruption and shortage of attorneys in certain parts of the country, lack of resources leading to lengthy pre-trial detentions, heavy caseloads, lack of adequate space and equipment and inadequate transportation that have posed major impediments to access to justice.<sup>23</sup>

The World Justice Project 2018 General Population Poll survey results on legal needs and access to justice in Niger provide further insights into the quality of access to justice in the country. According to it, only 56% of the citizens knew where to go when faced with legal problems, only 25% were able to access help and 31 % experienced hardship with their legal problems.

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<sup>22</sup> See, article 119 of the Niger Constitution.

<sup>23</sup> See for example, Niger report 2020 available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/niger/>. Accessed in July 2021. Accessed in July 2021.

## **2.4 Overview of the legal framework for access to justice pre-COVID 19 in Senegal**

### **2.4.1 Pre-COVID -19 legal framework for access to justice in Senegal**

The Senegalese legal framework for access to justice is fairly similar to that of Niger. Apart from references in the preamble to the Constitution “affirming” the country’s “adhesion” to several global international human rights instruments as well as the African Charter on Human and Peoples’ Rights, and an indication that this preamble is “an integral part” of the Constitution, there is no specific provision dealing with access to justice. In the absence of full domestication of these instruments, access to justice in Senegal depends entirely on ordinary legislation and any subsidiary legislation enacted under it.

The legal framework for dealing with emergency situations like COVID-19 is also weak. Article 69 of the Constitution provides that a “state of siege, as the state of urgency,” is to be decreed by the president of the Republic according to “modalities” to be determined by law. With no clear constitutional indication of the circumstances under which such declarations can be made and limitations on its use, these are powers that can be easily abused when regulated solely through ordinary legislation.<sup>24</sup>

### **2.4.2 Pre-COVID-19 access to justice levels in Senegal**

Senegal, like the other two countries, from the indicators examined, has experienced difficulties dealing with issues of access to justice. The scope for executive interference with the judiciary is the same as in the other two countries. Although the constitutions in these countries provide for judicial independence, this is completely compromised by the fact that the president of the Republic presides over the Higher Council of the Judiciary that deals with appointments, promotions and disciplinary matters. As a result, judges are said to regularly come under pressure from the government when dealing with corruption and other matters involving high level government officials.<sup>25</sup>

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<sup>24</sup> It must be noted that Senegal has a general legislation on state of emergency, which includes circumstances where the measure should be adopted. See Loi n° 69-29 du 29 avril 1969 relative à l'état d'urgence.

<sup>25</sup> See 2019 Country Report on Human Rights Practices: Senegal, Bureau of Democracy and Human Rights, and Labor, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/senegal/>. Accessed in July 2021.



Perhaps more serious are problems with the quality of justice that has impacted negatively on access to justice. Judges were often overwhelmed by caseloads and case backlogs, lack of adequate space and office equipment.<sup>26</sup> There have also been problems caused by lack of legal counsel (especially in regions outside of Dakar), judicial corruption and lengthy pre-trial detention that undermines the rights of defendants.

The performance of Senegal in the 2018 General Population Poll survey module on legal needs and access to justice for the three countries is surprisingly the poorest. Only 47% of its citizens knew where to go to when faced with legal problems, and 21% of them were able to access help whilst 28% experienced hardship with their legal problems.

It is against this background that the impact of the measures taken by the governments in the three countries to stop the spread of the virus and the way it affected access to justice was investigated.

### **3. Measures taken by the governments to combat COVID-19 and the impact on access to justice**

This section examines the measures taken by each of the three countries and the impact these have had on access to justice.

#### **3.1. Benin**

It is worth noting from the onset that Benin could be cited as an exception in respect of measures adopted to fight the COVID-19 pandemic. The approach taken in this regard might as well be understood as part of a new governance trend in the country. Upon the occurrence of the first cases in March 2020, the President gave a televised speech announcing the country's approach of "no total restriction". Government therefore did not implement any total lockdown and did not issue any emergency measure as opposed for instance to many other countries in the region. The only restriction included an initial two-month limited lockdown in some main

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<sup>26</sup>See, Freedom House, Freedom in the World 2021, report on Senegal 2021 available at <https://freedomhouse.org/country/senegal/freedom-world/2021>. Accessed in July 2021; and also 2019 Country Report on Human Rights Practices: Senegal, Bureau of Democracy and Human Rights, and Labor, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/senegal/>. Accessed in July 2021



towns in the southern part of the country including the economic capital, Cotonou.<sup>27</sup> Similarly, Parliament did not adopt any special law granting a derogation to security and defense forces, or to judicial officers. An appraisal of the impact of the pandemic in the Justice Sector is therefore reflective of the overall limited impact of the pandemic in the country as a whole.

As part of the regulatory measures aiming to combat the pandemic in the justice sector, the Minister of Justice issued three Orders dated 18 March 2020, 7 May 2020, and 30 June 2020 respectively. All three Orders were issued as part of the country's COVID-19 Plan of Action and was addressed to all judge presidents of first instance tribunals and courts of appeal. This included specialized courts such as the Cotonou Commercial Court, and the Court for Economic Crimes and Terrorism, as well as prosecutors and chief registrars of first instance tribunals. The Orders were made to implement a Cabinet decision of 17 March 2020.

The First Order of 18 March 2020 provided for several measures that were of a preventive nature and sought to reconcile the right to health and the necessity for an uninterrupted administration of justice.<sup>28</sup> It addressed judicial activities involving both criminal and civil proceedings.

With respect to criminal matters, due to considerations relating to public order and fair trial, the Government decided not to suspend criminal processes but to only implement restrictions. In matters being prosecuted, the following measures applied:<sup>29</sup>

- a) limit on the use of custody and/or detention measures to situations of extreme necessity;
- b) in collaboration with the departmental services of public health and the police, regular inspections of custody cells in order to assess conditions that may be harmful to health and to take the appropriate measures in order to remedy them were undertaken; and

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<sup>27</sup> Gouvernement du Bénin, 'Informations coronavirus' <https://www.gouv.bj/coronavirus/> (accessed 15 May 2021).

<sup>28</sup> *Idem.*

<sup>29</sup> Benin country report on COVID-19 and justice, 2021 (on file with authors).





- c) detentions were restricted to the most serious offenses against persons and property or to those from whom a surety measure is being implemented or could be considered.

With regard to matters under investigation:

- a) public prosecutors were instructed to request pre-trial detention only in situations where no alternative was possible under the law;
- b) public hearings were limited to matters related to bail and custody;
- c) exemptions were made concerning persons placed under judicial supervision; and
- d) in juvenile justice, priority was given to processing cases of minors in custody, with a view to limiting their detention.

Hearings were postponed in criminal proceedings involving persons on bail. In addition, restrictions were imposed on visits to detention facilities. Bail was granted to detainees on an exceptional basis. Thus, 411 prisoners serving sentences or on pre-trial detention were granted bail.

With respect to civil proceedings, the same Order provided that operations should continue with limited access to court rooms in urgent cases or certain important matters such as provisional measures, enforcement of judgments, matters of significant public economic interest and those involving protection of the child and family. Only these matters were heard, though with a limited number of persons allowed in court. For all other matters, judicial officers were directed to postpone pending processes by at least one month while keeping parties duly informed.

These measures were implemented in all courts and matters were postponed by several weeks in all ordinary matters. Court personnel worked on a rotational basis for at least four weeks countrywide. The main challenge though was one of effectively informing users of the justice system, given that many courts did not have virtual communication channels such as websites.



The Commercial Court of Cotonou was an exception as it could keep its users abreast of the status of their cases through its website.<sup>30</sup>

In order to give full effect to the measures implemented by Government, the Benin Bar Association issued an order suspending its members' participation in hearings before all courts across the country from 19 March 2020.<sup>31</sup> They were allowed to exceptionally attend hearings in cases involving bail and detention while abiding with all safety measures issued by the health authorities.

Following an assessment of the health situation across the country, Cabinet decided to order progressive resumption of economic and professional activities from 11 May 2020. In the Justice Sector, the resumption was implemented under the framework of the third ministerial Order of 7 May 2020.<sup>32</sup> The Order retained the directives and measures issued under the previous Order of March 2020. Chief judges and prosecutors were instructed to promptly organise criminal sessions, in particular for matters involving juvenile offenders. Prosecutorial authorities were also instructed, where the law did not provide otherwise, to expedite bail processes for persons charged and whose detention was no longer necessary for investigative purposes.

As a result of these changes, the Court of First Instance of Cotonou held a criminal session from 15 June to 13 July 2020 during which 21 cases involving the trial of 51 persons in pre-trial detention for various criminal offenses were disposed of. According to the Public Prosecutor, the session allowed the Tribunal to complete the trial of "all accused persons still on pre-trial detention and whose investigations had been concluded".<sup>33</sup> The Tribunal of Djougou, one of the major towns in the northern part of the country, the Public Prosecutor registered 13 cases for the criminal session, which were all tried and sentences handed down.<sup>34</sup>

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<sup>30</sup> See Tribunal de Commerce de Cotonou [www.tribunalcommercecotonou.bj](http://www.tribunalcommercecotonou.bj) (accessed 23 July 2021).

<sup>31</sup> Vincent Déguénon, 'Bénin – Coronavirus: les avocats suspendent leur participation aux audiences' Benin webtv <https://archives.beninwebtv.com/2020/03/benin-coronavirus-les-avocats-suspendent-leur-participation-aux-audiences/> (accessed 3 May 2021).

<sup>32</sup> See Circulaire n° 026/MJL/DC/SGM/DACS/DAPG/SA du 07 mai 2020 portant actualisation du plan d'action COVID 19/MJL.

<sup>33</sup> Cotonou.com, 'Session criminelle au tribunal de Cotonou : 21 dossiers à connaître' <http://news.acotonou.com/h/127208.html> (accessed 15 May 2021).

<sup>34</sup> See Agence Bénin Presse, 'Justice / 13 dossiers inscrits au rôle de la 1ère session criminelle du tribunal de Djougou' <https://www.agencebeninpresse.info/web/depeche/40/13-dossiers-inscrits-au-role-de-la-1ere-session-criminelle-du-tribunal-de-djougou> (accessed 15 May 2021).

As a result of the pandemic, commercial courts also faced considerable delays in disposing of cases dealing with the termination of contracts, rent default, debt recovery, and collective procedures for the discharge of liabilities.<sup>35</sup>

As a general measure, the 7 May 2020 Ministerial Order also included the following directives which aimed at a progressive resumption of hearings:

- a) compulsory wearing of masks for all staff and users of the justice system;
- b) compulsory washing of hands while accessing court premises and/or courtrooms;
- c) social distancing of at least one meter; and
- d) limiting the number of persons in a court room to 20.

Another measure that has helped to fight the pandemic while at the same time improving administration of justice is the dematerialization of policy implemented in the Judiciary. The launch of a platform for digitalization of procedures has allowed for the online filing of cases as well as other essential services such as electronic communication between lawyers and the court, electronic monitoring of the status of cases and online service of decisions. In line with this, an Order issued jointly by the ministers of Justice and Economy on the digitization of movable assets registry brought about a great deal of improvement in the revival of business activities.<sup>36</sup> The digitization of certain court processes and proceedings has allowed economic actors to directly register movable assets online.<sup>37</sup>

## 3.2 Niger

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<sup>35</sup> Benin country report on COVID-19 and justice, 2021 (on file with authors).

<sup>36</sup> Arrêté interministériel Année 2020 No. 20/MJL/MEF/DC/SGM/DACS/SA/020SGG20 portant modalité d'organisation et de fonctionnement du Répertoire Électronique des Sûretés Mobilières du Registre de Commerce et du Crédit Mobilier.

<sup>37</sup> Gouvernement de la République du Bénin, 'Amélioration du Climat des affaires : Le Répertoire Électronique des Sûretés Mobilières du Registre de Commerce et du Crédit Mobilier lancé' <https://www.gouv.bj/actualite/579/amelioration-climat-affaires-repertoire-electronique-suretes-mobilieres-registre-commerce-credit-mobilier-lance/> (accessed 18 May 2021).

In combating the pandemic, the Government of Niger adopted a Plan which revolved around directing all stakeholders of the Justice Sector to implement globally established measures such as hand washing, use of masks and social distancing. These were enforced at all court premises and in court rooms. The same applied to detention facilities where the measures were implemented for both staff and inmates with the support of some development partners. CSOs also conducted awareness activities to inform users of the justice system about the pandemic and encourage the continued access to court and filing of cases.

The Minister of Justice issued two Orders to tackle the pandemic in the justice system. An Order dated 20 March 2020 suspended all hearings until 25 March 2020.<sup>38</sup> Another Order dated 23 March 2021 regulated the minimum level of activities in courts.<sup>39</sup> A third Order issued on 7 May 2020 reinforced the first two Orders while calling upon all civil servants working in the justice system to effectively resume work and warning of sanctions in case of default.<sup>40</sup>

The first Order initially suspended all courts activities up to 25 March 2020 to allow time for re-scheduling of use of courts premises and court rooms.<sup>41</sup> The Order directed all senior judicial officers, that is, presidents of first instance and appeal courts, as well as chief prosecutors, to limit judicial activity in their jurisdictions both in terms of numbers of sessions, number of persons attending sessions, and logistical arrangements at the session venues. Measures directed at detention facilities included suspension of visits to persons in custody from 20 March 2020 until further notice, strict observance of security measures, and systematic and immediate notification of any suspected cases to the health authorities. The Order also called for the rearranging of cells at detention facilities to observe distancing standards issued by the World Health Organisation. Remand and detention processes were also reorganised in a manner that recourse to such measures would mainly be in cases of serious offences such as terrorism, economic and financial crime, and threats to state and public security.

The second Order, dated 23 March 2020, issued detailed directives to facilitate an effective implementation of the first Order. This second Order directed that presidents of courts would

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<sup>38</sup> Circulaire no 0006/MJ/GS/SG du 20 Mars 2020 relative à la suspension de toutes les audiences jusqu'au 25 Mars 2020.

<sup>39</sup> Note de service du 23 mars 2021 relative à la mise en place d'un service minimum au sein des Cours et Tribunaux.

<sup>40</sup> Order of 7 May 2020.

<sup>41</sup> Order of 20 March 2020, page 1.



work in rotation with other judicial officers, and the same would apply to secretaries on a weekly basis. Hearings were restricted to one to two per month, depending on the matters involved with a focus on criminal, economic, urgent measures, remand, and systematic postponement for all other matters. The rotations of judges allowed only for three judges per court for appeals courts. In lower courts, only one staff for registration of cases, and two for prosecution were allowed, although the chief prosecutors and their subordinates proceeded on a full-time basis for the full duration of the measures. The rotation also applied to court registries where only two staff per week were allowed, while investigative judges worked on a full-time basis and trial judges worked on the basis of two judges per week. The same measures applied to staff of all high courts.<sup>42</sup>

In the same vein, a presidential decree dated 30 March 2020, granted pardon to 1,500 inmates who had nine months and less of the sentences outstanding and persons older than 70 years.<sup>43</sup> The measures also extended to vulnerable persons namely women, children and persons suffering from severe or chronic illnesses.<sup>44</sup> However, it excluded persons serving sentences for offences related to terrorism, drug trafficking, embezzlement of public funds, state security, organised crimes and other particularly serious offences.<sup>45</sup>

It must be noted that the Order of 20 March 2020 allowed access to lawyers albeit under the strict observance of the security and health safety measures issued. The same directive applied to food and items brought to inmates from outside the detention centres.

The implementation of these measures did not come without some hiccups including work being unduly slowed down or halted altogether in many jurisdictions. The Order of 7 May was actually issued when it was noticed that the measures implemented had led to the non-observance of working hours and slowing down of the justice system. The latter Order therefore

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<sup>42</sup> Ministère de la justice du Niger, Note de service du 23 Mars 2020, relative au service minimum institué au sein des Cours et Tribunaux pendant la période de confinement [http://www.justice.gouv.ne/images/2020/PDF/Note de service du 23 Mars 2020.pdf](http://www.justice.gouv.ne/images/2020/PDF/Note_de_service_du_23_Mars_2020.pdf) (accessed 6 May 2021).

<sup>43</sup> Communiqué du Secrétariat général du Gouvernement du 30 mars 2020; Le Sahel, 'Lutte Contre Le Coronavirus : Le Président De La République Gracie 1540 Détenus Dont M. Hama Amadou' <https://www.lesahel.org/lutte-contre-le-coronavirus-le-president-de-la-republique-gracie-1540-detenus-dont-m-hama-amadou/> (accessed 5 May 2021); Le Point, 'Niger : quand le COVID-19 libère l'opposant Hama Amadou' [https://www.lepoint.fr/afrique/niger-quand-le-COVID-19-libere-l-opposant-hama-amadou-31-03-2020-2369518\\_3826.php](https://www.lepoint.fr/afrique/niger-quand-le-COVID-19-libere-l-opposant-hama-amadou-31-03-2020-2369518_3826.php) (accessed 5 May 2021).

<sup>44</sup> *Idem.*

<sup>45</sup> *Idem.*



directed all presidents of first instance and appeal courts to ensure that all staff within their jurisdictions resumed work on a full-time basis with effective from 11 May 2020, while duly observing all measures issued to fight the pandemic. The Order also lifted restrictions on visits to inmates by allowing full visits for spouses and close family members under observance of health safety guidelines.

The measures adopted in Niger did not include virtual operation of courts and digitization of judicial processes.

### **3.3 Senegal**

As a general and initial measure adopted to fight the COVID-19 pandemic, the Government of Senegal, on 23 March 2020, proclaimed a country level state of emergency regarding health. The measure authorized all public authorities to implement restrictive measures aimed at fighting the pandemic. The COVID-19 related state of emergency was adopted based on the 1969 General Statute on State of Emergency in Senegal.<sup>46</sup> Article 2 of the law provides that a state of emergency may be issued in circumstances where events occur that may lead to a public disaster. In implementation of the state of emergency, public authorities issued several orders some of which impacted upon access to justice and the functioning of the justice system. As a general measure, the Minister of Interior issued an Order prescribing the temporary restriction of movement for persons and goods, and closure of land borders. For instance, air borders were closed from 18 March 2020 to 15 July 2020. These measures generally restricted movements at a country level.

As part of these measures, the Ministry of Justice introduced the dematerialization of processes namely through the launching of a digitization platform mainly for commercial justice. This Tool allowed users of the justice system to access information virtually, follow-up on pending matters, as well as the outcome of processes and decisions rendered by courts. The platform also allowed lawyers and bailiffs to file cases and pleadings online and effectively follow-up on their matters.

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<sup>46</sup> Loi n° 69-029 du 29 avril 1969 relative à l'état d'urgence, à l'état de siège et à la gestion des catastrophes naturelles ou sanitaires Modifiée par la loi n° 2021-18 du 19 janvier 2021 modifiant la loi no 69-29 du 29 avril 1969 relative à l'état d'urgence et à l'état de siège.



Measures adopted to fight the pandemic also included extension of time limits for pending matters. Due to the overall limitation of movement across the country, users of the justice system were unable to abide by time prescription in proceedings. In response to this, Parliament enacted two laws providing for extension of time for prescribed deadlines,<sup>47</sup> and suspension of time for enforcement of certain judgments.<sup>48</sup> Thus, time limits were suspended in proceedings involving civil, commercial, administrative, revenue and custom matters from 16 March 2020 for the full duration of the State of Emergency, which was lifted on 20 June 2020. Similarly, processes and formalities whose prescription was sanctioned with nullity or foreclosure were allowed to be performed under the COVID-19 related extension of time.

The time extension measures also applied to orders issued by courts with an exception of urgent matters. These time extension measures to expire at the end of the State of Emergency.<sup>49</sup> Other processes that were subject to the time extension measures included the time for the commencement of action, formalities, declarations, registrations, notifications, and publications. The same rule applied to enforcement of judgments. Appeals and other procedures which should have been initiated were deemed to have been so initiated if this was done within a month after the end of the state of emergency.<sup>50</sup>

Measures adopted also covered persons in custody. A Presidential Pardon issued in April 2020 enabled 2000 prisoners serving short term sentences or near completion of their sentences to be released. The measure was expressly said to be aimed at drastically decongesting the prisons in order to curb the spread of the virus in detention and prison facilities.<sup>51</sup> During the same period, persons sentenced or being investigated were detained in isolation at specially devoted detention facilities to avoid contact with other inmates. Visits to persons in detention were also suspended.

The scheduling of normal court hearings was suspended for a short period of time and then resumed fully.

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<sup>47</sup> See Loi no 2020-17 du 26 mai 2020 relative à la prorogation des délais échus et à la suspension de l'exécution forcée des décisions de justice.

<sup>48</sup> See Loi no 2020-16 du 26 mai 2020 portant suspension des délais de prescription, de l'exécution des contraintes par corps et prorogation des délais de recours et autres formalités en matière pénale.

<sup>49</sup> See art 3 of the Law on extension of time.

<sup>50</sup> See art 3 of the Law on Suspension of time.

<sup>51</sup> République du Sénégal 'Plus de 2000 prisonniers graciés par le Chef de l'Etat en raison du corona virus' <http://www.big.gouv.sn/index.php/2020/03/27/plus-de-2000-prisonniers-gracies-par-le-chef-de-letat-en-raison-du-coronavirus/> (accessed 6 May 2020).



## 4. Challenges posed by measures taken to combat COVID-19 on access to justice

### 4.1 Benin

As earlier noted, an impact assessment of the pandemic in the case of Benin has to be understood in light of the fact that the country did not adopt any of the measures that inherently limit rights and freedoms. Challenges posed by the measures adopted to curb the pandemic therefore revolved around two main issues. These were the health safety of civil servants working in the justice system and the users of the system and management of backlog of cases that arose from postponement of non-urgent cases and new incoming cases. Due to the limited overall impact of the pandemic in the country, activities have resumed including in the justice system and court operations. As a consequence, lawyers and bailiffs have resumed their normal services. One challenge that must be noted is the difficulty to observe social distancing in court processes due to the state of the court infrastructures.<sup>52</sup>

In certain respects, the pandemic has led to the introduction of certain progressive measures that have eventually improved on the administration of justice, especially regarding commercial litigation. For example, the President and members of the Council of Private Investors have drawn attention to the systematic publication of court decisions online as one of those positive changes.<sup>53</sup>

Overall, it appears that jurisdictions that were able to resort to virtual and digitized operation overcame some of the main challenges posed by the pandemic, namely difficulties faced by users of the justice systems to access courts, related public offices, information on their cases; delays in getting justice; and difficulties faced by judicial officers and other supporting staff in processing the cases and administering justice in an effective manner. On the one hand, the pandemic has underscored the importance of technology in administration of justice and precipitated the massive use of such technology where it was previously absent. This has enabled the Judiciary to be well ahead of other branches of government. life.<sup>54</sup>

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<sup>52</sup> Benin country report on covid-19 and justice, 2021 (on file with authors).

<sup>53</sup> Banque Mondiale, 'Le Bénin passe à une justice 2.0' <https://www.banquemondiale.org/fr/news/feature/2020/04/21/commercial-justice-20-benin-upgrades-its-system> (accessed 16 May 2021).

<sup>54</sup> Benin country report on covid-19 and justice, 2021 (on file with authors).





## 4.2 Niger

The measures taken to fight the COVID-19 pandemic in Niger have had a significant impact on the functioning of the justice system in many ways. For example, in accordance with the Order of 20 March 2020, hearings involving civil matters were suspended. In criminal matters involving urgent or provisional procedures, hearings were held but limited to two times a week. Similarly, many hearings were delayed due to the implementation of social distancing rules. This seriously affected the access to justice right of fair trial, especially the right to for justice administered within a reasonable time. A significant decrease was observed in the number of cases enrolled.<sup>55</sup> More specifically, the suspension of hearings led to a decrease in the number of applications in civil matters and a slight increase of reported offences. The increment was due to the increase in the number of offences associated with the restrictions and other lockdown measures that were imposed. The backlog of cases increased.<sup>56</sup>

The pandemic and measures issued to tackle it also impacted on the time within which judicial processes were completed. First of all, the measures impacted on time especially the time to commence proceedings, file pleadings, appeal, intervene, review provisional measures and enforce judgments especially in respect of real estates. These also affected proceedings and processes in social and commercial matters. Statutes provide specific time frames for each of these processes which could not be observed due the anti-COVID measures implemented. The impact included limited operation of courts that led to a slowing down of processes, including trials, which caused unduly prolonged detentions and breached fair trial rights. The limited functioning of courts also caused persons in custody not to be afforded the right to be presented before a judge within the prescribed times.

The closure of courts and postponing of matters also impacted on persons involved in urgent proceedings such as women and children who were victims of domestic violence as well as juvenile inmates and even lawyers and sheriffs.

Overall, the measures were implemented in a more or less strict manner across the justice system. An additional impact was the loss of income among legal practitioners due to the

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<sup>55</sup> Ministère de la justice du Niger, Circulaire N° 0008/MJ/GS/SG du 07 mai 2020, relative à la reprise du travail, dès le Lundi 11 Mai 2020, dans toutes les juridictions du Ministère de la justice <http://www.justice.gouv.ne/index.php/les-actualites-1/247-circulaire-n-0008-mj-gs-sg-du-07-mai-2020-relative-a-la-reprise-du-travail-des-le-lundi-11-mai-dans-toutes-les-juridictions-du-ministere-de-la-justice> (accessed 5 May 2021).

<sup>56</sup> Niger country report on COVID-19 and justice, 2021 (on file with authors).



significant decrease in processing of cases. At the peak of the pandemic, particularly from April to June 2020, the measures implemented led to the suspension of civil proceedings and limited number of hearings in criminal matters. Court hearings were suspended and pending matters were postponed, including those of an urgent nature. Consideration of civil matters was suspended for at least three months after the first cases were identified.<sup>57</sup> This actually led persons found in breach of COVID-19 related curfew regulations to be detained as they could not be taken to court within the statutory time due to the pandemic restrictions.

The measures however allowed for some matters deemed to be “urgent” to be heard. This arguably breached the principle of equality of all before the law. While the use of pardons improved the situation in detention facilities, this did not necessarily solve the issue of overcrowding at detention centres, which exposed detainees to infection by the virus.

The pandemic aggravated the challenges of access to justice for the most vulnerable, particularly women and children. Prior to the pandemic, the justice system did not consider gender-based violence cases as urgent matters.<sup>58</sup> Thus, several cases of rape, sexual abuse and domestic violence could not be heard due to the pandemic.<sup>59</sup>

Judicial personnel were also significantly affected by the anti-COVID-19 measures. The impact was most felt by judicial officials involved in investigations, criminal processes as well as economic and financial courts who were required to provide a certain minimum level of service at the peak of the pandemic. This was to be dictated by the importance or urgency of the matters that they had to deal with. For example, police officers and investigative judges were at risks of infection given that they still had to conduct interrogations, perform arrests and searches for which physical contact was unavoidable or restrictive measures did not apply. The very modest digitization of the justice system in the country has not helped. Further details on digitization in Niger are provided later in the study under the section dealing with attempts to overcome the challenges brought or compounded by the pandemic.

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<sup>57</sup> Note de service du 23 mars 2021 relative à la mise en place d’un service minimum au sein des Cours et Tribunaux.

<sup>58</sup> Niger country report on covid-19 and justice (on file with authors).

<sup>59</sup> Idem.



Generally, it must be said that the pandemic has had a serious impact on the operation of the judiciary and administration of justice in Niger. One notable evidence to this is the decision dated 15 June 2020 in which the Constitutional Court found that the pandemic constitutes a case of *force majeure*. The Court argued so in finding that circumstances caused by the pandemic justified the suspension of enrolment of Nigeriens of the diaspora on the voters Register.<sup>60</sup> It is a major rule of civil law that the *force majeure* applies in a way that exempts a party from responsibility where the event involved was external that is beyond the control of the party seeking responsibility exemption, unforeseen, and irretrievable.

### 4.3 Senegal

Due to reforms that have been implemented prior to the pandemic, it appears that access to and administration of justice have significantly improved mainly through digitization of processes. One of the best illustrative cases is that of the Commercial Court of Dakar which has a fully operational online system for case management from filing suits to accessing judgments.<sup>61</sup>

Having said that, one notable development due to the implementation of measures aimed at fighting the pandemic is litigation of these very measures in courts. Administrative measures issued to fight the pandemic led to contentious cases which courts had to adjudicate. Restrictions on freedoms led to challenges of the measures before administrative courts among others. Some cases of interest are worth highlighting albeit raising controversies.

For instance, it was during in the implementation of anti-COVID-19 protective measures that the former Chadian president, Hissène Habré, was granted a 60-day special release from his life imprisonment of 27 April 2017 by the African Chambers for various international crimes.<sup>62</sup> His lawyer argued in the request that the pandemic constituted a serious risk for his client who is particularly vulnerable due to his old age. In its decision granting the release, the Judge in charge of enforcement of custodial sentence within the *Tribunal de Grande Instance* of Dakar took judicial notice of the fact that custody presents a greater risk of infection to older inmates

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<sup>60</sup> Arrêt no 04/CC/MC du 15 juin 2020.

<sup>61</sup> See Tribunal de Commerce Hors Classe de Dakar, ‘Comment saisir le Président par requête’ <http://tribunaldecommerce.sn/comment-saisir-le-president-par-requete/> (accessed 16 May 2021)

<sup>62</sup> Alexandra Victoria Frenet, Amicus Info (12 July 2020) ‘Hissène Habré’s release decision due to Covid-19 paired with the failure to pay reparations cause anger among his victims’ <https://info.amicus-curiae.net/afrique/hissene-habres-release-decision-due-to-covid-19-paired-with-the-failure-to-pay-reparations-cause-anger-among-his-victims/> (accessed 16 May 2021).

due to the pandemic and found that Habré, who was 78 years old, and thus the measure was legitimate.<sup>63</sup>

One other such matter arose when a civil society organisation filed a petition before the Administrative Chamber of the Supreme Court seeking an order that Government should ensure that all citizens undergo massive testing to curb the spread of the COVID-19 virus. The Court dismissed the petition on the ground that the effectiveness of the measure sought was not backed with scientific evidence and Government did not necessarily have the financial, human and material means to undertake such exercise.<sup>64</sup>

Another such action, initiated by a group of Senegalese in the diaspora, before the same Court, challenged the Government's decision, in the early days of the state of emergency, that prohibited the repatriation to the country of the remains of persons who had succumbed to the virus abroad.<sup>65</sup> Although the court dismissed the case, the Government subsequently revoked the prohibition. The Court reached this decision mainly on the ground that the restrictions were proportional to the aim to be achieved which was to guarantee public health and safety.

#### **4.4 Some of the attempts to overcome the challenges**

Digitization is generally not unknown to the justice systems in Benin, Niger and Senegal. All three countries have implemented electronic judicial working methods although to different levels.

As noted earlier, Benin has engaged in digitization to a relatively limited extent using the Commercial Court of Cotonou as the test tribunal. It appears that only this Tribunal can be accessed online for filing a case and following up on pending matters, and this being only applicable to first instance processes at this point in time and therefore not to matters pending appeal.<sup>66</sup> Digitization has also been implemented to a fairly limited extent in Tribunal of First

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<sup>63</sup> See Tribunal de Grande Instance Hors Classe de Dakar, Cabinet du Juge de l'application des peines, Ordonnance du 6 avril 2020 accordant une permission de sortir au détenu Hissène Habré (on file with authors).

<sup>64</sup> See *Nicolas Mendy et 10 autres c. Etat du Sénégal*, Ordonnance No 05 du 7 mai 2020, Affaire no J/188/RG/20 du 5 mai 2020.

<sup>65</sup> *Ibid.*

<sup>66</sup> See *Matin Libre*, 'Tribunal de Commerce de Cotonou: La digitalisation des actes actée' <https://matinlibre.com/2021/03/11/tribunal-de-commerce-de-cotonou-la-digitalisation-des-actes-actee/> (accessed 16 May 2021).



Instance of Allada, another town in the Southern part of the country.<sup>67</sup> This Tribunal is a general jurisdiction lower court, which is within the local competence of the Court of Appeal of Cotonou. It implements online services including filing of cases, and follow-up of processes in pending cases. This test is part of a larger plan designed by Government which the Minister of Justice stated is towards a full digitization of public services including all courts and tribunals across the country.<sup>68</sup> As a general reform in the justice sector, one may also file a request and obtain a copy of criminal records online across the country.<sup>69</sup>

As part of the general reform aimed at introducing the use of technology in courts processes, the Minister of Justice had in 2020 issued an Order on the use of electronic communication means in the Judiciary.<sup>70</sup> The Order provides for transmission by such means of information between personnel of the judiciary, between the parties as well as between them and the courts, in the course judicial proceedings. In the latter instance, information transmitted may include case files, images, audio and video information. The same Order provides for practical designing and setting up of websites for information, public relation desks in courts; as well as online platforms for digitization of processes.<sup>71</sup> It is implementation of this Order that Government has operationalised digitization of processes in the Commercial Court of Cotonou as a pilot tribunal and the same Regulation is being applied to extent the use of technology in courts in the rest of the country.

Digitization seems to also just be kicking off in Niger where processes are progressively being computerized in the major lower and upper courts as well illustrated by the *Tribunal de Grande Instance* of Niamey in the capital city. However, the judicial personnel including judges and registrars are not yet involved in the operationalization of the online case management systems. The lack of digitalization in the other parts of the country did not leave any alternative but to

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<sup>67</sup> Ministère de la justice, Tribunal de première instance de première classe d'Allada, <https://justiceetlegislation.bj/organisation-judiciaire/cour-appel-cotonou/tribunal-allada.html> (accessed 17 May 2021).

<sup>68</sup> *Idem*.

<sup>69</sup> See Ministère de la justice et de la législation, 'Dématérialisation de l'administration publique béninoise Les e-services casier judiciaire et passeport désormais des réalités' <https://justiceetlegislation.bj/accueil/actualites-mjl/306-dematerialisation-de-l-administration-publique-beninoise-les-e-services-casier-judiciaire-et-passeport-desormais-des-realites.html> (accessed 16 May 2021).

<sup>70</sup> Arrêté 2020 No 66/MJL/DC/SGM/DACS/SA/077SGG20 du 2 décembre 2020 fixant le cadre de l'emploi des moyens de communication électronique en justice.

<sup>71</sup> *Ibid*, art 1.



proceed with manual processes and thus physical contact which certainly provides a for a risk for the spread of the virus in those areas.<sup>72</sup>

Only some stakeholders of the justice sector were consulted in the making and implementation of the measures issued to fight the pandemic. In the case of Benin, some senior judicial officers were associated and participated in the process. The same applies to lawyers whose Bar Association actually issued a communiqué supporting the Orders issued by the Minister of Justice and calling upon all barristers to collaborate in the implementation process

The case appears to be a bit different in Niger where consultation was not fully done. The measures were said to have been adopted in a unilateral manner by the Ministry of Justice. Regulatory measures such as suspension of hearings were actually challenged by many lawyers who did not understand the rationale of the measures. For instance, the suspension of hearings was perceived as an interference of the Executive in the operation and functioning of the Judiciary. Similarly, the categorisation of some matters as urgent in comparison to other matters left many stakeholders sceptical of the very approach taken by Government to the concept of urgency when it comes to judicial matters and administration of justice. One of the most contentious issues was the arbitrary categorisation of some issues as urgent.<sup>73</sup>

## **5. Conclusion and Recommendations**

Across all three countries and based on the elaborate interviews that were conducted and research carried out on the general issue of access to justice, it has been noted that the problems that were encountered were very similar although their degree varied from country to country. On the whole, it can be said that before the pandemic, judges and courts in all the three countries were already overwhelmed by increased case numbers, backlog of cases and lengthy waiting period. This was made worse by the pandemic. The poorly maintained and antiquated court systems powered by legacy technology struggled to cope with a new world where social distancing, remote arrangements and the electronic exchange of documents had become imperative. There was no uniformity because courts in main towns were able to adjust slowly, whereas those in smaller towns and remote areas were simply shut down or struggled to cope

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<sup>72</sup> Niger country report on COVID-19 and justice, 2021 (on file with authors).

<sup>73</sup> *Idem*.

with the restrictions that were imposed. As a result, there was no equitable access. The issue of unevenness exacerbated “digital divide” between urban and rural areas and amongst older and younger generation. Most of the vulnerable population, especially those living in rural areas had no access to internet or lacked the means or illiteracy were significant factors that inhibited their ability to access justice.

The pandemic will not disappear overnight, or even if it does, there are likely to be more pandemics in the future. Therefore, how can we ensure that the mistakes that were made are corrected and the different countries can better prepare themselves for future pandemics? Based on our investigations, we are able to make a number of recommendations to the different institutions or bodies whose intervention is critical *viz*, the Executive, who are usually in the driving seat supported by the Legislature and Judiciary and CSOs and other justice sector stakeholders whose supporting and complementary role is of critical importance.

## **5.1 Conclusion**

Reports on the state of justice and the judiciary in all three countries point to the fact that before the pandemic, these countries were already grappling with how to handle heavy case backlog, lack of adequate space and office equipment and perhaps more seriously, lack of government commitment to judicial independence. Unless these governments countries are fully committed to respecting the independence of the judiciary and providing the courts with the human resources and the infrastructure they need, the problems of access to justice will hardly be solved. This is particularly so because the pandemic has worsened the problem with case backlog and the inordinate delays that this entails. Building on some of the ICT gains achieved during the pandemic, remote court hearings may speed the progressive return to some form of normality. However, the governments must be ready to commit the resources needed.

The pandemic has provided an opportunity to review the judicial systems in these countries, as well as in Africa as a whole to see how new processes and procedures can be developed to modernize the inherited justice system that has become dysfunctional in most countries. For example, is it not time to consider other forms of community-based dispute resolution systems borrowing ideas from the existing formal and informal legal system? The impact on access to justice of this particular pandemic was not as serious in these three countries as it has been on other countries in Africa, the worst case of this being South Africa. The fact that these three



countries were able to cope now does not mean they will always do so unless the lessons learnt are seriously studied and better plans prepared for future pandemics.

## **5.2 Recommendations**

### **5.2.1 Recommendations to the Executive**

Globally, all governments were caught unaware and their existing emergency measures had not anticipated a crisis of this gravity. As a result, it was inevitable that the measures taken fell short of what was needed. In the light of the shortcomings of the governments in these three countries, the following measures are recommended:

- i) The governments must now accept that the diverse fallouts of any crisis, particularly one of unprecedented severity such as the COVID-19, will hit many vulnerable groups such as children, women, older persons, persons with disabilities, displaced persons, migrants, asylum seekers, victims of gender-based violence, and people living at or below the poverty line at greater risk. These groups will be hit harder than anyone else in society. It is therefore imperative for special legislation setting up specific institutions in time of crisis to ensure that the plight of these groups is not exacerbated. More specifically, this must include special measures to ensure access to legal services and legal information to address their needs.
- ii) The governments must ensure that critical justice sector actors, such as judges, police officials, legal aid providers (like pro bono lawyers, community paralegals, CSOs providing legal aid and other human rights defenders) are classified as essential workers during pandemics and not disrupt or hinder their work. More specifically, governments should:
  - a) ensure continuous access to courts, justice and effective remedies as a priority when dealing with pandemics;
  - b) ensure continuous access to legal aid especially to the vulnerable;
  - c) ensure that independent internal and external oversight and accountability mechanisms (eg disciplinary bodies within the police, human rights commissions and the courts are functioning properly).





- iii) In responding to crisis, the governments should adopt an inclusive process of consultation with all key actors to develop response plans. The key actors include the judiciary, the prosecution, law enforcement and defense lawyers, bar associations, CSOs and all other relevant stakeholders. This was not done or not done in an organized and inclusive manner to ensure their continuous support and collaboration in implementing the measures that were adopted.
  
- iv) Given the perennial problem of understaffed courts which cannot cope with the backlog of cases, it is time for governments to seriously promote the informal system (customary courts). This is in addition to encouraging alternative dispute resolution (ADR) processes and finally take serious steps to invest in the emerging online dispute resolution (ODR) system and the virtual court. Many illiterate people are intimidated by the formal legal systems and engage only with the informal systems with which they are familiar. Similarly, geographical proximity to rural-based informal systems deflects attention away from urban-based formal systems, which are seen as expensive, remote, out of touch and rigid. This pandemic and its negative impact on access to justice provides a golden opportunity for governments to institute a review process to determine how the formal and informal legal systems can be made to operate more effectively. That is in a manner that they can complement each other and increase access to justice. This must go hand in hand with the expensive but progressive processes of digitalisation of courts and equipping them with the necessary ITC equipment needed to operate in today's changing court environment.
  
- v) Poverty, especially during pandemics affects people's ability to access justice by creating barriers to legal representation, particularly for the indigent and women. There is need for a system of legal aid to be introduced in these countries. It is crucial that such institutions have access to adequate levels of funding and efficient human resources and have a good geographical presence. Their role should be reinforced by paralegals who can offer significant opportunity to access remote and rural localities where the poor are severely limited in their access to justice.



### **5.2.2 Recommendations to the legislature**

The evidence from our investigations suggests that the parliaments in the three countries were operating as usual. Besides the special health safety guidelines that applied to all sectors, there were no restrictions on their sessions.<sup>74</sup> Nevertheless, in an era of executive aggrandizement, democratic recession and abusive populist constitutionalism that has seen parliaments in most countries being increasingly marginalized, it is doubtful if this could have been any different. This is because in the extraordinary circumstances created by the pandemic enhanced executive powers which would have called for more intense parliamentary oversight. In considering ways in which there could be a more effective parliamentary role when faced with such emergencies in the future, it is recommended that:

- i) Parliament must strive to assert and exercise its powers of oversight and scrutiny more rigorously to ensure not only that the other branches, especially the executive, do not abuse their powers or use periods of crisis to undermine democratic accountability, transparency, legitimacy and respect for the rule of law.
- ii) Parliaments must now explore and prepare for the possibilities of holding remote sessions in the future. As a result, this will require not only investment in acquiring ICTs but also the training of parliamentarians in the use of such equipment.

### **5.2.3 Recommendations to the judiciary**

Much as the courts in the three countries normally operate, like courts in many African countries, under challenging circumstances, there are several things that the judiciary can do to address some of the numerous challenges to access to justice. These include the following:

- i) The need for a recognition that courts are no longer just a place but a service. Hence, judges and other judicial officers must be ready to adjust to the emerging new operating environment where physical attendance in court may in pandemics become the exception rather than the rule.

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<sup>74</sup> Some parliaments, such as that of Benin, actually postponed their recess in order to deal with emergency issues that arose from the occurrence of the pandemic and measures deployed by executives to contain it. Senegal experienced a different situation where several Members of Parliament contracted COVID-19 but did not lead to suspension of sessions which proceeded although the number of MPs attending sessions was limited.



- ii) The judiciary must take the necessary measures to equip itself to provide ADR and ODR services. This will require training and regular refresher courses on the use of ITC and other digital resources. This training can now be organized on a more regular basis remotely.
- iii) Some of the courts in some of the countries have gone digital. The judiciary should now make it an option to allow petitioners to submit applications and other court documents via email and other online options for the exchange of documents, and remote trial through video conferencing for judicial hearings. This must be done creatively with special consideration be paid to specific barriers which may prevent full inclusion and participation by all parties, such as unequal access to the internet, the high cost of data and other challenges faced by under- resourced litigants.
- iv) The research shows that many of the measures introduced by the judiciary in the three countries were done without adequate consultation of important stakeholders in the justice sector, especially the local Bar. As a result, the prioritization of “essential”, “urgent” or “high priority” cases with a clearly defined understanding of these terms gave rise to judicial arbitrariness. It is therefore imperative that judicial directives to deal with access to justice and other issues dealing with the administration of justice must be done after consultation with all justice sector stakeholders.
- v) The judiciary should in its processes and procedures pay particular attention to crimes against vulnerable groups, such as gender-based violence which increase in frequency and severity during such crisis.
- vi) Finally, the judiciary must resolutely play its role as the bulwark of constitutionalism and ensure, without fear, favour or prejudice, respect for the principle of legality, the rule of law and fundamental rights. This is important in spite of the limited scope for judicial independence in all three countries.



#### **5.2.4 Recommendations to CSOs and other justice sector stakeholders**

There was not sufficient evidence to show that CSOs and other justice sector stakeholders played a particularly active and constructive role in alleviating the challenges to justice that arose during the pandemic in these three countries. Yet, these organisations can play a crucial role in not only monitoring government but also lobbying it and the international community to provide better services and limit the costs of private legal services. In line with the recommendation above that they should be considered as essential service providers, it is recommended that these organisations should, *inter alia*:

- i) Be more proactive in creating greater awareness of the different and less expensive forums that grant access to justice for different legal matters eg Human Rights bodies, Legal Aid bodies
- ii) Be more proactive in monitoring government respect for the rule of law, to ensure that the special measures put in place are not enforced in a discriminatory manner and that there is no disproportionate or illegal use of forces.
- iii) Use strategic litigation to address any abuses of power by the state and government services such as the military and the police.

#### **5.2.5 Recommendations to development partners and regional stakeholders**

Development partners and regional stakeholders play an important role in domestic governance in Africa. Besides, issues pertaining to the COVID-19 pandemic have rapidly gained global relevance so have become approaches to deal with the pandemic. It therefore becomes pertinent to make recommendations to partners and regional stakeholders if the recommendations directed at government and civil society stakeholders are to find the necessary support for an effective implementation. Is it accordingly recommended that the concerned stakeholders should, *inter alia*:

- i) Develop programmes aimed at supporting policy making, legislation, and capacity building both within government and non-governmental institutions;
- ii) Support programmes aimed at strengthening and improving existing efforts to digitalize essential services of the justice systems of the countries concerned,



with the ultimate goal of ensuring an efficient access to justice and administration of justice; a focus should be placed on extending digitization to the entire justice systems especially in areas where access to justice both physical and economic was already an issue before the pandemic;

- iii) Design or strengthen norms and programmes aimed at regionalizing response to pandemics such as the COVID-19 by using frameworks of regional economic communities and other regional intergovernmental organization such as the African Union, the Economic Community of West African States, the East African Community and the Southern African Development Community;
- iv) Make a purposive use of regional institutions including law-makers and judicial bodies to provide governments with the necessary legal advice but also supervise implementation of justice and health related rights and freedoms in a manner that is in abidance with both national constitutions and international norms whether global or regional.





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