



Remote Court Proceedings in Nigeria: Justice Online or Justice on the Line

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PROFESSIONAL ARTICLE



ABSTRACT

Remote court proceeding (RCP) is in its developing phase in Nigeria and whilst RCP is a laudable initiative, it must align with the tenets and principles of law that holds firm at traditional physical court hearings. The important goal being to achieve justice at all time. In that wise, RCP should not be a weapon that sacrifices justice for speed but that which achieves justice speedily. This paper focuses on the adoption of RCP in Nigeria, the areas in which the RCP rules may be at cross purposes with the existing traditional court room practices, conducts a risk benefit analysis of the innovation and identifies areas of improvement. A number of challenges were found to be associated with RCP particularly the admissibility of public documents and the existence of a digital divide. The paper observed the need for training and infrastructural support and recommended same amongst other recommendations.

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From the rise in the use of Artificial Intelligence in court rooms to the global trend of Remote Court Proceedings (RCP), technology is gradually permeating the legal industry. More pressing amongst such innovation has been the introduction of RCP which has been adopted by a number of jurisdictions that are migrating court proceedings online.¹ Since there is increasing consensus that work from home practices have come to stay,² there is the expectation that changes in society will require changes in justice practices including the introduction of technology to court proceedings. This naturally breeds an expectation of court systems dematerialising like other activities due to the fast pace of technology as predicted by Widdison.³ Sourdin, Li and McNamara detailed innovations introduced by courts in different jurisdictions and confirmed the use of RCP in varying degrees in the United States, Asia, Oceania, Australia, Africa, North America and Europe.⁴ From the comparative approach adopted by Sourdin et al, there appears to be a gap in the level of adoption of RCP across jurisdictions. For instance, while some courts restrict RCP to urgent and non – contentious matters,⁵ others accommodate all types of matters including criminal matters.⁶ Whilst the adoption of RCP has been a welcomed development to varying extents across jurisdictions, the Nigerian experience seems to be that of a crawling snail owing to number of challenges, such as infrastructural deficit, poor funding and regulation.⁷ Indeed, various reasons were also given amongst commonwealth countries such as Canada, Australia and Kenya to explain the slow adoption of RCP in their various jurisdictions including the need to preserve the adversarial system, the cost of technology, lack of internet access, the likely impact on judges as they assess witnesses and their evidence, the need to preserve the posture and clarity of roles of the various parties to a court.⁸ So far, it is noted that despite the identified challenges, some jurisdictions including Australia,

1 Tania Sourdin, Bin Li & Donna Marie Mc Namara 'Court Innovations and Access to Justice in Times of Crisis' 9 *Health Policy and Technology* 2020, pp. 447–453.

2 See <<https://www.bloomberg.com/news/articles/2021-12-18/the-five-day-office-week-isn-t-coming-back-wfh-is-here-to-stay>> [accessed 20 May 2022].

3 Robin Widdison in *Electronic Law Practice: An exercise in Legal Futurology* 60(2) *Modern Law Review* 1997, pp. 143 predicted three trends in the future of law practice to include dematerialization, omnipresence and malleability.

4 Ibid.

5 See section 7, National Industrial Court of Nigeria (NICN) Practice Direction and Guidelines for Court Sitting 2020.

6 See section 57, Singapore State Court, Practice Direction 2021 <https://www.judiciary.gov.sg/docs/default-source/new-roc/state-courts-practice-directions-20215026094db6e245deb484a00713e42d69.pdf?sfvrsn=46c44cfa_2> [accessed 20 May 2022].

7 See <<https://guardian.ng/saturday-magazine/cover/how-infrastructure-deficit-regulation-may-impede-effective-remote-court-proceedings/>> [accessed 20 May 2022]. Premium Times for instance reported that whilst some judges of the Federal High Court were delivering judgments virtually in Lagos, Abuja, Port Harcourt and Kano, lack of funding for infrastructure has limited the other jurisdictions of the court. See <<https://www.premiumtimesng.com/news/top-news/462512-exclusive-strike-why-full-virtual-hearing-is-difficult-for-federal-high-court-official.html>> [accessed 20 May 2022].

8 Meredith Rossner, David Tait & Martha McCurdy, Justice reimaged: challenges and opportunities with implementing virtual courts, 33(1) *Current Issues in Criminal Justice* 2021, pp. 94–110, Kate Puddister & Tamara Small, Trial by Zoom? The Response to COVID-19 by Canada's Courts *Canadian Journal of Political Science* 2020 1–5, Anne Wallace and Kathy Laster, Courts in Victoria, Australia, During COVID: Will Digital Innovation Stick? 12(2) *International Journal for Court Administration* 2021, pp. 9, See also <<https://www.cliffedekkerhofmeyr.com/en/news/publications/2021/Dispute/dispute-resolution-alert-19-october-the-future-of-litigation-in-kenya-virtual-or-hybrid-.html>> [accessed 20 May 2022].

and Singapore continue to accept the promises of RCP and are looking to improve upon and make its adoption a permanent feature in their adversarial system.⁹

Although technological innovations are necessary weapons for justice improvement,¹⁰ the question of whether the remote court can measure up to the feats of the traditional court in terms of justice delivery is important, taking a cue from previous researches by Frank Walsh and Edward Walsh,¹¹ Turner¹² and the Cook County Bail study.¹³ While the challenges of RCP have led to resistance and stiff opposition to its adoption in countries such as Italy¹⁴ and Nigeria,¹⁵ a risk benefit comparison is nonetheless essential to frame the provisions of the law for the unreserved support for RCP in Nigeria. This paper discusses the adoption of remote court proceedings in Nigeria in comparison with the existing physical court hearing, the immediate responses thereto, the benefits, challenges and the required steps or actions necessary to improve its adoption in Nigeria.

2 ADOPTION OF REMOTE COURT PROCEEDINGS IN NIGERIA

The requirements of the entire gamut of law have been developed over the years as is the practice in common law, and have been translated into the judicial process across traditional physical courts in Nigeria. Providing leadership, the remote court proceeding was recommended by the then Chief Justice of Nigeria by way of circular NJC/CIR/HOC/II/656 in April 2020 to mitigate the suspension of courts activities during Covid-19 pandemic.¹⁶ Following the recommendation, Heads of Courts issued Practice Directions for remote court sitting pursuant to powers granted by Constitution.¹⁷

9 Anne Wallace and Kathy Laster, Courts in Victoria, Australia, During COVID: Will Digital Innovation Stick? 12(2) *International Journal for Court Administration*, 2021, pp. 9, See also <<https://lawtech.asia/legal-tech-ing-our-way-to-justice/>> [accessed 20 May 2022].

10 See <<https://publications.iadb.org/publications/english/document/Digital-Technologies-for-Better-Justice-A-Toolkit-for-Action.pdf>> [accessed 20 May 2022].

11 Frank Walsh & Edward Walsh, Effective Processing or Assembly line Justice? The use of Teleconferencing in Asylum Removal Hearing 22 *Georgetown Immigration Law Journal* 2008, pp. 259.

12 Jenia Turner, 'Remote Criminal Justice' 53 *Texas Technology Law Review* 2021, pp. 198.

13 Taylor Benninger, Courtney Colwell, Debbie Mukamal & Leah Plachinski, 'Virtual Justice? A National Study Analyzing the Transition to Remote Criminal Court' *Stanford Criminal Justice Center* 2021, pp.5-300 <<https://www-cdn.law.stanford.edu/wp-content/uploads/2021/08/Virtual-Justice-Final-Aug-2021.pdf>> [accessed 20 May 2022].

14 See <<https://www.ibanet.org/article/DE193DF8-776C-451C-B48E-4A56C4A32761>> [accessed 20 May 2022].

15 See <<https://www.thisdaylive.com/index.php/2020/05/17/judges-oppose-virtual-court-sitting-say-its-unconstitutional/>, <https://www.ripplesnigeria.com/bill-for-virtual-court-hearings-fails-at-senate/>> [accessed 20 May 2022].

16 See National Judicial Council Covid – 19 Policy Report: Guidelines For Court Sitting and Related Matters in the Covid-119 Period, National Judicial Council, 2020, Circular No. NJC/CIR/HOC/II/660 <<https://njc.gov.ng/30/news-details>> [accessed 24 April 2022].

17 See Sections 236, 248, 254, 259, 264, 269, 274, 279 and 284 of the Constitution of the Federal Republic of Nigeria 1999, Ogun State Practice Direction No. 2 of 2020 <<https://r6a8n4n6.stackpathcdn.com/wp-content/uploads/2020/05/Ogun-state-Practice-Directions-2.pdf>> [accessed 20 May 2022], Lagos State Practice Direction for Remote Hearing 2020, National Industrial Court Practice Direction: Guideline for Sitting During Covid 19 Pandemic 2020 <<https://nicnadr.gov.ng/practice/direction.html>> [accessed 20 May 2020], High Court of Rivers State Practice Direction No. 2 of 2020 <https://www.barristerng.com/wp-content/uploads/2020/05/Rivers-HC-PD-No.2-2020.pdf?_ga=2.119260938.2045808144.1653038293-185291449.1649673350> [accessed 20 May 2022].

The Practice Directions varied fairly in the level of details covered but specific attention would be paid to Remote court Practice Direction of Lagos State, Ogun State, Rivers State and Abuja.¹⁸ For the courts whose Practice Directions also gave specific guidance on the court hearing, some of the suggested practices were at variance with court practices under the traditional court system.

2.1 REMOTE COURT PRACTICES AT VARIANCE WITH TRADITIONAL COURT PRACTICES

(a) Filing of Court Processes: In the traditional court setting, filing of cases is done physically with the court processes filed physically at the court registry where a manual assessment of fees is made. The Practice Directions issued by the judiciary of Lagos, Ogun, and Abuja in respect of RCP permit electronic filing of cases and payment of assessment fees as this may be done by email, WhatsApp or Dropbox.¹⁹ This is also the trend in Australia,²⁰ Singapore,²¹ United Kingdom,²² Kenya²³ and the Economic Community of West African States (ECOWAS) Community Court of Justice where filing is permissible either by way of email, e-lodgment or fax.²⁴ The proposed means of electronic filing i.e. via email, WhatsApp or Dropbox leverages available free media thus will likely be inexpensive to implement. However, they take away from the level of standardization that is required for court operations. This proposed model of e-filing clearly falls short of the developing practice in other jurisdictions such as the United States,²⁵ Singapore,²⁶ and Kenya²⁷ where the courts have developed a dedicated portal through which parties can file processes in addition to the option of filing by email. This appears to be the approach of River state, Nigeria which as at 2019 had developed its own designated RivCOMis platform through which e-filing is done.²⁸ The adoption of the e-filing portal can also serve to remove the areas of human interference in the process including the assessment and confirmation of filing fees. Indeed, countries such as Australia report benefits from the adoption of the filing system to include standardization

18 Abuja is the Federal Capital Territory, hence, the Practice Direction of the National Industrial Court (NIC) Abuja, Nigeria, a federal court with expertise in labour relations and that of the Federal High Court is used in this paper.

19 See Section 4, of the NICN Practice Direction and Guidelines for Court Sitting 2020, Section 6–10, of the Practice Direction for Remote Hearing of Cases in the Lagos State Judiciary 2020, Section 4 Ogun State Practice Direction No. 2 of 2020, Part C(1) Federal High Court Practice Direction for Covid–19 Period 2020.

20 See <<https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/SMIN-1-31-March-2020.pdf>> [accessed 1 February 2022].

21 Singapore State Court, Practice Direction 2021, s. 83, 85, 128.

22 See <<https://www.gov.uk/guidance/hmcts-e-filing-service-for-citizens-and-professionals>> [accessed 16 May 2022].

23 See Section 8–11 of Practice Direction on Electronic Case Management 2020, Kenya.

24 See Article 3, Practice Directions on Electronic Case Management and Virtual Court Session 2020, ECOWAS Community Court of Justice.

25 See <<https://courtechbulletin.blogspot.com/2019/08/2019-state-court-e-filing-program.html>> [accessed 20 May 2022].

26 See Section 83,128, Singapore State Court, Practice Direction 2021.

27 See Section 6, Practice Direction on Electronic Case Management 2020, Kenya.

28 See Section 4, High Court of River State Practice Direction No. 2 of 2020. RivCOMis was introduced in River state, Nigeria in 2019 prior to the first case of Covid-19 in Nigeria.

and improved court handling of cases.²⁹ However, the development of the portal will likely require some capital expenditure and a justification for such expenditure from a budgetary perspective.

(b) Service of Court Processes: The general consensus drawn from the Practice Directions of Lagos, Ogun, River state and the Federal High Court, Abuja is that service is by email or WhatsApp or any other means directed by the court.³⁰ The National Industrial Court however, included the use of the Legal Mail to augment its electronic options for service of processes.³¹ The use of email is also an option provided in Kenya,³² Singapore³³ and the ECOWAS Community Court of Justice,³⁴ but this mode of service, should in ideal cases be used pursuant to an order of substituted service as adopted by Singapore.³⁵ This would allow court assess by way of affidavit whether the email account to be served is active and belongs to the recipient.³⁶ The Federal High Court, Abuja, the National Industrial Court, Abuja and the Ogun State High Court further directed that proof of delivery of the email will be acceptable as proof of service.³⁷ This is a departure from the process at the physical courts where an affidavit of service is regarded as sufficient proof of service, removes the responsibility of service from the Sheriff of court and places same on parties and/or their legal practitioners. It is also worth considering whether the notice of delivery of email should be full proof of service especially with the possibility of infrequent or stoppage of use of email, lack of internet and fraud arising from switching names, as to presume sufficient knowledge of the suit and the grant of fair hearing. This point is important for at least two reasons. First, failure to effect service is fatal to the case as it impinges on the right of the adverse party to fair hearing³⁸ The other being that the acceptance of proof of delivery of emails as evidence of service can be viewed as being inconsistent with the extant provisions of the Evidence Act³⁹ that grants courts powers to presume that emails were delivered to the addresses they were sent to but does not grant the courts power to presume the owner of the email address. Although the Nigerian Bar Association created legal emails or

29 Anne Wallace & Kathy Laster, Courts in Victoria, Australia, During COVID: Will Digital Innovation Stick? 12(2) *International Journal for Court Administration* 2021 pp. 7.

30 Section 11, of the Practice Direction for Remote Hearing of Cases in the Lagos State Judiciary 2020, Section 5 Ogun State Practice Direction No. 2 of 2020, Section 4(a) High Court of River State Practice Direction No. 2 of 2020, Part D Federal High Court Practice Direction for Covid – 19 Period 2020.

31 See Section 6, National Industrial Court Practice Direction and Guidelines for Court Sitting 2020.

32 Section 7, 13 Practice Direction on Electronic Case Management 2020, Kenya, 4 March.

33 See section 28(3) Singapore State Court, Practice Direction 2021.

34 See Article 4, ECOWAS Practice Directions on Electronic Case Management and Virtual Court Session.

35 See section 28, Singapore State Court, Practice Direction 2021.

36 Ibid, s. 28(6).

37 Part D Federal High Court Practice Direction for Covid – 19 Period 2020, Section 5 Ogun State Practice Direction No. 2 of 2020, Section 6 (6), of the NICN Practice Direction and Guidelines for Court Sitting 2020.

38 *Compagnie Generale De Geophysique (Nig Lt) CCG Nig. Ltd V. Moses Aminu (2017)* NACLR Pt. 21 Pg. 65 at Pg. 78 para C – D Per Chima Centus Nweze JSC.

39 See Section 153 of the Evidence Act 2011.

official emails for lawyers, judges and authorized persons,⁴⁰ it is doubtful if this addresses the challenges of electronic services of originating processes. This is because by law, service of court process must be personal i.e. directly on the person being served except an order of substituted service has been obtained from the court⁴¹ and where service of an ordinary summons would be accepted by a legal practitioner, the latter ought to show that he was authorized to accept such service or at least enter an appearance on behalf of the party.⁴² In cases of service of originating process for the first time, it may be challenging to identify who the legal practitioner of choice of the party is or would be. This immediately puts a burden on a person seeking to serve to convince the court that the lawyer through whom they intend to serve is still the legal practitioner of choice of the litigant and can actually contact the person to be served. In cases involving corporate bodies, the rules of court prescribe personal service which is by serving any director, principal or responsible officer of the company at the company's registered address.⁴³ Hence, the use of electronic service for artificial persons, though good, conflicts with the known or acceptable mode of personal service in law. It follows that the electronic service on corporate bodies may only be adopted pursuant to an order of substituted service.

(c) Provisions for Actual Court Sittings: Traditional court setting requires the physical attendance of litigants, legal representatives and the judicial officers at the designated court rooms where all the actual hearings take place. Some of the practices at physical courts have been developed to indicate the roles of the participants in the court process and to assure equality and impartiality.⁴⁴ A replacement of the physical court sitting with virtual court sittings will require some alertness to the possible 'clash of cultures'⁴⁵ and requires the specification of the virtual location where the court hearings will now be held as well as a model to maintain the decorum required in courts. In Nigeria, virtual court hearing are held via Zoom, Microsoft Teams, Google Meets, Skype for business as well as other video conferencing platforms designated by the court.⁴⁶ This seems to follow the model adopted in Singapore,⁴⁷ United Kingdom,⁴⁸ International Court of Justice⁴⁹ and Canada

⁴⁰ See <<https://niji.gov.ng/wp-content/uploads/2020/03/An-Overview-of-the-Nigeria-Legal-Email-System.pdf>> [accessed 20 May 2022].

⁴¹ Order 5 Rule 8 Magistrate Court Civil Procedure Rules of Lagos State 2009, Order 7 Rule 8 High Court Civil Procedure Rules Abuja 2018, Order 5 Rule 1(c) Magistrate Court Civil Procedure Rules of Lagos State 2009 <<https://niji.gov.ng/wp-content/uploads/2020/11/VINCENT-IFEACHOR-PAPER-PRESENTED-AT-NJI-WORKSHOP-ON-9TH-SEPT.-2019.pdf>> [23 May 2022].

⁴² Ibid.

⁴³ Ibid, See also Section 78 of the Companies and Allied Matters Act 2020.

⁴⁴ Joe McIntyre, Anna Olijnyk, Kieran Pender, Civil courts and COVID-19: Challenges and opportunities in Australia 45(3) *Alternative Law Journal* 2020, pp. 195–201.

⁴⁵ Kate Puddister & Tamara A. Small, Trial by Zoom? The Response to COVID-19 by Canada's Courts, *Canadian Journal of Political Science* 2020, pp. 1–5.

⁴⁶ Part F Federal High Court Practice Direction for Covid – 19 Period 2020, Section 6–7 Ogun State Practice Direction No. 2 of 2020, Section 7 of the NICN Practice Direction and Guidelines for Court Sitting 2020, Section 4(b) High Court of River State Practice Direction No. 2 of 2020.

⁴⁷ See Section 57(2), Singapore State Court, Practice Direction 2021.

⁴⁸ See Section 4, United Kingdom Covid 19: National Guidance for the Family Court 2020, Section 2, Remote Access to Court Protection Guidance 2020.

⁴⁹ See Section 8, Guidelines For The Parties on The Organization of Hearing By Video Link 2020 of the International Court of Justice.

as part of its courts' first response to the Covid-19 pandemic.⁵⁰ Divisions of a court in similar jurisdictions should ideally adopt the same video conferencing model to allow for standardization. Such similarity in practices could prove helpful in the assessment of whether a party was afforded the necessary fair hearing. If the Australian experience is anything to go by, the standardization of the court processes backed by a piece of legislation will likely improve the adoption of the RCP across the jurisdictions covered.⁵¹ The adoption of RCP can take different forms i.e. whether the judge will sit remotely, whether the litigants and lawyers will sit remotely while judge will be in court or whether both the litigants, lawyers and judges will sit remotely.⁵² The Practice Direction for Lagos, Ogun, and the Federal High Court, Abuja omitted to specify the models for RCP to be adopted particularly to confirm whether the judge will be sitting in chambers during the proceedings which is important in view of the constitutional requirement for cases to be conducted in open court.⁵³ The lack of clarity may also breed uncertainty which can be a key concern for courts that are required to keep their operations within strict compliance with the law.

(d) Admissibility and Taking of Evidence: RCP procedures need to clearly indicate how parties to a matter would present evidence to the court. The Evidence Act allows parties to present both oral and documentary evidence⁵⁴ to the court and there are clear rules on the presentation of documentary evidence before a physical court. The nature of documentary evidence permitted by the Nigerian Evidence Act may be in primary form (i.e. original) or secondary form (i.e. copy) and these forms of evidence may be in respect of private or public documents. The Act requires that the secondary evidence of public documents admissible should be certified true copies and in no other form.⁵⁵ Thus, any virtual transmission of a certified true copy should ideally be interpreted as a copy of certified true copy of the said document, which is not an acceptable form of secondary evidence of a public document.⁵⁶ It is therefore critical to determine the process of tendering public documents through a remote or virtual court. To avoid this challenge, the Practice Direction of Lagos and the National Industrial Court, Abuja specified that RCP will be adopted for non – contentious matters,⁵⁷ but this can limit the ability of the court to resolve real disputes. In a bid to resolve issues on the admissibility of evidence, National Industrial Court directed that documents be frontloaded and contests on admissibility will be resolved by

⁵⁰ Kate Puddister & Tamara A. Small, Trial by Zoom? The Response to COVID-19 by Canada's Courts, *Canadian Journal of Political Science* 2020, pp. 1–5.

⁵¹ Anne Wallace & Kathy Laster, Courts in Victoria, Australia, During COVID: Will Digital Innovation Stick? 12(2) *International Journal for Court Administration* 2021 pp. 7.

⁵² See <<https://www.fedcourt.gov.au/pjsi/resources/toolkits/remote-court-proceedings/RCP-Toolkit-Amended-May-2021.pdf>> [accessed 1 February 2022].

⁵³ See Section 36 of the Constitution of the Federal Republic of Nigeria. River State and the National Industrial Court towed the line of allowing the judge conduct remote court proceedings from chambers, open court or any other location.

⁵⁴ See Section 83,86,125 and 126 of the Evidence Act 2011.

⁵⁵ See Section 90 of the Evidence Act 2011.

⁵⁶ Ibid, section 90. See also *Oba Aromolaran v. Agoro* (2014) LPELR 24037 SC, *Minster of Lands v. Azikwe* (1969) 1 All NLR 49, *Omisore V. Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 333.

⁵⁷ See Section 6 and 7 of the NICN Practice Direction and Guidelines for Court Sitting 2020, Section 1 of the Practice Direction for Remote Hearing of Cases in the Lagos State Judiciary 2020.

producing the original for sighting.⁵⁸ The challenge with this is that it returns the virtual hearing back to the physical court and exposes the timing of resolution of cases to manipulation by recalcitrant litigants who may seek to move cases between the virtual and physical courts with continuous objections to admissibility of documents. The taking of evidence is central to court hearings therefore, there is need to strengthen the procedures for the virtual courts to collect evidence whether oral or documentary.⁵⁹ While the cultural preferences of current practitioners must be recognized, it is useful to advance the theme that the court's role and service regarding taking of evidence is to facilitate the exchange of information.⁶⁰

(e) Commencement of Remote Court Proceedings: Another area of RCP that requires clarity is on how the remote court proceedings are expected to commence. Would parties require an application to schedule a case for RCP justifying same by way of affidavit evidence? Would RCP be listed upon the mutual consent of the parties? Would the court have the powers to list a matter for RCP *suo motu*? None of the Practice Directions for Lagos, Ogun, Rivers, National Industrial Court or Federal High Court addressed this question. It would be beneficial that the first step taken by the court would be to determine the suitability of a case for RCP as done by the Federal Court of Australia, after which an order of court is sought and obtained to commence the RCP.⁶¹ The approach of seeking for an order of court by way of application prior to remote court hearing is also adopted by ECOWAS Community Court of Justice,⁶² and Kenya.⁶³ This approach gives the court a good opportunity to determine early whether the parties have the requisite infrastructure to conduct the hearing remotely. However, this should not preclude the court from ordering the RCP *suo motu* in specified circumstances although this option may be recommended with caution. Clarity is also required on the kind of cases best suited for RCP.

Further considerations would be required for the adoption of RCP for criminal trials particularly given the requirements to maintain the voluntary giving of evidence and the attendance at trials unfettered etc.⁶⁴ Innovations regarding the use of technology in criminal trials was explored by Olugasa⁶⁵ in recommending the use of video conferencing for quick hearing of cases and the administration of bail promptly. This should not be ignored in the face of an increase in number of inmates awaiting trial in Nigeria.⁶⁶

58 Section 7(12)(l) of the National Industrial Court of Nigeria Practice Direction and Guidelines for Court Sitting 2020.

59 See <<https://theitcountrijustice.wordpress.com/category/on-line-courts/>> [accessed 20 May 2022].

60 Ibid.

61 See <<https://www.fedcourt.gov.au/online-services/online-hearings/National-Practitioners-and-Litigants-Guide-V5.pdf>> [accessed 20 May 2022].

62 See Art 5(1), ECOWAS Practice Directions on Electronic Case Management and Virtual Court Session 2020.

63 Kenya permits such applications to be made orally. See section 3, Practice Direction on Electronic Case Management 2020, Kenya (Kenya, 4 March 2020).

64 See <<https://tribuneonline.ng.com/74-of-prison-inmates-are-awaiting-trial-aregbesola/>> [accessed 24 April 2022].

65 Olubukola Olugasa, Utilising Technology in Making the Nigerian Administration of Criminal Justice Act Effective for Criminal Trials 11(2) *International Journal for Court Administration* 2020, pp. 1–11.

66 See <<https://www.prisonstudies.org/country/nigeria>> [accessed 23 May 2022].

3 RISK BENEFIT ANALYSIS OF REMOTE COURT PROCEEDINGS IN NIGERIA

With the commencement of RCP in Nigeria came series of arguments, both in support and against the innovation. These arguments brought to the fore the benefits in adopting RCP whilst highlighting the challenges needed to be overcome for the proper functioning of RCP in Nigeria.

Proponents of RCP argue that it is convenient and capable of saving time and cost.⁶⁷ As argued by Banon and Keith, the norm of lawyers and litigants sitting in court for long hours just to have their cases heard for few minutes is time consuming.⁶⁸ Time is an important resource that can be saved with RCP as evidenced by a study conducted by Turner.⁶⁹ In terms of how RCP can save cost, Turner posited that travel cost would be reduced with RCP.⁷⁰ This should be an important consideration given the excessive traffic rate and the increased number of adjournment responsible for delay of cases in Nigeria.⁷¹ Costs saved can also be deployed to secure better legal representation besides the likelihood that more litigants and their witnesses would attend RCP because of its convenience. There will be increased transparency as the RCP courts will be more readily accessible to more people⁷² a good example being the over 3 million people that accessed the livestream of the UK's Brexit hearing.⁷³ Increased transparency of hearings could be an immensely valuable tool for the Nigerian judiciary at this time, as there is some work to do to restore the hope and trust of Nigerians in the judiciary.⁷⁴ Inefficient case management has also been noted as an impediment to justice delivery in physical courts⁷⁵ and more cases can be concluded swiftly using RCP. Perhaps a further long term benefit to consider is the increased sophistication of the society and business transactions and the consequential requirements in terms of need for speed in the dispensation of justice. This is in addition to the need to curtail the rising operating costs of running courts particularly in the face of the recurrent budget constraints currently faced across all levels of government in Nigeria.⁷⁶

67 Bannon Alicia & Keith Douglas, 'Remote Court: Principles For Virtual Proceedings During The Covid-19 Pandemic and Beyond' 115 (6) *Northwestern University Law Review* 2021, pp. 1875.

68 Ibid.

69 Turner Jenia, 'Remote Criminal Justice' SMU Dedman School of Law Legal Studies Research Paper No. 487 53 *Texas Tech Law Review* 2020, pp. 197.

70 Ibid.

71 See <<https://www.vanguardngr.com/2016/09/lawyer-criticises-incessant-adjournment-cases-courts-says-justice-denied/>> [accessed 24 April 2022]. See also Okafor Cynthia & Anowia Victoria, 'Adjournment of Court Cases in Nigeria: Determinant, Effects and Way Forward' 4(7) *International Journal of Academic Management Science Research* 2020, pp. 70–74.

72 Joe McIntyre, Anna Olijnyk, Kieran Pender, Civil courts and COVID-19: Challenges and opportunities in Australia 45(3) *Alternative Law Journal* 2020, pp. 195–201.

73 Ibid.

74 See <<https://www.premiumtimesng.com/opinion/152559-wrong-criticize-court-judgments-media-jiti-ogunye.html>> [accessed 24 April 2022].

75 Agbonika John, 'Delay in Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint' 26 *Journal of Law, Policy and Globalisation* 2014, pp. 130–138 at 131.

76 See <<https://www.pwc.com/ng/en/publications/budget.html>> [accessed 23 May 2022].

One vocal argument against RCP in Nigeria is around the constitutionality of remote court proceedings. This argument rests heavily on the interpretation of Section 36 of the Constitution⁷⁷ that requires that all hearings by courts and tribunals must be held in the public. The view is that holding court sessions remotely or virtually would breach this constitutional requirement since members of public will not readily participate in the virtual court hearing. One of the vocal proponents of this view is Onyebuchi, Sholanke, and Onwuzulike⁷⁸ that argues that given the requirements of the Constitution, the courts must ensure public access except in those very limited instances where public safety or public health is required. Interestingly, the issue of publicity of trials is not unique to Nigeria as similar issues of compliance with regulations were raised in Canada,⁷⁹ Australia⁸⁰ and Italy.⁸¹ The Constitution is the supreme law and any law that is held inconsistent with the provisions of the Constitution will be deemed to be null and void to the extent of the inconsistency.⁸² This is why the constitutionality of RCP is an important argument since it means the Practice Directions issued by the Heads of Court or parts thereof can be deemed to be null and void if they are found not to be in alignment with the intents of the Constitution. Indeed, there has already been a challenge to the Constitutionality of RCP where the Attorney General of Lagos and the Attorney General of Ekiti State approached the Supreme Court of Nigeria in a bid to determine the constitutionality of RCP.⁸³ It is useful to note that these suits were withdrawn and as such were ultimately not dealt with on the merits. Nonetheless, the court mentioned that remote court proceedings are not illegal in Nigeria without more. This leaves a grey area for the adoption of RCP as the law is trite that only the *ratio decidendi* (reason for decision) made by the Court when dealing cases before it actually forms binding precedents for future cases.⁸⁴ It is therefore unclear how the superior courts will decide where a party seeks for remote court proceedings to be nullified for failure of fair hearing if the hearing was not done in strict compliance with Section 36 of the Constitution. The approach of the court in Nigeria in this case is at variance with the approach adopted in Australia, which country began to develop jurisprudence on this emerging area of law.⁸⁵

77 Constitution of the Federal Republic of Nigeria 1999.

78 See <<https://strachanpartners.com/wp-content/uploads/2020/05/A-CRITIQUE-OF-THE-PRACTICE-DIRECTIONS-FOR-REMOTE-HEARING.pdf>> [accessed 1 February 2022].

79 Kate Puddister & Tamara A. Small, Trial by Zoom? The Response to COVID-19 by Canada's Courts, *Canadian Journal of Political Science* 2020, pp. 1–5.

80 Joe McIntyre, Anna Olijnyk, Kieran Pender, Civil courts and COVID-19: Challenges and opportunities in Australia 45(3) *Alternative Law Journal* 2020, pp. 195–201.

81 See <<https://www.ibanet.org/article/DE193DF8-776C-451C-B48E-4A56C4A32761>> [accessed 23 May 2022].

82 *Governor Ekiti State & Ors V. Sanmi Olubunmo & Ors* (2017) 3 NWLR Pt. 1551 Pg. 1 *Per Chima Centus Nweze JSC*.

83 See <<https://businessday.ng/news/article/supreme-court-dismisses-suits-against-virtual-hearing/>> accessed 1 February 2022.

84 *Mobil Producing Nigeria Unlimited V. Okon Johnson & 17 Ors* (2018) NACLR Pt. 135 Pg. 20 *Per John Inyang Okoro JSC at Pg. 42 – 43 Para D – A*.

85 Anne Wallace & Kathy Laster, Courts in Victoria, Australia, During COVID: Will Digital Innovation Stick? 12(2) *International Journal for Court Administration* 2021 pp. 7.

Another concern to the adoption of RCP is the combination of the challenges of technophobia and the digital divide.⁸⁶ RCP is dependent on the acceptance of technology by stakeholders. The argument is that more adults will display fear for technology,⁸⁷ hence RCP may not be easily welcomed by older judges or legal practitioners. Such fear, lack of skill, variation in income, age and education can create a digital divide amongst users of technology leading to a decline in the usage of RCP.⁸⁸ Perhaps, more relevant is the need to align the tendering and admissibility of evidence with the traditional court practices. Since primary and secondary evidence are tendered in physical form,⁸⁹ more would need to be done to amend the Evidence Act to allow for tendering of soft copies as secondary evidence. Without a clear path as to how evidence should be admitted during RCP, more stakeholders may avoid RCP for fear of setting aside of decisions by appellate courts. Besides, admission of documents through RCP share screen feature may not necessarily expose any alteration or mutilation to a document that has been tampered with. Hence more caution may be exercised whilst admitted documents during RCP.

The need to evaluate the credibility of witnesses is a prerogative of the trial court⁹⁰ but RCP may pose challenges to this privilege. This was confirmed by Turner's 2020 survey⁹¹ which showed that video quality and technological hitches can interfere with the courts' perception of a witness's evidence. Perhaps the greatest risk to RCP is that a litigant would not get justice but this can be mitigated where the RCP process and rules are well thought through to measure up and surpass the existing traditional court process.

4 INFRASTRUCTURAL CHALLENGES TO THE ADOPTION OF REMOTE COURT PROCEEDINGS

The availability of requisite infrastructure to support RCP should be considered before delving into it. Infrastructural requirements such as the availability of stable internet connectivity, electric power supply, and access to electronic devices are important to conduct RCP. This challenge is corroborated by the Federal High Court in a report made to Premium Times⁹² and poses a threat to RCP in Nigeria because the burden

86 Bannon Alicia & Keith Douglas, 'Remote Court: Principles For Virtual Proceedings During The Covid-19 Pandemic and Beyond' 115 (6) *Northwestern University Law Review* 2021, pp. 1889 and Maria – Elena Osiceanu, 'Psychological implications of modern technologies: "Technophobia" versus "technophilia"' 180 *Procedia – Social and Behavioral Sciences* 2015, pp. 1137–1144.

87 Anne Powell, 'Computer anxiety: Comparison of research from the 1990s and 2000s' 29 *Computers in Human Behavior* 2013, pp. 2337–2381.

88 Bannon Alicia & Keith Douglas, 'Remote Court: Principles For Virtual Proceedings During The Covid-19 Pandemic and Beyond' 115 (6) *Northwestern University Law Review* 2021, pp. 1891.

89 See Section 86 and 90 of Evidence Act 2011.

90 *Muazu Ali v. State* (2018) *NACLR Pt. 128 p. 120 at 145*, *Bshiru Popoola v. State* (2018) *NACLR Pt 127 1 at 20*.

91 Bannon Alicia & Keith Douglas, 'Remote Court: Principles For Virtual Proceedings During The Covid-19 Pandemic and Beyond' 115 (6) *Northwestern University Law Review* 2021, Turner Jenia, 'Remote Criminal Justice' *SMU Dedman School of Law Legal Studies Research Paper No. 487* 53 *Texas Tech Law Review* 2020, pp. 55.

92 See <<https://www.premiumtimesng.com/news/top-news/462512-exclusive-strike-why-full-virtual-hearing-is-difficult-for-federal-high-court-official.html>> [accessed 24 April 2022].

of ensuring the provision of infrastructure rests on the government, the litigants and their legal practitioners in varying degree. There is therefore no guarantee as to the availability of internet or power supply for litigants who seek to participate in RCP especially as these services are not necessarily free. The infrastructure requirements of the courts can be addressed by ensuring budgetary allocation for development of designated website for live court streaming, provision of internet and power supply for courts. This infrastructure could additionally be provided for by government at the local government level as this will bridge the infrastructure deficiency faced by litigants and legal practitioners.

5 IMPROVING REMOTE COURT PROCEEDINGS IN NIGERIA

There has been a dearth of research on the reasons for the low adoption of RCP in Nigeria. Indeed, the adoption of RCP in Nigeria was dealt a further blow when the motion for the amendment of the Constitution to facilitate the creation of virtual courts was defeated at the National Assembly in 2022.⁹³ While there is no need to pass a hasty verdict on the applicability *vel non* of RCP in Nigeria, there are indications of inconsistencies in the current proposals for its adoption and the realistic expectations given Nigeria's unique legal background, societal development, available infrastructure and general socio-cultural milieu. A range of reviews and steps will need to be taken to improve its adoption in Nigeria. The relevant themes for consideration are described below.

5.1 UPDATE OF THE OVERALL LEGAL FRAMEWORK

The overwhelming importance of a framework is emphasized when one considers the famous saying that “one cannot build something on nothing and expect it to stand”⁹⁴ or when one considers the likely state of helplessness foisted when the foundation of a thing is destroyed. The framework for the Nigerian legal system is the entire gamut of Acts, laws and regulations and flows through from the Constitution to the various legislations by the levels of legislature as interpreted by case law from the superior courts. There is therefore a paramount requirement to ensure that the system of RCP hearings though novel sits well within the construct of extant legislations. Such a review may well require amendments to some existing laws that go beyond amending the Constitution such as the Evidence Act, Administration of Criminal Justice Act/Laws, and the Civil Procedure Rules.

5.2 CHOICE TECHNOLOGY

There are alternatives for video conferencing technology which are adopted for virtual meetings in today's time. Given that courts are a creation of law whose processes are to be well guided and guarded,⁹⁵ it will be preferable for the courts to

⁹³ See <<https://www.ripplesnigeria.com/bill-for-virtual-court-hearings-fails-at-senate/>> [accessed 23 May 2022], <<https://www.financialnigeria.com/are-virtual-court-sittings-and-proceedings-constitutional-blog-693.html>> [accessed 23 May 2022].

⁹⁴ *Benjamin Leonard Macfoy v. United Africa Company Limited* (1961) 3 All ER 1169 per Lord Denning.

⁹⁵ *Rotimi Williams Akintokun V. LPDC* (2017) NACLR Pt. 35 Pg. 51 at Pg. 83 para D Per Ibrahim Tanko Muhammad JSC.

be deliberate and decisive about which video conferencing platform will be adopted for each court and for the technology platform adopted to form a complete whole. This means that the platform should as much as possible be able to accept electronic filing of cases, assessment of fees, acceptance of fee payment, generation of the claim for service, assignment of cases within divisions, generation of court records etc. While it is noted that the development and adoption of required technology across courts will require some capital expenditure, this should be considered in view of the immense social benefits it will create, the cost savings from the deviation from manual processing as well as the revenue potentials of a vibrant and efficient court system. A key determinant of the budgetary allocation that can be made for such a venture can depend on the extent to which the judiciary can convince itself and the other arms of government that it is able to drive the innovation necessary to make the technology improvements work for the Nigerian judiciary.⁹⁶

5.3 DEVELOPMENT OF COMPREHENSIVE COURT RULES THAT INTEGRATES RCP AND TRADITIONAL COURTS

To aid its adoption, RCP will need to be infused into the everyday operations of a modern court. What this means is that the interplay of cases or hearings between virtual and physical courts, if any, will need to be explicitly spelt out and it should become everyday practice. The way to achieve this is to have a comprehensive set of rules for each court rather than having separate rules for physical cases and virtual cases. This is the approach adopted in Singapore⁹⁷ while other countries like Australia have made electronic filing of all cases through the e-portal mandatory.⁹⁸ The aim of such consolidated rules will be to eliminate the current uncertainties around which cases qualify for RCP, how cases should commence under RCP or how courts will deal with the tendering of evidence. Such consolidated rules will ensure consistency across the hearings of the court whether physical or virtual. Consolidating the rules will ensure standardization as well as the prima facie comfort that the RCP procedures are followed as intended since court rules are meant to be followed.⁹⁹

5.4 TRAINING AND DEVELOPMENT

There is also need for training and development for judicial officers and legal practitioners to bridge the technological divide. This training will span across the adoption video conferencing technologies as well as the need to maintain etiquette even during virtual court hearings. This training can leverage on the mandatory continuing education of the Nigerian Bar Association to train already qualified lawyers¹⁰⁰ while the training for remote court proceedings can be included in the curriculum for

⁹⁶ Anne Wallace & Kathy Laster, Courts in Victoria, Australia, During COVID: Will Digital Innovation Stick? 12(2) *International Journal for Court Administration* 2021 pp. 14.

⁹⁷ Singapore merged the court rules for in – person hearings with the remote court hearing. See <https://www.judiciary.gov.sg/docs/default-source/new-roc/state-courts-practice-directions-20215026094db6e245deb484a00713e42d69.pdf?sfvrsn=46c44cfa_2> [accessed 23 May 2022].

⁹⁸ See <<https://www.hcourt.gov.au/registry/filing-documents#:~:text=The%20system%20provides%20for%20mandatory,.hcourt.gov.au.>> [accessed 23 May 2022], <https://www.supremecourt.wa.gov.au/E/electronic_documents_system.aspx> [accessed 23 May 2022].

⁹⁹ *Iwunze v. Federal Republic of Nigeria* (2014) 6NWLR Pt. 1404 p.580.

¹⁰⁰ See Rule 11 of the Rules of Professional Conduct 2007.

new lawyers. For litigants however, there will need to consider the circumstances of the litigants on a case by case basis to ensure that litigants can effectively participate in RCP.

6 CONCLUSION

It is not unusual for there to be some unease at the thought of rapid adoption of RCP in Nigeria as there was skepticism in most other countries where it has now been adopted as well. The reasons for the skepticism include cultural preferences, need for courts to maintain the role play, the technological divide, the need to maintain the transparency and equality trials. Of the different voices against RCP, probably the loudest in Nigeria is the one around publicity of trial which is understandable given the famous comment that “publicity is the very soul of justice.”¹⁰¹ However, if the experience of other countries like Singapore, the United Kingdom, and Australia is something to go by, RCP can work and can be an important and potent force to support the prompt administration of justice in Nigeria. To this end, the pronouncements of the National Judicial Council and the Practice Directions issued by the various Heads of Court should not only be acknowledged but also celebrated. Nonetheless, as this paper has shown, the swift adoption of the RCP in Nigeria without addressing key requirements has the potential to introduce uncertainties which can breed further challenges for the credibility of the judiciary. A position the judiciary cannot afford. While noting that the pressures of the Covid-19 pandemic appear to be waning, this paper makes the case for the sustenance of the sojourn to introduce RCP to Nigeria given its potential to improve the speed and transparency of court hearings and its relevance in today’s world. Accordingly, the paper provides recommendations around the guiding principles that need to be considered for the development of a sustainable practice for the adoption of RCP. The detailed amendments of the several pieces of the gamut of law are necessary. In conclusion, the recommendations from the paper indicate that RCP should not be considered as a total replacement or in competition with physical court hearings but that both modes of court hearings need to be infused together and deployed jointly to serve the mutual interests of the judiciary and the wider public.

COMPETING INTERESTS

The authors have no competing interests to declare.

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