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**Ogun State Civil Justice Reform Virtual Workshop: Imperatives During and After COVID-19**

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MR. AKINGBOLAHAN ADENIRAN (HON. ATTORNEY-GENERAL OF OGUN STATE) (TRUNCATED): The Ministry is fully engaged, I wish to assure you of that, we are taking notes and we will come back to you if need be. And hopefully, we can have a fruitful discussion. Thank you very much.

MR TUNDE FAGBOHUNLU [SAN]: Thank you very much Honourable Attorney General. That captures pretty much the essence of this workshop. We had hoped, and I'm not quite sure if we were able to achieve that, that we would have Justice Olugboyega Ogunfowora on the session. I'm not sure if he's here with us right now and if he would like to share a word or two, by way of introduction to the guests. Honourable justice Ogunfowora, are you there?, Okay, he probably hasn't joined us yet. In which event, and I will then move on to the two organisations that have been working with the Ogun State Government through the Honourable Attorney General on questions of justice reform even before the unfortunate corona virus pandemic had started. These bodies are CRID-LawNet a project of the Lagos Chamber of Commerce and Industry and the Justice Reform Project. I will hand over the floor first of all to Mr. Tayo Oyetibo, the president of CRID-LawNet, just to share a few introductory comments. Thank you very much. Mr Oyetibo, the floor is yours.

**MR OYETIBO:** Good afternoon everyone. The workshop has been put together by the Commercial Disputes (Best Practices) Legal Network which is known as the CRID-LawNet, in collaboration with the Justice Reform Project. The CRID-LawNet is a non governmental advocacy group which is devoted to the promotion of best practices in the resolution of commercial disputes and regulatory issues. That aspect of the body is achieved through research studies and surveys, advocacy for institutional development. We also engage in as well as collaborating with other bodies just like we are doing with the Ministry of Justice of Ogun State and the Nigerian Bar Association. The mission of CRID-LawNet, principally, is to promote civil justice development, to ensure that the administration of civil disputes will be treated efficiently and economically. We look towards achieving a maximum of 18 months for the resolution of disutes that are brought before our courts and we expect about INAUDIBLE even achieve INAUDIBLE for disposal of matters including Alternative Dispute Resolution.

The model law for civil justice reform was put together for the purpose of achieving the objectives of CRID and was introduced first to the Ekiti State House and it has actually been passed into law in June last

year. Since then Ekiti has been operating the law and I believe that after this workshop, we'll be moving to other states. We've asked Akwa Ibom State to take a look at the bill and it's also been submitted to the Federal Attorney General and I believe that the recent statement that was made by the Attorney General is founded on the Draft which has been submitted. So we are looking forward to the National Assembly to ultimately passing the bill into an Act of the National Assembly. After this workshop, we are also hopeful that the Ogun State House of Assembly will be able to adopt the provisions and ultimately pass it into law. As you can see on the screen, the management of CRID is made up of the men and ladies that you can see on your screen, I'm not sure if it's showing on yours, we have Mr Kola Awodeyin, Mr Tony Idigbe and Mrs Funke Adekoya, Femi Atoyebi, Mr Tunde Adejuyigbe, Mrs Funke Agbor, Seni Adio, Tunde Fagbohunlu, Professor Chidi Odinkalu, Professor Maxwell Gidado, Yakubu Maikyau and my humble self. Those are the trustees of CRID. Apart from the trustees we now have the brainstorming group made up of Tunde Fagbohunlu, Tunde Ajibade, Tunde Adejuigbe. All Tundes but not everybody is Tunde. Then we have Chukwuka Ikwuazom, Mutiu Ganiyu, Funmi [who runs the secretariat] Mrs Funmi Odigie Iyayi. So, basically these are the two levels of Management of CRID and then we now have the general members.

It is my pleasure to welcome everyone to this workshop, we look forward to a successful deliberation. Thank you very much.

**MR TUNDE FAGBOHUNLU [SAN]:** Thank you very much, Mr Tayo Oyetibo. I understand that Justice Ogunfowora has joined us now. If he would like to share one or two minutes of welcome, introduction with the guests. My Lord, I hand over the floor to you sir.

I'm not sure if we have my Lord on yet. In that case I'll hand over the floor now to Mr Charles Adeyemi Candide Johnson, a Senior Advocate of Nigeria, who is the convener of the Justice Reform Project. Just a two-minute introductory statement. He will still be talking to us later on the virtual remote hearing protocol that the Justice Reform Project has put together. But for now, just an introductory comment from him introducing the Justice Reform Project. Mr Candide Johnson, the floor is yours.

**Mr Candide Johnson [SAN]:** Thank you very much for the introduction. Thank you very much to the Attorney General of Ogun State. It's an exciting prospect to join this meeting. Justice Reform Project of course will join any meeting and any platform and any association which is seeking to improve the quality of delivery of justice, across the board in Nigeria. As you know, and maybe some of the members do not know, it is a group that was started by leaders in the legal profession and has since become a platform which is supported by stakeholders interested in the administration of justice across the board. All these people are providing intervention, they're providing resources, providing occasions to liaise with authorities that matter as well as those who don't, apparently, to be sure that we can deliver to the people of Nigeria a system of justice which works. That is the Justice Reform Project, I think, in a nutshell. Thank you very much.

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much, Mr Candide-Johnson. Following that, we'll move straight into the business session of this workshop. We were expecting to have a discussion by Honourable Justice Nweze on technology during periods of emergency. I understand we are still trying to join him, to add him on to this session. As soon as we succeed in adding him on to the session, we

will hear from him. So right away, we'll proceed to hear from Mr. Candide Johnson on the proposed virtual hearing protocol for urgent hearings during the corona virus pandemic. So Mr. Johnson, we are going to have to bring you back to the floor just right after your introductory statement. Thank you very much. The floor is yours, again.

**Mr Candide Johnson [SAN]:** Okay it's my pleasure. Thank you very much. You know, again I have to say that Ogun state government is providing tremendous leadership. Someone who looked at the poster yesterday said, is Ogun State the new Lagos State and this is a very worrying prospect. But I'm glad to see that in the last 24 hours, that activity has been activated in a number of places. I know that the president of Nigeria has issued a statement, urging courts to bear in mind the importance of the administration of justice and delivering justice in this particularly difficult time. I'm aware that the Attorney General of the Federation himself has issued a press statement where he indicates a range of interventions that he wishes to encourage the court to take. Of course it's beyond his power to effect those himself, but he's speaking about the right things. Similarly, and I'm particularly pleased to note that a draft protocol has been going around in the last couple of hours, I think, it would purport to be from the Lagos State judiciary I have no idea whether it's genuine or not but what I know is that it provides a lot of the points which we think are points which are to be considered in making an appropriate response to this public health emergency, which has created, had an impact on much of our governments, our life, and of course, the administration of justice.

But if I may just overview, of course, we cannot dictate a protocol and we cannot enforce a plan. But we have intellectual resources which we have deployed ourselves to provide material which may be useful to those who have the power to determine how to respond to these issues. But it's important to set context and before you decide an intervention, you need to know exactly what it is you're dealing with. Now, the importance of law and order is something that is fundamental and we don't have to repeat it here. Although it's surprising that in many of the interventions from the federal, state governments previous to this time, they have not expressed the understanding that law and order is an essential to the function of any society. You can't throw up your arms in a panic and run in a crazy way without recognising that life must go on during a pandemic, during an emergency and life must go on after. Of course, for any government health and safety is the most fundamental objective, and I say again, that this is tied up with providing the security of law and order.

Now, when we have an emergency like this, we have to consider what exactly is the impediment which we have to overcome. The primary impediment in this particular emergency is that people cannot gather together in close proximity. That public health imperative means that we have to find solutions to essential services notwithstanding and therefore this is the birth of a remote hearing now I say the birth, it's not a new thing in many places, it's not a new thing in Nigeria. But it has become more important because crisis accelerates history. We are by this crisis being compelled to answer very urgently questions which we have taken for granted for a long time. The fundamental question is the efficiency of delivery of justice. And a couple of days ago, I was listening to a programme on BBC Radio at four, and they were talking about remote hearings in England and the necessity to attend to problems which their system of justice may face and they spoke of 55,000 backlog cases, potentially, if they didn't take care of them at this time. Now, the following day, a Nigerian Law magazine, Law Online, I think it's called, indicated that in this legal year, we're dealing with a 157,000 cases. So it's remarkable that because we have a greater deluge

of cases, because of inherent inefficiencies in our system of delivery of justice, it's something that we should have been thinking about long before this time Again, let me repeat myself, crisis accelerates history.

Now, there are many things to consider. First of all, when you talk about remoteness, the first thing that people throw up their hands in anxiety about is that the Constitution of Nigeria says that trial shall be in public. This is a form of words, which does not fully grasp what is the purpose of a public hearing. The purpose of a hearing is not that you put a court in a physical space, the import of open justice and an open hearing in public, which is what the constitution means is that any member of the public must have access to the workings, to the administration, to the records, and to the justice delivered in a court. This is something that is beyond just providing the justice or judging in a physical space. In my opinion, there is no constitutional legal or conceptual problem, as far as open justice principle is concerned with delivering justice by the means of modern technology. In many countries, this is a matter that has been studied and discussed before, and it is quite clear that the improvements in human knowledge and ability which are provided in technology, are almost a duty incumbent upon us to embrace. In fact, video, social media platforms, public records, these systems, in fact, are in fact, accentuate the delivery of open justice because even though hardly anybody's going to walk into the court, to listen to a civil or criminal case in any given day, hundreds of thousands, of millions of people, people to whom we're accountable, have access to these public platforms which are technology driven, and they can see and they can know what is going on.

Now, in an emergency, when we are now forced, if we want to resolve the problem of backlog on the mounting cases in the collapse of law and order, which is concomitant with that, we have to consider how to deal with a problem or a problem that has not been met before. You know, the Justice Reform Project prepared notes which set up concept notes for a remote hearing, we indicated how we thought it ought to work. I just want someone to remind me of a time, it's very easy to get to get lost in the time when, as I'm rambling on, so Tunde please I hope you'll tell me when I've reached the 10 minutes mark.

So then we prepared a concept notes on remote hearing. We also prepared draft guidelines for remote hearing, which we suggested respectfully, the Chief Justice of Nigeria might consider. Why the chief justice? The Chief Justice does not determine the rule in every court in Nigeria, but he has the holy pulpit, he is the most influential judge in the country. Any protocol that is effected in the lower courts can be upturned in the Supreme Court. So it's very important that the Highest Court provides the leadership by providing guidance and protocols for how they will recognise the operation of a fair system of remote justice. So we sent a concept note to the Chief Justice, we also sent a draft protocol, that protocol dealt within the confines of the direction which the Chief Justice himself had given, and the only options he had made on this subject. On the sixth of April, he wrote a letter where he said that courts could continue to hear urgent time bound matters. These were not defined, but beyond defining, beyond speaking in that manner in a nebulous manner about what cases will be attended to and recognise that all cases must be attended to even during an emergency, we listed a number of issues which should be considered, these are logistical issues, these are docket control issues, these are issues of choice, issues of technology, issues of choice, of platform issues of cost and we detailed them in a rational order. Primarily, the decision on how to conduct any hearing is a case management decision which the judge should take. The protocol that we suggested does not take that power away from the judge. It gives encouragement to judges to

comply with their constitutional responsibilities to hear cases, to hear those cases in accordance with the existing law and existing precautions for preserving openness, fairness, preserving equality of access to parties to be sure that independence of their decisions is obvious and manifest. And then a problem which will arise when you try to engage technology is that of choice of platform, this is meant to be technology neutral. We have not proposed any particular platform we have merely suggested a number of well known platforms and we've suggested that in a number of phases, these may be deployed. First of all the public platforms like Zoom, Skype, etc, which are accessible for very little costs or no cost at all, can be used by the courts because we do not have cases that necessarily have a great complexity, which will require a dedicated platform. Although ultimately, every court must invest in having a platform which is responsive and which can be accessible to any number of people. A video platform an audio platform, a telephone platform, which provides access to people to hear and exchange conversation and keeps a recording for the purposes of access to the courts records.

So that is something that is quite important to be done. And then in each particular case, again, the court must decide what type of case, what type of case can be heard on the platform. There are many measures that can be taken, not just now, but in the future, and should have been taken in the past to triage the cases that come before the court. This is one of the matters dealt with in this protocol, what type of cases is going to be heard? For example, it was quite clear to me and a lot of people who I talked to, that 60 to 70% of cases decided in our courts are applications and interlocutory applications and motions directions hearing. These are matters which can be dealt with on paper alone, especially since we write written arguments in most of these cases now, there's no reason why physical appearance is required to decide the majority of motions. And if the courts at the early stage decide that some motions will be determined without a hearing, they can do so very quickly and dispose of maybe 50/60%. If counsel or the judge in their own discretion decide that certain cases requires an oral hearing, they can decide how to do that on technology platform. In addition, judgments can be delivered by Skype, they can be delivered by simultaneous issuance on a number of technology platforms, they can be put on a website within five minutes of being delivered. Even conducting live hearings, where it is considered to be necessary, in the few number of cases where I think it will be required the protocols deal with how the parties will set up a technological platform: how they cooperate, how they speak to the registrar, how they enter the room before, how they connect their own devices, how recording is made, how prior to this they exchange interlocutory filings. In some courts in Nigeria, they have the e-filing platform, or so they say. I was told the Lagos High Court has the e-filing platform but I've been unable to understand exactly how it works. I think it was a big budget item of times gone past and very often, you see large amounts of money being spent for platforms which come to nothing. And just before I forget, a crisis requires us to be very prudent in spending of money, and it's occasion for us to ask what we haven't asked before, that how the judiciary should spend the money that is allocated to it. This is a critical matter of accountability, and an aspect of open justice, which we must pay attention to. But then the protocol we have sent to the Chief Justice, we made it available to the public.

We've indicated a step by step approach. This is nothing new, there are many models. India has a model. Australia has a model .Canada has a model, Uganda has a model. And the important thing is for the intellectual resources of any particular jurisdiction, to be applied to solving a physical and logistical problem in accordance with the law. This is the challenge, and this is why when I saw what was presented by Lagos yesterday, I thought, well they must have had people looking into it, it must be a remarkable

document. And I've taken a cursory look at it and I see some of the key points have been touched. And we're going to start out on this journey tentatively, we cannot provide all the solutions or find all the answers immediately, but we must start, because we have an urgent imperative to decide cases that matter to people, to keep to keep a semblance of order in a society means that we must assure people that the system of justice continue to function, in this emergency in particular, it's important for people to remember that. And I hope that's something in the overview, there are many questions, and there are many ways we can break down the aspect, the aspect of how this works. But I think that the next couple of weeks as these protocols are released and circulated, and people put their own input, we can get a more perfect, document, and a more perfect approach and I think that we will be able quickly to restore the authority of our courts restoring public confidence in the work that they do and the fact that they deliver a service effectively, efficiently. Thank you very much,

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much Mr. Candide-Johnson. That that was some very good insight into the work that the Justice Reform Project has been doing in collaboration with other organisations and in collaboration with the court systems. They've sent a communication, to the Chief Justice of Nigeria and Mr Candide-Johnson has just pretty much given us a bird's eye view of the suggestions that have been made by the Justice Reform Project to the Chief Justice of Nigeria, which we are willing to share with Heads of Court, all over the country. And we will also be disseminating this through public media. We've been doing that and we'll continue to do that.

Now before the pandemic like I said earlier, these two organisations; The Justice Reform Project and CRID-LawNet had been working with various state governments, to address problems with the justice system. And one of those problems, obviously, was the question of technology, the use of technology, the question of modernising the courts to make for more efficiency. Now, the the framework for that discussion had been a model law for the reform of civil justice, which, Justice Reform Project, CRID-LawNet and the Lagos branch of the Nigerian Bar Association had put together about a couple of years back, and which today forms the basis of legislation that was passed by Ekiti state early in 2019. Now, two of us who have been involved with that process, Dr. Tunde Ajibade and myself will be talking briefly about the essential features of this model law. We've chosen 10 points out of this model law to discuss in this session today, Dr. will be speaking to six of those features. The first is cultural transformation, a new culture for judges, lawyers and parties, case management parallel tracks, procedural cautions to enforce a new culture, the abolition of stay of proceedings in interlocutory appeals, strengthening the process for weeding out frivolous cases and taking costs more seriously. Dr. Ajibade will be speaking to these six points. I hand over the floor to you, Dr. Ajibade.

**Dr. Ajibade:** Thank you Tunde. Good afternoon, everybody. I join in thanking the Ogun state government for providing us with the platform for discussing this very important topic. As my big brother and good friend Mr Candide Johnson has said, we need to make the best of the crisis, we shouldn't waste it. And I think there's evidence that some good is going to come out of this at the end of the day. I've got 15 minutes to run through the six aspects of the administration of civil justice bill that Tunde and I are going to deal with. Tunde will deal with the remaining four. And I think just to lay the groundwork, I think it's important to to note that the administration of civil justice bill was designed as a model law. Our anticipation is that the Federal Government and the States that hopefully will enact this law, may choose

to modify it to fit the thinking of the various legislatures, but it sets a general framework for what we're trying to achieve.

And the first thing the first aspect of it that I would like to speak to which, which is embedded in the first part of the legislation is the need for a new culture to emerge. Legislation alone cannot change the problems we have with inefficiency in our, in our courts at the moment, especially in the civil justice sector. It's going to require a change of culture and a change of thinking. As much as can be done through legislation we have embedded in the bill. But we're clear in our minds that there's going to have to be some degree of evangelising to get both the courts, the judges the lawyers and the parties to start thinking and doing things in a different way. And if I could capture it in a nutshell. It's basically to get to the point of deciding the substance of disputes and shedding all the procedural trappings that currently constitute a bottleneck to the resolution of disputes in our courts. The bill talks about what we describe as the overriding or the overarching purpose and the overarching obligations, and the, I'm trying to use the exact language, and the paramount duty. And if I could just read that out I think that that captures it in essence, it's in Section 14. It says each person to whom the overarching obligations apply as a paramount duty to the court to further the administration of justice in relation to any civil proceeding in which that person is involved, including but not limited to any interlocutory application or interlocutory proceeding, any appeal for my judgement in a civil proceeding etc.

So the thrust of this is that we should all: the judges, the lawyers and the parties, see the civil justice process as aimed at arriving at a resolution of the core issue in dispute, and to the best effort possible, get rid of technicalities and interlocutory issues that tend to be a clog in the in the wheel of the process. Now, the second point which now deals with the substance of the manner in which the bill purports or tries to deal with this is case management, scheduling and the parallel tracks. As anybody who has conducted litigation in our courts is aware, one of the things that happens almost on a daily basis is that a matter goes to court and a defendant, and counter intuitively sometimes even a plaintiff raises all sorts of technical issues that have absolutely nothing to do with the substance of the dispute. And the substantive dispute never gets dealt with until all these inter interlocutory issues have been determined. And sometimes the substantive issue just never ever gets dealt with, because the interlocutory issues could even go on appeal all the way to the Supreme Court and by the time you come back 10, 12 years later, you find out that the substance has been overtaken by events. So what we've tried to do in the bill is to have a case management system that runs in parallel tracks, and it requires that once an action is commenced, the judge, together with the parties will sit down and have a timetable for that action. That timetable would set out a period from the filing of the action, up until the hearing, and that is the hearing track. We'll also have an applications track, which will deal with any interlocutory applications that may arise in the course of or prior to the hearing. You will also have an ADR track, which will deal with attempts to resolve the dispute, by means other than litigation. Now none of this is particularly new.

The novelty in the bill is that we have put in provisions that enable these processes to run in parallel. So you don't have to first go through interlocutory applications and defer agreeing a hearing date, or you don't have to first refer the matter to the multidoor court house and wait for all that to be decided before it comes back to court and then you get a hearing date. So right from the get go when a matter is filed the parties and the judge will decide that this matter is going to be heard on so so so date. It could be a long stop date it could be a year down the line, but at the get go, you have a date for hearing which is

fixed. Now, in the interim all the other things can take place. If you have interlocutory applications, discovery, you want to challenge the jurisdiction of the court, you want to challenge service and all that, all that can be done in the process. And also, attempts to resolve the matter by way of alternative dispute resolution methods can also run concurrently. It is anticipated that this will enable us get to the substance of matters a lot quicker, if this methodology is adopted and if the law receives uptake like it has done in Ekiti state. Now as I said, this is going to require a lot of cultural change and cultural change doesn't come easy people don't change their ways, without some sanction. So we're also dealing with procedural cautions.

There are specific actions that parties and representatives are expected to take and section 50 of the bill provides significant power. Again, nothing new, but it just encourages the courts to exercise the power that they already have, a bit more effectively and to impose significant sanctions on any party or counsel, representing a party who constitutes a clog in the progress of matters that are filed, civil proceedings that are filed. The procedural cautions are quite severe. The Bill recommends that it should result in contempt proceedings. So it's two strikes, and then you're out. So you have two opportunities to to delay the proceedings, the third time you don't get another warning, you're cited in contempt, and that that would apply to parties, as well as to their legal representatives.

The fourth innovation that the bill deals with is abolition of stale proceedings pending interlocutory appeals. We're of the view that in our experience the, the resort to appeals and stay of proceedings has been used too frivolously by defense, typically by defense counsel, where they have cases that lack merit. In order to eliminate that, the bill proposes that there should be no stay of proceedings pending appeal, except in very very restricted circumstances. And those are stay of proceedings pending a contention that matter should be referred to arbitration, pursuant to sections four and five of the administration, of the arbitration and Conciliation Act, or stay of proceedings pending the contention that the matter ought to be determined by a court, outside the jurisdiction of Nigeria, if that's what the parties have agreed. Aside those two instances, the bill proposes that there should be no stay of proceedings, and that any objection that a party takes to the proceedings on an appeal, the appeal can proceed, but that matter will be dealt with, after judgement has been delivered, and the interlocutory appeals and the substantive appeal can then be taken together. We think that will reduce the utility that defence counsel make of interlocutory appeals as a means of stultifying civil proceeding.

The other, the fifth innovation that the bill proposes is to strengthen the ability or to strengthen to encourage the judges to exercise their power to weed out unmeritorious cases at an early stage, rather than having to go through full hearings, where the lack of merit in the case, or in the defence is obvious, right at the get go. So the bill proposes that the judges' courts should be more willing to exercise the power to enter summary judgments, either summary judgments entering judgement for the plaintiff, or summary judgments dismissing the claim and entering judgement for the defendants in an appropriate case. Again, this is nothing new. Our current rules of most of our courts contain these provisions. But the bill proposes to take it out of the rules and put it in substantive law, and to give it real bite. And on this point I would like to digress slightly because when we've discussed this in previous interactions at CRID, we've come to the conclusion that some of the challenges we have with our current practices, are also driven by the fact that we are not encouraging the conduct that we want to see. So for example where this is concerned, I remember on a recent discussion at CRID, we realised that one of the reasons

perhaps why judges will be reluctant to exercise the power to dismiss cases at an interlocutory stage, based on summary application would be that that doesn't count towards their returns, their quarterly returns that they have to give to the NJC. Now so basically what we're doing is encouraging judges to delay matters because they know that it's only when they go through the full hearing that it will be counted. I think if we change that dynamic and if disposal of matters at an early stage in the appropriate in appropriate cases would count for the judges, it might encourage this a lot more.

And a related point, of course, is the current process by which members of the profession, considered eligible for elevation to the rank of senior advocate. I think until we move away from the quantitative methodology of deciding who can be a senior advocate, it's not likely that we're going to be able to reduce frivolous litigation, because I have no doubt in my mind that a lot of the cases we have in our courts, and a lot of cases that ought to settle but that don't settle, is because you know the lawyers involved are thinking why should I settle, this is another case that would aid my application for... So so so we need to start encouraging what we want to see, in my view, perhaps we should start thinking about, you know, the number of matters you settled being also a factor that will be taken into consideration for appointment as a senior advocate, then maybe we will start encouraging people to engage more in settlement and alternative dispute resolution, rather than taking things to the wire all the time, and filing frivolous appeals.

The last aspect of the of the bill that, and probably to my mind, the most important is a provision that that pushes for us taking costs more seriously. I think that also one of the reasons why we have so much frivolous litigation in our court system and why it's so clogged up is because access and exit from the court is just too painless, litigants come to court with cases that have absolutely no merit and they walk away, having inflicted severe pain on the administration of justice, haven't wasted everybody's time, wasted everybody's resources, and then they're asked to pay costs of 10,000 - 20,000 naira. I think that is absolutely ridiculous and the bill seeks to take care of that. We're recommending that cost should be on a full indemnity basis. Of course that comes with, a lot more work needs to be done because currently our system of costs, even where cost significant cost are imposed, there's no measure, there doesn't appear to be any science behind it, it appears to be just the way our Lordships feel on the particular day. And we think that that is not good enough. So, again, the provisions are there in all our rules of court, most of the rules of court contain elaborate provisions for the taxation of costs, etcetera. But none of those are being effectively employed at the present. And what we're recommending is that we should develop a proper jurisprudence on cost, the basis on which costs will be awarded should be clear, the party who is claiming costs must justify the basis on which costs are being claimed, and over time, there's actually provision in the bill that says that the Nigerian Bar Association should develop a scale, a scale of fees because as we know, costs are not necessarily what you ask for, costs are what you get. So over time we think that there should be a jurisprudence that develops around how much cost would you get for a particular type of case, depending on the level of counsel involved, depending on the complexity of the issues involved in the case, the length of time, etc. I was discussing this with some of our colleagues who practice in the UK recently, and we're actually going to have a webinar on this shortly and I understand that in the UK there's actually a cost bar. So you have some barristers who specialise just in arguing cases in relation to the propriety of the costs awarded, and the propriety of the cost to be paid. So that that is the level of sophistication that our colleagues in the UK have have reached. I think we're still away, away up from that but we need to start somewhere. And I think if we have a proper cost jurisprudence, it will assist in bringing a bit more sanity, to our civil justice system. Thank you very much.

**Mr Fagbohunlu (SAN):** Thank you very much Dr. Ajibade, that was a very incisive summary of six of the points, of the bill. I'll take just four more points.

I'll spend a bit more time on the first one from my perspective, which is very important, and that's the function of the ex parte injunctions and the role that ex parte injunctions have played in the scheme of things. So one of the things that the bill focuses on is on regulating and making tighter the rules around ex parte injunction, and why is that the case, what are we hoping to achieve by looking to regulate ex parte injunctions a bit more. One is to discourage strategic cases, cases that are filed, not because there's any merit to them, but because a party seeks to obtain a strategic advantage over over the counterparty. Now we believe, you know, and this is anecdotal, it's not empirical, obviously, it will be it will be interesting if some empirical work can be done in this area to know what proportion of cases that don't deserve to be in court, actually gets into court simply because they are motivated by somebody's desire to score a strategic advantage in a commercial dispute or in any other kind of dispute, it could be a land dispute, it could be anything else at all. Now we think that I've certainly in my own experience, seen a number of cases that have no bases in merit, filed in court simply to get an ex parte injunction and then keep the case in court until the party who filed that case scored a tactical advantage over the other side. I've seen quite a number of cases like that, those cases tend to stay in court for a very long time, those cases tend to be very disruptive to business relationships. And so one of the things that we think that we would achieve by regulating the whole scheme of ex parte orders in a more logical way, is to weed out frivolous cases, we looking to curb corruption.

Because again, when you look at a case, which on its merits, doesn't even deserve to be in court at all, and yes, that case actually deserves from the judge's perspective, an ex parte order, then you begin to wonder what happened, and you say to yourself it's either corruption or its incompetence. A good example for instance, from my perspective recently, recent example is an experience is a case in which somebody filed a case in court exhibited the agreement. The agreement clearly had an arbitration clause. The Federal High Court has a practice direction that says, when a case that has an arbitration clause comes to court, don't entertain it, tell the parties to go to arbitration like the agreement says, and in this case this judge granted the injunction, notwithstanding the existence of an arbitration clause in the agreement, notwithstanding the existence of a practice direction.

I only cite that as illustrative of the point that I make, that in many of the cases we've seen ex parte orders being granted, they were clearly not meriting it and you wonder whether there was a question of incompetence or corruption. So again one of the things we seek to achieve regulating ex parte orders is to curb corruption.

And of course the third thing which is very important, is to provide more value to the users of the system by making available a service that actually promotes a win-win attitude. One that actually delves into the commercial realities of the parties dispute, as opposed to a winner take all situation, a zero sum game situation in which you give an ex parte injunction in favour of a party, the injunction is disruptive of the party's commercial relationships, and nobody has really given any thought to, is there some kind of middle ground that we can achieve that helps both parties to continue the business relationship without

acrimony. And so what we've done is to incorporate some kind of ADR process that we call the interim remedies reference, into the whole procedure for granting or refusing ex parte order of injunction.

So essentially, one of the major focus of the bill is to is to reform that whole process, and how do we propose to do it, by simply going back to first principles. You know Dr. Ajibade in his presentation just now illustrated many assets in which, what the bill is looking to do are things that already contained in rules of court or in judicial principles, but all those principles have tended to be jettisoned, either because again, like I say, of incompetence, incompetence on the bench, bad ethics in the Bar or purely because of corruption, corruption both at the bar and on the bench .

Now, we have to go back to first principles, and from our perspective, the way to go back to first principles is to put it in a statute, with adequate sanctions, both in terms of costs, and in terms of the type of contempt proceedings that Dr. Ajibade referred to earlier.

The only other three points I would want to talk about, they've been covered to a large extent, technology. So Mr. Candide Johnson has spoken about technology in the context of remote hearings. The other aspects that the bill has to do with is using technology for filing and service, and then using technology for recording and transcribing court proceedings. And that takes me to my third point, which is collaboration. So we've seen efforts being made like Mr. Johnson pointed out just now, we've seen efforts in Ogun State. We've seen the Nigerian Bar Association at the national level, out with a statement that says we are going to begin to consult with stakeholders to put in place a process to use more technology. We've seen the Attorney General of the Federation, come out with a statement saying a civil justice bill will be passed and technology will be will be used. Now, the practicalities of it lead to the question whether this is an area where the judiciary needs to collaborate with the private sector to provide these services. It may be that it's possible to run technology using very basic methods, WhatsApp, Zoom, Microsoft Teams, which is a forum on which we're having this session right now. It may be that you can actually run a service that uses very basic inexpensive technology. It may be that some other types of cases there will be such complexity that you need to use more high grade technology. And that's what basically calls into question, whether we need to be thinking seriously about collaboration between the courts, the judiciary, and private establishments providing these services or a commercial basis.

Last point I will talk about will be fast track appeals.So the bill also takes cognizance of the fact that certain types of matters would need to be resolved very quickly in the interest of justice. Already some court rules, the Supreme Court rules, the Court of Appeal rules, some High Court rules, already recognise certain matters as being deserving of fast track. The bill adds to two instances, and then also then refers to other instances in which the rules of the court already make provision for fast track. Now, the two instances that the bill adds; one, cases in which an interlocutory injunction or an interim injunction ex parte have been granted or refused. And that's in recognition of the fact that those types of orders usually tend to be extremely disruptive of projects, of businesses, and so it's important that in those cases where an injunction is being granted or refused, the appeal to obtain remedy should be one that will be fast tracked. I'll give an example. We are all aware of the Mareva injunction. The Mareva injunction is a concept that came into existence in an appeal that was heard within two or three days from the time that the ex parte order for it was refused by the High Court. Because to the High Court judge in question at a time, I'm sure it was, this is a very novel procedure, how can you get an order that attaches the

defendant's assets in advance of judgement. And on that basis, the High Court Judge refused it. The appeal from the High Court judges judgement, was taken by the court of appeal and decided within two or three days after the high court order refused the order. We should be able to fast track those types of requests for remedy.

And the second one, of course, is arbitration. Because of the very important role that arbitration plays in decongesting the courts, in giving parties a tailor made approach to resolving their disputes, appeals in arbitration matters have also been included by the bill on the list of those types of cases that deserve to be fast tracked through the appellate process.

So that ends my presentation. Between, between the two of us, Dr. Ajibade and I have been able to present to you 10 points from the civil justice reform model bill, which we hope will become effective across the country, as states and the federal government begin to enact the bill.

Now, I will give the floor to Mr. Daniel Wilmot. Mr. Daniel Wilmot is a partner in the firm of Stewarts and we thought it was important to have him address this session because his firm just concluded a case in the commercial court in England, which started and concluded entirely using virtual technology, virtual process technology. So Mr. Wilmot , I hand the floor to you I hope you're still with us.

**Mr Wilmot:** Thank you Tunde. Can everyone hear me?

**Mr Tunde Fagbohunlu [SAN]:** We can hear you loud and clear. Thank you. Thank you Daniel.

**Mr Wilmot:** Very good, the wonders of technology continue therefore. Thank you Tunde for the introduction. And thank you everyone for inviting me to this session. Needless to say, it's a delight to be here with you and an honour to be in such esteemed company and amongst such excellent speakers. And I should say on a personal note, a privilege as well to help assist you in your discussions as to how you may reopen the courts in the face of this terrible crisis that is afflicting everyone in all four corners of the world. My slot is very short. And so inevitably, we've just been discussing fast tracking, I suspect my discussion will be fast tracked as well. But in the event there are any questions of course, we have a Q&A at the end of this but I would also be very happy to receive questions over email thereafter or otherwise. So as Tunde has alluded to, my firm and a team of my colleagues have just been through what is the UK's first entirely virtual hearing in the Commercial Court division of the English High Court.

To give you a little bit of context to what the hearing was about, so that you can understand the size and nature of the matter. My firm was acting for the Republic of Kazakhstan. We were resisting an application brought to enforce an arbitration award against our client. The arbitration award itself was in the sum of 530 million US dollars. It was an Energy Charter Treaty award, and a court order had been made in Belgium that garnishment of assets could be made for the purposes of enforcement and so the creditor sought to enforce against our client's funds in bank accounts held in the UK. Essentially, the dispute was whether the Belgian court order and the terms of its order were sufficiently broad to cover our client's assets in the UK. A four-day trial was listed in the Commercial Court. It was to have one witness of fact, four experts witnesses of law, and translators given a number did not speak English. And of course, the usual other court services such as transcription, and similar. The witnesses were from Kazakhstan, the

USA and Belgium. And so you can imagine the logistical feat in getting everyone into a courtroom in the UK would have been substantial notwithstanding the COVID-19 arrangements and impacts that appeared. On the 16th of March, being one week before the trial was due to start, the UK Government imposed a complete lockdown on the country. Similar to the lockdowns that I know many parts of Nigeria are currently experiencing. That very same day, the claimant seeking to enforce the award made an informal application to the presiding judge who was listed for the hearing. By informal, I mean that no application notice was served, witness statements were not served. Quite simply, they contacted the judge and his clerk, copying in all the parties, saying that the hearing had to be adjourned because it would be impossible for it to take place the following week. The judge in his wisdom three days later decided that his reading day, which was the Friday before the commencement of the trial, was instead going to be used to hear the application for adjournment made and he decided that no adjournment would take place and that the trial would continue the following week. Albeit, he did graciously allow the parties an additional day or two in order to get the technology in place. That very same Friday, the Lord Chief Justice of the English and Welsh Courts issued guidance that it would be the default position in all jurisdictions, by which he meant all branches of the court system, that hearings should be conducted with one, more than one or indeed all participants attending remotely. And that very much remains the case today in the UK.

Whilst it is not business as usual, in so far as the judges retain a discretion as to whether to adjourn and indeed, guidance has been issued to suggest that some cases are not suitable for remote hearings, for example, large jury trials or family disputes involving children, those are very much the exception than the rule. To give you a sense of how seriously the courts are now taking this guidance, on the sixth of April, in respect of a five week hearing which was due to take place in June, the application for adjournment was refused. And so that hearing is taking place despite it being five weeks in length.

Picking up on a number of the points that have already been made at today's session, the English courts have led the way by issuing guidance on, for example: which cases ought to be prioritised when it comes to listing; the factors that judges should take into account when exercising their discretion on whether to adjourn a hearing; some practicalities of actually running a remote hearing, the technologies available, how electronic bundles of papers can be set up, and the way that parties should collaborate before a hearing takes place to ensure that the technology in place has been tested and everyone is ready. And indeed, again, as has been suggested, even amending court rules.

One particular issue we have seen, similar to Nigeria justice, is the core principle of justice that it must be open and public. However, in our court rules, we have a ban on recording proceedings. And of course, if you are to live stream a virtual trial, that in effect is a recording, or there is nothing to prevent someone watching the live stream from recording it themselves. And so rules have had to be amended on a temporary basis in order to allow the virtual hearings to proceed.

So now, talking about my own experience and that of my colleagues in the trial which I mentioned, the headline is that it was a very positive experience. Picking up on the point that has already been made, we did not need bespoke software or bespoke technology in order to allow the smooth running of the hearing. The technology already exists in the market; we can see it here today using Microsoft Teams, that it is more than able to allow participation from those who are working from home or otherwise. We,

in our instance, decided to use the platform Zoom. That is not a plug for Zoom, I'm not on commission or otherwise. We simply used that platform as we felt it was a mature piece of software. Importantly, it uses the least amount of Internet bandwidth, such that in the case of participants not having a very strong Internet connection, Zoom would be the best for them. And it also allowed the sharing of documents on screen, we felt, in the best way.

Some observations, perhaps some learning points, which I share with you all to inform your own thinking. The technology is very good. The one thing it is not very good at is allowing two people to speak at the same time. It can only pick up one audio channel, and one will often override the other. And so counsel, judges and participants have to exercise good speaking discipline in allowing one to speak and the other to answer. That was particularly important in cross examination. One has to consider a protocol for the calling of witnesses. In a courtroom, one typically leaves it to the court clerk to swear the oath. Of course there are no court clerks in a virtual hearing, so one needs to give some thought to how oaths may be sworn And that might be nothing more complicated than giving the text to all witnesses in advance.

Clearly, there are issues around *purdah*. If there is a break in the hearing, how do we ensure that witnesses are not communicating with their counsel during that break or discussing their evidence? An agreed protocol can address that. There may be concerns about interference, you don't know who else is in the room with a witness. And I should say, a lot of thought has been given to sorts of fandangled technological answers to resolving that issue. In my experience, the easiest thing to do may simply be to get the witness to take the camera and just turn it 360 degrees. Unless someone can hide in the corner, you know that they are in the room on their own. But clearly, where there are issues of fraud or dishonesty alleged against the witness, that might militate against a virtual hearing being appropriate.

We instructed a third party IT vendor to support our hearing. We did that for a number of reasons. First, the judge in that particular case inevitably had to focus on case management, which meant that there was no other independent third party who could administer technological issues, and if one of the parties to the proceedings administered those issues, that would always be open to an allegation of impropriety. So we had a third party vendor who, for example, supported the software, they would manage the lobby in the virtual hearing, and would only admit people through to the hearing room once they had checked that their name was on a pre approved list and they had undergone testing: audio testing, visual testing and internet connectivity testing. The independent party also was able during the hearing, to advise, for example, if counsel had accidentally left their microphone on mute, or if the transcribers were not able to hear the audio line properly So that was a very useful role that we had.

Internet connectivity I've touched on already. Clearly, connectivity is crucial to the use of technology. That said, one need not over-think the points. At one point in the hearing, one of the expert's internet line went down, he reconnected using his telephone over a 4G connection and his evidence proceeded unhindered. 4G was by far sufficient given the technology adopted, so one need not necessarily overthink the point. Already in the English Courts, applications for adjournments on the basis that a participant does not have a good enough internet connection are being dismissed. English judges are taking a very robust line saying that one is able to obtain good internet packages on a temporary basis for a few days. And therefore it is incumbent upon lawyers, counsel and their clients to have foresight of these issues and to put solutions in place.

Finally, there is the big question of legal team communication. Clearly in a hearing, there is the advocate. But of course, the advocate will well know that they receive post-it notes with points, they will ask questions of their junior advocates and their clients 'live' in the hearing room. To allow for that, we adopted WhatsApp, and we used the web portal of WhatsApp so that it could be on our screen. Indeed, we had one half screen with the hearing the other half screen with the WhatsApp channel. We considered creating groups with counsel, groups with experts and groups with our clients and we were able to exchange live messaging and feed messages through as needed. And indeed, because of that, 'more' clients felt like they had a stake in the hearing, then could have fitted in the hearing room. And in our case, given we were representing a government, we had a great many client stakeholders who were, in effect, participating in the hearing when they might not otherwise have done.

Two challenges I would say, or three challenges very quickly if I may. The first is the use of documents. In our case, because we were so close to the hearing the bundle was already in hardcopy and had already been shared with all of the parties, therefore its use during the hearing was easy. If we had another hearing, we would use E bundle functionality - there are specific software solutions available to do that, or simply parties can create a hyperlinked PDF as an equivalent solution that can be used, but clearly a lot of thought needs to be given to that.

We have seen issues with clients wanting their day in court. A virtual hearing inevitably comes across as more informal than the grandeur of sitting in a courtroom with a robed judge and robed advocates before you. And so I think is it is incumbent upon the players in the system to ensure that there is still the perception of formal justice. We have seen anecdotal evidence of counsel becoming more relaxed in the way they present their cases. And so I think it's incumbent upon everyone to retain a level of professionalism and decorum.

And lastly, the challenge I would say we have seen is that is that virtual hearings are more tiring than in person hearings, which might seem counterintuitive, but we are already noticing that judges are unable to do as many hearings virtually as they are in person. There are studies going on into why, but it has something to do with the focus that is required by being on camera, the light that is shone into one's face via a laptop screen or a monitor screen. And so I think one needs to account not for the fact that hearings take longer, but for the fact that fewer hearings will be capable of being undertaken.

My last point, my closing point, and I realise I'm slightly over time with apologies, is that I would also encourage everyone to draw from the experiences of the international arbitration lawyers of which I am one of them. International arbitration has adopted virtual aspects of case management, virtual aspects of case hearings for many, many years. And Tunde, and others who are seasoned arbitration practitioners, will know well what I'm talking about. I would encourage those who have that direct experience as well to share those experiences in the context of civil and criminal litigation before the courts

I should stop there. I've run through it rapidly. As I say, I'm very happy to answer any questions. And indeed, after the event, I'd be happy to compile all the questions asked of me to issue some sort of answer list if that would be of assistance. No doubt you may have appreciated already, I'd be very happy to assist you going forward as needs be. Thank you Tunde. .

Mr Tunde Fagbohunlu [SAN]: Thank you very much Daniel. And I have a question for you which however, I will hold over till the question and answer session and it's essentially just give you enough time to think about it, the rule that forbids parties from recording proceedings, what is its rationale? And what is the relevance of that rationale in today's world in which we all now have to contend with the reality that a lot of hearings are going to be happening virtually where recording, like you just observed is a very intrinsic aspect of the process. But just before we continue, I would like to announce that Honourable Justice CC Nweze, Justice of the Supreme Court of Nigeria is now with us. We are very honoured and privileged to have you with us, Sir. We know that you have a few words for us , specifically the context, as I understand the question, what is the utility of technology in dispensing justice in an emergency, such as the one in which we are now today. So my Lord, thank you. Welcome to this session. Thank you for joining us. I will now give you the floor. You will have to unmute your camera, so that we can hear you but my Lord, the floor is yours. Thank you very much. My Lord it appears your system is still muted, you will have to unmute it so we can hear you.

**Justice Nweze:** Thank you very much. Thank you for the invitation to join in this work. The learned Senior Advocate, Tayo Oyetibo, asked me to look at the use of technology in judicial proceedings given situations of emergency. I've just been able to catch one or two things. And here I note that technology, information technology has permeated every sphere of our lives and the entire process cannot be an exception. Indeed, this revolution has pervaded the three principal modes of proof. That is to say oral evidence, proof by document and material things. Now with regards to oral evidence, there is clear indication of the ubiquitous presence of IT, in at least three things. I propose in the traditional, INAUDIBLE that it's not the reality of video recorded evidence in chief, video recorded cross-examination and re-examination. These developments have indeed received endorsement and judicial imprimatur in other places. And here I cite example of Section 32A of the Criminal Justice Act which introduced an important provision for admission in evidence of video recordings of interviews of pre-trial witnesses carried out before the trial. Under that, cross examination and re-examination can also be video recorded. The live television link procedure, dates back in England to 1988, with the endorsement of remote taking of evidence of trial witnesses via a live television link.

This procedure which was used mostly in cases of physical and sexual abuse of children, have been endorsed by the courts. In the statutes of the International Criminal Court, Article 69 (2) of the ICC statute, which have both been adopted. The trial chambers of the International Criminal Tribunal of former Yugoslavia and International Criminal Tribunal Law, Rwanda, have exercised their powers under Article 2, 21 and 22. Like the court said, ever since Lord Woolf's recommendation on the use of video recording in receiving the opinion of experts, the popularity of that mode of expression of evidence, that is live video conference links, have gained tremendous impetus. Even the traditional method courts observance of the demeanour of witnesses have been affected by these developments and this is the way it has been captured. Interestingly, IT has actually enhanced our ability to assess the credibility of witnesses. Witness demeanor will be much more effectively monitored via an electronic link and at some distance away. A video image of a witness responding to questions in conjunction with high quality reproduction of testimony and textual subtitles, will run from a computer generated transcript, may give a far better impression of whether the witness in question is being truthful or not.

With the ready availability of option replay of testimony, the opportunity to view the witness from different angles and the ability to engage the image of the witness will arise. Now, there is also the issue of verbal presentation versus visual displays, and here I have itemized the three types of computer generated displays. The computer animation, relation and virtual reality as it oppose to the idea of a witness coming to the witness box to take two or three days. We have elaborated on these techniques and keep in view that if we are able to amend our rules to accommodate them, will go a very long way in this procedure. Hello. Hello Tunde.

**Mr Tunde Fagbohunlu [SAN]:** Yes, my Lord, my Lord we can hear you loud and clear. Thank you very much.

**Justice Nweze:** Then the issue of loqus in quo because like I said, these are the three major means of proof of evidence, oral evidence which I've already said, there are alternatives under technology, the proof of document. And I heard the previous speaker when he was saying something about documentary proof. The only problem I have with him is that here , in Nigeria, there is this laid down principle that you don't dump documents. I don't know how he's going to wriggle out of that one.

Then I cited section 2 or 3(1) of the evidence, that's, on the means of proof of document in certain cases. Gentlemen, these are just my ideas which I have been able to generate overnight because it was actually two nights ago that Tunde, I mean Tayo Oyetibo, learned Senior Advocate of Nigeria, told me about this. I thank you very much for this opportunity.

**Mr Tunde Fagbohunlu [SAN]:** My Lord thank you very much. It's been a honour having you with us. That has been a very insightful presentation, it has also certainly inspired confidence, that even at the highest levels of our judicial structure, these things are being thought about, these things that are needed to be able to take both the judiciary as well as our profession into the next stage, the next level of development, which essentially is being able to deal, not only just in situations of emergency like this, but in indeed in terms of going forward and to able to make, to deploy technology to make the dispensation of justice a lot more efficient.

Thank you very much again, my Lord for being with us. I hope you will stay with us while we run through the rest of the programme. The time now is 1:24pm, we still have about forty minutes to go. I will now at this point, hand over the floor, we have a number of stakeholders participating in this session, representing different stakeholder perspectives. The first that I'd like to hand over the floor is the Attorney General of Akwa Ibom state a state that is already contemplating putting these measures in place to reform the civil justice system, to modernise its entire judicial process. So we have with us in the house, honourable Uwemedimo Nwoko, the Attorney General of Akwa Ibom. Honourable Attorney General, I hand over the floor to you You're welcome. Thank you very much.

**Honourable Nwoko:** Yes, thank you very much, Learned Senior Advocate of Nigeria, Tunde. Are you hearing me? Am I unto everyone

**Mr Tunde Fagbohunlu [SAN]:** We can hear you loud and clear, Honourable Attorney General. Thank you very much.

Honourable Nwoko Hello. Thank you very much. Thank you very much. It's my pleasure being part of this very wonderful and forward looking programme.. I want to thank you very much, the organisers and thank Tayo Oyetibo [SAN] in particular, for contacting me for this. I, this is very elucidating.

**Mr Tunde Fagbohunlu [SAN]:** Yes, we can still hear you. You are still on.

**Honourable Nwoko:** Okay. Okay. Thank you, sir. Thank you, sir. We are having this as a way of advancing progress in particularly civil justice system. A couple of things touch me. The presentation by Ajibade, Learned Senior Advocate of Nigeria is very touching, particularly, the Learned Senior Advocate talked about the change of culture. I think that is very critical. A lot of the issues that are being advocated now are already within our civil procedure rules, either directly or by implication. But part of the major problem we are confronting is culture, and our attitudes and so that will play a major role. And I think part of what will help that to move forward is putting a more discouraging sanctions against parties who indulge in processes and procedures that tend to delay trial.

Akwa Ibom State would like to also host this conference because the product this conversation, the product of this interrogation. We would like to take that as part of our model law for civil proceedings. I want to say that, I should agitate our mind is a deliberate processes, deliberate acts of parties, particularly defendants and counsel, who indulge in procedures that are meant, deliberately calculated to delay delivery of justice.

But let me say this, clearly that very as soon as soon as it will be possible, we would like to be part of this, and as this one will round up, we will like to have a part of the the components of the of the understanding reached towards advancing the cause of justice delivery system. Let me thank my Lord, the Honourable Justice Nweze for making your time to make contributions to this process and say that we are ready to adopt we are ready to move on with this, and at any point in time we are called upon, we will also like to be part of the proceedings. Thank you very much.

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much Honourable Attorney General Akwa Ibom State, It's been a pleasure to have you with us and we're happy, we are looking forward; the two organisations: CRID-LawNet, and the Justice Reform Project, working with Akwa Ibom State, to carry this conversation forward into practice. Thank you very much for joining us today with us. Stay with us.

**Honourable Nwoko:** Thank you, sir.

**Mr Tunde Fagbohunlu [SAN]:** I will now like to invite Mr. Mike Igbokwe he represents a stakeholder perspective of that of a practising lawyer in Nigeria, a senior advocate of Nigeria, a user of the system. Mr. Mike Igbokwe, I hand over the floor to you.

**Mr Mike Igbokwe [SAN]:** Thank you Tunde. Can you can you hear me?

**Mr Tunde Fagbohunlu [SAN]:** Yes, we can hear you loud and clear. Thank you very much.

**Mr Mike Igbokwe [SAN]:** Let me appreciate this invitation. And also, thank your organisations for thinking it fit to have this workshop, despite the challenges that we've been having as a result of this lockdown and COVID-19. I don't think it could have come at a better time than this, because you will all agree with me that currently, administration of justice in Nigeria has been grounded to a halt , whether we like it or not, nothing is going on, and it affects not just the delivery of justice, but also affects commerce, affects every other part of our lives So the earlier we began to talk with a view to coming up with a way out, just like other common law jurisdictions have done, the better for us. We cannot continue to lock down justice. Right. Now, I was asked to talk on an aspect of this, which is the constitutional requirement of public hearing in relation to virtual hearing. Now I what I did was to look at section 36 subsections three and four, if I may quickly read, it says: the proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection one of this section, including the announcement of decisions of the court or tribunal shall be held in public. Subsection four says: whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or Tribunal. From my research, especially in jurisdictions where virtual hearing had become the norm, I found out that the [reservation] in the area of the system not having proper hearing had to do with the fact that he had been preventing confidentiality between the lawyers and their clients. And it had become difficult, if not impossible, for defenders or persons who are under trial to have confidential discussions with their lawyers, because everything is now in the open, everything they're saying is being recorded, there's no confidentiality and it is fair that that is bound to prejudice fair hearing.

Secondly, the system is seen as one that makes the accused persons or witnesses to be disconnected, you know, in the sense that the, they don't even understand what is going on, and they cannot appreciate it, because they're not near their lawyers, it is impossible for them to actually appreciate what is going on or to be guided. And that at the end of the day it's bound to prejudice fair hearing.

But my take is that if we do not take any definite decision and find a way out of these criticisms, we will be stuck. And I think it's better to find a way out than to say we should fold our hands and say what because this is bound to prejudice fair hearing precisely our and it is unconstitutional, we will not find a way out. And one of the things I thought we will have to do, because by the time I also looked at subsection four of Section 36 of 1999 constitution says that provided that such a court or such key tribunals may exclude from its proceedings, persons other than parties there to, or their legal practitioners in the interest of defense, public safety, public order, morality, the welfare of persons who have not attained the age of 18 years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity will be contrary to the interests of justice. So, my take is that the constitution on its own has made exceptions, in which case and this section they are predicated on what would be regarded as not being contrary to the interests of justice.

So all we need to do is in either preparing practice directions, or new rules, I understand the Lagos State has even gone ahead to, the CJ of Lagos State has gone ahead to bring up some practical direction in this respect, but what I'm thinking is that all we need to do is to make sure that in coming up with whatever we need to do in order to accommodate virtual proceedings, we should, as long as we consider the interests of justice, that they're not contrary to the interest of justice, we should be right. A lot of decisions

of the court, especially the Supreme Court had given us the impression as to what the attributes of justice or fair hearing are. And if we are drafting these laws or practice direction as long as we put these into consideration, I believe that we will not be seen to be contradicting the provisions of Section 36.

Now, in in, in light of the present pandemic, public hearing will prove difficult, but as such virtual hearings must be embraced. Other common law and African countries have also embraced this initiative to ensure that justice is not forestalled. I know Kenya has taken a position, India has taken position, you know, apart from what we have in the UK in. For instance, in the UK practice direction 51(y) of the Civil Procedure rules, Part 51 which was passed on 24 March 2020 states that the step the court will take to ensure access by the public to remote hearings in private will have to do with steps, arrangements must be made for a member of the media to assess the remote hearing. Now, in addition, where the court must conduct the hearing in private he must be video recorded, or at least audio recorded and anyone may apply to the court for access to the hearing. In this regard a judge of the court of protection, Mr. Justice Mustill, conducted a sensitive welfare case by using Skype for Business.

In Kenya, the judiciary made use of Skype and Gmail to deliver pending judgments between 30th of March and third of April 2020. Both the Mombasa High Court and Court of Appeal have delivered about 43 judgments using Skype. This is an African country. We haven't even started. Now, therefore the following suggestions or initiatives can be employed for virtual hearing here in Nigeria based on the constitution. One, courts should open social media pages such as Twitter, Instagram and YouTube. Through these social media pages information will be disseminated about pending cases and judgments to be virtually had, including, but not limited to news of parties, date, time of hearing, and so on and so forth. Virtual hearing can be conducted, like someone said, using Zoom or Skype for Business. I must say, well, quite unlike what obtains elsewhere, access to the internet in Nigeria and the structure for this, is still not as satisfactory as one would expect. We still have problems with power generation or even accessibility to diesel or the cost of diesel to run alternative power system like generators. And, for instance, I partook in a foreign arbitration recently using Zoom, couldn't, we couldn't complete the proceedings using Zoom because the internet's access was very poor. One of the participants was in South Africa, the other one was in, in Egypt. We ended up using WhatsApp, it didn't work. So these are some of the challenges that we have to look into with a view to ensuring that in trying to create an alternative, we do not also affect the interests of justice of fair hearing . Someone has said, well, if there is a break in communication, you could resort to some other means like telephone as well. If that is possible, why not? As long as it does not forestall proceedings, you know, these are things that we need to think about and bring together now virtually, excuse me.

Now, another thing I noted is that access to media could also be encouraged in order to ensure that there'll be no criticism as to the fact that it is not public by ensuring that the representative of NTA or Channels or some popular newspapers will have access to and attend the hearings, through either video or teleconferencing. Where it proves difficult to have live recordings of the hearings or judgments, the sessions must be video and audio recorded and uploaded to the court's YouTube pages for easy access to the hearings by the stakeholders. That way, we'll be able to at least have an alternative way of having cases go on notwithstanding the fact that we're operating a system that we have not, that is not satisfactory.

Before I end this let me just quickly say this, I had an opportunity to just skim through the model law. My take on this, is, it's a very, very good step in the right direction. But while the type of cases that should be given accelerated hearing or be fast tracked was been mentioned, I did not hear, Admiralty matter been mentioned, I want to ask you guys to consider it because there is a universal principle all over the world that Admiralty matters must be given accelerated hearing, no doubt, that has to be taken into consideration.

I think on on this note, I conclude by saying yes, some aspects of video conferencing, teleconferencing, which are some of the things we use in virtual hearing could be seen to violate the provisions of section 26 subsections three and four of the nineteen ninety nine constitution in terms of not having that public hearing that we're all used to. Yet there are, there are rules not only in the constitution but also through the media that can be that can be put into place to ensure that this criticism are addressed with a view to ensuring that we do not invalidate or perhaps contradict the provision of the constitution. And what is more , the constitution is not perfect, it can be amended. It's a pity that in Nigeria, amending or creating laws, enacting laws always take very long time, and then we have a situation where they may drag on for a very long time, but I know that of recent, the National Assembly had as a result of the emergency situation we have been facing due to this pandemic, brought out a lot of enactments or bills that they wanted to get enacted.

So this can also be taking as one that will require a very expeditious amendment if that is the way we should go in order to accommodate virtual hearing in our judicial system, not just by way of practice, practice directions or by the rules. And what is more, if we look at if you look at section 2(b), the second schedule of part or three of the 1999 constitution on supplemental and interpretation, you will see that the categories stated there include the jurisdiction, the powers, the practice and procedure, of courts of law. So, what we're talking about has to do with practice and procedure of courts of law and comes within the purview of the National Assembly. So that model law can even be enacted into an act that can become enforceable in every state of the Federation.

Thank you so much for the opportunity to share my thoughts on this topic.

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much for an interesting perspective in relation to the constitution. But let me make the observation, this session is being attended by 64 people. And you would ask yourself the question, what can be more public than that? Aside from the people who are actually speaking, 64 people are joining and attending and observing this session. The Constitution says that there should be hearing in public. It does not say what public means. It does not say how public can be achieved. In actual facts, this session is taking on a lot more people than our average courtroom can accommodate, our average physical courtroom. So my view with all due respect, Learned SAN, is in actual fact, virtual technology, virtual hearings, probably even satisfy the requirement for public hearings more than the very small court rooms that we have. I mean, imagine a courtroom in the federal High Courts in Lagos having to take 64 people, 64 observers. But this virtual technology is actually achieving that. That's number one. Number two, you raised very important practical points about, you know, the electricity, the speed of internet. Yes, indeed very, very valid points. And indeed, you remember I made a point earlier, one of the things that this bill addresses is the possible areas of collaboration between the judiciary and the private sector. So I can very easily imagine, the moment

virtual hearings become mainstream, I can see people setting up virtual hearing centres, where they will ensure that there is constant supply of electricity, the best possible internet facilities possible and offering it to parties and their lawyers to use those virtual hearing centres, where otherwise they wouldn't have had access to electricity and good quality internet.

So indeed, one of the things that this process will encourage, it's going to increase employment, it's going to open up new areas for economic activity, and for potential collaboration between the private sector and the judiciary. Now, thank you very much again, Mr Igbokwe for those very, very insightful, practical observations. We appreciate your views. I will now hand over to other stakeholder interests.

We have, I think, Mr Seyi Solomon, from the Ogun State House of Assembly. The House of Assembly plays a critical role, they will be passing laws to implement to the extent that they consider desirable, the various suggestions that we are making. I'm not sure if Mr Seyi Solomon, Honourable Seyi Solomon is on the line. But if you are we'll give the floor to you for two minutes to express any views or comments that you may wish to. Thank you very much. Mr. Solomon, the floor is yours.

**Honourable Osho:** All right, good afternoon. Thank you for having me. I bring greetings to you all from the speaker of the Ogun State House of Assembly, Rt. Honourable Olakunle Oluomo. Just as I have been introduced, my name is Honourable Solomon Osho and it's a great privilege to be invited to this virtual meeting. The discussion so far has been very robust and insightful and I want to assure everyone, including the Attorney General, that the House of assembly, we are willing and ready ….

**Honourable Osho:** Yes, as I was saying, I said the suggestions and the recommendations for amendment is actually welcome development and I want to assure the Attorney General and other partners that as long as this draft is being presented to the House of Assembly, we are willing and ready to give it the rightful consideration and the passage because anything that will actually improve in our judiciary is what we actually support. And we are willing and ready to partner with the judiciary. So it's been a very good and insightful discussion so far. I wish everyone the best. And I wish our judiciary the best because the Covid I9 that we didn't actually expect, nobody expected it, that it actually put everyone on their toes that we need to be post COVID-19 compliant, just as it's been done all over the world and as the previous speaker has already said. In Ogun State we are also ready and willing to do everything to be post I9 compliant. Thank you very much for having me once again.

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much Honourable Osho, that was very encouraging, a very encouraging message from the House of Assembly of Ogun State. I will now hand over to the various branches of the NBA in Ogun State, but just before I do that, we have among us Mr Gbenga Okuboyejo. He's a technology expert from Holland , and he would like to share for one or two minutes a perspective with us. Mr. Okuboyejo if you are still on the line, I give you the floor. Thank you.

**Mr Okuboyejo:** Good afternoon. Can you hear me?

**Mr Tunde Fagbohunlu [SAN]:** Yes can hear you very clearly.

**Mr Okuboyejo:** Thank you. This is very encouraging, I must say to see the development and the directions the honourable Attorney General of the state is trying to take the judicial system and as a whole, Nigeria as a whole. I must say I have a lot of experience in supporting the judicial system from an IT perspective. Many people have said wonderful things and it's really resonates with me with, the kind of work I've done and I'm doing, provided support to an international judicial organisation where everything is done. But before I continue on the technology aspect, I must say , the first thing is to have what everybody is talking about, the legal framework to support the technology. Technology could do whatever you want it to do, but without the legal framework behind it, it's just a waste of time. So that is where the time needs to be spent first to understand digital systems.

But I'll give you a little bit of what I have done in the past from my side. We constantly do remote testimony because witnesses are all over the world. Not everybody is being flown in. And also the only thing we do is we ensure that the line is encrypted, because as technology is good so a potential in situation is also there. So I've been using this technology both ways. It's a razor blade, you can use it for bad, you can use it for good.. But as long as you understand the effect and what you want to achieve, you will always achieve the good that you needed it for. . So as I said, we've done where the judges will be in court, in this case it's not full virtual hearing as is being talked about now. But this is kind of hybrid whereby you could have some participants out or the witness out, or even an expert that is being brought in from outside. Somebody mentioned from the logistical point of view or the legal point of view whereby the person is out there and you're having remote testimony, you might have to switch the camera 360 to be sure that nobody is there with the person. That is a way to resolve it but most of the time the way we do it is, there is always a location somewhere which somebody or at least, an IT, a bit of someone that understands IT not an expert but someone that understands IT, with a device. We have the device, the device is sent to the person, it could be an hotel or anywhere and the witnesses is transported to that hotel and everything is done. And it's all done without anybody understanding what is being done but of course within the court, everything is being recorded and is streamed out, streamed out in the sense that all media, global media can tap into the source of the recording and broadcast as they want to. So everything is all done electronically. And like I said, before we start or the beginning of everything is having a legal framework to back it up. For instance, where I support, there is a legal framework that supports electronic evidence, electronic evidence is what is being supported .

So if there's any evidence that is brought in in a physical form, it still has to the transported into electronic format. To reach that it is highly tamper proof, nobody can touch it and there is always what is called chain of custody behind every evidence . So from one to the other, and when there is a disclosure, there is a disclosure it's all tracked, everything is tracked. So, as it is, technology is the main driving factor of the organisation I am providing support for. I am the head of infrastructure in that place. So, we provide many solutions, transcriptions we do transcriptions in multi languages. And sometimes the solutions you can obtain on the cloud, like someone said, is true you don't need to have bespoke solutions, but it's not potentially fit for all if you get also a software as a service from for every angle. The process of judicial proceedings is long, there's a lot of these in there, starting from the beginning of the case also someone mentioned something about case management and again the interlocutory within inside because yes, it happens that when it the main case has been going on, there are so many branches that comes around with it, and the way the legal framework support is where I am, they open a different case channel for that particular one and that goes parallel. So, there is a framework that supports it.

Like I said, there are many things you can do that is good, but you need to have this this legal framework first that supports it. And from that legal framework, you can now build the right IT solutions for it. At this moment, it is easy to jump and say this can fit, this can fit, this can fit. And if you do that, at the end of the day, you will end up having more trouble than actually solution. If you have that right legal framework, you could build up upon that. I don't want to take too much of your time because the Honourable Attorney General just briefed me up yesterday evening and said this is happening. I said I'll like to listen, just to hear what's going on and innovations and ideas people are coming up with. And all of a sudden he asked me if I want to say something and I just said, okay. It's an honour to be part of this forum and to be able to say something about what initiative is going on. Thank you very much.

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much Mr Gbenga. That's very insightful. Again, extremely useful contribution. There is no doubt that this era into which we are moving is one that's going to require collaboration between so many disciplines, the judiciary, the lawyers, technology specialists, like you, parties to civil proceedings, parties to criminal proceedings. We're all going to have to work together, collaborate to make this new process work because in any event, the circumstances in which we find ourselves, make it imperative. Thank you again for joining us.

Now I will give the floor to the chairmen of the different branches of the Ogun State Nigerian Bar Association. Starting with Mr. Olu Ade Emmanuel the chair of the NBA Abeokuta branch. If you are with us, Mr. Emmanuel, please. You're welcome. And I give you the floor. Thank you very much. Mr. Emmanuel, are you with us? Well, I think we also have with us in the session, Mr. Isaac Ogba Chairman NBA Ota branch. Mr Isaac Ogba. Alright. There's also Mr Bayo Omoniyi. I don't know if Mr Bayo Omoniyi is with us. NBA Ilaro branch. Very well, we'll probably move into the question and answer session now. But if any of these gentlemen: Mr. Emmanuel, Mr. Ogba Mr. Omoniyi, Mr. Ganiyu, NBA Ijebu Ode branch, Mr Adetoro, Chair, NBA Sagamu branch, If at any point in time you wish to make a contribution, please send me a note on the MS Team's messaging facility and I will give the floor.

Now we are just a few minutes to the end of our session. I will go into questions and answers now. Based on requests I have received on the messaging facility on the MS Team's app. Mrs. Funmi Roberts, you had indicated that you had a comment. So I give you the floor. Mrs. Roberts.

**Mrs Funmi Roberts:** Thank you very much Mr Tunde. And as usual, when you start something, you drive it with a lot of passion. And I can see the passion with which you're doing this. I just want to make two points. And one of them is around perception. Anything external is perception. Now, if you look at the composition of the main drivers of this initiative, they are either from Abuja or from Lagos. You had discussed this project with me, and I had conversations with several people. And believe me, people outside Lagos - you know I reside in Ibadan so I'm from one of the rural areas of the country and they keep saying, Oh, this is a Lagos thing or an Abuja thing. So I just want you to take that into consideration because you're going to need a lot, many people to help to drive this. And there would need to be a lot of mindset change as Tunde Ajibade had alluded to. Then secondly, I think we need to address IT training for our judges. I know judges who cannot operate the Android phones they hold. So I don't want us to make the assumption that all of them are IT enabled. And perhaps IT competency may be one of the criteria for appointment of judges, going forward. I know that in a particular state, they're thinking of

appointing three judges, and I know that one of them is not IT enabled at all. I also want us to look at the sophistication of the parties and the level of IT sophistication they may have. These are things that have made me come to the realisation that this project may actually need to be implemented in a scalable manner and not wholesale soon. So, but that should be determined, of course, State by State. . And one of the recommendations I would like to make is that this kind of webinar, be done , at every state, NBA separately from the general group we have now and then maybe groups with Nigeria, the different Houses of Assembly. But one thing I can assure you of is that in Oyo State, if you require my assistance and I've given you that assurance before, Tunde, I'm ready to help you not only with government, but also with the State House of Assembly. Thank you very much, and well done.

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much Mrs. Funmi Roberts. That's as always very incisive, very helpful comments from you. We will take all of those on board. I got a request from Mr. Tayo Oyetibo, president of CRID-LawNet would like to make a comment. Mr. Oyetibo the floor is yours.

**Mr Tayo Oyetibo:** Thank you very much. My comment will be very short and in relationary to public hearing Now if you take a typical courtroom here in Lagos, let's use Lagos for, a typical courtroom in the Federal High Court might not be able to take more than thirty/forty, so if you have a virtual hearing and you circulate the log in details; if you want to participate, if you want to enter this room, register. Give out provision for about 30 people or 40 and you've got the maximum number that we could accommodate, that will satisfy the requirements of the Constitution because what is important in public hearing it's not that the whole world that would participate, it's that those who want to and who can be accommodated in the courtroom, they're be allowed to come in. I think we can use that to obviate the difficulties that can arise from the public hearing angle of the constitution. That's my short submission on that..

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much, Mr. Oyetibo. I have a request from Mofesomo. The floor is yours.

SPEAKER B: Thank you very much Mr Fagbohunlu. The question or comment I just have relates to the issue cost because I noted from the presentation of Dr. Ajibade that cost should be used appropriately as a sanction for misuse of the judicial system. But the question I just have a or comment relates to recovery of those costs, because it's one thing to have cost awarded in your favour and it's another thing to actually get your hands on that money, which is the real deterrent. The fact that the person against whom cost is awarded actually pays. I say this because even in terms of substantive hearings , we still have issues of recovery of even judgments, debts. And so if you're not able to get a judgement debt, it is probably less likely that you're going to be able to recover costs in a way that is beneficial to you for time wasted, and also it is incentive to the person against who some cost is awarded for misusing the judicial system. So I think that's one aspect that requires a lot of critical thoughts and manoeuvring.

The other thing I wanted to just also talk about is witness evidence. And I know we can talk about taking evidence of witnesses over Skype or Zoom, which is done in arbitration and with success. But one of the things I wanted to comment on is the fact that part of our jurisprudence in Nigeria, especially at the High Court is that the trial court should be able to observe the demeanour of the witnesses. And so in a scenario in which for instance, even using today's workshop as an example, to see the ability of judges to observe the demeanour of witnesses in hearings that are ongoing. So I think that's one aspect that

we need to also consider in the terms of suitability of matters for virtual hearing, which I think is a point that Mrs Funmi Roberts made about not necessarily applying this wholesale, but maybe starting as a pilot team, and then seeing how we can then scale it from there. Thank you.

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much Mofesomo. And I have two more questions, question requests which I can cover before I handover first of all to Dan Wilmot to answer to technology related issues that have arisen in the course of, the questions and then finally …

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much. I lost connectivity for a very brief moment now, so finally I will then hand over to the Honourable Attorney General of Ogun State, for his closing remarks, he's our host. But so, first of all, Mrs Akeredolu, you had wanted to make some comments. I hand over the floor to you.

**Mrs Akeredolu:** Thank you, Mr Fagbohunlu. I want to commend the Attorney General of Ogun State for this amazing initiative. My comments relate to the issue of cost, as raised by Dr. Ajibade. I'm sorry, I referred to him as Mr Ajibade in my type up, I'm Sorry. Yes. The issue of cost is something I'm very passionate about, having been, well, a beneficiary in some cases, a sufferer in many cases of the insufficiency inadequacy of costs. It's someone who raised a question now, I think it's Mofesona, Oyetibo said that the issue of recovery makes it difficult. So my view is, effect of the award where the award is commensurate and realistic, is damning enough for the party against whom it is awarded. And don't forget that as the case goes along, cost will be awarded, may be awarded against and for each party. So it could be netted off at the end of the day and could be realised by way of garnishee proceeding. So that such a such an item, such a move should be considered to make enforcement or realisation, of course, realistic. And my point again is, one of the other points I want to make is looking at a way if we could, the justice reform could find a way of taking the issue of costs away from the hands of judges. Yes, they are masters of their court, but perhaps, maybe a committee of lawyers, senior lawyers, or willing slawyer. Lawyers, of integrity who are able to consider lots of cases of costs and make them realistic cause it appears that the judges are not in touch with reality when it comes to cost Once they've entered their comfortable cocoon of the state bearing their cost, they really don't, they see it more, as a favour to be dispensed to the right or to the left, as they please. Whereas there are objective parameters for discussing these things. Lawyers also need to be proactive. The instances where I have gotten realistic costs, have been situations where I have filed an affidavit of cost, showing the court the costs that I incurred and in those cases some judges have given me realistic costs. So it is doable if we can all get on to the same page. It's either that or we find an objective parameter for determining cost. you wake up, some people live in far places wake up at inhuman hours to get to court only to find that the other side is not ready and you get given 20,000, 50,000 totally unrealistic cost which cannot in anyway put you in restitutio in intergrum. I am more for the issue, addressing the issue of course because if we give realistic costs, lawyers will sit up. Even courts who decide to adjourn their matter without informing counsel at nine fifteen a.m will sit up and be more realistic. Thank you.

**Mr Tunde Fagbohulu [SAN]:** Thank you very much Mrs Akeredolu. Of course I should have mentioned, Mrs Akeredolu was one time Attorney General of Ogun State herself. Thank you very much for a very helpful contribution.

**Mrs Akeredolu:** Mr Fagbohunlu, I don't know if that is a plus in this case. Because I think that issue of the State not paying cost should also be reversed. I mean, I was the Attorney General and I had not a few headaches about the State not paying cost. Even though I did represent the State. It's very unfair that the State does not pay cost.

**Mr Tunde Fagbohunlu [SAN]:** Indeed. Well I'm sure Mr Adeniran will have something to say about that in his closing remarks. Daniel Wilmot handing over to you just for your responses on the technology issues that some of the people have raised. I have raised one myself earlier, which is the rule against parties recording proceedings, is that now an anachronism, an ancient anachronism that we can all afford to dispense with now in today's realities, and others had raised other questions as well. So a quick response from you, and then I'll hand over the floor to the Honourable Attorney General of Ogun State for his closing remarks, Daniel.

**Mr Wilmot:** Thank you Tunde and I'll do my best to answer the questions that I can. On your question, and thank you for the forewarning, I think you're touching on a very good point. The legal and logical basis for the prohibition on bringing recording devices, whether cameras or video recording devices, into court and recording proceedings is dated, it comes from the 1920s in the UK, and effectively, it had two objectives. One was to stop the tabloid press from taking photos of judges and witnesses that could be used in tabloid pieces to intimidate. The second was to avoid a situation in which a judge loses control over a single source transcript, such that the court transcriber would be the only person who would transcribe the hearing and there will be no other way for parties to prepare an alternative transcript and perhaps use that to their benefit for illicit means. But you're quite right that in the modern day, those arguments are not as sustainable. Indeed, the UK Supreme Court now livestreams all of its hearings, publicly to all and indeed the matter that I my team was participant in a couple of weeks ago was live-streamed over YouTube. I think the interests of justice, and the statement that justice must not only be done but be seen to be done, must no longer be understood to only allow people into court buildings, but must now be understood to allow general access to watch court proceedings. So, I suspect if I was a betting man, Tunde, the exception made on a temporary basis to allow live streaming and recording effectively of proceedings for the purposes of the current crisis may never be undone and I suspect it will be allowed henceforth.

In terms of some of the other questions raised, there were many but some observations that perhaps I can share. Someone rightly raised the question about whether it is important for judges to be able to witness and watch the demeanour of a witness when giving evidence. That that is absolutely right. But in my experience, what it is that puts judges and or opposing counsel on notice regarding demeanour is the tone of voice, is the awkward pauses, is stress demonstrated on one's face, one looking to opposing counsel for answers. All of those things are nonetheless available to be seen on a video conference, and indeed I've had a number of arbitrations whereby evidence has been delivered virtually, and all arbitrators have found it perfectly possible to make decisions on demeanors of witnesses and therefore the weight to be given to evidence.

The last point I would make is I think one that Ms Funmi Roberts very rightly focused on: the need for judges to receive IT training. That is absolutely key. Because whilst I fully endorse the various comments made that a virtual initiative needs collaboration by all stakeholders in the process, it is clear to me, and

I think it is clear to many, that the judges need to lead the way using the case management powers that they have at their disposal. And clearly if technology is to form part of a solution to a problem, then judges need to receive the correct training, need to have the correct investment to provide them and their courts with the necessary technology to allow that. I think that addresses some of the points raised. No doubt I've missed others. But as I offered at the outset, I would be very happy to have sidebar conversations or email exchanges with anyone if they have any further questions. Thank you

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much, Daniel, that was extremely helpful. There are so many other requests for questions but we have to close the session now. I will soon hand over to the Honourable Attorney General of Ogun State. But we are very happy, the two organisations: Justice Reform Project, and CRID-LawNet, very happy to entertain questions from you. Please send us an email or share your questions on our social media platforms. And we'll be very happy to have those questions, answered. Mr. Gbolahan Adeniran, Honourable Attorney General of Ogun State, our host for this session. I give you the floor to just express a few round of comment and we'll draw the session to a close. Mr Adeniran.

**Honourable Adeniran:** Thank you very much, Learned Silk it is my pleasure again, I think to first of all start by thanking CRID-LawNet and Justice Reform Project for partnering with us on this live broadcast. I think the passion obviously that Mr. Tunde Fagbohunlu [SAN] has shown in driving this project is really commendable. He's available 24/seven, we talk and we catch up on it, we discuss and rub minds at any given moment, and I think it's worth mentioning. Now, at the beginning, I said that there were two major issues I thought we'll be discussing today and we've actually delved into both.

The first is the imperative to go back to court for the courts to reopen and for us to start addressing matters. Of course, the second is to look at ways in which we can reform the civil justice system. I think it's important to also stress that going forward, in the current situation, we will have scenarios where there will still be COVID-19 and life will just have to resume and go back to normal at some stage with restrictions on social gathering with social distancing, and, you know, health hygiene issues, and so on and so forth. So, I don't want us to look at a scenario whereby we're only focusing on everything being virtual, because we can have a combination of both, we can have the hybrid, and I want us to look at that going forward. I appreciate the comments from Mr. Gbenga Okubadejo where he stressed that the legal framework is particularly important. And I think this is where we would like to work with the Honourable Chief Judge, and, of course, the House of Assembly to look at practical ways in which we can take this forward. But we have to consider the circumstances of every party that is likely to appear before the court. And I think when we talk about remote hearings, we we need to focus on the architecture of the infrastructure, both from the bar, the bench, and of course, the the litigants, the people who will be appearing, and I like the comments of, you know, trying to encourage members of the public to go into business to provide fora or platforms where people can participate. And we can look at ways in which we can make sure that those things meet the minimum standards for proceedings in court.

In terms of the reform of civil justice system, we have been carrying along the High Court, the judiciary, the Bar, and of course now the House of Assembly. And we hope to take this forward now because what we have now is a model law which we have circulated and we'll be asking for comments so that we can finalise the model law in order to present to the House of Assembly. And of course, it does not stop us

in the meantime, from looking at certain aspects of it that we can push. Like, for example, I talked about case management. One fundamental aspect, I think, is we must be ready for a scenario where we'll go back to the courtroom, combined with virtual hearing and so on. And of course, we need to limit the number of people that appear in court. And I take the point also from Daniel Wilmot, when he said that perhaps judges may not be able to take on as many cases with virtual hearing as they would in a physical hearing. Which may mean that a combination or having days, in which is virtual and days in which is physical, but even when it's physical, we need to observe the number of people that in the courtroom to ensure that there is social distancing, there's enough measures that have been put in place to protect the health of every single individual in that courtroom.

And so, without, you know, delving into the issues of costs, I think the only point I need to make there is that, of course, we realise as a state that, you know, the reform of the civil justice system, and whatever we're talking about will affect us, the Ministry of Justice in this state, we're the largest law firm in Ogun State, and it's going to affect us more than every other lawyer, perhaps. And I think it's incumbent on us to lead from the front, which is why we're taking the initiative to partner with CRID-LawNet and Justice Reform Project to try and see how we can ensure that, you know, justice being essential services is not just not by word of mouth, we're also leading by making examples of how we can practically achieve this. So I thank everyone else for participating. It's a pleasure. Like I said, we're taking note of everything that has been said. And I promise that we will move forward on many of these issues. Perhaps many people did not talk, but I can tell you that there are other technology experts, including our special adviser on ICT, who has participated in this online workshop. And we hope that we'll be able to all rub minds to come up with practical solutions going forward. So I thank you very much.

**Mr Tunde Fagbohunlu [SAN]:** Thank you very much Honourable AG . I also want to thank Justice Nweze of the Supreme Court for honouring us with your presence, as well as for that very insightful remark that you made. The Attorney-General of Akwa Ibom State, thank you very much. Ladies and gentlemen, thanks for all your participation. Just before I round off and close the session. I want to thank Mr. Max Ikongbeh, who just shared a an insight he said, we should all look at the guide to good practice, or the use of video link under the Hague conference on private international law convention on taking of evidence abroad brought in civil and commercial matters 1970. That's something that we shall be looking at as we develop various resources in relation to this matter.

Thank you for joining everyone. It has certainly been a very helpful session. I think it has also proven that virtual hearing is a possibility. There were at various times anything between 64 to 66 people participating in this session, so we can make it work. Thank you very much. I declare this session closed at this point. Bye, everyone.

Thank you.