



Critical Analysis of Factors Contributing to Delays in the Prosecution of Corruption Cases and Compliance with the Administration of Criminal Justice Act 2015

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and Compliance with the Administration of
Criminal Justice Act 2015**

by

**Transparency Information
Technology Initiative
(TransparencIT)**

January, 2019

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The Transparency Information Technology Initiative (TransparencIT) was founded in 2016 and registered in 2018 under the Companies and Allied Matters Act CAP C20 LFN 2004. TransparencIT's objectives are to promote transparency and accountability in public service, foster social justice and advance the rule of law.

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Acknowledgement

We extend our heartfelt gratitude to TrustAfrica for their generous funding support, which has been instrumental in driving our initiatives and this specific project forward. We would like to express our deep appreciation to all the Anti-Corruption Agencies and the Presidential Advisory Committee Against Corruption (PACAC) for their invaluable partnership and unwavering commitment to providing essential information crucial to our mission.

We are immensely thankful to the judiciary for consistently ensuring that the doors to the halls of justice remain wide open, facilitating our efforts to combat corruption and uphold the rule of law.

Our profound gratitude also goes out to the numerous non-governmental organizations and civil society groups with whom we have collaborated. We owe a debt of gratitude to all the individuals, legal experts and law firms who have graciously participated in our Public Policy Dialogues. Your contributions have enriched our discussions and advanced our cause.

Lastly, we extend our thanks to the media for their extensive coverage and Nigerians for their social support towards our work.



Abbas Inuwa

Founder/Director, TransparencIT
January, 2019

List of Acronyms

ACJA	Administration of Criminal Justice Act
ACJL	Administration of Criminal Justice Law
AGF	Attorney General of the Federation
CCB	Code of Conduct Tribunal
CCT	Code of Conduct Tribunal
CJN	Chief Justice of Nigeria
CPA	Criminal Procedure Act
CPC	Criminal Procedure Code
CSO	Civil Society Organization
EFCC	Economic and Financial Crimes Commission
FCT	Federal Capital Territory
FRN	Federal Republic of Nigeria
ICPC	Independent Corrupt Practices and Other Related Offences Commission
LFN	Laws of the Federation of Nigeria
NBA	Nigerian Bar Association
PPD	Public Policy Dialogue
QC	Queens Counsel
SAN	Senior Advocate of Nigeria
TransparencIT	Transparency Information Technology Initiative

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Executive Summary

Corruption has penetrated deep into the country. The impact of corruption is felt in every sphere of our national life. From bad roads and poor equipment in our hospitals to diversion and misappropriation of public funds. Therefore, it is imperative and incumbent on every citizen to join in the fight to eradicate it. There are many measures in tackling corruption, ranging from preventive measures and trials of those alleged to have soiled their hands in corruption.

The trial of corruption cases draws the keen interest of Nigerians. However, many are disappointed with the time these cases last in court. The Administration of the Criminal Justice Act was passed in 2015 to fast-track the trial of corruption cases. The Act made some salient provisions on tackling the problem of prolonged trials of criminal cases, by extension corruption cases. Some of the novel introductions include day-to-day trial of corruption cases, restriction on the number of days when cases are to be adjourned, and also a provision for Judges elevated to superior courts to come back to the lower courts to complete cases pending before them. Despite these innovations in the Act, corruption cases still take a long time to be concluded.

As an organization committed to ensuring transparency and a speedy trial of corruption cases, we organized a stakeholder meeting on the challenges faced in the trial of corruption cases and full implementation of the Administration of Criminal Justice Act, where stakeholders brainstormed and identified the challenges and proffered solutions to the identified problems.

Some of the reasons identified for the delays in the trial of corruption cases are:

1. Poor investigation by anti-corruption agencies.
2. Unnecessary delay tactics by defence counsels.
3. Lack of functional and adequate equipment in the courts.
4. Limited number of judges handling corruption cases.
5. Lack of special courts dedicated to the trial of corruption cases.
6. Lack of enough personnel in court.
7. Non-passage of the Administration of Criminal Justice Laws by the various States.
8. Corruption in the judiciary.

Some of the solutions recommended include:

1. To create special courts that will exclusively handle corruption cases.
2. To conduct regular training for Judges and members of the Nigerian Bar Association on the Administration of Criminal Justice Act.
3. To provide more funding for the judiciary.
4. To sanction lawyers who flout the provisions of the Administration of Criminal Justice Act.
5. To conduct an awareness campaign on the importance of the Administration of Criminal Justice Act.

6. To form synergy among civil society organizations to ensure strict compliance with the provisions of the Administration of Criminal Justice Act
7. We believe these recommendations, if implemented will go a long way in fast-tracking the trial of corruption cases.

Introduction

Any establishment regarded as a court has a major responsibility of ensuring justice is administered as efficiently as possible between litigating parties where both parties are satisfied that the case has been considered and critically examined.

In the criminal justice system, it is noted that oftentimes, there are some kinds of unavoidable delays. However, the distinction between avoidable and non-avoidable delays must be established.

The chamber's dictionary defines the term 'delay' as ... "to slow someone or something down or make them late". Consequently, over 800 years ago, the great Charter of England described 'delay' in the administration of justice as 'sale' i.e., providing equal and reasonable opportunity for both parties to be heard in pursuit of fairness in the justice system.

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) contains this pillar in section 36 (1). The section provides that;

"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

Our work at TransparencIT seeks to address these delays in the trial of corruption cases and promote reforms in the justice sector to accelerate justice delivery and ensure full compliance with the Administration of Criminal Justice Act. The organization's novel approach to addressing this is through trial monitoring of corruption cases at the national level, covering ongoing cases at the Federal and High Court of States, including the FCT High Court, the Court of Appeal and the Supreme Court. So far, we have tracked over one thousand cases.

Background of the Administration of Criminal Justice Act

The Administration of Criminal Justice Act (ACJA) 2015 aimed to reduce unnecessary delays in the trial of cases and enhance the efficiency of the criminal justice administration in Nigeria. Before the enactment of the ACJA, the Criminal Procedure Act and the Criminal Procedure Code were the two primary legislations governing the criminal procedure in Nigerian Courts.

In previous years, lawyers developed certain acts of abusing procedural laws by utilizing certain ambiguities favouring their clients. Given the foregoing, the coming of the ACJA in 2015 addressed Nigeria's need for comprehensive new legislation that has the potential to positively impact the criminal justice system

to echo provisions of the constitution and reduce undesirable delays in the dispensation of justice. However, the Act has not been fully effective in improving the pace of justice, particularly in cases involving high-profile suspects.

The Administration of Criminal Justice Act ACJA 2015 provides for relevant stakeholders and their roles towards facilitating the quick dispensation of justice and highlights the need for effective collaboration and commitment to ensure that the objectives of the Act are attained, maximally.

The State and Federal Governments have a duty to provide necessary facilities that will facilitate full implementation of the Act. Some agencies established by the Federal Government include the Independent and Corrupt Practices Commission (ICPC), Economic and Financial Crimes Commission (EFCC) and Code of Conduct Tribunal (CCT). Their establishment was backed by their Acts to tackle challenges accompanying the Criminal Justice process. However, these challenges are still lingering.

Institutions Prosecuting Corruption Cases

Since the return of democracy in 1999, the Federal Government has set up agencies with the sole responsibility of fighting corruption through a legal framework. The creation of these agencies was moved by the endemic scourge of corruption in the Nigerian public system. For the purpose of this report, the following agencies are discussed here:

- Independent Corrupt Practices and Other Related Offences Commission (ICPC)
- Economic and Financial Crime Commission (EFCC)
- The Code of Conduct Tribunal (CCT) and the Code of Conduct Bureau (CCB)

Independent Corrupt Practices and Other Related Offences Commission (ICPC)

The ICPC is among the pioneer agencies that was established to fight corruption. ICPC was created on the 29th of September, 2000 with the responsibility of fighting acts of corruption through the legal framework of Corrupt Practices and Other Related Offences Act 2000. The Act gives it power to receive petitions and investigate and prosecute the accused. Other functions of the Commission stated in the Act include public sensitization against all acts of bribery, corruption and other related crimes, and also identifying and preventing certain activities of public institutions which promote acts of corruption.

The comprehensive functions of the ICPC are stated in Section 6 (a-f) of the Commission's Act.

"To receive and investigate complaints from members of the public on allegations of corrupt practices, and, in appropriate cases, prosecute the offenders; to examine the practices, systems and procedures of public bodies and where such systems aid corruption, to direct and supervise their review; to instruct, advise and assist any officer, agency, or parastatal on ways by which fraud or corruption may be eliminated or minimized by them; to advise heads of public bodies of any changes in practice, systems or procedures compatible with the effective discharge of the duties of public bodies to reduce the likelihood or incidence of bribery, corruption and related offences; to educate the public on and against bribery, corruption and related offences; to enlist and foster public support in combating corruption."

Contrary to the view of the general public that ICPC exclusively has a mandate to prosecute cases that were petitioned to them or through the Public Complaints Commission, its function is not to prosecute only petitioned cases but also offences committed in the public sector which are not petitioned.

The Commission's ability to prosecute corruption cases was considerably affected due to the general perception of its mandate. Nonetheless, Hon. Justice Obande F. Ogbuinya of the Court of Appeal, in a landmark judgement delivered in the case of FRN V Alhaji Zakari Sani and Abdullahi Amore in May 2014, emphatically pronounced the powers of ICPC as contained in Sections 6 (a) and 27 (3) of the Act.

The ICPC expressed their satisfaction with the milestone achieved by the decision of the Appeal Court upholding their powers to initiate investigations without relying on petitions. Regardless of the above conviction at the Court of Appeal upholding the mandate of the Commission to investigate, arrest and prosecute without relying on a petition, it has not been able to secure a considerable large number of convictions in courts. A close look at the ICPC's updated criminal database records will reveal that most of the cases being prosecuted by the Commission are stalled in various courts for one reason or the other.

Between 2001 and 2008, the Commission prosecuted 146 cases and was able to secure only 15 convictions within that time. Among the high-profile persons that the Commission has arraigned include Alh. Ghali Umar Na'abba, a former Speaker of the House of Representatives; Vincent Ogbulafor, former Peoples Democratic Party National Chairman; Cornelius Adebayo and Fabian Osuji, former Ministers of Communication and Transportation Ministry and Education Ministry respectively.

The greatest challenge faced by the ICPC in its fight against corruption has been the incessant recall of cases that have been filed against some prominent persons

by the Office of the Attorney General of the Federation. During the tenure of Mr. Mohammed Bello Adoke as the Minister of Justice and Attorney General of the Federation (AGF), about 25 high-profile cases were withdrawn by him within eight months between 2010 and 2011.

The interference of the Attorney General's Office and, by extension, the Presidency hinders the ability of the Commission to successfully prosecute corruption cases, which brings about the question of the Commission's independence and competency to perform its statutory functions.

The Economic and Financial Commission (EFCC)

The EFCC was established some three years after the creation of ICPC by the Olusegun Obasanjo Administration. The EFCC (Establishment) Act of 2004 gave it the mandate to tackle illicit financial and economic crimes. The Act enables it to investigate, prevent, prosecute and penalize matters related to economic and financial crimes. It is also saddled with the responsibility of ensuring the full implementation of the provisions of various laws and regulations for combating economic and financial offences, which include embezzlement, bribery and other corrupt practices, money laundering, foreign exchange malpractices such as counterfeiting of currencies, theft of intellectual property, tax evasion, illegal arms deals, amongst others. The Commission is also tasked with identifying proceeds of terrorist activities to seize and confiscate.

So far, the EFCC has investigated and prosecuted several corruption cases involving many high-profile cases and has successfully secured convictions in a few of them. The slow conviction rates could likely be as a result of its struggle to stay unbiased in the centre of political intrigues, judicial misdemeanours and monetized politics. The Commission has been widely criticized for doing less to halt the unprecedented grand corruption in Nigeria. This criticism is valid because the EFCC has performed poorly relatively compared to the Hong Kong system which was modelled regardless of its legislative and executive support.

There have also been criticisms over the EFCC's dependence on plea bargaining, which is adopted to secure settlements out of court in many high-profile cases. In some quarters, it is believed that the plea bargain is just a lawful means of bypassing the full legal sanctions for engaging in acts of corruption. However, the ACJA 2015 provides for a plea bargain in section 270 (1a) that notwithstanding, the prosecution may offer or grant upon request a plea bargain from the defendant being tried for an offence.

The Commission's publication of its "High-Profile, Oil Subsidy, ETC Matters Being Prosecuted by EFCC" in a bid to justify its existence in the face of unprecedented grand level of corruption in Nigeria shows inconclusive cases pending at trial courts, which the Commission believed have made considerable gains since commencing such prosecutions.

The supposed gains by the Commission have been ridiculed by Human Rights Watch, arguing that in terms of its total convictions, the figures of prominent corruption cases convicted are not encouraging. Between 2003 and 2011, the Commission secured only four (4) convictions, representing 5 per cent of its corruption cases within that period. Prolonged delays have brought about serious doubts about the Commission's ability to bring corruption cases to a logical conclusion. However, the number of convictions secured by the EFCC has significantly improved as the Commission has successfully prosecuted and secured convictions of over 700 persons charged with one form of corruption to the other from 2015 to date.

The Code of Conduct Tribunal (CCT) and the Code of Conduct Bureau (CCB)

The Code of Conduct Tribunal was created in the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Its statutory inclusion in the Constitution demonstrates the importance of the code of conduct for public service personnel. The Constitution provides that the proceedings of the Code of Conduct Tribunal (CCT) be supervised by the Court of Appeal and also has appellate jurisdiction of the CCT.

The Code of Conduct Bureau ensures transparency and accountability in the affairs of government businesses and that public officers are exemplary to the conformity of public morality, transparency and accountability. With this, the Bureau is empowered to mandate Federal and State public officers to make declarations of their assets before and after their tenure, which is to be analyzed and verified. They are also empowered to investigate all petitions submitted to them to check violations of the code of conduct and refer such petitions to the CCT.

In a paper titled "Strengthening the Code of Conduct Bureau", the Vice President, Prof. Yemi Osinbajo (SAN) reiterated that the code of conduct of public officials is an important element of the anti-corruption and transparency framework of Nigeria.

Provisions in the Act of Code of Conduct Bureau and Tribunal enable it to investigate and prosecute complaints of corruption and breaches of laws in the public service.

However, the National Assembly passed two bills to limit the powers of the CCB. The first Bill "Code of Conduct Act Cap C15 LFN 2004 (Amendment) Bill 2016," seeks to amend section 18 (1) and (2) of the Code of Conduct Bureau and Tribunal Act transferring regulatory powers from the President to the National Assembly. The legislative body also inserted new provisions mandating the CCB to invite any accused person who is suspected to have falsely declared his/her asset to approach the Bureau to make necessary changes instead of being charged before the Tribunal.

The second Bill “A Bill for an Act to Amend the Administration of Criminal Justice Act (ACJA) 2015 and Other Related Matters,” seeks to halt the CCB’s power to initiate criminal proceedings on persons found culpable in declaring their assets. These two Bills to amend the Code of Conduct Tribunal Act and the Administration of Criminal Justice Act 2015 came to life when the CCB charged the Senate President Bukola Saraki at the Code of Conduct Tribunal for falsely declaring his asset when he was the Governor of Kwara State.

Shortcomings of the Administration of Criminal Justice Act

Just like any other human system, every law made by man has a flaw. The ACJA has its share of inadequacies. These include the awkward drafting of several provisions, which contain the use of complicated terms, which are likely to have been lifted from the Criminal Procedure Act and Criminal Procedure Code and lack of proper sequence of the provisions.

Speedy conclusion of corruption cases as related to an effective criminal justice system remains a cause of concern to the public and relevant stakeholders. The snail pace at which justice is delivered has long been experienced and is still increasing, with both parties involved in litigation exploiting loopholes within the law.

This report intends to highlight these loopholes and find lasting ways to bridge the gap to clear the way for effective implementation of ACJA 2015 provisions. Major impediments hindering the implementation of ACJA will be identified and discussed to proffer recommendations to block all loopholes.

Observations made in the prosecution of some corruption cases with regard to compliance with the provisions of the Administration of Criminal Justice Act

Critical analysis of the ACJA will reveal that it contains important improvements that have the potential to enhance efficient justice. It was expected to yield rapid results, especially in the trial of high-profile cases after three years of implementation. However, the results obtained so far have been far from satisfactory. This stems from poor implementation of its provisions.

1. The case of adjournment

Section 396 of ACJA made an unambiguous provision for the trial of criminal cases to proceed daily. In cases where it is not feasible after arraignment has been made, both Counsels shall have a maximum of five adjournments with not more than 14-day intervals. Where the conclusion of a criminal proceeding has not been reached after adjournment of the case has been made five times, additional adjournment should not exceed

seven days intervals, and the court has the discretion to impose certain strategies to avoid frivolous adjournments.

In the process of our monitoring and tracking of corruption cases, we observed several cases where violations of this section occurred. Some selected cases are highlighted in the table below:

Table I:

Case Details	Observations on Adjournments
<p>Defendants: Sule Lamido (Former Governor of Jigawa State) & 5 others Alleged Offence: N1.3bn (Money Laundering) Date of Arraignment: 15-Sep-2015 Prosecuting Agency: EFCC Judge & Court: Justice I. Ojukwu, Federal High Court, Abuja</p>	<p>Re-arraigned on September 15, 2015</p> <ol style="list-style-type: none"> 1. Adjourned till October 21 and 22 2015 for trial. 2. Adjourned till March 9,10,11, 2016. 3. The case was returned to the Chief Judge of the Federal High Court for reassignment, this is because the trial judge, Justice Adeniyi Ademola handling the case will be proceeding with statutory retirement 4. Case reassigned to Justice Quadri following the arraignment of Justice Ademola 5. The matter adjourned till May 3, 2017 for hearing.
<p>Defendants: Olisa Metuh (Former Publicity Secretary of PDP) & 1 other Alleged Offence: N400m (Money Laundering) Date of Arraignment: 15-Jan-2016 Prosecuting Agency: EFCC Judge & Court: Justice Okon Abang, Federal High Court, Maitama, Abuja</p>	<p>Arraigned in January 2016.</p> <ol style="list-style-type: none"> 1. On April 8th, 2016 court ruled that the defendant must commence defence, after dismissing five applications preventing the commencement of the trial. 2. Adjourned to May 23, 2016, due to the defendant's ill-health. 3. Prosecuting counsel, closed the case on Oct. 10, 2016. 4. Adjourned to Nov. 22 2016 for the defense to open its case. 5. Adjourned to Jan. 24 2017. 6. Adjourned to March 2, 2017 7. Adjourned to May 3, 2017. 8. Adjourned till June 19 for ruling on the application filed by the defendant over the adjournment of his trial. 9. Adjourned to June 22, 2017, for the defence to open its case. 10. Adjourned to June 23, 2017, for continuation of trial. 11. Adjourned to October 23 2017.
<p>Defendants: Orji Uzor Kalu (Former Governor of Abia State) & 2 others Alleged Offence: N7.6bn (Money Laundering) Date of Arraignment: 13-Jul-2007 Prosecuting Agency: EFCC Judge & Court: Justice M. Idris, Federal High Court, Lagos</p>	<p>Initially docked in 2007 and re-arraigned on May 16, 2016.</p> <ol style="list-style-type: none"> 1. Adjourned for hearing till 30th of June 2016. 2. The case adjourned till December 6, 2016. 3. Trial to commence, on March 6, 2017. 4. Adjourned till October 3rd 2017 for further trial.

<p>Defendants: Mohammed Dele Belgore (Senior Advocate of Nigeria) & 1 other Alleged Offence: N450m (Money Laundering) Date of Arraignment: 7-Feb-2017 Prosecuting Agency: EFCC Judge & Court: Justice R. Aikawa, Federal High Court, Ikoyi, Lagos</p>	<ol style="list-style-type: none"> 1. Adjourned till March 14, 2017. 2. Adjourned till March 23, 2017. 3. Adjourned till May 5, 2017, for continuation of trial. 4. Adjourned till July 7, 2017, for ruling on an application by, Mr. Belgore, seeking to quash charge against him. 5. Adjourned till October 4, 2017.
<p>Defendants: Ibrahim Shehu Shema (Former Governor of Katsina State) & 3 others Alleged Offence: N11bn (Money Laundering) Date of Arraignment: 21-Feb-2017 Prosecuting Agency: EFCC Judge and Court: Justice Maikanta Bako, Katsina State High Court, Katsina</p>	<ol style="list-style-type: none"> 1. Adjourned till January 10, 2017 2. Adjourned till February 7, 2017, for hearing of the motions. 3. Adjourned till February 21 to rule on the matter of jurisdiction. 4. Adjourned till June 6th 2017 for hearing. 5. Adjourned till November 24th 2017 for trial.
<p>Defendant: Sylvester Ngwuta (Supreme Court Judge) Alleged Offence: Gratification/Money Laundering Date of Arraignment: 21-Nov-2016 Prosecuting Agency: OAGF Judge & Court: Justice John Tsoho, Federal High Court, Maitama, Abuja</p>	<ol style="list-style-type: none"> 1. Adjourned till March 16 – 17, 2017 at the instance of the prosecution 2. Adjourned till May 25 and 26 for continuation of hearing. 3. Adjourned till July 3, 2017, for further hearing. 4. Adjourned till October 6, 2017 continuation of trial. 5. Adjourned till October 20, 2017, for further trial.

The effects of the provisions of section 396 of ACJA on the length of the trial of criminal cases are targeted towards ensuring speedy proceedings in trials, but as seen in the above table, the decisions of the various judges in adjourning cases exceeding 14 days violate section 396 of the ACJA.

2. Transfer and/or elevation of Judges

The adverse effect of this situation arises as cases that are at an advanced stage of trials before the transfer or elevation of the presiding Judges ordinarily commence de novo. Most of the resources and time invested in such cases becomes pathetically wasted, even more unfortunate are cases awaiting judgment.

The challenges appearing due to the de novo phenomenon in prosecuting criminal cases should ordinarily not arise since 396 (7) of the ACJA (2015) made provisions to address such challenges to avoid starting partly heard cases de novo. The section states that;

“Notwithstanding the provision of any other law to the contrary, a Judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit as a High Court Judge only for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time” (ACJA, 2015)

This section is one of the most innovative sections of the Act, as full implementation of this section will confront the problem of the slow dispensation of justice and ensure the speedy conclusion of cases.

Despite the novelty of this section, its implementation remains poor. With the recent elevation of 12 Judges of the Federal High Court to the Court of Appeal, the future of their cases that are at an advanced stage remains unclear. Notable among those cases that are likely to be affected are those before Justice Gabriel Kolawole of the Federal High Court. These cases involve high-profile persons, including former Governor of Benue State, Gabriel Suswam; Bala Mohammed, a former Minister of the FCT; and Mr Stephen Orosanye, a former Head of Service of the Federation, among others.

3. Stay of proceedings and Interlocutory Appeals

These two are the primary instruments through which lawyers exploit to excessively delay cases in the criminal justice system. They are necessary tools employed in the administration of criminal justice when used appropriately. However, they are tools that have become subject to abuse and have become very common when employing tactics to frustrate the progress and pace of proceedings (Oditah). This is encouraged by the acceptance of virtually any issue to rise to the apex court so far as the appellate could come up with reasons for appeal, even based on a simple technicality or error of law which is far from being of interest to the public or relevance to the main proceedings. Section 396 (3) of ACJA (2015) clearly states trials should proceed daily after the arraignment of the defendant. The stay of proceedings has been a means of stalling trials as it is being granted without valid appeal based on issues obscure to the law. Entertaining a stay of proceedings in a criminal matter pending before any court is a violation of section 306 of ACJA (2015).

The hearing of interlocutory appeals represents a large number of cases before the High Court up through to the Supreme Court and has had significant effects on the outcome and progress of cases in courts.

However, the introduction of section 396 (2) has started yielding results as the Supreme Court relied on the provisions in the section of ACJA to dismiss the stay of proceedings appeal by Olisah Metuh on the 9th of June, 2017. This ruling by the Supreme Court has put an end to unnecessary

delay of cases, once an appeal is filed against an interlocutory ruling. The Supreme similarly denounced the unnecessary delay in the trial of Joshua Dariye V. FRN caused by a strange interposition of interlocutory appeals. A petition was submitted against the Appellant, former Governor of Plateau State in May 2004, bordering on accusations of money laundering, corruption and abuse of office. The EFCC investigated the allegations and filed an application requesting leave to prefer charges against the Defendant/Appellant at the FCT High Court. The leave was granted to the EFCC on the 13th of July 2007. The Appellant submitted a 'not-guilty' plea on all 23 counts charges after being arraigned, and the case was adjourned to the 13th of November, 2007. On the 13th of November, his Counsel filed a motion for all charges to be repealed while the Prosecution filed a counter affidavit to oppose the motion. The presiding Judge dismissed the application on the 10th of November 2007. The interlocutory appeal was filed to the Court of Appeal up to the Supreme Court with both courts dismissing the appeals.

The Supreme Court threw out the appeal in February 2015 and requested that the case be sent to another court for retrial. An Interlocutory appeal took eight (8) years for it to be quashed before the recommencement of the case. In reading the judgement of the case, Justice Ngwuta expressed his absolute displeasure with the way the criminal justice system is being frustrated with the use of such interlocutory appeals, he said:

"This motion is a disservice to the criminal process and a contemptuous lip service to the fight against corruption"
(Prof Yemi Akinseye)

In the case of Dr. Bukola Saraki in which he was tried by the Code of Conduct Tribunal for falsely declaring his asset, a stay of proceeding was granted to him despite the provision of the section stating not to entertain any stay of proceedings. The Supreme Court also granted a stay of proceeding at the CCT pending the appeal of the Defendants challenging the CCT's jurisdiction. There is thus an inconsistency in the ruling of the Supreme Court.

Public Policy Dialogue on Corruption Cases and Compliance with the Administration of Criminal Justice Act

According to ACJA (2015), the criminal justice administration requires the active participation of stakeholders and citizens as a whole. In addition to provisions of trial situations before, during and after trials, the roles of citizens, complainants, prosecutors, justices, and civil society organizations (CSOs) are required to ensure its full implementation.

With regard to this, TransparencIT held several Public Policy Dialogues (PPD) on Corruption cases and Administration of Criminal Justice Act (2015) Compliance across different locations with stakeholders. The PPD was used as the methodology to discuss and identify possible challenges that hinder the speedy delivery of justice in corruption cases.

In these dialogues, the challenges faced by the prosecution and those hindering the implementation of the Act were discussed. The delays envisaged in the dispensation of justice are a result of several universal factors, while some are exclusively experienced in certain specific cases.

The following are findings from the Public Policy Dialogues:

1. Non-domestication of ACJA in various States:

A considerably large number of corruption cases are being tried at the state level. The non-domestication of ACJA in these states restricts the Act from being applicable during such trials, which could facilitate speedy trials. The Act is implementable only in cases with misdemeanours cited in an Act of the National Assembly and offences that are indictable in the Federal Capital Territory. So far, among the 36 states in the federation, only 23 states have adopted the Act as a law.

2. Deficiencies in basic infrastructure and personnel for ensuring smooth day-to-day conduct of trial as stipulated by the ACJA:

a. Recording of proceedings. The burden of writing proceedings in longhand by presiding Judges hinders the day-to-day trial, which negatively affects the efficiency and pace of the dispensation of justice. Most, if not all courts, in Nigeria still adopt the use of manual documentation and take records of proceedings with long handwriting. (Justice Marshal Umukoro, 2016).

Before the enactment of ACJA, there was a constraint in migrating from manual recording to e-recording because it had no legal backing in the Criminal Procedure Act and Criminal Procedure Code. This was contributing to delays in the Administration of Justice. Section 364 of the ACJA was introduced to address this challenge. By this section, transcripts of recordings are to be taken after proceedings have been recorded electronically and verbatim to be printed for judges or magistrates to certify or authenticate their proceedings.

The certified printed copy can then be taken as a certified record of the proceedings. Around the world where the judicial system operates to its fullest capacity, they have moved away from the analogue system and have since gone into the digital system with the use of information technology being their backbone for development.

b. There is also the challenge of not having adequate infrastructural facilities. Various courts do not have sufficient library capabilities with

which to ensure prompt judicial rulings. There are not enough courtrooms, and in places where there are, the facilities of such courtrooms are being used by multiple judicial officers. As a result, some judges cut half the amount of time they are supposed to be sitting. Judges are expected to sit for at least six hours daily. Albeit, long adjournment of criminal cases is sometimes a result of inadequate court facilities. The fact that situations arise where judges sit for two or three hours a day to give way for other Judges to sit does not augur well for quick and effective dispensation of justice.

Insufficient facilities and equipment extend further to the police and prison service. Instances abound where accused persons who have been remanded in prison custody arrive in courts late due to the unavailability of vehicles to transport them to court to attend proceedings.

With regards to the police, on the other hand, many police formations lack the requisite equipment and tools that will enhance their efficiency in gathering evidence. In many instances, the police have based their failures and inefficiency on this particular factor. This manifests itself in the lack of high-tech gadgets for investigations.

The insufficiency of basic facilities and state-of-the-art tools has become a norm in the Nigerian judiciary and law enforcement agencies. With the rapid advancement in science and technology, courtrooms are expected to be more comfortable in their proceedings and equipped with modern equipment that will enhance their efficiency. Continuous clinging to the old-fashioned ways and equipment will continue to cause delays in trial, creating more backlog of cases in courts.

3. Absence of special courts for corruption cases and/or other criminal cases to decongest the backlog of cases in Nigerian courts

The lack of special courts for trying corruption cases is significantly linked to the challenges related to the speedy dispensation of justice in corruption cases. Trial of corruption and financial cases in conventional courts together with other civil and criminal cases causes undue delays as judges are overwhelmed with other responsibilities. Most of the time, judges are burdened with many backlogs of cases, and the continuous assignment of cases to a single judge affects the delivery of justice in a just and timely manner. Non-creation of special courts for trying corruption and financial cases continues to hamper provisions of section 396(3) of ACJA 2015.

4. Inadequate funding for the implementation of ACJA 2015 and poor working conditions

In the prosecution of corruption cases, poor funding causes undue frustration when the need arises for presenting prosecution witnesses, which impedes the implementation of some key innovations of the Act. An example is Sections 251 to 254 of the Act, which ensures the expenses incurred by witnesses are being covered. Funds provided by the Government for such purposes are largely inadequate. In so many instances, there have been situations where prosecutions are being stalled due to the absence of key witnesses as a result of insufficient funds to bring them over to courts for their testimony. This inadequate funding considerably affects the quality of prosecutions carried out by prosecuting agencies and, by extension, the power of the prosecution

5. Corruption and indiscipline in the judiciary

In recent times, most counsels and legal practitioners have raised concerns about the way and manner in which judges have partial control of their courts. This is as a result of excessive grant of discretionary adjournments and injunctions during proceedings in a manner that is not fair and transparent. Most often, judges abuse their discretionary powers to grant interlocutory injunctions, which is largely attributed to corruption.

It is at the height of this that the Chief Justice of Nigeria (CJN) Walter Onnoghen gave an elaborative meaning of corruption, he said:

“Corruption (in the judiciary) is not limited to bribe-taking, but includes the giving or withholding of judgements or orders based on any consideration other than legal merits.”

This unfortunate phenomenon has given rise to godfatherism, favouritism and increased lobbying in the judiciary.

In most cases, their failures to exercise powers in awarding substantial disciplinary costs to parties found culpable of slowing and sabotaging trials do not deter parties from proceeding in an unethical manner.

Consequently, failures to exercise powers to decisively take control in case management hampers speedy trials, as a result, parties do not stick to a fixed time for proceedings of case trials. Professor Fidelis Oditah (QC, SAN).

Another form of corruption and indiscipline lies in the supporting staff of the judiciary that lose or omit case files intentionally or unintentionally at critical stages of trials sabotaging cases and causing unnecessary delays and adjournment.

6. Poor Prosecution

a. Poor synergy among state actors charged with the responsibility of investigating and prosecuting

Most corruption cases lingering in courts are stalled or lost in the end due to official negligence and inadequate synergy between anti-graft agencies and other stakeholders in implementing ACJA. The purpose of ACJA is to “promote efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crimes and protection of the rights and interest of the suspect, the defendant and victims in Nigeria”.

The institutions referred to in this case are the stakeholders, including the security agencies, anti-graft agencies, Nigerian Police, Nigerian Correctional Service and others in the legal profession. Often, bodies involved in the criminal justice administration lack the requisite understanding of their roles under ACJA, as well as the roles of other agencies involved. In so many cases, corruption trials have been stalled due to the inability or unwillingness of security agencies to produce defendants in courts.

The synergy between these agencies to collaborate and work in sync to achieve the objectives of section 1 (2) of the ACJA 2015 is lacking. The section reads:

“The courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with the provisions of this Act for the realization of its purposes.”

b. Unpreparedness by counsels

Anti-graft agencies have a lackadaisical attitude towards prosecuting corruption cases. They have habits of dragging suspects to court before the conclusion of the investigation of the alleged offence, resulting in poor prosecution. Situations also arise where a trial begins after filing a criminal charge, then later the investigating officer is nowhere to be found, evidence is insufficient, or investigations are inconclusive. This issue is exacerbated by anti-corruption agencies' constant transfer of key witnesses, which adversely affects their availability in court to give testimony. Furthermore, it is customary for most anti-graft agencies to arrest suspects before investigating and prosecuting instead of investigating first before making any arrests of the accused. Judges often dismiss such cases for poor prosecution.

The prosecution sends Counsels to courts who waste time opposing bail applications filed by defendants who may never attempt to jump

bail or interfere with investigations. Most times amateur prosecuting Counsel with insufficient expertise come to courts without adequate pre-trial preparations and then not being able to keep up with the pace of the court and, therefore, request for adjournment. The defense Counsels also contribute to this wanton abuse. To ensure that they are fully paid by their client/defendants, they purposely request for adjournment at a critical stage, thereby delaying trials, just for them to demand their full legal fees. This delay tactic is employed by Counsels who get paid on every appearance they make in court, they stall criminal proceedings to increase the days of appearances in courts and subsequently increase their fees.

Additionally, the structural composition of law firms as allowed by the legal professional body encourages delays in criminal proceedings. Because the legal body allows for a lone legal practitioner in private law firms, such legal practitioners handle many of their cases without resorting to the help of junior Counsels. Therefore, this results in a repeated mix-up of dates with that of other courts and such Counsel consequently requests that some of their cases be stood down for them to focus on other cases. These requests are often granted, constituting delays in such criminal trials.

c. Inadequate and inexperienced investigating and prosecuting personnel

Anti-graft agencies have limited capacity to investigate the chunk of petitions being filed to them daily. The case of ICPC is an example, the anti-graft agency receives an average of 100 cases every month. However, the whole staff strength of the commission is not more than one thousand, bearing in mind that not all staff are saddled with the responsibility of investigating petitions. The implication is that the success rate for investigations and prosecutions is severely hindered. It is observed that investigators and prosecutors lack relevant experiences and exposure and are also hampered by poor working conditions. Among the challenges of investigating and prosecuting agencies, they cited insufficient equipment and manpower which is crippling investigations.

d. Duplication of charges

The prosecution introduces too many charges attached to one defendant when prosecuting. Such many charges brought against a defendant could be as high as over 100, which, upon critical analysis, are more or less the same, being duplicated due to overlapping evidence. The inclusion of several charges in prosecuting cases is likely to bring about confusion during the proceeding and is to the detriment of prosecution. This inclusion of multiple charges that may

or may not be valid or chargeable to the accused person or multiple accused persons brings unnecessary waste of time as the prosecution has to prove beyond reasonable doubt each charge labelled on the accused person(s).

7. Little oversight functions from the Ministry of Justice to check the level of compliance with extant laws among the prosecuting agencies

The limited oversight exercised by the Ministry of Justice to monitor and enforce compliance with existing laws among prosecuting agencies significantly affects the trial of criminal cases. An effective oversight mechanism by the supervising ministry will ensure that prosecuting agencies adhere to the rule of law. This lack of adequate oversight makes the prosecuting agencies act without accountability, potentially leading to improper handling and losing of corruption cases.

8. Little to non-existence of technology-based procedures to track and follow up with cases in a unified database

The limited or non-existent use of technology-based procedures to track and manage cases within a unified database is a significant challenge facing the criminal justice system. In an era where technology has revolutionized various aspects of our lives, its lack or underutilization in Nigeria's criminal justice results in inefficiencies and delays in the dispensation of corruption cases. A unified database with modern technology will enhance the administration of justice and allow for seamless tracking of cases to hold judicial actors accountable.

9. Some sections of ACJA which were provisioned to tackle some major-specific problems do not address the challenges due to poor enforcement

While the Administration of Criminal Justice Act (ACJA) was introduced with the laudable goal of addressing critical issues within the criminal justice system, the effectiveness of certain sections often falls short due to poor enforcement. The practical implementation of the Act has been hindered by limited resources and a lack of commitment from various stakeholders within the justice system. As a result, many of the intended benefits of these provisions remain unrealized, and the challenges they were meant to tackle persist. Authorities need to prioritize the enforcement of the provisions of ACJA to unlock its full potential and deliver a fair, efficient, and accountable criminal justice system for all Nigerians.

Conclusion

The primary objectives behind the enactment of the Administration of Criminal Justice Act (ACJA) 2015 were to facilitate speedy trials and the efficient dispensation of justice. Notably, the ACJA sought to eliminate the practice of stay of proceedings, a long-standing issue that had contributed to significant delays in court proceedings whenever jurisdictional challenges were raised during trials. This delay tactic had often been exploited by some legal practitioners, frustrating the progress of criminal cases. However, despite the ACJA's provisions, there continue to be instances where unscrupulous counsels insist on using the stay of proceedings, raising concerns about the Act's full implementation. Such challenges threaten the progress made in enacting and enforcing the ACJA. Addressing the issue of inadequate prosecution resulting from the weak implementation of the Act is critical to avoid embarrassing setbacks in the judiciary and the country as a whole.

The methodology employed in this report attempted to spotlight and assess the numerous challenges hindering the effective implementation of the ACJA, particularly section 396 (3), which mandates day-to-day trials until a case's conclusion. This work also highlighted weaknesses within all stakeholders in the criminal justice sector. As a result, it is evident that all parties involved bear some responsibility for trial delays, particularly in corruption cases and violations of the ACJA.

In light of the above, it is hoped that the recommendations presented in this report will assist stakeholders in recognizing the ACJA's potential and encourage them to collaborate more effectively to ensure the Act's intended outcomes are achieved.

Recommendations for the Judiciary

- a. There is a need to appoint more Judges. The current number of judges is inadequate to handle the rising number of corruption cases that are instituted in the courts. These judges are also overwhelmed as they have other cases that they need to attend to. Therefore, this makes it impossible for them to focus solely on corruption cases and thus leads to delays in the cases.
- b. Monitoring committees should be given powers to recommend disciplinary measures and ensure that such measures are carried out. This is necessary because what is currently obtained is that the committees merely recommend and once they do, they do not have the power to ensure that their recommendations are strictly implemented.
- c. There should be training and public sensitization of the judges and other actors that play a significant role in the judiciary and law-making in general. Periodic training of judges will not only keep them informed with recent developments in criminal justice law, but it may also help them form a

common opinion on specific issues of law, which they will apply when these issues come up in cases they are handling.

- d. All witnesses should be given adequate security before, during and after trials. Criminal trials are stalled sometimes because of the absence of witnesses. Many people who are supposed to serve as witnesses are scared to do so. This is because they are either afraid of being harmed or because the accused person, his friends or family members have intimidated them from doing so. So, it behooves the government and the judiciary to put witness protection mechanisms in place.
- e. The Court processes and proceedings should be digitalized as the world is already digitalizing. It is sad to note that our judiciary has not yet fully adopted a digitalized system of processing court processes. Issues such as missing court processes and eluding service of court processes will be a thing of the past once we adopt a digital system of filing and service of the court process. This will in no small way, help facilitate the speedy conclusion of cases.
- f. Fines should be enforced to reduce frivolous applications and ensure speedy trials. The courts are taking a stance against the filing of frivolous cases. They need to extend it to frivolous applications.
- g. There should be ways to verify reasons for seeking adjournment by Counsel in a proceeding, and flimsy excuses be punished. Counsel appearing in corruption cases should not seek adjournment with the aim of frustrating trials or to buy time for their clients. The courts should frown at such applications, and only applications for adjournment that are cogent and verifiable should be granted.
- h. Increased awareness and implementation of section 396 (7) of the ACJA. The presiding Justices of the higher courts should ensure that elevated Justices are allowed the time and space to go back to complete the cases pending before them prior to their elevation.
- i. Prosecution should have a time limit. The benefits attached to this cannot be overemphasized. It will make the prosecuting agencies sit up and ensure that they conclude the investigation before filing charges. The practice of filing charges while still shopping for evidence would be checkmated; so also, will the laxity by prosecuting Counsel.
- j. There should be alternatives to prison sentencing. A non-custodial approach like probation and community services should be adopted. The ACJA makes provisions for alternative means of punishment. Courts should strive to implement those provisions as it will go a long way in decongesting our prisons.

Recommendations for Prosecuting Agencies

- a. There should be cooperation between the anti-corruption agencies and the Nigerian Bar Association (NBA). They must consider themselves as partners in progress and not opponents. They must work together to ensure that justice is achieved and attained in cases taken to court.

- b. Plea bargaining should be embraced more. However, it should be made more stringent. By this, we mean that the punishments meted out on accused persons who opt for a plea bargain are not sufficient to deter them and others. The aim of punishment is to make offenders pay for the crime and also to rehabilitate them. When we give them options that allow them to keep a large percentage of what they are alleged to have stolen, then we are not doing enough to fight corruption and may not win the fight against corruption.
- c. Anti-corruption bodies should make proper investigations before making any arrests. A good case is won or lost at the investigation stage. Anti-corruption agencies should ensure that investigations are concluded before conducting arrests or filing charges. This will help reduce the number of cases filed against them bordering on the Enforcement of Fundamental Human Rights and also reduce the number of cases lost. It is important to ensure that it has a good case before it proceeds to court.
- d. Senior lawyers should be in charge of corruption cases within the anti-corruption agencies. This is because most of the lawyers who serve as prosecutors do not possess the needed experience to match the lawyers hired by those facing trials.
- e. In cases where petitions to prosecuting agencies are being rejected by the bodies, a cogent response detailing good reasons should be given to the petitioner.
- f. Provision of modern equipment in investigation offices. Investigating officers face a herculean task when they are conducting investigations. Sometimes, critical facts are lost because they were not gotten through technology or because there is no means of preserving them. There is a need to equip our investigation processes and facilities with modern technology to support the prosecution of corruption cases effectively.

Recommendations for Government

- a. The government should make more funds available to the judiciary and ensure judicial independence. The judiciary is underfunded and lack of enough funds impedes the smooth running of the courts. Vital and critical equipment required for a smooth process are lacking. These may affect Judges and may not make them be at their best when they are sitting to hear cases.
- b. The Ministry of Justice should regulate the number of cases prosecutors handle at a particular time. This will not only enhance the concentration of the prosecutors, but it will also enhance efficiency. A current situation where prosecuting counsels are absent from court because they have other cases they need to appear at would be checked and reduced to the barest minimum.
- c. The Ministry of Justice should have full oversight powers and be well-articulated without interference. This is in line with the calls for a separation of the office of the Attorney General and Minister of Justice. Oftentimes, the Attorney General is placed under intense pressure to either take over pending

- cases or withdraw same from court. Once this office is separated, such pressure will be checked.
- d. There should be a high level of commitment towards funding. The government must continue to fund the judiciary and anti-corruption agencies to achieve the results it seeks. If they are underfunded, they will not function optimally and the fight against corruption may be defeated.
 - e. Provision of modern equipment in courts and investigation offices. Judges in our courts still write in long hand to take down records of proceedings. This slows the pace of the trial and is susceptible to mixing up facts and even losing the records. Such records can also be tampered with by dubious people who may have access to them. Recorders and other modern gadgets should be provided for the courts. Investigating officers face a herculean task when they are conducting investigations. Sometimes, critical facts are lost because they were not gotten through technology or because there is no means of preserving them.
 - f. There is a need for full domestication of ACJL in all States of the Federation. Although many states are embracing the law, others who have not passed it must be encouraged to pass the law. There is so much to be gained if the law is passed by all States of the Federation
 - g. The cost of implementation should be considered by the National Assembly when drafting new legislation. This is imperative because most times legislations are introduced with novel ideas but are hampered because there are no financial provisions for their implementation or a commitment to finance in terms of making it compulsory for the government to fund its implementation and application. When cost effects are taken into consideration by the lawmakers, it will ensure a fast and lasting implementation of these laws.
 - h. ACJA should be amended so it can accommodate forensic evidence. The world is constantly improving in the process of investigation. The legislature needs to amend the Act so that Nigeria does not lag behind in the community of nations. Although the Act introduced novel ideas, we still need to revisit it and ensure we make the necessary amendments that are needed to make it in line with international standards.
 - i. Special courts should be created for the trial of corruption cases. Special courts created solely to try corruption cases will fast-track trials and ensure that those who have engaged in acts of corruption are made to pay for the acts and quick too.

Recommendations to Civil Societies

- a. Citizens groups and associations should be strengthened to monitor the activities of anti-corruption agencies. Strengthening them will give them more resources and funds to reach a wider population and organize training and conferences for Judges and other stakeholders involved in the implementation of the ACJA and the trial of corruption cases.

- b. There should be a collaboration among civil societies to monitor the implementation of the Administration of Criminal Justice Act and the Laws of various states. This will enhance partnership and check the duplication of activities. Organizations can know which one is involved in what project and can, therefore, focus attention on other areas or locations.
- c. Organizations should work for the creation of the Administration of Criminal Justice Monitoring Committees across the federation. This goes hand in hand with the passage of the Administration of Criminal Justice Laws by the States. Also, states that have passed the law should form the Committee, which will serve as an instrument for monitoring its application and compliance.
- d. There should be massive enlightenment and awareness of ACJA within the anti-corruption organizations to ensure proper coordination and synergy between the anti-corruption actors.

Recommendations to the Nigerian Bar Association

- a. There should be regular training of lawyers on the provisions of the ACJA. This is important because lawyers are the ones who prosecute and defend accused persons. They need to be regularly kept abreast of the provisions of the Act and why it is important to ensure compliance with these provisions.
- b. Mechanism to punish lawyers who flaunt the Act should be put in place. Lawyers should not be allowed to get away with inflicting unnecessary delays in the justice process.
- c. The Bar must see itself as a stakeholder in the justice sector and do all it can to engender the course of justice. While lawyers defend their clients, they should not pervert the course of justice or support acts that would impede justice.

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