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This Training Manual is one of the outputs under the Supporting the Effective Implementation of and Compliance with the Administration of Criminal Justice Act/Law in Nigeria, a Project that aims to facilitate the implementation of the administration of criminal justice in Nigeria by increasing understanding and awareness about the Administration of Criminal Justice Act 2015 and the various state replicas.

The project is supported by John D and Catherine T. MacArthur Foundation

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TRAINING MANUAL ON THE IMPLEMENTATION OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 FOR JUDICIAL OFFICERS

MacArthur Foundation

Training Manual On the Implementation OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

for Judicial Officers

ACJA 2015

Developed by
Nigerian Institute of Advanced Legal Studies (NIALS)
with the Support of John D. and Cathrine T. MacArthur Foundation

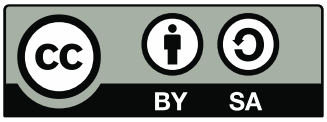




NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

(NIALS)

TRAINING MANUAL ON ACJA IMPLEMENTATION FOR JUDGES



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Manual on ACJA Implementation for Judges

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EDITOR'S NOTE

The Administration of Criminal Justice Act (ACJA) 2015 and the subsequent Administration of Criminal Justice Laws (ACJL) of States, introduced significant reforms to the management of criminal justice in Nigeria. These changes are targeted at reducing visible shortcomings under the previous existing framework that hampered the effectiveness and efficiency in criminal justice administration. However, the success of the ACJA, 2015 and the State ACJLs hinges on a proper understanding and implementation of its provisions by key justice sector actors.

This Manual is specially designed by the Nigerian Institute of Advanced Legal Studies (NIALS) for Judges to facilitate the effective handling of matters under the new procedural frame work for the administration of criminal justice in Nigeria, especially as it relates to corruption by natural and juristic persons. First published in 2018, the Manual was compiled and printed to fill the knowledge gap experienced by Judges as justice sector actors, arising from the absence of practical guidance on the implementation of ACJA and the State ACJLs. The Manual has subsequently been utilised for the training of judges across the federation.

NIALS deemed it fit to update and revise its content, in line with developing jurisprudence and current international best practices. This revised version of the Manual features further guidance and recent judicial interpretations of key provisions of the legal instruments as they relate to addressing corruption through the criminal justice system

The Editor would specifically like to express his deepest thanks to the experts who have contributed to the first compilation and the revision of this Manual. The Institute also acknowledges the support of John D and Catherin T. MacArthur Foundation in funding the production of this manual, as part of the Foundation's *On Nigeria Grant Program*

It is hoped that the summaries, explanations and practices provided will enhance the proper implementation of the ACJA 2015 and the respective States ACJL for the entrenchment of an efficient and effective criminal justice system in Nigeria.

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ACRONYMS

ACJA	Administration of Criminal Justice Act, 2015
ACJL	Administration of Criminal Justice Law
ACJMC	Administration of Criminal Justice Monitoring Committee
AFFA	Advanced Fee Fraud Act
CAMA	Companies and Allied Matters Act
CCDs	Criminal Case Demographics
CFRN	Constitution of the Federal Republic of Nigeria
CJN	Chief Justice of Nigeria
CPA	Criminal Procedure Act
CPC	Criminal Procedure Code
DPA	Deferred Prosecution Agreements
EFCC	Economic and Financial Crimes Commission
FCT	Federal Capital Territory
HC-FCT	High Court-FCT
ICPC	Independent Corrupt Practices and other Related Offences Commission
ICPPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technology
IGP	Inspector General of Police
IOC	Instrumentality of Crime
LFN	Laws of the Federation of Nigeria
NASS	National Assembly
NCVS	National Crime Victimisation Survey
NPA	Non-Prosecution Agreement
RPCLP	Rules of Professional Conduct in the Legal Profession
UNCAC	United Nations Convention Against Corruption
VAPPA	Violence Against Persons Prohibition Act

MODULE ONE: ADJUDICATING CORRUPTION OFFENCES UNDER THE ACJA 2015

Unit One: Understanding the ACJA 2015

1.0 Introduction
1.1 Objectives of ACJA
1.2 Scope and Application of ACJA
1.3 Self-Assessment Exercises
1.4 Conclusion
1.5 References

1.0 Introduction

Judicial powers refer to the express and inherent powers of legally constituted courts and, more appropriately, the judges. The supreme court defined judicial powers as the total powers which a court exercises when it assumes jurisdiction to hear a case. See **Hon Sani Sha'aban & Anor v. Alhaji Namadi Sambo & Ors (2010)** LPELR-3032(SC)

The unit explains the fundamentals of the ACJA in terms of objectives, content, application and scope as they relate to the adjudication of corruption cases. The objective of this unit is to ensure that the trainees appreciate the challenges experienced under the old criminal justice system and the nature of changes introduced by the ACJA. At the end of the unit, there are practical exercises and useful references for trainees. The utility of these exercises and reference materials are to support the application of knowledge in a contextual manner, and to help facilitators and trainees improve their understanding of the ACJA.

1.1 Objectives of the ACJA

One of the objectives of the ACJA is the need for judges, lawyers and criminal justice administration stakeholders in Nigeria to ensure that criminal proceedings including those meant for economic crimes and corruption cases are treated with utmost urgency. Accordingly, the ACJA seeks to:

a. Achieve speedy dispensation of justice by eliminating undue delay occasioned by the use of frivolous interlocutory applications. See s. 306

ACJA; **FRN v. Lawan** (2018) LPELR-43973(CA) P 33 Paras (A-F)[1]; and **FRN v. Babalola Borisad**e (2015) All FWLR (Pt. 785) 227;[2] and Order 1 Practice Direction on the Implementation of the ACJA 2015 in the Courts of the Federal Capital Territory, 2017 (HC-FCT Practice Direction, 2017).

b. Promote efficient management of criminal justice institutions. See s. 1 of ACJA[3] and **UBA v. FRN** (2018) LPELR-46552(CA)

c. Ensure protection of the society from crime and the protection of the rights and interests of the defendant and the victim. See s. 1(1) ACJA and **Awelle v. People of Lagos State** (2016) LPELR-41395 (CA)

The ACJA has been lauded for its innovative provisions geared towards achieving an egalitarian society. The Act repealed the Criminal Procedure Act (CPA), the Criminal Procedure (Northern States) Act and the Administration of Criminal Justice Commission Act by virtue of s. 493 and introduced provisions to expedite criminal proceedings including those involving charges on corruption.

What Innovations can be found in the ACJA 2015?

a. Judges are empowered to carry out day-to-day trial of criminal cases including anti-corruption cases under the ACJA. The Act also limits adjournments from arraignment to final judgment to five with interval between each adjournment not exceeding fourteen working days. See s. 396 (4) ACJA and Order 7 Rules (2) and (3) of the Practice Direction on the Implementation of the ACJA 2015 in Courts of the Federal Capital Territory[4] (HC-FCT Practice Direction, 2017). See also **Okobi v State** (1984) LPELR-2453 (SC) on adjudicatory powers of the court[5] and **Saraki v FRN** (2016) LPELR 40013(SC) where the Supreme Court in its ruling of 15th March 2018 granted indefinite adjournment on the appeal before it pending when the parties file all necessary processes.[6] This ruling by the apex court is against

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[1]"The essence of the Administration of Criminal Justice Act, 2015 (ACJA) was to ensure amongst others, speedy trial and quick disposal of criminal cases in the interest and as of right of a suspect, the defendant, the victim and in fact the society at large" per Uwa J.C.A.

2 Section 306 is an unprecedented provision in that it aims to stop delays occasioned by interlocutory applications to stay proceedings pending appeal on preliminary matters when the substantive issues are yet to be tried on merit.

3 Section 1 is an indication of a deliberate shift from punishment as the primary objective of the criminal justice system to restorative justice, which hinges on the needs of the society, the victims, vulnerable persons and human dignity.

4. Issued by Chief Judge of the Federal Capital Territory (FCT) on 25 April 2017.

5 Power of Court –Ways of enabling the court to utilise its powers under the Criminal Procedure Law.

6 Bright Chiedu Onochie, "Supreme Court Adjourns Saraki's Case, Federal Government Appeals Indefinitely" *The Guardian* (Abuja, 16 March 2018)

the provisions of s. 396 (4) of ACJA. See also **Audu v FRN** (2017) LPELR on adjournment,[7] and Dr. **William Oki & Anor v. First Bank of Nigeria PLC** (2019) LPELR-47542(CA)

b. Judges have discretionary powers to award costs to discourage frivolous adjournments. See s. 396 (6) ACJA and Order 7 Rules (4), (6), (7) and (8) of the HC-FCT Practice Direction, 2017.

c. Judges are discouraged from entertaining applications for stay of proceeding in respect of criminal trials. See s. 306 of the ACJA and Order 11 Rule (1) HC-FCT Practice Direction, 2017.

d. The ACJA in s. 111 introduced mandatory 90 day returns by the Controller General of Correctional Facilities on all persons held in custody for more than 180 days after the date of arraignment. The returns must detail name of suspect; passport photograph; date of arraignment or remand; date of admission to custody; particulars of offence charged; court of arraignment; name of prosecuting agency; and any other relevant information. Returns must be made to the Attorney-General of the federation, President of the National Industrial Court and the chief judges of the federal high court, federal Capital Territory and chief judge of the State where the prison is situated.

e. Another important innovation of the ACJA 2015 to enhance speedy trials is the provision in s.396(7) which permits a judge of the High Court who has been elevated to the court of Appeal to preside as a high court judge for the singular purpose of concluding a criminal matter pending before the judge at the time of the elevation. Matters under this category must however be concluded in reasonable time. The provision is important because of the hardship the elevation of high court judges to superior courts occasion on the speedy dispensation of criminal matters, as when judges are thus elevated matters have to be tried de novo leading to a waste of time, money and in some cases miscarriage of justice. As witnesses may have died or are on the run or may not remember in exactitude what transpired in the case.

However, there has been objections to this provision that the section is in conflict with the doctrine of supremacy of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as provided for in its s. 1(1) and (3) and to that extent is null and void and no legal action can be successfully predicated on it. The provision of s 396(7) of the ACJA appears to be in conflict with the provision of the Constitution on the appointment of judges/justices, powers/jurisdiction and the constitution of the federal High court and the Court of Appeal. See sections 237, 238, 239, 240 and 247 of the Constitution with respect to appointment of Justices, powers/jurisdiction

[7] For duty of court when an application for adjournment is made to it in criminal trials. See ***Osho & Ors v A.G Ogun State*** (2015) LPELR-41669 (CA)

and constitution of the CA. See also sections 249, 250, 251, 252 and 253 of the Constitution with respect to appointment of Judges, powers/jurisdiction and constitution of the Federal High Court.

The supreme court seem to agree with the objection of the constitutionality of s. 396(7) of the ACJA 2015 with its recent judgement in **Ude Jones Udeogu & Ors v. FRN** (Unreported Appeal number SC.662C/2019 delivered May 9, 2020)[8]. In that case, the criminal trial of former governor Orji Uzo Kalu, Mr Udeogu and Slok Airlines on corruption charges was continued after the presiding judge was elevated to the Court of Appeal on the strength of the provisions of s. 396(7) of the ACJA 2015. On appeal to the Supreme Court, it was held quashing the judgement of the Court Appeal, that the conclusion of Governor Kalu's trial by an elevated justice of the Court of Appeal was inconsistent with the provisions of s 290(1) and s. 253 inter alia. See also **Ogbunyiya v Okudo** (1979) NSCC 77 and **Our Line Ltd v SCC Nigeria Ltd & Ors** (2009) 17 NWLR (Pt 1170) 383.

From the above decision of the apex court of the land, the job of the legislature is clear if this innovation of the ACJA is to be preserved; the constitution must be amended to accommodate/validate same.

1.2 Scope and Application of ACJA

The ACJA applies to:

- All criminal trials and inquiries, generally. See s. 86 ACJA.
- Criminal trials for offences established by laws enacted by the National Assembly (NASS). See s. 2 (1) ACJA.
- Other offences punishable in the Federal Capital Territory (FCT). See s. 2 (1) ACJA.
- All federal courts (and FCT) irrespective of jurisdiction. See the long title to the Act

The ACJA does not apply:

- Where 'express provision is made in respect of any particular court or form of trial or proceedings' See s. 86 ACJA.

[8] Gbenga Bamodu, 'Orji Uzor Kalu's Case - Was the Supreme Court Correct?' *Sahara Reporters* (14 May 2020) <http://saharareporters.com/2020/05/14/orji-uzor-kalu%E2%80%99s-case-was-supreme-court-correct-professor-%E2%80%99gbenga-bamodu> accessed 15 August 2020

- To a Court Martial. See s. 2(2) ACJA.

NOTE ALSO that:

a. The ACJA is inapplicable in State courts unless the State House of Assembly has adopted its provisions. However, the Act will apply where State officials are authorised to prosecute federal offences (even in State high courts). The provisions of the Act apply to federal agencies like the Nigeria Police and Correctional Facilities in their relations with State authorities and courts.
b. While several States have commenced the introduction of the ACJA, as of February 2020, twenty-nine States have fully adopted the ACJA by virtue of their own Administration of Criminal Justice Laws (ACJL)[9].
c. Importantly, the ACJA did not expressly repeal the Criminal Procedure Code (CPC) mainly on account of it being a law made by States. Regarding courts situated in the FCT where the CPC applies, wholesale repeal of the CPC would have affected their jurisdictions since the CPC has embedded in it provisions on the constitution, powers and substantive jurisdiction of courts (Part II). However, provisions of the CPC that are inconsistent with the ACJA or are incorporated therein are impliedly repealed.

1.3 Self-Assessment Exercises

1.3.1 Questions

a. Critically appraise the innovative provisions that will assist judges in the trial of anti-corruption cases within the context of the ACJA.

b. Examine the applicability or otherwise of the ACJA in Federal and State courts.

1.3.2 Case Scenario

Mr. Ibio was appointed as Commissioner for Finance in Cross River State on May 2015. Following allegations of fraudulent enrichment and misappropriation of State funds, he was arrested in March 2017. He was later arraigned before a high court judge sitting in Calabar. Cross River State has extant Administration of Criminal Justice Law (ACJL), which is not a re-enactment of the ACJA. The prosecution argued that since the provisions of the Cross-River State ACJL encourages undue delay, and lack necessary provisions to enable it prosecute his case successfully, the court should grant

[9] Zamfara, Kebbi, Niger, Imo, Taraba, Gombe and Borno states are yet to domesticate the ACJA 2015.

him leave to rely on the provisions of the ACJA. But the defence contested otherwise.

You are consulted for advice. With reference to case law and statutory provisions, advise the judge.

1.4 Conclusion

This unit outlined the innovative provisions of the ACJA, which are geared towards promoting efficient management of criminal justice institutions, ensuring protection of the society from crime and protecting the rights and interests of the defendant and the victim. The role of the court in dispensing justice in an expedited manner was also highlighted under this unit.

1.5 References

- Administration of Criminal Justice Act, 2015
- Practice Direction on the Implementation of the ACJA 2015 in the Courts of the Federal Capital Territory, 2017 issued 25 April, 2017.
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Unit Two: Corrupt Offences: Nature and Typologies

2.0 Introduction
2.1 Nature of Corrupt Offences
2.2 Some Typologies
2.3 Self-Assessment Exercises
2.4 Conclusion
2.5 References

2.0 Introduction

The nature and effects of corruption is a crucial issue of global concern. Its definition varies depending on the approaches, goals and requirements of policy makers. A legal perception of corruption may, for instance, involve accurate, explicit and definitive recognised corrupt offences in order to conceptualise legal frameworks that inform individuals, States and the international community of what constitutes prohibited acts.[10] This unit expounds the nature of corrupt offences and typologies. A deeper understanding of these typologies will help judges to effectively adjudicate and make informed pronouncements in corruption cases.

2.1 Nature of Corrupt Offences

Corrupt offences, can only be prosecuted after the commission of the act. Prosecution of corruption cases are onerous, expensive, indefinite, and can only be successful when there is availability of evidence. Corrupt offences can be categorised either as criminal or administrative conduct. The nature of the corrupt offence will, more often than not, determine the agency that is empowered to handle it. For example:

a. If the corrupt offence deals with false declaration of assets, the Code of Conduct Bureau/Tribunal is empowered under the Code of Conduct Bureau and Tribunal Act to handle it. See s. 3(d) of the Code of Conduct Bureau and

[10] In Nigeria, reference to corruption may not only be abuse of state offices for some kind of private gain but may also be linked to a whole range of social behaviour where several forms of questionable activities are carried out to amass wealth, power or prestige including mundane goals.

Tribunal Act, 1990 and ***Olubukola Saraki v. Federal Republic of Nigeria*** [2016] 3 NWLR (Pt.1500) SC 531.

b. With respect to economic and financial crimes, the agency with the prosecuting power is the Economic and Financial Crimes Commission (EFCC). See s. 6 of the Economic and Financial Crimes (Establishment) (EFCC) Act, 2004. The EFCC is empowered to prosecute any proceeds of crime offence and to also identify, trace, freeze, confiscate or seize such proceeds of crime derived from economic and financial crimes related offences. See s. 6 of the EFCC Act, 2004 and ***Mustapha v. FRN*** *(2018) LPELR-43131 (CA*) where the court stated that the EFCC is empowered to investigate and prosecute all economic and financial crimes as defined in Section 46 of the EFCC Act and created and punished under other penal statutes, including those enacted by the States of the of the Federation.

c. The Independent Corrupt Practices and other Related Offences Commission (ICPC) is empowered to prosecute bribery or corruption related offences. See s. 6 of the Independent Corrupt Practices and other Related Offences (ICPC) Act, 2000. Judges should be aware that the ICPC Act in Cap C31 LFN 2004 and the ICPC Act in the LFN 2010 is not an existing law. In 2003, the National Assembly attempted to amend the ICPC Act, 2000, but this was met with stiff opposition. In the case of ***Hon. Bala Kaoje & 4 Ors. v. The National Assembly of the Federal Republic of Nigeria & 13 Ors***; unreported Suit No. FHC/ABJ/CS/93/2003 which was decided on the 21st day of May, 2003, it was held that the Corrupt Practices and Other Related Offences Act, 2000 is a valid Law. Also, in ***Oke v FRN*** (2016) LPELR-41362(CA), the Court of Appeal held that the ICPC Act 2000 remains a valid and subsisting law.

2.2 Some Typologies

Here, we will examine the typologies[11] of corruption, which are the subject of several legal and academic definitions. The common forms of corrupt offences include:

11. The word 'typologies' simply refers to the study of or analysis or classification based on types or categories. When used in the context of corrupt offences, it connotes the various forms of corruption. The discussion of these forms of corruption under this unit is not exhaustive.

a. Grand corruption: This is a term often used to label corruption that permeates the highest levels of government, stimulating main abuses of power.[12]

b. Petty corruption: Petty corruption, which is sometimes referred to as 'administrative corruption', entails the exchange of very little amounts of money, and the granting of small favours.[13] The receiving or obtaining of property or benefit of any kind for any act or favour done is punishable with 7 years imprisonment under the ICPC Act. See s. 8 ICPC Act.

c. Active and passive corruption: Whenever issues of corruption offences arise, the terms 'active bribery' and 'passive bribery' are often used. 'Active bribery' simply means the act of offering or paying a bribe, while 'passive bribery' involves the requesting or receiving of a bribe.[14]

d. Bribery: This is perhaps the most common type of corruption, involves conferring a benefit improperly with the intention to influence an action or decision.[15] Definitions or descriptions of this type of corruption can be found in several international instruments or national laws of most nations and also academic journals. See Article 15 of United Nations Convention Against Corruption (UNCAC), 2003 and s. 2 ICPC Act.

e. Incidental and systemic corruption descriptions do not, in any way, depict the scope or degree of corruption. Incidental corruption denotes corruption that occurs occasionally and is not mostly prevalent. Conversely, systemic corruption refers to corruption that is as extensive as if it is innate in the system.

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12 This type of corruption symbolises an extensive violation of the rule of law, leads to economic instability and loss of confidence in governance. It is most times referred to as "state capture" and is said to occur constantly in areas such as construction, telecommunications, the extractive sector, defence contracts, huge infrastructure contracts in health and water sectors, etc.

13 Petty corruption takes place at the citizen-state level where, for instance, citizens get involved with such sharp practices to evade stringent rules or where officials resort to extortion of money from them in abuse of their discretionary power. According to Transparency International's worldwide survey of 2009, forty per cent of respondents reported having expended between one and ten per cent of their annual earnings on bribes.

14 The expressions 'active and passive' corruption particularly applies in cases of corruption where a 'transaction' is involved (for example, bribery). For example, active corruption occurs where individual/organisation funds the transaction/act (that is, a bribe is offered/paid, while passive corruption occurs where there is receipt of proceeds from the act by the public official (i.e. accepting the bribe.

15 This can be initiated by an official who requests for a bribe, or by someone who offers to pay one.

2.3 Standard of Proof in Official Corruption Offences

The case of ***Ojo & Anor v. FRN*** (2008) LPELR-5155 (CA) borders on the offences of conspiracy and official corruption. This is an appeal against the judgment of M. O. Oniyangi, J. of the High Court of the Federal Capital Territory holden at Gwagwalada. The appellants allegedly gave the sum of N20,000.00 as gratification to Ibrahim Pam. (PW3) an Assistant Chief Legal Officer with the Independent Corrupt Practices and Other Related Offences Commission (hereinafter referred to as the Commission) in the course of his official duty for the specific purpose of inducing or influencing him to issue an official letter. The letter was meant to exonerate the 1st appellant from the allegation of corrupt practices against him whilst he served as the Chairman of Oriade Local Government Area in Osun State which allegation was then under investigation by the Commission.

The trial court convicted the appellants. Aggrieved and dissatisfied with the judgment, the appellants filed this appeal to the Court of Appeal. The appellants formulated three issues for the determination of the appeal, which the Court adopted. The issues are: (1) Did the prosecution establish all the elements of the offences of conspiracy and official corruption that the appellants were charged with and convicted of? (2) Did the prosecution prove, beyond reasonable doubt that the appellants committed the offences of conspiracy and official corruption that they were charged with and convicted of? (3) Was the decision of the lower Court to convict the appellants perverse?"

HELD:

On the whole, the appeal succeeded. The judgment of the trial Court was set aside. The conviction and the sentence of the appellants were quashed. The appellants were, accordingly, discharged and acquitted. It was also held that: "In criminal proceedings, the prosecution always has the duty to prove the guilt of an accused person. It is a time-honoured legal principle that the standard of proof the prosecution is required to discharge has been fixed as "proof beyond reasonable doubt".

2.4 Essential Elements of the Offence of Corruption

An essential element of the offence of corruption under the Criminal Code Cap C38, LFN 2004 (ss. 98, 114 and 116) is that there must be a duty to be performed by the person to whom the corrupt payment is made or offered. If there is no such duty no offence is committed under any of these sections, however morally reprehensible the transaction may be. See ***Onyekwere v. State*** (1973) LPELR-2734 (SC)

Section 10 (a) (ii) ICPC Act illustrates the kind of duty stated in *Onyekwere's* case. It provides as follows –

"Any person who

(a) asks for, receives or obtains property or benefits of any kind for himself or any other person; or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of

(ii) Anything to be afterwards done or omitted or any favour/disfavour to be afterwards shown to any person by a public officer in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of an offence of official corruption and shall on conviction be liable to imprisonment for seven (7) years."

Also, in ***Nwankwoala v FRN*** (2015) LPELR-24392 (CA), the defendant was a Deputy Superintendent of Police at Benin City, Edo State. He was charged with demanding for the sum of N1,000,000 (One Million Naira) from Elder Alexander Okiye, a person against whom criminal complaints were made, as an inducement to write, secure, procure and counter a favourable report of Elder Alexander Okiye in respect of the criminal complaints. It was held by the Court of Appeal that to prosecute an offender under s. 10(a)(ii) ICPC Act, the following ingredients of the offence must be proved:

i. That the accused or offender is a Public Officer within the meaning of s. 2 of the ICPC Act.
ii. That he asked for the benefit of any kind for himself or for any other person in respect of something to be done afterwards, or something already done.

iii. That he asked for the benefit in the course of the discharge of his official duties. See also **Anifowoshe Muyideen v. The State** (2019) LPELR-47743(CA)

By s. 135 of the Evidence Act 2011, the proof required is proof beyond reasonable doubt. See ***State v. Ahmed*** *(2020) LPELR-49497(SC) where the supreme court stated that proof beyond reasonable doubt simply means the prosecution establishing the guilt of an accused person with compelling and conclusive evidence. It means a degree of compulsion which is consistent with a high degree of probability*; and ***Miller v. Minister of Pensions*** (1947) 1 All E.R 372.

2.5 Significance of Proper Constitution of the Court/Tribunal for Prosecution of Corruption Cases.

The case of ***Saraki v. FRN*** *(2016) LPELR-40013(SC)* illustrates this point. This appeal bordered on the jurisdiction and competence of the Code of Conduct Tribunal. It was an appeal against the judgment of the Court of Appeal, Abuja in appeal No. CA/A/551/2015 delivered on 30th October, 2015, in which the court dismissed the appeal of appellant against the ruling of the Code of Conduct Tribunal in charge No CCT/ABJ/01/2015 delivered on 18th September, 2015. The tribunal had held that the criminal charge preferred against appellant was competent, despite the absence of a sitting Attorney-General of the Federation and issued a bench warrant against appellant for his failure to appear before the Tribunal and answer/plead to the charges preferred against him. The appellant was a two-term Governor of Kwara State, between May, 2003 and May, 2011. While in the said office the appellant filed, as required by law, for asset declaration forms and submitted same to the Code of Conduct Bureau. These forms were duly investigated by the Bureau and other relevant agencies of government as a result of which it was allegedly found that the appellant allegedly corruptly acquired many properties while in office as Governor of Kwara State but failed to declare some of them in the said forms earlier filled and submitted to the relevant authorities. It was also allegedly discovered that the appellant made an anticipatory declaration of assets upon his assumption of office as

Governor of Kwara State which he acquired later. It was equally alleged that the appellant sent money abroad for the purchase of properties in London and that he maintained an account outside Nigeria while serving as Kwara State Governor. It was on the discovery of these alleged violations of the Code of Conduct for Public Officers that the Code of Conduct Bureau initiated a criminal proceeding against the appellant before the Code of Conduct Tribunal, Abuja. Upon being served the summons, the appellant filed a motion dated 17th September, 2015, before the Code of Conduct Tribunal challenging the competence of charge No. CCT/ABJ/01/2015. He also filed a suit before the Federal High Court, Abuja and Lagos respectively in which he ~~also~~ challenged the validity of the criminal proceedings initiated against him at the Code of Conduct Tribunal.

In the proceedings at the tribunal on 18th September 2015, the appellant contended that since there was no sitting Attorney-General of the Federation at the time charge No CCT/ABJ/01/2015 was filed before the Tribunal, the charge was incompetent and that the appellant would not appear before the Tribunal etc. The Tribunal overruled the objection of the appellant and issued a bench warrant against him and adjourned the case to 19th September, 2015 to enable appellant appear and take his plea. The appellant did not so appear, resulting in the Tribunal renewing its order of bench warrant and adjourning the matter to 22nd September 2015. On 22nd September 2015, the appellant voluntarily appeared before the Tribunal in person. The charges preferred against him were read to him and he pleaded not guilty. Consequently, the warrant of arrest/bench warrant issued against him was revoked. He was granted bail on self-recognisance and the matter was adjourned to the 21st, 22nd and 23rd of October, 2015 for hearing. However, on 2nd October, 2015, the appellant filed an appeal against the ruling of the Tribunal of 18th September, 2015 before the Court of Appeal. The Court of Appeal dismissed the appeal, which resulted in a further appeal before the Supreme Court.

HELD:

On the whole, the Supreme Court dismissed the appeal. The judgment of the Court of Appeal delivered on 30th October, 2015 dismissing the appeal of the appellant against the ruling of Code of Conduct Tribunal of 18th September, 2015 was affirmed. The Court also held *inter alia* that the Code

of Conduct Tribunal cannot assume jurisdiction without having been properly constituted.

Saraki's case shows that the nature of the corrupt offence, can determine the agency that is empowered to handle it. The Supreme Court, per Amiru Sanusi, J.S.C, held that the Code of Conduct tribunal is empowered by paragraphs 1 to 11 of the 5th Schedule to the 1999 Constitution (as amended) to try persons who contravene the offences listed there, especially bribery and corruption offences by public officers.

2.6 Self-Assessment Exercises

2.6.1 Questions

a. Using statutory provisions, evaluate the nature of corrupt offences.

b. Generally, corruption in the literature include petty corruption and grand corruption. Is this typology applicable to corrupt practices under the relevant anti-corruption legislation in Nigeria?

2.7 References

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Unit Three: The Role of Judges in Anti-Corruption Cases

3.0 Introduction
3.1 The role of Judges in Anti-corruption Cases
3.2 Exercises
3.3 Conclusion
3.4 References

3.0 Introduction

The purpose of the ACJA is to ensure that the system of administration of criminal justice in Nigeria runs efficiently and that speedy trials are guaranteed without losing sight of the protection of the society and protection of the rights and interest of both the suspect, defendant and the victim (s. 1(1) ACJA). This unit examines the role of judges in anti-corruption cases.

3.1 The Role of Judges in Anti-Corruption Cases

The principal function of the judiciary is the administration of justice, which consists, essentially, in adjudication. That is, the resolution of conflicts, rights and interests. It is pertinent to mention that s. 6 (6)(a) and (b) of the 1999 Constitution gives the courts an extensive power to adjudicate all matters or controversies in which civil rights of any person are involved or threatened. For the avoidance of doubt, s. 6 (6)(b) of the Constitution provides that:

> The Judicial power vested in accordance with the foregoing provisions of sections shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

In resolving corruption cases, judges must be guided by the concept of rule of law. The concept of the rule of law enjoins:

i. that no man is punishable or can be lawfully made to suffer, in body or goods, except for a distinct breach of law, the proof of which is established by procedural regularity in the ordinary courts of the land. This means the supremacy of the regular law against the exercise of arbitrary power by Government or individuals;

ii. that no man is above the law and that every man is subject to the jurisdiction of the courts;
iii. that the Constitution of the land is supreme and everybody – Government, institutions, and individuals – is subject to the Constitution as interpreted by the Courts.

To achieve rule of law, the Judiciary must operate:

i. within certain principles;
ii. within certain conditions; and
iii. within certain environment.

The Judges must be:

i. independent and fair-minded;
ii. experienced and knowledgeable in law;
iii. totally detached and work for God and for humanity;
iv. fanatical in their desire to do justice; and
v. achieve justice to their satisfaction; to the satisfaction of the parties; and to the satisfaction of the community.

The role of judges as adjudicators in cases cannot be overemphasised. The attainment of the objectives of the ACJA depends on how effectively judicial officers discharge their responsibilities as unbiased and firm umpires. This is borne out by several provisions such as -

a. Ensuring speedy trial: The Act provides for day-to-day trial of criminal cases including anti-corruption Cases. It also limits adjournment to five per party during trial and the interval between each adjournment shall not exceed fourteen days. See s. 396 (4) ACJA; Order 7 Rules (1), (2) and (3) of the Practice Direction on the Implementation of the ACJA 2015 in the Courts of the Federal Capital Territory, 2017 (HC-FCT Practice Direction, 2017). In a situation where the five adjournments provided for under the Act has been exhausted, the court shall grant adjournment where necessary and it shall not exceed 7 days inclusive of weekends. See s. 396(5) ACJA and paragraph 126(b) of the High Court of FCT, Benchbook of Best Practices Trial of Criminal Cases). Adjournment should not be indefinite as ruled by the Supreme Court on 15th March 2018 in ***Saraki v. FRN***. The ruling on indefinite adjournment by the apex court in Saraki's case is against the provisions of s. 396(4) of ACJA. See ***Audu v FRN*** (2017) LEPLR on adjournment; ***Osho & Ors v A.G Ogun State*** (2015) LPELR 41669 (CA) and ***Okobi v State*** (1984) LPELR-2453 (SC)

b. Prohibition of stay of proceedings applications: Judges are not to allow applications for stay of proceedings by virtue of s. 306 ACJA. See also s. 40 EFCC Act. Thus, no application for stay of proceedings can validly be entertained in respect of criminal proceeding before the High Court before judgement; or even by an appellate court in an interlocutory appeal. 'This is in line with the overall and primary objective of the Administration of Criminal Justice legislations of ensuring that criminal trials are concluded expeditiously and not clogged by undesirable and often frustrating delay occasioned by interlocutory appeals.' Per Mohammed Garba JCA in ***Mustapha v FRN*** (2017) LPELR-43131 (CA). The recent decision of the Code of Conduct Tribunal in ***Saraki v FRN*** (Charge No CCT/ABJ/01/2015) to stay proceedings of the court pending the determination of an appeal by the parties before the Supreme Court no doubt negates the provisions of s. 306 of the ACJA. The section enjoins courts not to entertain any application for stay of proceedings in any criminal trial to ensure speedy trial. The only ground where a trial court may be allowed to entertain application for stay of proceeding is when the issue of reference bothers on interpretation of the Constitution of Federal Republic of Nigeria, which is not one of the grounds of appeal the parties brought before the Supreme Court (s. 305 ACJA). It is contradictory for the CCT Chairman to stay the proceedings of the Tribunal after averring that by virtue of ss. 305 and 306 of ACJA, an appeal does not mean stay in proceedings. See ***Metuh v FRN*** (2017) 11 NWLR (Pt. 1575) 157 (SC), where the Supreme Court held that by virtue of ss. 305 and 306 of ACJA an appeal should not act as a stay of proceedings.

c. Discouraging the application for unnecessary adjournments: Judges are encouraged to award costs to discourage frivolous adjournments. See s. 396 (6) ACJA and Order 7 Rules (4) and (8) of the HC-FCT Practice Direction, 2017.

d. Prompt assignment of cases: The Chief Judge, on the filing of information in court is required to assign it for trial within fifteen working days from the date it was filed. See ss. 382 ACJA and Order 2 Rules (2) and (3) of the HC-FCT Practice Direction, 2017

e. Curtailing trial de novo: The ACJA makes it unnecessary to start trial afresh on account of the elevation of a Judge to a superior Court. The ACJA mandates such a judge to continue with the matter for the purpose of concluding the criminal matter (s. 396 (7) ACJA). This provision is commendable given the effect of trial *de novo* in anti-corruption or criminal trials generally.

f. Time limitations: These have been introduced for remand orders (s. 296 ACJA).

g. Review of quarterly returns by Chief Judge: The Chief Judge is empowered to review quarterly returns of particulars of all criminal cases from courts (**s.** 110 (5) ACJA). This is to ensure speedy trials, decongestion of cases and correctional facilities. See s. 110(6) ACJA and Order 13 Rules (1) and (2) of the HC-FCT Practice Direction.

h. Non-custodial sentencing: Judges are empowered to make non-custodial sentencing and release orders regarding correctional facilities inmates before completion of sentence (ss. 460, 467 and 468 ACJA)**.**

3.2 Self-Assessment Exercises

3.2.1 Questions

a. Examine the role of judges in the adjudication of anti-corruption cases under the ACJA.

b. With respect to adjudication of anti-corruption cases, state the scope and limitations of the ACJA.

3.2.2 Case Scenario

a. Mr. Akpa won the bid to supply computers and computer accessories to Oceanic technologies. On receiving part payment for the supplies, Mr. Akpa decided to surprise his wife on her birthday with a G-wagon and his mother with a Toyota Corolla Sports. A month after Oceanic Technologies contacted Mr. Akpa about the said supplies and also threatened to withdraw the contract if he fails to make the supplies within one month. Having squandered the money, Mr. Akpa decided to purchase substandard products for oceanic technologies to prevent them from executing their threat. Dissatisfied with the supplies, Oceanic Technologies made an entry at Apo police station and Mr. Akpa was arrested and is facing trial on a one-count charge of embezzlement. In the course of the trial, Emeka Esq, lawyer to the defence is seeking another adjournment to enable him attend to another matter in the appellate court having adjourned five times already in the last two weeks. The prosecutor has objected to this adjournment arguing that the current adjournment is frivolous and intended to waste the time of the court.

i. If you were the judge, will you overrule or sustain the objection of the prosecutor?
ii. What number of adjournments is permitted under the ACJA and why?
iii. Will the case have been different if it was the defence's fourth adjournment in two weeks?

b. Mr. Big was arrested for the offence of corruption under Yoruba customary law and charged to Molete (Ibadan) Customary Law Court, where he was released. He was then re-arrested by the joint forces of EFCC, ICPC and DSS and kept in detention for 2 years. When he was brought before the State High Court, the Judge refused bail on the ground that the 100 million Naira alleged to have been corruptly converted by Mr. Big was enough to repair all the Roads in Oyo State. Discuss the legal issues.

3.3 Conclusion

Judges can be described as the engine house of the criminal justice system. As an engine house, it is important that it functions effectively and independently in the adjudication of cases. However, this was difficult under the old criminal justice system as judges had heavy caseloads coupled with frivolous adjournments from lawyers. With the provisions of the ACJA on plea bargain, summary trials and time limit on adjournments, the caseloads are now reduced and speedy trials can be achieved in anti-corruption cases.

3.4 References.

- Administration of Criminal Justice Act, 2015
- High Court of Federal Capital Territory Benchbook of Best Practices in Trial of Criminal Cases 2017 (FCT Benchbook)
- Hon. Justice Ishaq Usman Bello, Practice Direction on the Implementation of the Administration of Criminal Justice Act 2015 in the Courts of the Federal Capital Territory, Issued 25 April, 2017.
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MODULE TWO: DEVELOPING AN INSTITUTIONAL MECHANISM FOR DAY-TO-DAY TRIAL

Unit One: Developing Criminal Case Demographics

1.0 Introduction

1.1 General Overview of Day-to-Day Trial as an Aspect of a Speedy Trial

1.2 Types of Criminal Case Demographics

1.3 Self-Assessment Exercises

1.4 Conclusion

1.5 References

1.0 Introduction

Demographics simply mean statistical data relating to the population and particular groups within it. It has the character of communicating patterns in society. For example, why people shop in a certain supermarket, or why they patronise a certain type of transport.? Significantly, demographics also articulate pattern in criminality. For example, why do crimes occur in certain locations or why a gender or category of persons engage in certain crimes?

Developing Criminal Case Demographics (CCDs) is beneficial in a number of ways. For example, it can benefit law enforcement in many aspects such as actual policing, budget formulation, local community development efforts, criminal justice research for purposes of finding solutions to improve the criminal justice system, news media reports, and provision of comprehensive view of crimes that have been committed. CCDs further explain the reasons behind the commission of crimes.

It is expected that at the end of this module, the user is able to appreciate the need to develop criminal case demographics, its many benefits and also identify the challenges associated with developing such an important criminal justice resource.

1.1 General Overview of Day-to-Day Trial as an Aspect of Speedy Trial

The concept of speedy trial deals with speedy disposal of cases to improve the efficiency of the judiciary and to deliver justice as fast as possible. The constitutional right to speedy trial (**see s. 36 of CFRN**) is an important safeguard to prevent undue and oppressive incarceration prior to trial. It minimises concerns regarding public accusation and limits the possibilities of long delays impairing the ability of an accused to defend himself. It is a right that is specifically mentioned in the historical *Magna Carter* and other international human rights instruments (see for example Articles 14 and 16 of International Covenant on Civil and Political Rights (ICPPR), Article 6 of European Convention on Human Rights and Article 10 of Universal Declaration [16]on Human Rights). It is a known fact that delay has been endemic in the Nigeria judicial system for decades due to the following factors:

- The nature of the court system;
- Professional courtesy of lawyers towards each other;
- Population ratio as per number of judges available as against the number of case files;
- Functioning of the judiciary;
- Provision of adjournments allowed under the CPC and PC upon which frivolous adjournments were often sought and granted in addition to the power of court to postpone hearing;
- Court vacation; and
- Hurried and badly drafted legislation enacted by NASS.

Addressing delay in justice delivery is one of the main aspirations of the ACJA, which seeks, among other things, to provide efficacious justice through speedy trial. To achieve speedy dispensation of justice, the ACJA provides for day-to -day trial in s. 396 (3) for purposes of eliminating glut in pending cases. The ACJA has provided for instances where a day-to-day trial is impracticable by allowing each party not more than five adjournments (s. 396(4) ACJA). Where it is still impracticable to conclude a criminal proceeding after each of the parties have exhausted its five adjournments, the interval between one adjournment and another shall not exceed seven days inclusive of weekends (s. 396(5) ACJA).

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To achieve day-to-day trial however, institutional mechanism, specifically apparatuses that make day-to-day trial a possibility must be established. Some of the mechanisms highlighted in this module are (a) the establishment of Criminal Case Demographics; and (b) developing a judicial e-governance grid.

1.2 Types of Criminal Case Demographics

a) **Offence**- this is a database of recorded offences according to their genre for example, rape, sexual assault, unlawful homicide, robbery etc. It provides official figures for police-recorded offences aggregated according to regions in the country; and also introduces correctional facilitites' population in Nigeria.

b) **Court**- here information is presented about the types and volume of criminal cases that are received and processed through the various criminal courts. It also provides information on the type of defendants, offences, case outcomes, and sentences associated with those defendants. By and large, this aspect collects and stores data on status of the criminal court, type of charges, criminal cases finalised, penalties, appeals finalised and delays, if any.

c) **Victim**- this type of demographic can be established by conducting a National Crime Victimisation Survey (NCVS), which can be updated periodically, perhaps annually. The survey is to classify a list of violent crimes, including robbery, aggravated and simple assaults, rape and sexual assault, human rights violations among others. This document would then form the primary source of information on criminal victimisation in Nigeria, providing information on the impact of crime and how people are victimised. Other elements include the frequency, characteristics and consequences of being victimised in Nigeria.

d) **Defendant**- demographics of defendants include their gender, age, and level of education, ethnicity and race, and religious inclination.

e) **Location**- as the name implies, these demographics provide information on criminal incidents as per location. For example, the number and types of offences recorded in Lagos, Abuja, and Kano etc.

f) **Gender**- provides information on the percentage of offenders by gender, whether male or female. This is to provide statistics on the prevalent crimes among men and women, boys and girls.

1.2.1 Benefits of and Challenges of Developing Criminal Case Demographics

The following benefits can be derived from well-developed CCDs:

- It can furnish information on nearly every major criminal justice issue in Nigeria today, including offences relating to terrorism, corruption, human trafficking, drug/narcotics, arms, domestic violence, juvenile crime/gangs, organised crime, pornography as well as traffic offences amongst others.
- Legislators, policy makers and implementers, administrators, academicians, sociologists, and the public will have access to more comprehensive crime information.
- It has the ability to produce more detailed, accurate, and meaningful data and this can improve law enforcement.
- CCDs can potentially foster inter-agency collaboration as agencies can easily find similarities in crime-fighting problems so that agencies can work together to develop solutions or discover strategies for addressing the issues.
- It would provide statistics to enable a law enforcement agency to provide a full accounting of the status of public safety within the jurisdiction to the Police Commissioner, or Inspector General of Police (IGP) as the case may be.

1.2.2 Challenges of Developing Criminal Case Demographics

Even with all the benefits identified above, resource issues and the development of legacy data systems remain a huge challenge in the country.

A major challenge relates to funding, which of course, is inadequate to develop data that is pervasive enough to make broad generalisations about crime in Nigeria. Be that as it may, creating a representative sample of data that could be applied to the whole country, so everyone affected could feel the benefits described above, is the way to go.

1.3 Self-Assessment Exercises

1.3.1 Case scenario

Miss Mandarin is a senior researcher to the Chief Justice of the Federal Republic of Zambaro (CJZ). The CJZ has just set up a committee to examine the state of criminal courts demographics regarding criminal cases received and processed by the various criminal courts so as to formulate criminal justice policy that would enable appropriate funding and provision of necessary resources for ~~to~~ criminal justice delivery. Miss Mandarin looked everywhere, including the websites of the Police and other law enforcement agencies, National Bureau of Statistics, Ministry of Justice among others, but found nothing. She reported back to the CJZ to that effect.

- Prepare the new terms of reference for the committee?
- What is the expected starting point both for the CJZ and the committee?

1.3.2 Questions

- Examine the various types of criminal case demographics relating to location, gender and victims.
- Critically appraise the benefits and challenges of establishing a criminal case database in Nigeria? Do you think such an enormous project is achievable? Give reasons.

1.4 Conclusion

This unit has captured issues relating to developing the series of CCDs as well as the benefits and challenges of developing the various demographics. These indices are crucial to achieving day-to-day trial. If information is accessible, reference is easily made.

1.5 References

- Administration of Criminal Justice Act 2015
- Constitution of the Federal Republic of Nigeria, 1999 (as amended) Cap C23, LFN 2004
- Crime and Justice www.abs.gov.au
- European Convention on Human Rights
- FBI, Uniform Crime Reporting <http://ucr.fbi.gov>
- International Covenant on Civil and Political Rights
- Universal Declaration on Human Rights
- *Magna Carter Libertatum*

Unit Two: Developing the Judicial E-Governance Grid

2.0 Introduction
2.1 E-Governance Grid
2.2 Importance of E-governance Grid in Achieving Day-to-Day Trial
2.3 Self-Assessment Exercises
2.4 Conclusion
2.5 References

2.0 Introduction

Establishing a Judicial E-Governance Grid that would cover the entire judicial system in Nigeria from the lower courts to the apex ones is one of the mechanisms for achieving the objectives of s. 396 of ACJA. The digitisation of the judicial system is imperative for achieving effective justice system that is based on the four principles: *Independence, Transparency, Accountability* and *Efficiency*. These ideals can potentially provide the people of Nigeria a justice system that is responsive to their interests, meet the needs of the court users and the public in timely and effective manner. Fortunately, these are the ideals that the ACJA seeks to promote and achieve in the criminal justice sector as stipulated in its *Explanatory Memorandum* and *s. 1(1)*, which sets out the purpose of ACJA. E-governance grid for the judiciary is important, as global activities have become electronically driven. At the end of this unit, it is expected that the users will know what E-governance grid for judiciary means and its importance in enhancing speedy trial.

2.1 E-Governance Grid

Judicial Electronic Governance or E-governance signifies the application of information and communication technology (ICT) to delivery of judicial services, exchange of information, communication transactions, integration of various stand-alone systems and services between court users: lawyers, litigants, etc. It serves as (a) a monitoring tool to identify, manage and reduce pendency of cases; (b) an aid tool for providing timely inputs for making

policy decisions to reduce delay and arrears in the justice system; and (c) a facilitating tool for better monitoring of court performance and systemic bottlenecks, seamless flow of information and better resource management. Judicial e-governance grid will give litigants and others the consolidated figures of pending cases in the country's courts. The purpose is to promote transparency and enhance access to information for all stakeholders in the justice delivery system.

2.1.1 Nigeria's Effort Towards Judicial E-Governance Grid

In July 2012, the Nigerian Judiciary Information Technology Policy Document was adopted to lay a foundation for the digitisation of the judicial system in Nigeria; and to provide a framework for the design, development and organisation of all judicial institutions. Consequently, the Chief Justice of Nigeria (CJN), Hon. Justice Walter Onnoghen announced the digitisation of the justice sector, which took effect on 16 July 2018. The essence of the project is to computerise, record and monitor the progress of cases from the time they are registered till when they are disposed of. The judicial e-governance system would be implemented as a distributed online web system that ensures e-filings and service of court processes and orchestrate seamless communication between judges, court staff and lawyers on the one hand; and between lawyers themselves on the other hand. The new digital system will require lawyers to acquire "legal email address" as the only means of communication for filing and service of court processes. As highlighted below, the benefits of digitisation of the judiciary are many. If properly and effectively implemented, the Nigerian justice sector will be at par with those of other jurisdictions, especially in the area of case management.

2.2 Importance of E-Governance Grid in Actualising Day-to-Day Trial

Some of the key benefits of computerisation of courts are:

- Automation of case management. The case management system is a process, which increases judicial control over identification of substantive issues and optimises the time required to complete the procedural steps of

litigation. This simply means delay will be minimised;

- Intending users will be able to access services through a Judicial Service Centre at every court complex. These would include filing of cases, availability of certified copies of orders and judgments, and information about case status etc.;
- The judiciary will be able to use 1CT-enabled tools to improve court, case and performance management;
- Court data available through the digitisation of courts will enable government to plan policy measures to reduce pendency of cases;
- Case status information, including copies of orders and judgments are made available online to stakeholders, particularly lawyers and litigants thus mitigating the need for frequent court visits;
- Reduction of difficulties of service of processes;
- Reduction in costs associated with "processing" of court processes at the court registry;
- Reduction in billable man-hours spent on initialing, assessing processes; and on logistics such as travel costs etc;
- Savings on resources such as paper and other stationaries; and
- Elimination of quacks.

2.2.1 Challenges of Establishing E-Governance Grid

Some of the challenges identified include:

- lack of IT infrastructure;
- epileptic power supply;
- lack of trained and qualified personnel; and
- the resistance to change attitude by most public servants

2.2.2 Day-to-Day Trial and the CFRN 1999

Although the provisions of the ACJA, such as s. 396 have been lauded, some lawyers have argued vehemently that ss. 306 and 396 are in conflict with the provisions of the Constitution of the Federal Republic of Nigeria (CFRN) 1999, (as amended). Relying on judicial authorities highlighted below, they argue that these provisions seek to limit the inherent powers of the court to deal with matters the best way they can - ***Nwaogu v Atuma & Ors*** (2012) LPELR- 19647B(SC). Stripping the judges of the power to grant incessant adjournments and being compelled to hold trial on day-to-day basis is tantamount to depriving the judges their constitutional powers- ***Usikaro v***

Isekiri Communal Land Trustees & Ors (1991) 2 NWLR (pt. 172), the Supreme Court held that the grant of an adjournment is an inherent power of court and that "it is settled that apart from the rules, a superior court of record has an inherent power to postpone the hearing of any matter set down for hearing before it if the justice of the case so demand" ***Shonekan v P. G. Smith*** **(**1967) 1 All NLR, 333, 329**-** adjournment is **at** the discretion of the court

This is, especially, against the backdrop of the Supreme Court's decision in ***Okoye v Commissioner of Police*** (2015) 17 NWLR (pt. 1488) 276 that it is the right of an accused person to be given adequate time and facilities to prepare his defence under s. 36 (6)(b) of CFRN, as amended. The argument that s. 396 of ACJA could work injustice for defendants and, therefore, take away the right of the defendant to fair hearing is baseless with the institutionalisation of mechanisms that balances the interests of the defence, the judge and the state.

2.3 Self-Assessment Exercises

2.3.1 Case scenario

Barrister Bambuzu is domiciled in a village called Usumutong in Cross River State of Nigeria from where he travels to the city to represent his clients and return. Internet facility at Usumutong is extremely poor; hence Bambuzu checks his emails only when he visits the city. The Chief Judge of Cross River State Judiciary has just introduced the electronic governance system for the state's judiciary such that all lawyers can only practice in the state courts if they are registered on the grid through legal email. Bambuzu is opposing this move vehemently, claiming that by introducing a framework that is not easily accessible to him by reason of his place of domicile, his right to practice law is being violated.

- Is Barrister Bambuzu right in opposing the newly introduced e-governance grid?
- Should Bambuzu relocate to where he can easily access the new e-framework for the justice system? What is your view?

- What system of judicial e-governance grid should be introduced to accommodate people like Bambuzu so that their legal practice is not jeopardised because of their place of residence?

2.3.2 Questions

- What is judicial e-governance grid? How does it enhance day-to-day trial?
- Examine Nigeria's effort towards judicial e-governance grid. Considering the several challenges, do you think that this is achievable? Give reasons.

2.4 Conclusion

Nigeria's judiciary is dynamic and is catching up with societal and technological evolution. As the protector of human rights and the final resort for dispensation of justice, the citizens look up to this institution with hope; hence the judiciary must adopt measures capable of enhancing justice. Some of these measures have been addressed in this unit through the establishment of the e-governance grid with its benefits and challenges.

2.5 References

- Judicial Information Technology Policy Document, July 2012
- Administration of Criminal Justice Act 2015

- B. Adeyemo, "E-Government Implementation in Nigeria: An Assessment of Nigeria's E-Government Ranking" (2011) 2(1) *Journal of Internet and Information System*, 11-19.
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MODULE THREE: CASE MANAGEMENT AND DISCLOSURE PROTOCOLS UNDER THE ACJA

Unit One: Role of Judges in Ensuring Speedy Trials

1.0 Introduction
1.1 Speedy Trials in Anti-Corruption Cases
1.2 Role of Judges in Ensuring Speedy Trials
1.3 Self-Assessment Exercises
1.4 Conclusion
1.5 References

1.0 Introduction

This unit explains the meaning of case management, its place in advancing the aspirations of the ACJA and the role of judges in ensuring speedy trial of criminal cases, particularly corruption cases. It provides pointers to relevant sections of the ACJA and Practice Directions governing speedy dispensation of justice with particular reference to corruption cases and the extent of judicial powers in fast- tracking such cases. The unit includes practical exercises and provides reference materials for users. It is expected that at the end of this unit, users are able to have better understanding of the relevant provisions of the ACJA that promote speedy dispensation of justice, and the role of judges in facilitating and achieving the objectives of the ACJA as stipulated in its *Explanatory Memorandum*.

1.1 Meaning of Case Management

Case management entails the adoption of pre-emptive methods of administering cases by the court through a series of techniques. By being pre-emptive, it is proactive rather than reactionary. It is an omnibus process that requires effective management of time and procedures necessary to facilitate fluid movement of a case from beginning, i.e. from filing, etc. to the end. Case management generally underpins the principles/initiative of stopping delay of justice so as to ensure efficient disposal of criminal justice by the court working in partnership with the prosecution and the defence lawyers. The main objectives of case management are to:

a. engender a practice of justice delivery that allow the court to effectively and efficiently control and manage cases in a way that dispenses justice to parties timely;
b. enable the court to regulate its own proceedings;
c. ensure that litigants and their legal representatives comply with the timetable set by the court in order to achieve the desired result;
d. guide the court on how criminal cases should be prosecuted and managed; and
e. disseminate good practice and compliance with the Criminal Procedure Rules

1.2 How Does the ACJA Expedite Trial Process?

Expedited trials simply connote fast trial, however undertaken through streamlined judicial processes/proceedings. The aim is normally to resolve issues in contention in effective, efficient and speedy manner so as to save time and resources for litigants and the courts. Some characteristic features often associated with expedited trials includes, (a) all parties in the case agree to the proceeding, (b) limited appeals and motions, (c) limited time available to all parties to present evidence and arguments; and (d) flexibility of parties to enter into forms of agreement. One of the main objectives of the ACJA is to entrench a culture of expedited trials. Accordingly, several provisions allow judges to exercise powers that ultimately lead to achieving speedy dispensation of justice.

With regards to powers of the judge, the most important power of the judge is the power to question, that is, the power to require practitioners and parties to account for the positions they have taken: whether a claim adds materially to the prospects of success and if not why it is pressed; why facts not seriously in dispute are not admitted; whether proof sought expensively (for example, by discovery) might be more cheaply obtained. Deployed wisely, but vigorously, this power can be a major contribution to efficiency (Law Council of Australia/Federal Court of Australia *Case Management Handbook* 2011, p 16). However, judges refrain from frequent questioning of counsel out of caution as counsel may allege bias. Judges should therefore be wary not to give one party undue advantage over another.

In ***Olaolu v FRN*** (2015) LPELR-24778 (SC), the court, while acknowledging the constitutional right to a fair hearing, held that the trial judge rightly recorded that the defendant (who was arrested for dealing in 750 grams of Indian hemp) as of right was entitled to speedy trial but this was aborted by several issues. In the instant case, the point or issue of speedy trial of the appellant was not raised by either party to the proceeding. It was raised by the trial court *suo motu*, which proceeded to determine the case on the point by dismissing the charge and discharged the accused without giving the prosecution the opportunity to comment on the point. This, to say the least, is in breach of the right to fair hearing of the respondent, who was affected by the decision.

One of the objectives of the ACJA is to eliminate undue delay and ensure expeditious disposal of cases. To this end:

a. Courts are not to entertain applications for stay of proceedings. This has been abolished by s. 306 of ACJA.
b. After the plea has been taken, the defendant may raise any objection to the validity of the charge or the information at any time before judgement provided that such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment (s. 396 (2) ACJA).
c. A Court is to make quarterly returns of the particulars of all criminal cases brought before it (ss. 110 (4) and 111(1) ACJA).
d. Objections shall not be taken or entertained during proceeding or trial on the ground of an imperfect or erroneous charge (s. 221 ACJA and paragraph 91 of the High Court of FCT Benchbook). In ***FRN v Alex Badeh*** *(*FHC/ABJ/CR/46/2016), the defendant challenged the jurisdiction of the court to try him based on a charge that lacked legal validity– that the charge did not disclose any offence known to the Money Laundering Prohibition Act. The Federal High Court in refusing the application held that s. 221 of ACJA bars the entertainment of objections during proceedings or trial on the ground that a charge is defective. *The court further held that it can only entertain and make findings on the application at the end of the proceeding and ruling delivered when the matter is decided. The 'Right of the defendant to be heard has been preserved till the end of the proceeding.'*
e. On arraignment, the trial of a defendant shall proceed from day to day until its conclusion. See s. 396 ACJA; the Constitutional safeguards in **ss.** 34(a), 35(1)-(7) and 36(4) and (6)(a) CFRN; ***Olaolu v. FRN*** (2015) LPELR – 24778 (SC) and paragraph 126 of the High Court of FCT Benchbook. It is only where day-to-day trial is impracticable that parties can be entitled to

adjournments (s. 396(4) ACJA). Each party is entitled to only five adjournments (s. 396(4) ACJA). The period between adjournments under s. 396(4) shall not exceed 14 working days. Where the five adjournments provided for under the Act have been exhausted, the court shall grant adjournment where necessary and it shall not exceed 7 days inclusive of weekends (Para. 126(b) of the FCT Benchbook).

f. Trial not to start *de novo* on account of the elevation or transfer of a trial judge or magistrate. S. 396 (7) provides:

> 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 same within a reasonable time.

However, this section was put to test in the case of ***Ude Jones Udeogu v FRN***, (SC.622C/2019), where a trial judge, Justice M. B. Idris who has been elevated to the Court of Appeal was given a fiat by the President, Court of Appeal (pursuant to s. 396(7) ACJA), to return to the High Court to conclude a part-heard corruption matter involving the appellant and others, including the former governor of Abia State, Orji Uzor Kalu. The appellant was subsequently convicted, hence the appeal. In a judgement delivered on 8 May 2020, the Supreme Court held that s. 396 (7) set out "to frontally contradict and challenge the letters, substance and spirit" of some provisions of CFRN, 1999 as amended; and that by operation of s.1 (3) of CFRN, s. 396(7) is to the extent of its inconsistency with the CFRN void. This principally stifled the aspirations of the ACJA to establish a regime of speedy dispensation of justice through the elimination of *de novo* trials.

g. Criminal trials in a Magistrate Court are expected to commence within 30 days after filing a charge and must be completed within a reasonable time. (s. 110 (3) ACJA). Magistrates are expected to complete criminal cases before them within 180 days of arraignment (s. 110(4) ACJA).

h. Where a Judge of the High court is elevated, partly heard cases before the Judge shall be concluded by the Judge within a reasonable time. The provision shall not prevent the Judge from resuming duty as a Justice of the Court of Appeal. (s. 396(7) ACJA). Also s. 315 of ACJA provides that another judge or magistrate may read a judgment written by a judge or magistrate, if the trial judge is ill or unavoidably absent.

i. In order not to waste the time of the court, a Judge can dismiss a charge on merits which would have the same effect as an acquittal. (s. 30 (1) and (2)).

j. Under a plea agreement, a presiding Judge/Magistrate may convict a defendant on a voluntary confession of guilt. See s. 270(9) and (10)(a) and (b); ***Kayode v. The State*** *(2016)* LN-e-LR 2016/33 SC; ***Babangida v. FRN*** (2017) LPELR – 42350 (CA) and **Adamu** ***& Anor v.*** *FRN* 2017 LPELR-42338 (CA).

k. The non-attendance of a witness, refusal to answer any question put to him, refusal or negligence to produce any document or anything which he is required by the court to produce or deliberate refusal to attend will not preclude the Judge from disposing of the case according to any other sufficient evidence taken by it (s. 250 ACJA).

While these provisions aim to expedite justice delivery, lawyers have argued-rightly or wrongly that to abolish stay of proceedings by means of legislation is tantamount to "taking away the discretion of the court and the right to a fair hearing of a defendant". For these lawyers, this would likely lead to injustice, particularly in very serious cases.

1.2.1 Role of Judges in Ensuring Speedy Trials

Following the outbreak of the Coronavirus or COVID-19 pandemic, the Chief Justice of Nigeria (CJN), Justice Tanko Muhammad counselled Chief Judges of the various states to speed up trials and ensure the decongestion of correctional centres. In the midst of the confusion occasioned by the pandemic, judges were encouraged to hold virtual/remote trials, despite several challenges. Interestingly, the call came after the courts have been closed as a containment measure to stop or minimise the spread of the virus. This is a pointer to the strategic position of the judges in ensuring that justice is dispensed speedily, effectively and efficiently at all cost.

Judges have a responsibility to administer rapid justice at the grassroots and reinforce public confidence in the justice system. The judge can neither be "a mute spectator nor a neutral umpire", but "an active player embodying the right spirit of ensuring justice" according to an Indian jurist. This is important because criminal justice reflects responses of the society to crimes and criminals. As held by the Supreme Court of India held in *All India Judges' Association vs. Union of India (1992) 1 SCC 119*:

"The Trial judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the proceedings in court. On him lies the responsibility of

building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personalities, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful".

Before the ACJA became effective, some of the challenges facing judges were frequent adjournments, congested dockets of the courts, dilatory tactics of defence counsel, anachronistic laws and convoluted procedures. While some of these challenges still stare at the judges, an existing but *mostly ignored* challenge (technological) is awaken by the pandemic making it even more challenging for judges to dispense justice. This is notwithstanding the powers given to judges under ACJA to enable them expedite justice delivery. These powers include:

- Power to award reasonable costs to discourage frivolous adjournments (s. 396 (6) ACJA). This power extends to all situations and circumstances.
- Power to dispense with specific applications. For example, s. 306 of the ACJC does not permit an application for stay of proceedings with respect to criminal matters.

A very potent tool that judges need to utilise in ensuring speedy trial is case management as this can potentially shorten the lifespan of a case. Ensuring speedy trial is tantamount to promoting the rights to life and liberty as right to speedy trial is embedded in these rights guaranteed by ss. 33 and 35 of CFRN.

The ICPC Act emphasises the role of a judge in the trial of offences. It mandates the Chief Judge of a State, or the Federal Capital Territory, Abuja to, by order under his hand, designate a court or judge or such number of courts or judges as he shall deem appropriate to hear and determine all cases of bribery, corruption, fraud or other related offences arising under the Act or any other laws prohibiting fraud, bribery or corruption. A court or judge so designated shall not, while being so designated, hear or determine any other cases provided that all cases of fraud, bribery or corruption pending in any court before the coming into effect of the Act shall continue to be heard or determined by that Court (s. 61 (3), ICPC Act).

1.3 Self-Assessment Exercises

1.3.1 Questions

- What is the effect of a Trial De-Novo on speedy dispensation of criminal justice?
- What should happen in a case where a magistrate in charge of a criminal trial is transferred or appointed to a higher court?

1.3.2 Case Scenario

On 1st October 2017, Mr 'S' allegedly embezzled #550,000,000,000 from Copeland Bank Plc. During the investigation, he fled Lagos to Oshogbo where he was later arrested and remanded by the magistrate court Grade I in the locality. Two months later, Mr 'S' was arraigned before the same court and on entering a guilty plea, the magistrate sentenced Mr. 'S' to 3 years imprisonment without option of fine.

Comment on the date of arraignment, jurisdiction, plea and sentencing.

1.4 Conclusion

The significance of speedy trial in the administration of criminal justice is not only to safeguard and prevent undue oppressive imprisonment prior to trial but to limit the likelihood for long delays to impair the substance of the case. The ACJA is a vibrant reverberation of the constitutional safeguards for speedy trial in criminal cases.

1.5References

- Adedeji Adekunle, *Guidance Notes on the Administration of Criminal Justice Act 2015 for Judicial Officers* (NIALS, Abuja) 2015 pp 9 -10, 14
- Sections 34 (a), 35(1)-(7) and 36(4) and (6) (a) of 1999 Constitution of the Federal Republic of Nigeria (as amended)
- Section 34 Evidence Act 2011
- Olayinka Ojo, 'Right of an Accused Person under the Nigerian Criminal Justice System' https://www.academia.edu/12347294/RIGHTS_OF_AN_ACCUSED_PERSON_UNDER_THE_NIGERIAN_CRIMINAL_JUSTICE_SYSTEM
- High Court of FCT Benchbook of Best Practices 2017
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- Adedeji Adekunle, 'An Overview of the Administration of Criminal Justice Act 2015' National Judicial Institute Presentation for Newly Appointed Judges and Grand Khadis (May 2016) available at <http://nji.gov.ng/images/Workshop_Papers/2016/Induction_Course/s11.pdf> accessed 17 August 2020
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- *Babangida v. FRN* (2017) LPELR – 42350 (CA)
- *Kayode v. The State (2016)* LN-e-LR
- *Adamu & Anor v. FRN* 2017 LPELR- 42338 (CA)
- Role of Judicial Officers in Criminal Justice Administration, Speech delivered by Honorable Mr. Justice P.Sathasivam, Judge, Supreme Court of India on 05.01.2013 at Tamil Nadu State Judicial Academy for the Newly Recruited Civil Judges,

<https://advocatetanmoy.files.wordpress.com/2017/04/role-of-judicial-officers-in-criminal-justice-system.pdf> accessed 8 august 2020.

Unit Two: Timelines for Trial

2.0 Introduction:

2.1 Timelines for Trial

2.2 Self-Assessment Exercises

2.3 Conclusion

2.4 References

2.0 Introduction

The cooperation of counsel to ensure that timelines are observed in criminal trials is critical to ensuring proper case management. This unit outlines the specific time lines prescribed for both the honourable Trial Court and the counsel in taking certain actions during the trial. It is, therefore, expected that at the end of the unit, the reader would have full understanding of how to work with prosecutors and defence counsel in case management; and be abreast with timelines stipulated for trial.

2.1 Timelines for Trial in Anti- Corruption Cases.

In relation to timelines for commencement and conclusion of criminal proceedings in the Magistrate Court, s. 110(3) (4) ACJA require that trial must commence within thirty days of filing and concluded within a reasonable time. This is reinforced under Order 3 Rule 9 and 10 HC-FCT Practice Directions 2017.Where trial is not commenced within 30 days and is not concluded within 180 days of arraignment, particulars of the charge accompanied with reasons for the failure must be sent to the CJ. With regards to *reasonable time* used in the section, lawyers have interpreted this to be the 180 days stipulated under the section. Furthermore, under s. 396 (4), the interval between each adjournment shall not exceed 14 working days.

Generally, cases are assigned to the judges within 5 working days of filing of the charge for trial. Also notices of trial shall be served within 10 working days on the prosecution and service of charge sheet on the defendant within 7 days for filing (Order 2, Rule 1 HC-FCT Practice Directions 2017). At arraignment, the prosecutor should note that any disputes arising out of the list of witnesses shall be concluded within 5 working days. See Order 4 Rule 3(b), Order 2 Rule 3, and Order 3 Rule 5 of the HC-FCT Practice Directions 2017.

Timelines are similarly prescribed for trial by information. Thus, the Chief Judge shall take appropriate steps to ensure that the information filed is assigned to a court for trial within 15 working days of its filing and the court to which the information is assigned shall, within 10 working days of the assignment, issue notice of trial to the witnesses and defendants and a production warrant properly endorsed by the Judge in respect of the defendant charged, where he is in custody, for the purpose of ensuring his appearance on the date of trial.

2.2 Self-Assessment Exercises

- What options are available to the court where a suspect absconds after a warrant of arrest has been issued?
- The foremost role of a judge is to dispense justice and, not only must justice be done, it must be seen to be done. In view of the above, comment on the 180 days' time line for conclusion of a criminal trial.

2.3 Conclusion

This Unit outlines the various stipulated timelines for criminal trials. It equally emphasised the importance of synergy between the Judge and Counsel in managing timelines throughout the trial.

2.4 References

- Adedeji Adekunle, *Guidance Notes on the Administration of Criminal Justice Act 2015 for Judicial Officers* (NIALS, Abuja) 2015, 9 -10; 14.
- Administration of Criminal Justice Act, 2015
- The Practice Direction on the Implementation of the ACJA 2015 in the High Courts of the FCT (HC-FCT)

Unit Three: Disclosure Limits and Fair Hearing

3.0 Introduction

3.1 Maintaining Fair Trial in Anti-Corruption Cases

3.2 Disclosure Limits in Anti-Corruption Cases

3.3 Self-Assessment Exercises

3.4 Conclusion

3.5 References

3.0 Introduction

The ACJA strengthens the constitutional presumption of innocence and right to fair trial. Hence at the beginning of a trial, the prosecution is bound to disclose to the defence all relevant materials that it has (s. 350 (2) and 379 ACJA). Disclosure of material evidence, including witnesses, is fundamental to an effective case management system in criminal trials. Note that the rules on disclosure are not intended to prejudice the constitutional rights of the defendant or even the safety of prosecution witnesses. This Unit examines disclosure protocols under the ACJA, particularly as it relates to the constitutionally guaranteed principle of fair hearing. Examination of disclosure protocol in this context also extends to the role of judges in encouraging defence lawyers to regard disclosure as a responsibility despite non-obligation imposed on them by law. The unit also examines limitations, if any, to the disclosure protocols as prescribed under the ACJA and HC-FCT Practice Directions 2017.

3.1 Disclosure Protocols under the ACJA

Disclosure simply means a revelation of fact or the process of revealing something hitherto unknown. The concept occupies a fundamental position in an adversarial criminal justice system such as Nigeria where the power to investigate lies with the police and other law enforcement agencies. Its importance means that it must not be treated with levity because it can impact heavily on the outcome of proceedings, especially as it relates to credibility

The regime for disclosure is contained in the Constitution of the Federal Republic of Nigeria 1999 as amended (CFRN) (impliedly though) as well as the ACJA 2015. The ACJA sets out the disclosure duties of the prosecution. But what obligation does the defence have to disclose?

This legislation has been supplemented by disclosure guidelines provided under the FCT High Court Direction on the ACJA particularly in respect of long and complex trials. As an effective case management tool, frontloading (disclosure) has the potential to engender speedy dispensation of justice

Disclosure protocols are addressed in sections 300 and 379. Although these provisions impose obligation on the prosecution to disclose, there is generally no obligation on the defence to disclose. However, lawyers, including defence lawyers are enjoined to see themselves as *ministers in the temple of justice, owing obligation to the court and public interest;* and on that basis, to disclose material facts even if the facts would be detrimental to their client's case.

3.1.1 Protecting the Interest of the Defence in Anti-Corruption Cases

The protection of the interest of the defence in anti-corruption, and indeed every criminal case hinge on the constitutionally guarantee right to fair hearing in s. 36 CFRN. In relation to this, the Supreme Court in ***Shema & Ors v FRN*** (2018) LPELR-43723 (SC) observed that the concept of **adequate time and facility** is general and open ended (per Baje JSC**)**. However, "it is meant to ensure that the defendant "receive necessary hints, aid and assistance necessary that would assist him in preparing his defence to the charge, including the statements of the prosecution witnesses and his own written statement". The Supreme Court decision in the case of ***Nweke v State*** (2017) LPELR-42103 (SC) is equally instructive in that regard.

Generally, the interest of the defence is protected, having no obligation to disclose. However, lawyers owe a duty as *ministers in the temple of justice* to disclose material facts. *All* lawyers have a responsibility to ensure that criminals don't go scot free on account of non-disclosure on the part of defence. Hence the provisions of Rule 37 (3) of Rules of Professional Conduct in the Legal Profession (RPCLP) 2007 must be taken seriously and complied with. It provides:

Where an accused person discloses facts, which clearly and credibly show his guilt, the lawyer shall not offer any evidence inconsistent with those facts and shall not offer any testimony, which he knows to be false.

On the part of prosecutors, it is important to disclose *all material facts*. No information should be hoarded irrespective of its likely impact on the prosecution case. In that regard, the, Rule 37(6) of RPCLP provides:

A lawyer engaged in public prosecution shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused person; but he shall make timely disclosure to the lawyer for the defendant, or to the defendant if he has no counsel, of the existence of evidence known to the prosecutor or other government lawyer that tends to negate the guilt of the accused person, mitigate the degree of the offence, or reduce the punishment.

The trial information / proof of evidence should contain all material evidence, including the list of witnesses, exhibits to be tendered in the case, summary of witness statements, copies of statement of the defendant and any other document, report, or material that the prosecution intends to use in support of its case. See s. 379 (1) ACJA and para. 137 of the High Court of FCT Benchbook of Best Practices.

Under the ACJA, no defence is required where essential evidence of the basic elements of the offence is lacking. Where the prosecution has insufficient evidence to convict the defendant, the judge may record a finding of not guilty without calling on the defendant to enter his defence. See s. 302 ACJA; ***Abgo & Ors v. State*** (2013) 11 NWLR (Pt. 1355) 337 and para 142 of the High Court of FCT Benchbook.

Disclosure protocols of the prosecution and defence to the court are further set out in Order 5 of the FCT Practice Directions 2017. The defendant must be given adequate time and facility to prepare for his defence. Defence counsel may voluntarily disclose to the prosecution and the court relevant material or information that will assist the court in identifying the issues to be decided upon, or narrow down the issues in dispute in order to achieve speedy dispensation of justice for all parties (Order 5 Rule 1 and 4 HC-FCT Practice Direction). The first limb of Order 5 Rule 1 above is a replication

of s. 36 of the 1999 Constitution. See ***Musa Ibrahim v The State*** SC. 652/2013 (5 May 2017).

In ***Ejike Okoye v Commissioner of Police*** SC. 279/2011 (8 May 2015), the Supreme Court noted:

> The facilities that must be afforded the accused person are the 'resources' or 'anything which would aid' the accused person in preparing his defence to the crime for which he is charged. These no doubt include the statements of witnesses interviewed by the police in the course of their investigation which might have absolved the accused of any blame or which may assist the accused to subpoena such favourable witnesses that the prosecuting counsel may not want to put forward to testify.

NOTE:

a. In a situation where the accused person does not know the case he will meet, while the prosecution knows everything concerning the case against the accused ahead of time, amounts to nothing less than procedural inequality which is a gross violation of the principle of fair hearing or fair trial and is tantamount to a violation of s. 36(6) of the Constitution. (***Ejike Okoye v Commissioner of Police*** SC. 279/2011 (8 May 2015)).

b. Where the facilities requested for by the defence to prepare its case includes statements of witnesses, the provision of photocopies of the statements will suffice. See ***Ejike Okoye v Commissioner of Police*** SC. 279/2011 (8 May 2015)

c. In an instance where the prosecution fails to disclose material fact or provide requested facilities, the defendant may apply to the court to issue a process for compelling the attendance of a witness for examination or for the production of document or for any other thing. Where it seems that the application of the defendant was made for the purpose of vexation or to delay the course of justice, the judge should not grant the application (s. 359 ACJA).

d. The judge should be able to make the defence understand that the Constitutional right to facilities under s. 36 (6)(b) of the Constitution is not self-executing. The defence should first make a request to the court, either orally or in writing for the prosecution to oblige it with the facilities. (***Nweke v. The State*** (2017) LPELR-42103 (SC))

3.2 Disclosure Limits in Anti-Corruption Cases

a. Notwithstanding the provisions of ss. 350(2) and 379(1) ACJA, the name and identity of witnesses of economic and financial crimes may not be disclosed in any record or report of the proceedings (s. 232 ACJA).
b. There is no general duty of disclosure by the prosecution in the case of an *ex parte* order.
c. To prevent any doubt as to the veracity of confessional statements, such statements may be recorded electronically on a retrievable video compact disc or such other audio-visual means (s. 15 (4) ACJA).

3.3 Self-Assessment Exercises

"…The raison d'être of the evolution of the mini trial procedure is to arm the trial court with a procedural mechanism for sifting the chaff of involuntary and inadmissible evidence from the wheat of admissible evidence…"
- Nweze JSC in **FRN v. Babalola Borisade** SC.230/2012, LN-e-LR/2015/7 (SC)

- What is the effect of a mini trial on case management and criminal justice administration?
- Discuss the impact of electronically obtained confessional statement on the need for a mini trial.
- Can sensitive/privileged information be disclosed?
- Can disclosure be made in situations where it can cause injury or death of a person

3.4 Conclusion

The main purpose of disclosure is to engender speedy trials in accordance with the aspirations of the ACJA and sustain equality of arms for parties in a litigation envisaged in the CFRN. Therefore, stakeholders must ensure that practice relating to disclosure entrenches justice and is done in good faith. To achieve this, there must be:

- effective use of pre-trial conference and scheduling; and
- synergy/cooperation between the bench and the bar.

This unit shows that the court must as a matter of necessity ensure that material evidence relied on by the prosecution is brought to the notice of the defence.

3.5 References

- Administration of Criminal Justice Act, 2015
- Section 28 Evidence Act 2011
- *FRN v. Babalola Borisade* SC.230/2012, LN-e-LR/2015/7 (SC)
- *Abgo & Ors v. State* (2013) 11 NWLR (Pt. 1355) p.337
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Unit Four: Adjournment, Delays and Punitive Costs

4.0 Introduction

4.1 Restrictions on Adjournment Delays

4.2 Frivolous Adjournments and Punitive Costs

4.3 Self-Assessment Exercises

4.4 Conclusion

4.5 References

4.0 Introduction

Adjournment connotes the suspension or postponement of proceedings to another time or place. The postponement may be permanent-*sine die,* without a date or time fixed for further proceedings, indefinite or temporal. Adjournment differs from recess, which is a short break from proceedings. Unlike the pre-ACJA era when adjournments were sought and granted at will, leading to delayed cases, the ACJA has provisions and guidelines that regulate adjournments.

In criminal matters, any of the parties may apply to the court, orally or in writing for an adjournment. Although the grant or refusal of an adjournment is entirely at the discretion of the judge, the judge must bear in mind the necessity of ensuring speedy justice. See ***Ogunsaya v. State*** (2011) 12 NWLR (Pt. 1261) 401 and ***Benson v. COP & Anor*** 2013 LPELR- 21212 (CA). The objective of this unit is to enable facilitator, trainees and other users acquire sufficient knowledge of the provisions of ACJA relating to adjournments; and be able to demonstrate how restricting adjournments and enforcing consequent punitive costs can help to prevent delays in the dispensation of justice.

4.1 Restrictions on Adjournment Delays and Punitive Costs

Over the years, lawyers have been blamed for delays in criminal trials in Nigeria, due to their tendency to ask for frivolous adjournments. To forestall

this, the ACJA imposes restrictions in the number of adjournments allowed per case. For example,

a. Only five adjournments are permitted throughout a criminal trial with an interval of not more than 14 days each but where the numbers of adjournments have been exhausted, a judge may grant adjournments within a seven-day time frame. See s. 396(4) ACJA; Order 7 Rules 1, 2, 3 and Order 14 Rule 2 of Practice Direction on the Implementation of the ACJA 2015 in the High Courts of the FCT 2017 (HC-FCT Practice Direction, 2017) However, where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment and another shall not exceed seven (7) days, inclusive of weekends (s. 396 (5) ACJA).
b. After two consecutive adjournments, if a defendant disregards a bail condition to surrender to court order, the judge shall continue with the trial in his absence and convict him, unless he sees reasons otherwise (s. 352 (4) ACJA)

4.2 Frivolous Adjournments and Punitive Costs

a. To curtail frivolous adjournments, the judge may order the party seeking the adjournment to pay reasonable cost (s. 396(6) ACJA). See also ss. 252-254 ACJA for payment of witness expenses/cost. In the absence of sufficient notice or good cause, cost may also be awarded against counsel who fails to appear in court on an agreed adjourned date (Order 7 rule 4 HC-FCT Practice Direction, 2017 and s. 353 ACJA). Also, where a counsel holding brief for another counsel is unable to proceed with the business of the day due to his unpreparedness, costs may be awarded against him personally (Order 7 Rule 8 HC-FCT Practice Direction, 2017 or Order 11 Rule 1 & 2). It should be noted that costs awarded against counsel or any party or under any Order in the HC-FCT Practice Direction, 2017 shall be treated as a fine (Order 14 Rule 2 HC-FCT Practice Direction, 2017).[17]
b. Also, a witness who intentionally fails to attend court without reasonable cause or leaves the court premises without leave of the court may have cost of not more than N10, 000 awarded against him/her or be liable to a term of imprisonment not exceeding two months imprisonment (s. 246 ACJA).

[17] See also Order Eleven (11) rule 1-3 of the Federal Capital Territory Administration of Criminal justice Rules, 2019.

4.3 Self-Assessment Exercises

4.3.1 Questions.

- What options are available to a judge where a defendant disregards a bail condition?
- Based on the principle of fair hearing, can a trial held in the absence of the defendant be said to have been fair? Or can it be said that the defendant was given a fair opportunity to be heard and he waived his right by not being present?
- What is the effect of the adjournment limits in s. 396 of ACJA on judicial discretion?

4.3.2 Case Scenario

H had been accused of swindling 5 foreigners of 18 billion Naira each. H was arraigned before a High Court of the Federal Capital Territory, Abuja in December 2015 and trial commenced that month. At arraignment, H applied to stay the proceedings on the basis that the death of his account officer, Mr E who he claimed could have contradicted the EFCC's evidence, rendered the trial unfair. That application was refused. H then applied for a four weeks adjournment to call his pastor Mr T as a witness. Mr T was on pilgrimage he said and would only return 'in the next three weeks'

The court asked the prosecutor (K) in the case if he was opposed to the application by H for adjournment. K in his response said he assumed that it would be fair to grant H's application.

- Could the court have been right in refusing to grant H, his application for stay of proceedings? Give reasons for your answer?
- Assuming the court granted H's application for adjournment based on K's response, could the court's decision be considered proper?
- What is your opinion of K's response to the Court? What other (or better) step(s) could K have taken?

4.4 Conclusion

From the foregoing, the reader can appreciate that applications for adjournment are always granted at the discretion of the court, depending on the peculiar circumstances of a given case. However, judicial discretion in this regard ought to be exercised judiciously, and judicially. Where frivolous reasons are given for applications for adjournment or counsel for either the prosecution or defence are not present at a hearing, or where counsel have

used up their adjournment quotas, the court should be fearless in granting punitive costs against the defaulting party.

4.5 References

- See ss. 246, 252-254 and 396 ACJA 2015
- See also Orders 7 Rules 1, 2, 3 and 14 Rule 2 of HC-FCT Practice Direction, 2017)
- *Benson v. COP & Anor* 2013 LPELR- 21212 (CA)
- *Ogunsaya v. State* (2011) 12 NWLR (Pt. 1261) 401
- David Baumann and Victor Kirk, "Congress: Pitfalls to Adjournment" (2001) *National Journal*.

Unit Five: Interlocutory Applications under the ACJA 2015

5.0 Introduction

5.1 Preliminary Objections under the ACJA

5.2 Restrictions on Preliminary Objections/Interlocutory Applications under ACJA and Practice Directions

5.3 Self-Assessment Exercises

5.4 References

5.5 Conclusion

5.0 Introduction

Interlocutory applications are usually made during trial proceedings; and subject to the provisions of relevant laws, they can be made at any stage of the trial. The point to note is that any application made to the court after trial has commenced is known as *interlocutory application*. Interlocutory application may be made in writing or orally. Oral application is only accepted in selected cases. Written application must be accompanied with some documents i.e. affidavit in support of the motion, exhibits, motion paper and written address to support the application. This Unit discusses preliminary objections and interlocutory applications under the ACJA. It provides insights into the ACJA's objectives to curtail the use of preliminary objections to stall or delay anti-corruption cases/trials. At the end of this unit, the user should know the practicability or otherwise of interlocutory applications under the ACJA; and be guided by Practice Direction on the Implementation of the ACJA 2015 in the High Courts of the FCT 2017 (HC-FCT Practice Direction, 2017) when contemplating such application.

5.1 Preliminary Objections under the ACJA

As already noted above, interlocutory applications are applications made in a proceeding already started in court or during the pendency of proceedings. In ***Ugo v Ugo*** (2008) 5 NWLR (Pt. 1079) p. 15, paras A – E, the Supreme Court describe interlocutory application as:

> An application which does not decide the rights of the parties but are made for the purpose of: (a) keeping things in status quo till the rights of the parties can be decided; b) obtaining some directions of the court as to how the cause of action is to be conducted; c) determining what is to be done in the progress of the cause of action for the purpose of enabling the court ultimately to decide upon the rights of the parties. Therefore, an order of court is interlocutory when it does not deal with the final rights of the parties' (per Peter-Odili, JCA)

Interlocutory application follows the cause or event in the proceedings and therefore, when the cause or event necessitates filing or making an interlocutory application, an aggrieved party will be perfectly entitled to do so in the court. Note that interlocutory applications are made by way of motion. Nevertheless, in a bid to forestall unwarranted delays in trial caused by interlocutory applications, the ACJA provides in s. 306 that an application for stay of proceedings in respect of a criminal matter before the court shall not be entertained. After the plea has been taken the defendant may raise any objection as to the validity of the Charge or Information at any time before judgment, provided that such objection shall only be considered along with the substantive issues and a ruling made at the time of the delivery of judgment (s 396 ACJA).

Within the context of interlocutory applications, the Saraki case is instructive. In ***Saraki v FRN*** (2016) LPELR-40013 (SC), Learned Senior Counsel for appellant argued that the Lower Court was in error when it held that notwithstanding the lack of proper service on the appellant of the criminal summons to appear before the Tribunal on 18th September, 2015, such a vice was a mere irregularity which was cured by the appearance of appellant at the proceedings, despite the conditional appearance of appellant on protest.

The complete answer to the above issue as argued lies in the provision of s. 136(a) of ACJA to the effect that trials may be held notwithstanding-
(a) any irregularity, defect or error in the summons or warrant or in the issuing service or execution of the Summons or Warrant. By operation of s. 4(2) (b) of the Interpretation Act (Cap I 23, LFN 2004), references to the Criminal Procedure Act or Criminal Procedure Code in the Third Schedule to the Code of Conduct and Bureau Tribunal Act, Cap C15, LFN 2004 , particularly, *Rule 17* are understood to mean references to s. *136* of ACJA. Section *136(a) of ACJA* provides as follows:

> Where a defendant is before a Court, whether voluntarily or on summons, or after being arrested with or without warrant, or while in custody for the same or any other offence, the trial may be held notwithstanding:
> (a) any irregularity, defect, or error in the summons or warrant or the issuing, service, or execution of the summons or warrant.

Additionally, the EFCC Act 2004 in s. 40 has a similar provision as s. 306 of ACJA, which prohibits applications for stay of proceedings. Under s. 40 of the EFCC Act, an application for stay of proceedings in respect of any criminal matter brought by the Economic and Financial Crimes Commission before the High Court shall not be entertained until judgment is delivered by the High Court.

The word 'shall' in s. 306 of ACJA denotes that the section is mandatory and not permissive. Section 306 provides: "An application for stay of proceedings in respect of a criminal matter before the court shall not be entertained." The provision of s. 306, thus, precludes reliance on the position of the Supreme Court in cases like ***Mohammed v. Olawumi*** (1993) 4 NWLR (pt. 287) 254, 277, 278 where the Supreme Court held that a trial court ought not to continue hearing a matter where it is aware that an application for stay of proceedings is pending before the appellate court.(see also ***Akilu v. Fawehinmi*** (No.2) (1989) LPELR-339 (SC) 82.

5.2 Restrictions on Preliminary Objections and Interlocutory Applications under the ACJA and Practice Directions

The ACJA curtails the strategy of using preliminary objections to the validity of charges or information as a strategy to stall the commencement of trials. See ss. 221, 396(2) and 306 ACJA and para. 125 of the High Court of FCT Bench Book of Best Practices.

Generally, case management requires that preliminary issues such as (a) objections on ground of jurisdiction, (b) admissibility of evidence, including statements of the defendant(s), (c) relevant number of witnesses to be called by the parties, (d) the non-contentious evidence to be agreed and admitted - 'evidence agreed', (e) time estimate and schedule of witnesses for the trial; and (f) any other questions of law relating to the case should be dealt with at a case management hearing immediately after arraignment. See Order 3 rule 1 HC-FCT Practice Direction.

On the strength of s. 306 of ACJA and Order 11 HC-FCT Practice Direction, etc., courts have rejected applications for stay of proceedings in high profile corruption cases; and derided lawyers that bring such applications. In ***FRN v. Babalola Borisade*** (2015) All FWLR (Pt. 785) 227, a case involving a former Minister of Education prosecuted by ICPC, Nweze, JSC condemned the use of interlocutory appeals to frustrate criminal trials especially those involving politically exposed or highly placed defendants. In the classic case of ***Olisa Metu v. FGN*** [2017] 11NWLR (Pt. 1575) 156 at 176-178, the Supreme Court gave effect to s. 306 ACJA when it set the precedent of *no stay of proceedings*. Before the Supreme Court's ruling in Olisa Metu's case, the Federal High Court, sitting in Abuja had denied an application for stay of proceedings in *Dasuki's* case in 2016. In the high-profile case involving corruption allegation against the former National Security Adviser (NSA), Sambo Dasuki, the court refused Dasuki's counsel application for indefinite stay pending the determination of appeal pending at the Court of Appeal after Dasuki was re-arrested by the EFCC having already been granted bail by the court.

For speedy determination of corruption cases instituted in the federal courts, counsel is required to merge all preliminary objections with the substantive

case. Therefore, interlocutory appeals and stay of proceedings may not be entertained. See ss. 306 and 396 (1) and (2) ACJA; ***FRN v. Babalola Borisade*** *supra* and ***Joshua Dariye v. FRN*** (2015) 10 NWLR (Pt .1467) 212

5.3 Self-Assessment Exercises

5.3.1 Questions

- Where an interlocutory appeal is fundamental as to alter the final decision of the court, what then happens to the judgment already delivered?
- How does this affect the right to fair hearing in anti-corruption cases?

5.3.2 Case Scenario

a. Johnbull has been charged before the Federal High Court, Lagos State for the offence of money laundering. During the trial, Johnbull's lawyer, Mr. Atu, brings an application before the court for stay of proceedings on grounds that Johnbull has a pending criminal matter regarding the same subject in the FCT High Court. He is praying the court to stay proceedings pending the determination of the case before the FCT High Court.

b. Mr Atu, Johnbull's lawyer has been absent from court on two different adjourned dates agreed upon by him, the prosecution and the court. He failed to give sufficient notice of his absence or give reasons to the court as to what warranted his absence.

In your role as a judge, relying on the provisions of ACJA and any other criminal legislation,

i. what would be your response to Mr Atu's application?
ii. what would be your decision regarding Mr Atu's absence from court?

5.4 Conclusion

The introduction of measures to address undue delays and enhance speedy trials in the ACJA such as limiting adjournments to five, abolition of stay of proceedings as established in the case of *Olisa Metu v. FGN supra*, reserving ruling on rebutted confessional statements till end of trial-technically clogging *trial-within-trial*, among others, is good spirited. Inspite of these provisions, counsel continue to approach the courts with interlocutory applications. Attitude of lawyers, particularly senior lawyers in that regard, have been publicly condemned at different fora as well as by the Supreme as the court

did in ***Dr. Dayo Olagunju v. FRN*** (2018) LPELR-43909 (SC)*;* and ***Joshua Dariye v. FRN****, supra* where the Supreme Court condemned eight years delay of trial due to uncanny interposition for interlocutory applications. This unit addressed the provisions of the ACJA on interlocutory applications. Generally, the sections of the ACJA apply to anti-corruption trials. Judges have a duty to effectively manage anti-corruption cases by ensuring the compliance of counsel with the provisions of the ACJA pertaining to interlocutory applications.

5.5 References

- Administration of Criminal Justice Act, 2015
- *FRN v. Babalola Borisade* (2015) All FWLR (Pt. 785) 227
- *Joshua Dariye v. FRN* (2015) 10 NWLR (Part 1467) 325
- *Ugo v Ugo (2008)* 5 NWLR (Pt. 1079) p. 15, paragraph A – E
- *Saraki v FRN* (2016) LPELR-40013 (SC)
- Adedeji Adekunle, An Overview of the Administration of Criminal Justice Act 2015, May 2016 National Judicial Institute Presentation for newly appointed Judges and Grand Khadis <http://nji.gov.ng/images/Workshop_Papers/2016/Induction_Course/s11.pdf> accessed 10 September 2020
- *Olisa Metu v. FGN* [2017] 11NWLR (Pt. 1575) 156 at 176-178

MODULE FOUR: EFFECTIVE PLEA BARGAIN SYSTEM IN THE ADMINISTRATION OF JUSTICE

Unit One: Concept of Plea Bargain

1.0. Introduction
1.1. History of Plea Bargain in Nigeria Criminal Justice Administration
1.2. Plea Bargain Agreement Requirements
1.3. Self-Assessment Exercises
1.4. Conclusion
1.5. References

1.0 Introduction

In simple terms, Plea bargain means a negotiated agreement between parties to a case, i.e. prosecutor and defence. The Administration of Justice Act 2015 (ACJA defines Plea bargain as "the process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case; including the plea of the defendant to a lesser offence than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence for the higher charge subject to the court's approval" (s. 494(1) ACJA). It is an integral part of criminal justice administration; and applicable in criminal cases. It is traceable to American judicial system and was established in the case of ***Robert M. Brady*** **v** ***United States*** 397 U.S 742 where the United States Supreme Court explained the nature of plea bargaining and its importance (See Ogunwumiju JCA in ***Romrig Nig Ltd v FRN*** LPELR-22759 (2014) (CA) [D] 24-30). In ***Santobello v New York*** (1971), 404 U.S. 257 the US Supreme Court held:

> The disposition of criminal charges by agreement between prosecutor and the accused, sometimes loosely called 'plea bargaining', is an essential component of the administration of justice. Properly administered, it must be encouraged.

This unit examines the concept of plea-bargaining generally and its incursion into Nigeria criminal justice system. It is expected that at the end of the unit,

users are able to have a clearer understanding of the concept of plea bargaining as well as its introduction in criminal trials in the country. This understanding will enable users to appreciate the fact that plea bargain agreements do not necessarily provide leeway for suspects in high profile corruption cases to escape justice.

1.1 History of Plea Bargain in Nigeria Criminal Justice Administration

The concept of plea bargain and its application in Nigeria is traceable to the criminal trials in 2005 and 2006 respectively where two high profile public servants-former Inspector General of Police (IGP) Tarfa Balogun and Nwude were tried for criminal embezzlement of public funds. Before the ACJA was enacted in 2015, application of plea bargain agreement had indirect support in the EFCC Act in s. 14 (2) and s. 339 of the Criminal Procedure Code (CPC), Cap 491 Laws of Federal of Nigeria (LFN), 1999. Section 75 of the Administration of Criminal Justice Law of Lagos State (2011) was the first legislation to introduce plea bargain into the Nigeria criminal justice jurisprudence. The next legislation is ACJA. ***(PML (Securities) Co Ltd V FRN*** (2018) LPELR 47993 (SC). The concept also found support in the provision of s. 167 of Anambra State Administration of criminal Justice Law, 2010.

It should be noted that s. 14 (2) EFCC Act,[18] did not use the term *plea bargain* but gave effect to the practice of compounding offences. Although it has been argued that the provisions of s. 14(2) do not mean plea bargain, its application translates to plea bargain action. It is just a question of semantics.

The concept of Plea Bargain in its broader form- meaning, application and processes was introduced in 2015 under s. 270 of ACJA. S. 494(1) defines plea bargain as:

> The process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case; including the plea of the defendant to a lesser offence than that

[18] Section 14(2) of the EFFC Act provides that Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.

charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than that for the higher charge subject to the court's approval.

The core elements of this definition were captured by Ogunwumiju JCA in ***Romrig Nig Ltd v FRN*** LPELR-22759 (2014) (CA) [D] 24-30. See also Black's Law Dictionary, 8th edition, 1190. For experts, this definition provides a platform for a defendant to plead guilty to a lesser offence in return for a lighter one. This is beneficial to the defendant and provides opportunity to the court to consider noncustodial punishment as may be applicable.

Inherent in a plea bargain are either sentence bargain or charge bargain. A sentence bargain is where the prosecution agrees to a lesser punishment for the accused if he can plead guilty to the charge. A charge bargain involves the agreement to drop some charge(s) against the accused if he pleads guilty.

The advantages of plea bargain include:

i. Accused can avoid the time and cost of defending himself at trial, the risk of harsher punishment, and the publicity the trial will involve.
ii. The prosecution saves time and expense of a lengthy trial
iii. Both sides are spared the uncertainty of going to trial
iv. The Court system is saved the burden of conducting a trial on every crime charged. (Ogunwumiju JCA in **Romrig Nig Ltd v FRN** LPELR-22759 (2014) (CA) [E-A] 27-28 explaining how the Supreme Court of US in ***Robert M. Brady*** **v** ***United States*** 397 U.S 742 treat plea bargain and its importance.

1.2 Plea Bargain Agreement Requirements.

One of the requirements stipulated by ACJA relates to the form a plea bargain should take. S. 270 (7) stipulate that plea bargain agreement *shall be reduced in writing*. If construed strictly, it means a non-written plea agreement is unacceptable and invalid. According to the Court of Appeal in ***Romrig Nig Ltd v FRN*** LPELR-22759 (2014) (CA), reducing plea bargain into writing is most logical as it would prevent
the inconsistencies that trail oral evidence such asdistortion of agreement ter ms by parties at will.

The written agreement shall contain the following information:

a) That prior to conclusion of the agreement, the defendant has been informed of his or her right to remain silent, the consequences of remaining silent; and non-obligation to make a confession or admission that could be used in evidence against him/her.
b) Terms of the agreement, including any admission made are expressly written.
c) It is signed by the prosecutor, defendant, the legal practitioner and the interpreter, as the case may be; and
d) A copy of the plea bargain agreement is forwarded to the Attorney General of the Federation.

It is crucial that the presiding judge or magistrate does not participate in the discussion leading up to the agreement under s. 270 (8) ACJA. The role of the judge or magistrate is limited to considering the terms of the agreement after it has been concluded by the prosecutor and defendants.

1.3 Self-Assessment Exercises

- Examine briefly the history of plea bargain in Nigeria. Does s.14 (2) EFCC Act, 2004 apply to the plea bargain? Give reasons for your answer.
- State the requirements of a plea bargain under ACJA. Is oral plea bargain agreement acceptable?
- What are the implications of sentence bargain and charge bargain in a plea bargain agreement?
- Adumbrate on other importance of plea bargain not listed in this unit.

1.4 Conclusion

Plea bargain is now part of our criminal justice system. The concept is shrouded in controversy and seen as a conduit pipe for suspects in high profile corruption cases to escape justice. However, it can be a veritable tool for reclaiming stolen national assets. Re-echoing the position of the US Supreme Court in *Santobello's case,* the Solicitor- General of the Federation, Dayo Akpata observed: "mechanism of plea bargaining if well deployed is capable of fast-tracking the return of stolen assets to the country". Its proper deployment should therefore be encouraged.

1.5 References

- UNODC, *Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery* (2014), available at <www.unodc.org> accessed 12 August 2020.
- EFCC Act, 2004
- Anambra State Administration of Criminal Justice Law, 2010
- Administration of Criminal Justice Act
- Lagos State Administration of Criminal Justice Law
- *Romrig Nig Ltd v FRN* LPELR-22759 (2014) (CA)
- *Santobello v New York* (1971), 404 U.S. 257
- *Robert M. Brady* v *United States* 397 U.S 742
- Black's Law Dictionary, 8th edn, 1190.
- Omoloa Coker, *Plea Bargaining: A Developing Trend in Criminal Justice System* (2010) <www.internationallawoffice.com> accessed 12 August 2020.

Unit Two: Validity of Plea Bargain Agreement

2.0 Introduction
2.1 Validity of Plea Bargain Agreement under ACJA
2.2 Implications of s. 270 (18) ACJA on a Valid Agreement
2.3 Self-Assessment Exercises
2.4 Conclusion
2.5 References

2.0 Introduction

Validity simply means a state of being legally or officially binding or acceptable. The conditions that makes a plea bargain agreement acceptable or legally binding are stipulated in the ACJA. This unit examines factors that give plea bargain agreement validity. It also examines the question of the implications of s. 270(18) that precludes a party to a validly concluded plea agreement from going on appeal on the basis of the agreement. It is expected that at the end of this unit, facilitators, participants and other users gain more insight into the preconditions for a valid plea bargain agreement.

2.1 Validity of Plea Bargain Agreement under the ACJA

Generally, the ACJA provides stringent rules that limit the powers of prosecutors to conclude plea bargain agreements and protect defendants against abuse of their constitutional rights. More crucially, it ensures that victims have a stake in the plea-bargaining negotiations. To ensure compliance, the ACJA makes all plea bargain agreements subject to judicial review in order to give it the required validity. The process of plea bargain would normally begin with the steps stipulated in s 270(1) and (3) ACJA to wit: the prosecutor may receive and consider an offer of plea bargain from the defendant or initiate it if the prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process. Section 270(5)(b)

(i-ix) ACJA itemised the factors which the prosecution must consider in determining whether a plea bargain is entered in the public interest.[19]

A valid plea bargain agreement is one, which is entered into within the context of conditions stipulated in s. 270 (2) ACJA i.e. (a) the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt. However, because "agreement to plead guilty is the essence of a plea bargain, the accused … must suffer a conviction … no matter how insignificant or trivial the offence to which the conviction relates … This condition is reinforced in (**PML (Securities) Co Ltd V FRN** (2018) LPELR 47993 (SC) per [E-F] 27 (b) where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative, or (c) where the defendant in a case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.

The point to note is that the law requires that the victim is part of the process of negotiating plea bargain agreement. The victim's or his representative consent is a condition precedent to the process. Procedure wise, the prosecution and the defendant may enter plea bargaining during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence (s. 270(2) ACJA).

2.1.1 Implications of s. 270 (18) ACJA on a Valid Agreement

Where due process is followed and all preconditions for entering into a valid plea bargain agreement have been complied with; and the judge rules upon same, s. 270 (18) does not permit appeal beyond the court that made the ruling. The section provides:

[19] The factors include (i) the defendant's willingness to cooperate in the investigation or prosecution of others, (ii) the defendant's history with respect to criminal activity, (iii) the defendant's remorse or contrition and his willingness to assume responsibility for his conduct, (iv) the desirability of prompt and certain disposition of the case, (v) the likelihood of obtaining a conviction at trial and the probable effect on witnesses, (vi) the probable sentence or other consequences if the defendant is convicted, (vii) the need to avoid delay in the disposition of other pending cases, (viii) the expense of trial and appeal, and (ix) the defendant willingness to make or pay compensation to the victim where appropriate.

The judgement of the court contemplated in subsection 10 (a) of this section shall be final and no appeal shall lie in any court against such judgement, except where fraud is alleged.

This provision seems to contradict the provisions of ss. 240 and 241 (1) of CFRN, 1999, as amended, particularly s. 241 (1) that guarantee the right of appeal to litigants. The Court of Appeal, Abuja, affirmed this position in a recent ruling on controversy arising from plea bargain agreement. The case was an appeal (Appeal No: CA/A/767/2019) filed by Barrister Chikaosolu Ojukwu on behalf of his client, Chinaka Chijioke Promise against the EFCC challenging his conviction and sentencing by the FCT High Court presided over by Justice M.B. Idris based on plea bargain agreement. The court held that s. 270(18) ACJA, 2015 is ultra vires the legislative powers of the National Assembly, and therefore null and void. It held further that the section conflicts with the provisions of ss. 240 and 241 (1) of CFRN 1999, as amended. Hence, it is void by virtue of s. 1(3) of CFRN.

2.2 Self-Assessment Exercises

- Examine the conditions under which a plea bargain agreement can be valid.
- By virtue of s. 1 (3) of CFRN, s. 270 (18) of ACJA is invalid as it conflicts with constitutional provisions-ss. 240 and 241(1) CFRN. Do you agree? Expatiate.
- Why is it crucial for the victim of crime to be involved in the plea bargain process? Where the plea bargain agreement relates to embezzlement of public funds, which means the public is the victim, is it possible for the whole public to be part of the process? If yes, give reasons, if no, what is the alternative?

2.3 Conclusion

It has been noted that plea bargain agreement is subject to review by the presiding judge or magistrate. This is to ensure that the entire process followed due process and comply with the provisions of the law, particularly with respect to abuse of the rights of the defendant(s). It is also to ensure that the agreement is in public interest. However, there is a sense in which certain provisions of the ACJA, particularly those that have been condemned by the courts, should be revisited.

2.4 References

- Epiphany Azinge & Laura Ani (eds), *Plea Bargaining in Nigeria: Law and Practice* (NIALS Press: 2012)
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- Ted. C. Eze & Eze Amaka G., A Critical Appraisal of the Concept of Plea Bargaining in Criminal Justice Delivery in Nigeria (2015), 3(4) *Global J. Pol. & L. Res*. 33, 38.
- Administration of Criminal Justice Act, 2015.
- Constitution of the Federal Republic of Nigeria, 1999, (as amended).

Unit Three: Overriding Public Interest Considerations in Plea Bargaining

3.0. Introduction
3.1. Public Interest Element in Plea Bargain Agreement
3.2. Judicial Discretion and Plea Bargain Agreements
3.3. Self-Assessment Exercises
3.4. Conclusion
3.5. References

3.0 Introduction

Experts have argued that the term *public interest* cannot be defined in absolute terms but it can serve as the fundamental criterion for establishing the legitimation of power. This means that the acceptability and legitimacy of political government depends on whether it is established to serve public interest. The Black's Law Dictionary defines the term as "the general welfare of the public that warrants recognition and protection; or something in which the public as a whole has a stake". This means that *public interest* borders on what matters to everyone in the society: their common good and general welfare. The question is whether a plea bargain agreement is in public interest. This unit discusses how the court applies the concept of reasonableness and overriding public interest as pre-conditions for accepting or rejecting a plea bargain agreement.

3.1 Public Interest as Precondition for Accepting or Rejecting a Plea Bargain Agreement

Critics of plea-bargaining argue that the system under which plea bargains are conducted is inherently unfair to defendants due to perceived imbalance in bargaining strength between prosecutors and defendants, as well as the coercive nature of the process. It has also been argued that the pressures and incentives that defence attorneys face can prejudice their clients. Using judges as umpire during the plea process as provided by the ACJA is for purposes

of addressing issues of abuse of the plea bargaining process. This would be a consequence of them serving as a check on both defence and prosecutorial misconduct and ensure that defendants get better representation. Judges involvement will also protect the involvement of the victim. "Victim" in high profile cases of embezzlement of public funds is the general public, which is why *public interest* must form the bedrock upon which a judge will ratify a plea bargain agreement.

We considered in the previous Unit what factors should be considered by a Judge in considering whether to accept or reject a plea bargain agreement. Where a plea bargain is accepted, the judge convicts the defendant and awards compensation to the victim (s. 270 (10)(a) ACJA). Although the ACJA only specifies public interest as a factor to be considered by prosecutors in offering or accepting a plea bargain agreement, the judge should also consider the interest of the victim in determining whether to accept or reject a plea bargain agreement. Public interest is significant in corruption cases as the public is also the victim in many cases.[20] Public interest considerations in corruption cases may include the sufficiency of the money, asset or property agreed to be forfeited to the state.

3.2 Judicial Discretion in Accepting or Rejecting Plea Bargain Agreements

The Judge may accept the plea bargain agreement without accepting certain terms of agreement. For instance, the judge may accept the agreement while not accepting the sentence (s. 270 (11) ACJA).
With regards to sentencing, the ACJA provide certain guidelines for the judge to proceed, whether in terms of imposition of appropriate sentence or if, for example, the judge is satisfied that the defendant is guilty, he shall convict him on the plea and proceed to sentence him.

- If the judge is satisfied that agreed sentence is appropriate, the judge shall impose that punishment.

[20] Pressure from the public for instance may contribute to the acceptance or rejection of plea bargain agreement by the judge.

- If the judge is of the view that a lesser sentence is appropriate, then he would impose such lesser sentence.
- If the judge is of the view that the offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers appropriate (s 270 (11) (a) and (b) ACJA).
- If the defendant elects to abide by the guilty plea agreed on, the judge should give him the opportunity to lead evidence and present argument relevant to sentencing (s. 270(15) (a) ACJA). However, if the defendant decides to withdraw his plea under the agreement, the trial shall be commenced afresh before another court (s. 270(16) ACJA).

The judge, while sentencing, is required to make an order that any money, asset or property agreed to be forfeited under the plea bargain shall be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible (S. 270 (12) ACJA).

3.3 Self-Assessment Exercises

- What are the factors the judge should consider in the interest of the public in accepting or rejecting a plea bargain agreement?
- Where there is a conflict between the general public interest and the rights of a victim, what should the court do?

3.4 Conclusion

The judge plays an important role in the plea bargain process as he determines whether the agreement will be accepted or rejected. Although not expressly provided for under the ACJA, public interest considerations are paramount in the acceptance or rejection of plea bargain agreements by the judge. The ACJA gives the judge the discretion to either accept or reject the plea bargain agreement. In doing this, certain factors will influence the decision of the judge in accepting or rejecting the agreement.

3.5 References

- Administration of Criminal Justice Act 2015.
- A. Adekunle, *Overview of the Administration of Criminal Justice Act 2015* (2016)

＜http://nji.gov.ng/images/Workshop_Papers/2016/Induction_Course/s11.pdf＞ accessed 17 August 2020.

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- Gregory M. Dyer & Brendan Judge, ‘Criminal Defendants' Waiver of the Right to Appeal--An Unacceptable Condition of a Negotiated Sentence or Plea Bargain,’ (1990) 65 Notre Dame L. Rev. 649
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- Black’s Law Dictionary.

Unit Four: Role of the Court in the Plea Bargain Process

4.0 Introduction
4.1 Supervision of the Plea Bargain Process
4.2 Conviction and Sentencing in Plea Bargain Process
4.3 Self-Assessment Exercises
4.3 Conclusion
4.5 References

4.0 Introduction

In Nigeria, plea bargaining has been shrouded in controversy with many regarding it as (a) affront on our justice system, (b) violation and undercut of s. 135(1) Evidence Act that require for *proof beyond reasonable doubt* in criminal cases, (c) abuse of s.36 (1), (5) and (11) of CFRN that provides that a defendant is entitle to fair hearing, presumption of innocence until proved guilty and should not be compelled to give evidence. This is because plea bargain require that the defendant plead guilty to some charges. However, plea bargain does not compel defendants to plead guilty or empower prosecution to determine the fate of the defendant. For the process and outcome of plea bargain to be acceptable to parties, the judge must ensure that due process is followed through a transparent process. This unit examines the responsibility of the judge in the plea bargaining process under the ACJA. The unit contains exercises and reference materials for all readers- facilitators and trainees. The exercises and reference materials will help users improve their understanding of the subject.

4.1 Supervision of the Plea Bargain Process

Generally, the judge is precluded from participating in the negotiation under s. 270 (8) of ACJA. The judge shall not participate in the discussion leading up to the agreement (para. 154 the High Court of FCT Benchbook). Therefore, he or she has no formal role until the plea deal is presented to the court. In ***Romrig Nig Ltd v FRN*** LPELR-22759 (2014) (CA), the Court of Appeal held that it is logical for plea bargain agreements to be documented. When the plea bargain deal is brought before the judge, the ACJA provides

for the steps to be taken. But when a plea bargain is agreed between parties to the case i.e. prosecution and defence, the judge has to

a. confirm the terms of the plea bargain agreement from the defendant (s. 270(9) ACJA);
b. ascertain whether the defendant admits the allegations in the charge to which he has pleaded guilty (s. 270(10) ACJA).
c. ensure that the agreement was entered into by the defendant voluntarily ***Romrig Nig Ltd v FRN*** (2017) LPELR-43834(SC); The Supreme Court of Nigeria expressed this condition as deliberate and conscious act on the part of the prosecution and defendant or his representative in ***PML (Securities) Co. Ltd v FRN*** (2018) LPELR 47993 (SC)
d. safeguard the rights of the defendant as provided for under the ACJA. see ***Igbinedion v. FRN;***[21] and
e. ensure that there is factual basis for the plea of guilty as provided in s. 270(10) of ACJA.

4.1.1 Accepting or Rejecting the Plea Bargain Agreement

The ACJA provides a broader perspective to the concept and application of plea bargain. It defines what it means and set out guidelines (already stated) as to who can offer, what the process of negotiation should be as well as the victim's involvement. After the plea has been bargained and agreed by both parties, the judge must perform the important duty of either accepting or rejecting the plea of guilty by the defendant as provided under s. 270(10)(a) and (b) of ACJA. It is a condition precedent for accepting the agreement that the 'judge must be satisfied that the defendant is guilty of the offence to which he has pleaded guilty' (s. 270(10)(a) ACJA and para. 156 of the High Court of FCT Bench Book). The judge must also be satisfied that the agreement was a deliberate and conscious act taken by the prosecutor and, in particular, the accused (***Romrig Nig Ltd v FRN*** (2017) LPELR-43834(SC)[22].

The plea bargain concept as different from 'withdrawal from prosecution' connotes that the court must record a conviction, no matter how insignificant

[21] (2014) LPELR-22766 (CA) 35 para. B – D "A plea bargain cannot be done in absentia or by representatives of the accused person. Since the accused must personally make his plea in Court, an accused person must also be present personally to negotiate his plea bargain agreement." per Helen Moronkeji Ogunwumiju, J.C.A.
[22] Where a company is the defendant, the Hon Justice Amiru Sanusi, J.S.C. held that the Directors of the company must be involved in the plea-bargaining negotiation. Pp. 19-22, paras F-E.

or trivial the offence to which the conviction relates. Where a defendant is not exposed to a conviction in respect of any charge or charges, an essential ingredient for a plea bargain is lacking. The judge must reject the agreement (***PML (Nig) Ltd v. FRN*** 2017 LPELR-43480 (SC) 30-33).

The conditions under which the judge can reject a plea bargain agreement are highlighted below:

a. If the judge is of the opinion that the defendant cannot be convicted of the offence he has pleaded guilty to in the agreement, he can reject the plea bargain agreement.
b. Where the agreement is in conflict with the right of silence of the defendant as provided by ACJA, i.e. where the defendant was not informed of this right, the consequences of the right, and that he is not obliged to make any confession or admission that could be used in evidence against him (s. 270 (10)(b) ACJA)

4.2 Conviction and Sentencing

The judge can convict the defendant on his plea of guilty after being satisfied that the defendant actually committed the offence to which he has pleaded guilty. The judge is also to award compensation to the victim according to the terms of the agreement under s. 270(10)(a) of ACJA. On conviction of the defendant, the judge is to consider the sentence agreed upon in the agreement. The Judge can impose the sentence contained in the agreement (s. 270(11)(a) ACJA), a lesser sentence (s. 270 (11)(b) ACJA), or a heavier sentence (s. 270(11)(c) ACJA). Section 270 (12) also impose a duty on the judge to make an order "that money, asset or property agreed to be forfeited under the plea bargain" shall be transferred to and vest in the victim. By virtue of s. 270(18), the judgement of the court "shall be final and no appeal shall lie in any court against such judgement, except where fraud is alleged". However, in 2020, in an appeal CA/A/767c/2019 filed by Chinaka Promise challenging the judgement of the FCT High Court, which was based on plea bargain agreement, the Abuja Division of the Court of Appeal held that an appeal could be filed against the plea bargain judgement. The court in the instant case stated:

> "I agree with the submission of learned counsel for the appellant that section 270(18) of Administration of Criminal Justice Act takes away the right to appeal given by Section 241(1)(a) and (b) of the 1999 Constitution to the

> appellant to appeal as of right against the judgment convicting him consequent upon a plea agreement being a final decision in criminal proceedings before the trial high court sitting at first instance. "By providing that no appeal shall lie in any court against such judgment except where fraud is alleged, section 270 (18) of the Administration of Criminal Justice Act also ousts the general power vested in this court by section 240 of the 1999 Constitution to hear and determine appeals from the trial court."

The validity of this judgement is yet to be tested at the level of the Supreme Court. However, one is inclined to thinking that the Supreme Court will not vary this judgement seeing that a right, such as the right to appeal that is guaranteed under the CFRN cannot be taken away using another legislation.

4.3 Self-Assessment Exercises

- Judicial participation in plea bargain negotiation has been canvassed to check prosecutorial power and to check on defence counsel misconduct. Should the ACJA give room for judicial participation in plea bargain negotiation and to what extent? Discuss.
- Compare and contrast the role of the court in plea bargaining under the ACJA with the provisions of the EFCC Act. How does the restorative justice intendment of the ACJA come to play through the courts?

4.4 Conclusion

The ACJA does not allow judicial participation in the negotiation of plea bargain agreement and the judge only gets involved in the process after the agreement has been concluded. The ACJA guarantees that the interest of the defendant as regards the negotiation is adequately protected and it is the duty of the judge to ensure this. The role of the judge in the plea bargain process also involves conviction and sentencing.

4.5 References

- Administration of Criminal Justice Act 2015
- High Court of Federal Capital Territory Bench Book of Best Practices Trial in Criminal Cases (2017).

A. Adekunle, Overview of the Administration of Criminal Justice Act 2015 (2016),

＜http://nji.gov.ng/images/Workshop_Papers/2016/Induction_Course/s11.pdf＞ accessed 17 August 2020.

- Rishi Raj Batra, “Judicial Participation in Plea Bargaining: A Dispute Resolution Perspective” (2015) 76 (3) *Ohio State Law Journal*.
- Ted. C Eze and Eze Amaka, ‘A Critical Appraisal of the Concept of Plea Bargaining in Criminal Justice Delivery In Nigeria’ (2015) Vol.3, No.4, *Global Journal of Politics and Law Research* pp.31-43.
- Albert Alschuler: The Trial Judge's Role in Plea Bargaining, Part I ＜http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article＝2004&context＝journal_articles＞ accessed 17 August 2020.

.*Santobello v New York* (1971), 404 U.S. 257.

Unit Five: Judicial Ethics and Standards on Plea Bargaining

5.0 Introduction

5.1 Judicial Ethics and Standards

5.2 Ethical Considerations Binding on the Judge

5.3 Self-Assessment Exercises

5.4 Conclusion

5.4 References

5.0 Introduction

This unit appraises ethical challenges associated with plea-bargaining and how to maintain professional ethics while negotiating a plea agreement. The practice of plea bargain is fraught with the danger of intimidating the innocent into pleading guilty to a charge in exchange for a supposed reduced sentence. There is the additional risk of abuse by powerful defendants who may compromise a judge's professionalism in the course of the plea bargain. At the end of this unit, the reader is expected to understand the rudiments of plea bargaining in terms of ethical behaviour expected of a judge and be able to advise an erring judge accordingly.

5.1 Judicial Ethics and Standards on Plea Bargaining

Plea-bargaining raises the danger of condemnation without adjudication; it also risks forcing the innocent to plead guilty out of fear. There is the additional risk of granting undue leniency as reward for pleading guilty. A judge is expected to reject a plea agreement where he is satisfied that the parties failed to comply with the principles guiding plea bargain agreement as stipulated in s. 270 (7) (a), (9) and (10) of ACJA. A judge must possess core values and attributes to enable him [23]discharge his duty well. A good judicial officer must dispose of matters before him promptly, efficiently and diligently. See Rule 2(6)) of the extant Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria. He must demonstrate due regard

[23] This Revised Code entered into force on February 24, 2016.

for the rights of the parties to have their cases heard and disposed of without unnecessary delay - Rule 2(5) (1) Code of Conduct for Judicial Officers, 2016.

Another ethical rule for the judge is that of "command and control", which requires effect that a judge must be in control of his court to eliminate tardy practices and unnecessary adjournments. Also, it is imperative for the judge to abide by the Code of Conduct and Judicial Ethics and be impartial in the discharge of his duty in plea bargain process, as his partiality can truncate the rule of law.

NOTE: A patently flawed plea agreement may have untoward consequences on the judge. See the decision in ***FRN v. Esai Dangabar***[24] where the defendant, in a criminal trial for embezzlement of N27 billion pension funds, pled guilty to three counts of embezzlement of N1 billion which carried a maximum punishment of two years imprisonment. The ridiculously low fine of N750, 000.00 imposed by the Judge on conviction attracted the sanction of the National Judicial Council as the Judge was suspended for a year without pay.

5.2 Ethical Considerations Binding on the Judge

The ACJA imposes some responsibilities on the presiding judge or magistrate from which derogation is not allowed. These duties form part of ethical issues, which must be obeyed. In general, the judge or magistrate owes a duty to refrain from participating in plea negotiation. The judge can only step in after plea negotiation has been concluded. This is for purposes of validating or invalidating the agreement by way of acceptance or rejection.

A duty is imposed on the judge to determine whether the agreement was entered voluntarily and intelligently; hence he or she is expected to ensure fairness of the process on the defendant and the society, taking into consideration the circumstance of the case. In all situations, the judge can admonish but cannot modify the plea bargain agreement-he can only accept or reject.

24 (2012) LPELR – 19732 (CA)

Furthermore, the judge is under obligation to ensure that the constitutional rights of the defendant are protected. It is also imperative for the judge to give independent judgement on whether or not to accept the plea deal presented before him or her. To restate the indispensability of independent judiciary to criminal justice administration, a judge should comply with provisions of the law and be able to uphold the law in a manner that promote confidence in the integrity and impartiality of the judges-both by litigants and the general public.

5.3 Self-Assessment Exercises

5.3.1 Questions

1. Enumerate the ethical norms a judge should adhere to in plea bargaining agreement
2. State briefly the procedure the judge must follow when presented with a plea bargain agreement in a criminal proceeding.

5.3.2 Case Scenario

Mr. Pascal Desmond served as the Director of Finance at the Joint Admissions and Matriculation Board (JAMB) between 2011 and 2016. After his transfer to the Ministry of Agriculture, his successor in office discovered that Mr. Desmond had corruptly enriched himself to the tune of N 5 billion of government funds. He was arrested by the EFCC and arraigned on a 25-count charge of embezzlement, abuse of office, stealing, corrupt enrichment, etc attracting a maximum punishment of 14 years imprisonment. Mr. Desmond has instructed his counsel to approach the prosecutor for a plea bargain. In the course of negotiation, Mr. Pascal Desmond offered to plead guilty to only one charge of false declaration of assets for a sentence of N 500, 000 in fine plus forfeiture of N 10 million to the Federal Government. The prosecutor, after discussing with the presiding judge, accepted this offer and Mr. Desmond was re-arraigned on only one count of false declaration of assets. Mr. Desmond appreciated the prosecutor's co-operation by giving him N150 million out of the N 5 billion he embezzled and also give N200 million to the judge in appreciation.

a) With reference to the ACJA and the Code of Conduct for Judicial Officers, briefly discuss the ethical implications of the judge's action.
b) Identify possible areas of unethical behaviours by a judge in plea-bargaining.

5.4 Conclusion

Plea-bargaining is vulnerable to unethical practices. Hence, ethics and professional norms, which is cardinal in the legal profession should be upheld at all times. The ethical challenges include possible conviction of the innocent and setting free of the guilty with a slap on the wrist. Judges must eliminate these potential abuses by abiding strictly with the Code of Conduct for Judicial Officers and the rule of law. All the stakeholders including victims, defendants, prosecutors and defence counsel should religiously observe the roles assigned to them in the ACJA in order to avoid these pitfalls.

5.5 References

- Administration of Criminal Justice Act, 2015.
- High Court of Federal Capital Territory Bench Book of Best Practices Trial in Criminal Cases, 2017 (paragraphs 159 – 160).
- Rules of Professional Conduct 2007.
- Constitution of the Federal Republic of Nigeria 1999 (as amended).
- Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- "Judicial Ethics Training Manual for the Nigerian Judiciary" <https://www.unodc.org/documents/corruption/publications_unodc_judicial_training.pdf>

MODULE FIVE: SENTENCING AND CONSEQUENTIAL ORDERS

Unit One: Guidelines and Directions on Sentencing

1.0 Introduction

1.1 Fundamental Rules in the Sentencing Process

1.2. Scope and Application of FCT Sentencing Guidelines

1.3 Self-Assessment Exercises

1.4 Conclusion

1.5 References

1.0 Introduction

Sentencing and consequential orders are the expected outcome of a concluded criminal trial after a court of competent jurisdiction has pronounced judgment. This module is focused on highlighting the objectives, principles, factors and the procedural requirements under the Administration of Criminal Justice Act 2015 (ACJA) that judges and magistrates are expected to comply with when sentencing convicts. No doubt, effective sentencing implies achieving the desired result of triumph of the criminal justice system in the society through an infliction of a penalty commensurate with the crime committed. Howbeit, this must be done bearing in mind the relevant constitutionals provisions and other statutes, especially the ACJA, since each sentence must take into consideration the peculiarity of each case, the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016 (FCT Sentencing Guidelines)[25] is designed to assist judges in handing down sentences in criminal matters. The major objective of the FCT Sentencing Guidelines is to set out the procedure for sentencing of corruption and related offences for the purposes of ensuring uniformity in sentencing, pursuant to the provisions of ss. 416 and 311 of the ACJA. The Guidelines, though strictly applicable in the FCT only, can be used as best practice for other

[25] The FCT Sentencing Guidelines entered into force in October 2016.

High Courts and can be adopted by them. Other relevant provisions of the ACJA on sentencing are 310, 312, 401, 402, 404 and 405 of the ACJA.

1.1 Fundamental Rules in the Sentencing Process.

In applying the sentencing guidelines, members of the bench should note that some fundamental rules of the Constitution and general law are of importance to the sentencing process.

1.1.1 Constitutional Imperatives.

- A sentence of imprisonment by a court constitutes a major exception to the right to liberty as enshrined in the constitution (s. 35(1)(a) CFRN)
- A court shall not impose punishment heavier than that prescribed by the law creating an offence at the time the offence was committed (s. 36(8) CFRN).
- No person shall be convicted for an offence unless that offence is defined and the penalty therefore is prescribed in a written law (s. 36(9) CFRN).

1.1.2 The Interpretation Act

- By virtue of s. 17 of the Interpretation Act penalties prescribed by statute should be construed as maximum permissible range.

1.1.3 The ACJA Requirements

A. Sentence Hearing or Awaiting Sentence after the Finding of Guilt: The implication of s. 310(1) of the ACJA is that where the court has reached the finding of guilt of the defendant, his status changes from being a defendant to a convict because the presumption of innocence is no more in his favour. If bail was earlier granted, it lapses and the convict becomes as it were, a ward of court pending sentence.[26] However, the court shall only sentence him after the sentence hearing. During the sentence hearing, the court shall ask the convict to call any witness to character if he has not previously done so. After the court has taken the witness, if any, the court shall further ask the convict if he desires to make any statement or produce any necessary evidence

[26] Adedeji Adekunle, Digest of Cases on the Administration of Criminal Justice Act 2015 (NIALS 2019) 86

or information in mitigation of punishment. Thereafter, the prosecution shall produce evidence of any previous conviction of the defendant, if he has not previously done so (s. 310(2) ACJA).

B. Obligation of Court after Conviction: After conviction, the court is mandated to take all necessary aggravating and mitigating evidence or information in respect of every convict that may guide it in deciding the nature and extent of sentence to pass on the convict in each particular case, even though the convicts were charged and tried together (s. 311(3) ACJA). **In applying the sentencing guidelines, members of the bench should note that** each case shall be treated on its own merit because, although the guideline is expected to create near uniformity in decisions reached, the circumstances of every criminal case is different. Therefore, regardless of the need to reach near uniformity in similar cases, the court must treat each case distinctly. On the power of Judge to sentence and how it must be exercised. See s. 416(2)(a) ACJA, ***Zacheous v. People of Lagos State*** **(**2015) LPELR-24531 (CA), ***Ayeni v People of Lagos State*** (2016) LPELR 41440 (CA), ***Obi and Ors v. C.O.P Abia State*** **(**2014) LPELR 23157 (CA).
In ***Obidiozo & Ors v. State*** (1987) LPELR -2170 (SC) while ruling on the power of the Judge to sentence the court held that the learned trial Judge was wrong after having found the three accused persons guilty as charged to have proceeded to make an order as to the mode in which the mandatory sentences of death he passed on them should be carried out. However, an error like the one the trial Judge has committed in this case will not render the whole of the proceeding, including the conviction and sentence, void.

C. Actions to be taken after the Sentence Hearing: The court may pass sentence on the convict or adjourn to consider and determine the sentence and shall then announce the sentence in open court (s. 311(1) ACJA)

D. Factors Courts must take into consideration in Pronouncing Sentence (s. 311(2) ACJA): The objectives of sentencing as provided for in the ACJA: prevention, restraint, rehabilitation, deterrence, education of the public, retribution and restitution[27] (s. 401(2) ACJA) including the principles of

27The court may decide in each case the objectives that are more appropriate or even possible (s. 401(2) ACJA)

reformation and deterrence (s. 311(2)(a)). **Ali v FRN (**2016) LPELR- 40472 (CA) and ***Karumi v. FRN*** (2016) LPELR 40473 (CA).

In **Usman v. State**, Abiru JCA defined sentencing as:

> The judicial determination of a legal sanction to be imposed on a person found guilty of an offence. It means the prescription of a particular punishment by a court to someone convicted of a crime. Sentencing generally aims at the protection of the society through prevention of crime or reform of the offender, which may be achieved by the means of deterrence, elimination or reformation/rehabilitation of the offender. The justification is that imposing the penalty will reduce the future incidence of such offences, by preventing the offender from re-offending or correcting the offender so that the criminal motivation or inclination is removed or by discouraging or educating other potential offenders. These are known as reductive justification.[28]

*In **Ali v. FRN*** the court held that:

> the essence of imprisonment is to meet the legitimate expectation of society of retribution, where the society strikes back at the offenders to deter potential offenders and make the commission of crime unattractive, protect the public and society by ensuring that dare devil criminals and recalcitrant offenders are taken out of circulation to provide interregnum for dangerous criminals to reflect pending their rehabilitation to normalcy … it restores confidence and enhance the credibility of government and governance, failure to send signal by imposing such severe punishment may engender disunity and promote private retribution by the aggrieved.

See also ***Yakubu v. State*** **(**2015) LPELR -40867 (CA), ***Uya v State*** **(**2015) LPELR -25840 (CA) and ***Usman v State*** **(**2015) LPELR -40855 (CA).

[28] (2015) LPELR-40855(CA) 40-41 paras D-B.

The following objectives shall apply to sentences of death, imprisonment, fine and non-custodial sentences (s. 401(1) ACJA):

i. The interest of the victim, the convict and the community (s. 311(2)(b) ACJA).

ii. Appropriateness of non-custodial sentence or treatment in lieu of imprisonment (s. 311(2)(c) ACJA)

iii. Previous conviction of the convict (s. 311(2)(d) ACJA)

Section 416(2) of the ACJA stipulates generally the factors the court shall take into consideration when passing sentence other than capital sentence

i. Treat each on its merit

ii. Courts to bear in mind the objectives of sentence including the principle of reformation

iii. The Appeal court may reduce or increase the sentence of the trial court where it is inadequate, but not above the maximum penalty which the lower court has power to impose. ***Ayomitan v State*** (2018) LPELR-45700(CA) [A-B] 39-48***; Ekpo v The State*** (1982) 6 SC 22; ***Ekpeyong v The State*** (1967) All NLR 283

iv. Trial court must not pass the maximum sentence on a first offender. This applies only where the law prescribe a minimum and maximum sentence for an offence, but not when the law prescribes only a mandatory sentence. ***Amoshima v State*** (2011) 14 NWLR (Pt 1268) 530, 561; ***Ayomitan v State*** (2018) LPELR-45700(CA)

v. Period spent in correctional facility awaiting or undergoing trial shall be considered and computed in sentencing a convict

vi. An inquiry into the convict's antecedents before sentencing is mandatory on the trial court

vii. Considering the provision of s. 311(1) of the ACJA is desirable

viii. Any doubt as to whether the convict is up to 18 years must be resolved in his favour

ix. A defendant may not be given consecutive sentence for two or more offences committed in the same transaction

x. Imprisonment sentences shall apply to only convicts who should be isolated from the society and with whom other forms of punishment have failed or is likely to fail.

E. Sentencing of Capital Offence**:** The sentence for capital offence is death by hanging or by lethal injection (s. 402(1) ACJA). The form which the sentence shall be pronounced is provided in s. 402(2) of ACJA. The sentence of death on a woman found to be pregnant shall be suspended until the baby is delivered and weaned (s. 404 ACJA) (***Orjiakor v State*** (2017) LPELR-42735(CA) [E-C] 23-25). The sentence of death of a convict who had not attained the age of 18 years as at the time the capital offence was committed shall not be pronounced or recorded, but in lieu of it, the court shall sentence the child to life imprisonment or to such other term as the court may deem appropriate in consideration of the principles in s. 401 ACJA (s. 405 ACJA) (***Odidoka & Anor v State*** (1977) LPELR-2217 (SC) [C-A] 6-8.

NOTE: the use of the word 'principles' in s 405 with reference to s. 401 is wrong. Section 401 of ACJA prescribes the objectives of sentencing. The phrase 'principles of sentencing' is used in s. 311(2)(a) –reformation and deterrence- and s. 416(2((b).

F. Recommendation for Mercy: The court may in any case in recording sentence, make a recommendation for mercy and shall give the reasons for its recommendation (s. 312 ACJA).

G. FCT Sentencing Guidelines: The guidelines mandate each case to be treated on its own merit in line with the provisions of section 416(2)(a) of ACJA and the objectives of sentencing listed in s 401(2) of the ACJA shall be borne in mind in sentencing a convict. The guidelines reiterated the need to take into consideration the interest of the victim, the convict and the community already set out in s. 311(2)(b) of the ACJA (Para 1(1)(a-c) FCT Sentencing Guidelines). The FCT Sentencing Guidelines makes it clear that its provisions shall not derogate from the statutory and inherent discretion conferred on a judge to determine and impose sentences. Para 1(2) FCT Sentencing Guidelines). The implication of this is that the guidelines serve as a check on the abuse of the use of discretion imposed on the court by law. On how the court should exercise its discretion in sentencing, see para. 3 of the FCT Sentencing Guideline, ***Ali v FRN*** (2016) LPELR-40472 2 (CA) and ***Saleh v. State*** (2015) LPELR -40399 (CA).

1.2 Scope and Application of the FCT Sentencing Guidelines

The FCT Sentencing Guidelines applies to corruption and related offences as well as to offences against the person, offences against property, homicide related offences, offences against public order, offences against morality and offences against the State.[29] (Para 2(1) (a-g) FCT Sentencing Guidelines). The guidelines do not apply to persons below 18 years of age. (Para 2(2) FCT Sentencing Guidelines). For the purposes of this module we restrict discussions to how the guidelines affect corruption related cases. In applying the scope and its application the court should determine whether the statute allows for exercise of sentencing discretion on the offence under consideration. In that case, the court shall proceed to apply the provisions paragraphs 9, 10 and 11 of the guidelines.[30] Where the statute does not permit the exercise of any sentencing discretion, the court should apply the punishment prescribed by the statute (Para. 3 of the FCT Sentencing Guidelines) and shall proceed to apply the provisions of paragraphs 4-11 of the guidelines.[31]

1.3 Self-Assessment Exercises

1.3.1 Questions

a. What instances can amount to abuse of discretion by the court in relation to sentencing?

b. What is your view on the practicality or otherwise of the sentencing guidelines in terms of affecting the abuse of discretion by the court?

1.3.2 Case Scenario

a. The trial court successfully concluded a trial involving stealing of public funds with the offence tried having a maximum of ten years imprisonment. The offender had committed an offence related to forgery of official documents earlier even though not related to his current trial.

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[29] See Cross Rivers State Sentencing Guidelines (2016). The Sentencing Guidelines cover seven areas: offences against the State; offences against the person; offences against public order; offences against morality; offences against property; homicide offences and corruption related offences.

[30] The themes of the paragraphs are: para 9 - Confiscation, forfeiture, compensation, restitution and ancillary orders, Para 10 - Time spent in remand, and Para 11 - Reasons for decision

[31] The themes of the paragraphs are: Para 4 - category of offence, Para 5 - starting point and category range, para - 6 aggravating and mitigating factors, para 7 - Guilty plea, Para 8 - Totality principle, para 9 - Confiscation, forfeiture, compensation, restitution and ancillary orders, Para 10 - Time spent in remand, and Para 11 - Reasons for decision.

- In view of the information available to you, will you impose the maximum sentence?
- What factors will you consider if your answer is yes or no to (a) above?

b. James, a 35-year-old married man, pleaded guilty to a 3 counts of indecent assault. The victims were young girls aged 6, 7 and 8 respectively. This was James' first offence, and the evidence indicated that he was a person of good character and that it is unlikely that the incidences would recur. The crimes for which he was convicted each carry a maximum of 5 years imprisonment.

- Assume that you are the trial judge; how will you hand down the sentence?
- What ingredients will you consider in sentencing Mr James?
- Would you employ the maximum sentence? For any answer, give reasons.

1.4 Conclusion

The unit covered grounds on the need for uniform sentencing as it affects corruption related cases; the trainee is expected to have hands-on knowledge on the application of sentencing guidelines and the objectives of sentencing.

1.5 References

- FCT (Sentencing Guideline) Practice Direction 2016.
- Administration of Criminal Justice Act 2015.

Unit Two: Custodial Sentencing/Punishment

2.0 Introduction

2.1 Objectives, Scope and Application of Custodial Sentencing

2.2 General Principles Relating to Non-Custodial Sentencing

2.3 Self-Assessment Exercises

2.4 Conclusion

2.5 References

2.0 Introduction

A custodial sentence is a judicial sentence, imposing a punishment consisting of mandatory custody of the convict, either in prison or in some other closed therapeutic or educational institution, such as a reformatory, (maximum security) psychiatry or drug detoxification. [32]

What this sentence means is that the convict shall leave his personal residential premises in his community for a new residential accommodation in the correctional facility to be provided by the government. He must reside in such correctional facility until the expiration of the term of imprisonment. Where the law creating an offence prescribes imprisonment as punishment, upper and lower limits are usually set by the same law. Imprisonment is the punishment that is one of the few exceptions to the rule against non-infringement of the right to personal liberty provided for under the Constitution of the Federal Republic of Nigeria 1999, (as amended) in Section 35(1)(a).

This unit aims to explore existing national standards and identify the principles and the reasoning behind custodial sentencing. The unit also explains the aim of custodial measures and their use at the various stages of the administration of justice.

[32] Section 438 (1) of the ACJA

2.1 Objectives, Scope and Application of Custodial Sentencing

The objective of custodial sentence or incarceration is as provided in s. 401(1) and (2) of the ACJA. More specifically the objectives of custodial sentencing are:

i. Prevention - he objective of persuading the convict to give up committing offence in the future, because the consequences of crime is unpleasant.
ii. Restraint - the objective of keeping the convict from committing more offence by isolating him from society.
iii. Rehabilitation - the objective of providing the convict with treatment or training that will make him into a reformed citizen.
iv. Deterrence - the objective of warning others not to commit offence by making an example of the convict.
v. Education of the public - the objective of making a clear distinction between good and bad conduct by punishing bad conduct.
vi. Retribution - the objective of giving the convict the punishment he deserves, and giving the society or the victim revenge.

Custodial sentence is the most commonly imposed type of punishment and may be imposed in almost all cases involving adults and children. Where the only prescribe punishment for an offence is death then custodial sentence shall not be applied except in the case of child. Section 405 of ACJA provides to the effect that the sentence of death of a convict who had not attained the age of 18 years as at the time the capital offence was committed shall not be pronounced or recorded, but in lieu of it, the court shall sentence the child to life imprisonment or to such other term as the court may deem appropriate in consideration of the principles in s. 401 ACJA ***Odidoka & Anor v State*** (1977) LPELR-2217 (SC) [C-A] 6-8.

2.2 General Principles Relating to Custodial/ Prison Sentencing:

Imprisonment or custodial sentence is the most severe sentence available to the courts of law. They are reserved for the most serious offences and are imposed when the offence committed is "so serious that neither a fine alone nor a community sentence can be justified for the offence" Paragraph 4 (3) and the Sixth Schedule to the FCT High Court Sentencing Guidelines 2016.

There are principles guiding or relating to this type of sentencing;

- The law requires that imprisonment may only be imposed where it is absolutely necessary because of the restriction or withdrawal of a person's right to personal liberty under section (35)(1) of the 1999 Constitution (***Mohammed & Anor v Lasisi Sanusi & Ors*** (1990) LPELR-1893 (SC) [C-D] 26). It must therefore not exceed the maximum limit or fall below the minimum limit set by the law. But where a court imposes a sentence that is in excess of that prescribed by the law, an Appellate Court will set same aside and in its place may impose the maximum sentence for the offence (***Queen V. Eyo & ors*** (1972) 6 S.C. 28) where the court in place of the excessive sentence the court imposed one that was within the trial court`s jurisdiction.[33] **See also Paragraph 59 (3) and (4) of this Practice Direction of the FCT High Court Practice Direction 2016.**
- A custodial sentence may also be imposed where the court believes it is necessary to protect the public. The length of the sentence depends on the seriousness of the offence and the maximum penalty for the crime allowed by law.[34]
- In considering a custodial sentence the court must make adjustments for any differences in the statutory maximum sentence and in the elements of the offence. It will not be merely arithmetical exercise.
- A sentence of imprisonment takes effect from and includes the whole of the day of the date on which it was pronounced (s. 419 ACJA) provided that in reckoning the length of imprisonment, the Court shall direct that any period of detention prior to conviction shall be taken into consideration. See ***Afolabi v State*** (2013) LPELR-207000(SC); ***Kayode v FRN*** (2017) LPELR-51865(CA)
- The placement of a child in an approved accommodation or Government Institution shall be a disposition of last resort; and not be ordered unless there is no other way of dealing with the child, and the Court shall state, in writing, the reason or reasons for making the order (s. 223 Child's Rights Act 2003).[35]

[33] Queen V. Eyo & ors (1972) 6 S.C. 28 where in place of the excessive sentence the court imposed one that was within the trial court`s jurisdiction.
[34] See paragraph 60 of the FCT High Court Practice Direction 2016 on Aggravating and Mitigating factors
[35] Section 452(1) of the ACJA provides that where a child is alleged to have committed an offence, the provision of the Child's Rights Act shall apply.

2.3 Self-Assessment Exercises

i. What is your view on custodial sentencing?
ii. Are non-custodial sentences more effective?
iii. What are the categories and goals of Sentencing?
iv. What are the justifications for imprisonment and the states obligations towards incarcerated citizens?

2.4 Conclusion

It is believed that putting the offender in prison takes them away from the community or the society and this defines the element of incapacitation. This enhances public security and perception. Also, according to (Goggin, 1999) the rationale behind sentences is the belief that, the length of time in prison acts as a deterrent to future offenders,[36] but this must be done in line with the law.

2.5 References

- Adedeji Adekunle, *Explanatory Notes on Administration of Criminal Justice Act* (NIALS, 2018) 62
- Udosen Jacob Idem1 and Nkokom Eyo Udofia, 'Sentencing and the Administration of Criminal Justice in Nigeria', (2018) 4(1)Donnish Journal of Law and Conflict Resolution, 1-10
- Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016.
- United Nations Office on Drugs and Crime (UNODC) (2006), Custodial and Non-Custodial Measures: Alternatives to Incarceration. Criminal Justice Assessment Toolkit (UNODC)
<https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/3_Alternatives_Incarceration.pdf>

[36] Goggin P.G (1999) Centre for Criminal Justice, University of New Brunswick.

Unit Three: Non-Custodial Punishments

3.0 Introduction

3.1 Objective, Scope and Application of Non-Custodial Sentencing

3.2 General Principles Relating to Non-Custodial Sentencing

3.3 Self-Assessment Exercises

3.4 Conclusion

3.5 References

3.0 Introduction

Under the old Nigerian criminal law system, imprisonment sentences were custodial in nature. Non-custodial punishment or suspended sentence were not part of the Nigerian criminal law system. For instance, in ***State*** **v** ***Audu*** (1972) LPELR-3214(SC), the Supreme Court of Nigeria decided that of the various types of punishment provided for in section 68 of the Penal Code, there is none for a suspended sentence of imprisonment and on that basis held that the High Court at Sokoto acted in excess of its jurisdiction by importing the idea of a suspended sentence for which there is no provision in the applicable law. Meanwhile, in English law, the punishment of a suspended sentence of imprisonment was introduced in 1967 under s 39 of the Criminal Justice Act, 1967.

The predominant custodial nature of criminal punishment, even for very simple offences, led to congestion of Nigerian Correctional Facilities. Worst still, the Federal government failed to expand, upgrade or built new prisons. The congestion of prisons and the global emergence of the principles of reformation and rehabilitation of convicts, particularly children, led to the introduction of non-custodial sentences or probation orders in s 223 of the Child's Rights Act 2003. Later, the Lagos State Administration of Criminal Justice Law 2011 and the Administration of Criminal Justice Act 2015 (ACJA) embraced the new trend. Specifically, part 44 of ACJA provides for non-custodial sentences or probationary orders and supervised release.

This unit aims to discuss the objective, scope and application of non-custodial sentencing. It will explore the types of non-custodial sentences and their institutional structures and also discuss the general principles relating to non-custodial sentencing

3.1 Objective, Scope and Application of Non-Custodial Sentencing

The objectives of the provision of alternative sentencing is to reduce congestion in prisons; rehabilitate prisoners by making them to undertake productive work; and prevent convicts who commit simple offences from mixing with hardened criminals (s. 460(4) ACJA). Other reasons include protection of the public, reduced re-offending, enforcement of the orders of the Court, taking account of the needs of victims and rehabilitating offenders (ss. 454(3) and 455(2) ACJA). Non-custodial sentences, particularly suspended sentence and community service, shall not be applied for an offence involving the use of arms, offensive weapons, sexual offences or for an offence which the punishment exceeds imprisonment for a term of 3 years (s. 460(3) ACJA). Also, non-custodial sentencing does not apply to offenders who should be isolated from the society and with whom other forms of punishment have failed or is likely to fail (s. 416(k) ACJA).

Non-custodial sentencing consists of different types. They can be applied where a defendant is charged for an offence before a court and the charge is proved, but the court, after considering the defendant's character, antecedents, age, health, or mental condition, the trivial nature of the offence and the extenuating circumstances under which the offence was committed, is of the opinion that it is inexpedient to inflict a punishment or any order than a nominal punishment or that it is expedient to release the defendant on probation. In that case, the court may without proceeding to conviction of the defendant pronounce non-custodial punishment on him by way of sentencing (s. 454(1) ACJA). The different types of non-custodial sentence include:

a. Dismissing the charge (s. 454(2)(a) ACJA).
b. Discharging the defendant conditionally on his entering into a recognizance to be of good behaviour and to appear at any time not exceeding 3 years as the court may specified. This can be with or without sureties (s. 454(2)(b) ACJA).

In addition to above two forms of custodial sentences, the court may order the defendant to pay such damages for injury or compensation for any loss suffered by the victim and cost of the proceedings. The court may order the

parent or guardian of the defendant to bear the damages or cost of proceedings if the defendant is below 18 years and the parent or guardian had conducted the commission of the offence. (s. 454(3)(a) and (b) ACJA)

c. Probation.[37] A probation is created by the court where a recognizance order contains a condition that the defendant be under the supervision of such person or persons of the same sex, called a probation officer. Importantly, the court making the probation order must furnish the defendant a notice in writing stating in simple terms the conditions he is required to observe (s. 455(3) ACJA).

d. Suspended sentence.[38]

e. Community service.[39]

f. Serving sentence at a Rehabilitation and Correctional Centre.[40]

g. Parole.[41]

Note that parole is not really a non-custodial sentence per se rather a non-custodial measure. It involves the remaining term of a convict imprisonment (usually at least 15 years or life imprisonment) been suspended with or without condition and the convict mandated to undergo a rehabilitation programme in a government facility or any other appropriate facility in order to properly integrate him into the society (s. 468 ACJA).

In addition to s. 467(3) of ACJA which provides that a court may make an order directing that a child standing criminal trail be remanded at Rehabilitation and Correctional Centre, all the non-custodial sentences are

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[37] For additional conditions such as with respect to residence, abstention from intoxicating substance, etc. which an order of recognizance may contain see s. 455 ACJA; on conditions of variation of terms and conditions of conditions of probation including, discharging the recognisance, and convicting and sentencing the defendant for the original offence see ss. 458-459 ACJA.

[38] Section 460(1) ACJA. A suspended sentence is the imposition of a sentence on a convicted person coupled with an order that the imprisonment must not come into effect, during the period of suspension unless the accused is brought before the court for committing another offence. See Oluwatoyin Doherty, *Criminal Procedure in Nigeria: Law and Practice* (Blackstone Press Ltd, 1990) 317.

[39] Section 460(2) ACJA. For the institutional framework (establishment Community Service Centre by the Chief Judge, its officers and functions) on implementation of community service see s. 461 of ACJA. On default of convict in complying with community service order see s. 463 of ACJA. The court is empowered to order a convict to perform a community service work for five (5) hours daily in lieu of imprisonment for a period not more than six (6) months under a Supervisory Officer (s. 462(1) ACJA). See ss. 464, 465 and 467 respectively on duty of court where a convict commits a further offence during community service period; amendment, review and discharge of community service orders, and discharge of community service orders.

[40] Section 467 of ACJA. Only a defendant convicted of offences triable summarily can be sentenced or ordered to serve the sentence at a Rehabilitation and Correctional Centre. Section 467(2) of the ACJA lists age, first offender and relevant circumstances necessitating an order of confinement at a Rehabilitation and Correctional Centre as the factors a court may consider before making an order for a convict to serve his sentence at a Rehabilitation and Correctional Centre.

[41] Section 468 of ACJA. Parole entails the release of an inmate from imprisonment before the full sentence has been served.

applicable to children by virtue of s 452(1) of ACJA which provides that where a child is alleged to have committed an offence, the provisions of the Child's Rights Act shall apply. Section 223 of the Child's Rights Act contains elaborate provisions on custodial sentencing of a child.

3.2 General Principles Relating to Non-Custodial Sentencing

The ACJA lays down explicit general principles guiding recourse to non-custodial measures as alternatives to imprisonment. Other principles can be deduced from the text of part 44 of the ACJA. This section highlights those general principles.

a. Non-custodial sentence is based on the principles of reformation, including rehabilitation of a defendant convict (ss. 311(2)(a), 461(3)(d) and (4)(c) and 467(1) ACJA).
b. Gender Protection: The probation officer shall be of the same sex with the defendant (s. 455(1) ACJA. More specifically, where the convict is a female, the supervising officer for her community service shall be a female (s. 466(5) ACJA).
c. Avoid double jeopardy: A convict sentence to community service shall not at the same time be sentenced to a term of imprisonment for the same offence, which will amount to punishing the convict twice (s. 461((7) ACJA)
d. Ensure fairness to all stakeholders: Victims gain through payment of compensation, restitution or delivery of property (s. 454(3) and (4) and 336 ACJA); defendant from the underpinning reformation process ((ss. 311(2((a) and 461(3)(d) and (4)(c) ACJA) and undertake productive work (s. 460(4)(b) ACJA); the state gains from reduction in prison congestion by making out good and lawful citizens from convicts who are reformed and rehabilitated (ss. 460(4)(a) and (b), 461(3)(d) and (4)(c) and 467(1) ACJA) and maintaining security of lives and property of its citizens by ensuring that convicts on probation are prevented from committing same or other offences (s. 451(2) ACJA); and the local communities gains from the focus of community service activities on their environment (s. 461(4)(a) and (b) ACJA).
e. Protection of Public interest: Community service shall enhance the preservation of the environmental and invariably protect human life; enhance production of agricultural produce (farming) thereby contributing to addressing the problem of food insecurity in the country; and enhance economic development by engaging convicts on community service in construction and mining activities (s. 461(4)(a) and (b) ACJA).

3.3 Self-Assessment Exercises

a. What is your view on non-custodial sentencing?

b. Do the criteria set out under the ACJA do justice as the basis for using alternate sentencing measures?

c. Do you consider non-custodial sentencing appropriate in the case of grand corruption - for example where there is a loot of one billion naira from Government funds by a public officer?

i. Will your answer be different if the public officer merely misappropriated Government funds for a project other than the one it was meant for?

ii. Will your answer be different if the public officer returned all the looted funds?

iii. Will your answer be different if the public officer was a first offender?

Give reasons for your answers

3.4 Conclusion

There is no doubt that one of the great advantages of non-custodial sentences is the possibility of adjusting them to the needs of the individual defendant. Unfortunately, the paradox of such adjustment is that the element of exercising discretion by judges in such decision-making may increase the risk of inconsistency. Good enough, strict adherence to legal safeguards incorporated into Part 2 of the FCT Sentencing Guidelines on discretionary punishment, albeit not designed for majority of the offences contemplated for non-custodial punishment, will promote equality of treatment in the application of non-custodial sentences. The flexibility inherent in non-custodial measures implies that they can be used at any stage of the proceedings. Non-custodial measures must be applied fairly and objectively; they must not involve discrimination. Differences in treatment are lawful only if they have a reasonable and objective justification. Authorities must ensure consistent sentencing when resorting to non-custodial measures and in doing this consider all aggravating and mitigating factors in line with the sentencing guidelines. An active ACJMC will ensure that measures towards building structures for an efficient non-custodial system are established.

3.5 References:

- Ifeoluwa Oduola: The Non-custodial Sanctions Regime under the Administration of Criminal justice Act 2015 in A. Adekunle, et al (eds) *Issues*

in Criminal Justice Administration in Nigeria (NIALS Abuja 2016) 166 – 189.

- Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016.
- United Nations Office on Drugs and Crime (UNODC) (2006), Custodial and Non-Custodial Measures: Alternatives to Incarceration. Criminal Justice Assessment Toolkit (UNODC)

Unit Four: Forfeiture Orders

4.0 Introduction
4.1 Considerations for Forfeiture Orders
4.2 The Protection of Third Parties and Varying Orders
4.3 Self-Assessment Exercises
4.4 Conclusion
4.5 References

4.0 Introduction

A forfeiture order is an order of court upon which the State may confiscate, seize and dispose of property that is proven to have been derived from an offence or used in, or in connection with or is intended to be used for the commission of a serious offence. Theoretically, because human beings are rational in taking decision, almost every criminal does an economic analysis of his action by weighing the benefit and cost of his crime.[42] Forfeiture increases the cost of committing a crime thereby reducing accruable benefits to the criminal. It is one of the effective ways of discouraging criminals from engaging in criminal activities.[43] Today, national and international momentum is gathering towards investigation, tracing, identify, seizure and forfeiture of assets of corrupt public officials and private individuals involved in stealing public funds through dubious contracts and other ways. Meanwhile, the Constitution of the Federal Republic of Nigeria (as altered) (CFRN) prohibits compulsory acquisition of property except, among others, it is prescribed as penalty or as forfeiture for the breach of a law, or after conviction for an offence (s. 44 (2)(b) CFRN, 1999) and relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry (s. 44 (2)(k) CFRN, 1999).

This unit explains what the court will consider before making a forfeiture order and how an innocent third party will be protected. This unit is intended

[42] Read generally Gary Becker, 'Crime and Punishment: An Economic Approach (1968) 76(2) *Journal of Political Economy*,169; Nuno Garoupa, 'Economic Theory of Criminal Behaviour,' (2014) *Encyclopedia of Criminology and Criminal Justice* 17-63

[43] Ibid

to guide judges on the relevant and necessary guidelines that will encourage practices that will accomplish the intendment of forfeiture orders.

4.1 Considerations before Issuing Forfeiture Order

Generally, it is the court that makes an order of interim or final forfeiture at the request of a prosecutor. There are factors that need to be considered before either the interim or final forfeiture orders can be granted. It is important to appreciate the circumstances and nature of property for which the seizure or forfeiture order is being sought. Paragraphs 274 to 295 of the High Court of FCT Bench Book provide that an order of forfeiture can be made with respect to property and interests in property related to complex financial crime, fitting into the followings:

i. Proceeds of crime,
ii. A facilitating property, which is deployed in committing the crime, and
iii. A property that is directly involved in the crime

See para. 266 of the High Court of FCT Bench Book.

4.1.1 Proceeds of Crime v. Instrumentality of Crime

Proceeds of crime is defined under s. 20(3) of the Economic and Financial Crimes Commission Act (EFCC Act) to mean any property derived from or obtained, directly or indirectly, through the commission of an offence. The African Union Convention on Preventing and Combating Corruption defines proceeds of corruption as assets of any kind corporeal or incorporeal, movable or immovable, tangible or intangible and any document or legal instrument evidencing title to or interests in such assets acquired as a result of an act of corruption (ss. 20 (1)(a),(b) and 21 EFCC Act).

An instrumentality of crime (IOC) refers to any property used or intended to be used to wholly or in part commit an offence (s. 333 ACJA). IOCs are also forfeitable just as proceeds of crime (s. 25 EFCC Act).

4.1.2 Procedure on Seizure of Property

Part 34 of the ACJA, particularly ss. 337 and 338, make provision for two categories of seizure. The first category is seizure of property taken during arrest or investigation or alleged or suspected to have been or found in the circumstances which create a suspicion of the commission of an offence (s. 337 ACJA). See ***FIMHAB (NIG) LTD V. FRN*** *(2018) LPER-43882* (CA) on the duty of the EFCC to trace and attach any assets and properties of any person arrested for an offence under the Act where the Commission suspects that such assets or property has been acquired from the proceeds of crime. The court shall then upon application of the EFCC cause such assets or property to be, in the interim, forfeited to the Government (s. 29 EFCC Act). The second category of seizure arises where the owner of property seized is unknown within the period of six month from the date of the notice issued by the court under (s. 337(2) of ACJA) and the person in whose possession the property was found is unable to show that it was lawfully acquired by him (s. 338(1) ACJA).

a. Procedure under s. 337 ACJA

i. The Police shall within not more than 48 hours of the taking of the property or thing report to a court.
ii. The court shall make an order in respect of the disposal of the property or its delivery to the person entitled to its possession or such other orders as it may deem fit in the circumstances.
iii. Where the person entitled to possession is unknown, the court may detain it and issue a public notice of the articles requiring any person with a claim to them to appear and establish such claim within six months.

b. Procedure under s. 338 ACJA

i. Where no person lays claim to the property, it shall be at the disposal of the court and may be sold in accordance with the order of the court and proceed forfeited to the Federal Government of Nigeria.
ii. At any time within six years from the date of the property coming into the possession of the police, the court may direct the property or the proceeds of the sale of the property to be delivered to any person proving his title to it, on payment by him, of any expenses incurred by the court in the matter.

c. Route to Forfeiture

Based on the EFFEC Act, Ogakwu JCA in ***Senator Peter Nwabobshi & Anor v FRN*** (2018) LPELR 45107 (CA) decided that there are three routes to the forfeiture of assets and property. There is the forfeiture route after a conviction (s. 20). There is the forfeiture route consequent upon an arrest (s. 28) and there is the forfeiture route sequel to a seizure and sealing of property (s. 26). Ibid, [D-F] 26.

4.1.3 Interim Forfeiture v. Final Forfeiture

Interim forfeiture involves the temporary taking of property by a court order from persons suspected of committing an offence or persons convicted of an offence. Interim forfeiture empowers the state to hold seized property while the suit is pending. In ***Senator Peter Nwabobshi & Anor v FRN*** (2018) LPELR 45107 (CA), the Court of Appeal described the procedure leading to an interim forfeiture order in the seizure and sealing route as follows: the Respondent in the course of investigation identifies the property subject to forfeiture, being any property which represents or is traceable to gross receipts obtained as a result of the violation of the Act … Having thus identified the property subject to forfeiture, the Respondent proceeded to seize the property by placing the same under seal pursuant to s. 26 of the EFFC Act … Having identified, seized and sealed the property, the next step was obtaining an interim forfeiture order as stipulated under Section 29 (b) of the EFCC Act. Construing the stipulation of Section 29 of the EFCC Act in ***Umezulike V Chairman, EFFC*** (2017) LPELR (43454) (CA) this Court per Ogunwumiju, JCA held:

> *The only requirement is that the Court to which an application to attach may be brought must be satisfied that there is a prima facie case that the property concerned is liable to forfeiture before such an order was made. Nnamani, JSC, while defining the phrase prima facie in* ***Duru v. Nwosu (1989) 4 NWLR pt. 113 pg. 24 at 41****held as follows: It seems to me that simplest definition is that which says that there is a ground for proceeding. In other words, that something has been produced to make it worthwhile to continue with the proceedings. On the face of it, it suggests that the evidence produced so far indicates that there is something worth looking at."*

The lower Court being satisfied that there existed a prima facie case made the interim forfeiture order. (Per Ogakwu JCA [A-F] 28-29. According to Ogakwu JCA, this procedure for interim forfeiture of property is justifiable under Section 44 (2) (k) of the Constitution.[44]

Final forfeiture involves the permanent deprivation of property by order of a court (Art. 2 of UNCAC). Interim forfeiture orders are granted as a preservatory measure to ensure that properties suspected to be the proceed of crime are not destroyed, removed from jurisdiction, disposed of or otherwise converted to other use by suspects. Final forfeiture orders are only granted where the burden of proving why the property should be forfeited has been discharged. In ***Dangabar v. FRN*** (2012) LPELR-19732(CA), the court upheld the constitutionality of interim forfeiture proceedings under ss. 27-29 of the EFCC Act and ss. 37-39 of the ICPC Act. It held that such proceedings are consistent with the exceptional situations created by s. 44(2)(k) of the 1999 Constitution.[45] The Court also declined to hold that an *ex parte* order by the court (for attachment of property) violated a defendant's right to fair hearing. In the court's opinion -

"…. because the order was in the nature of a preservatory order. The order is in my view in the interest of both parties. This is because it will prevent dealing with the properties in such a way that could render the final Judgment of the Court nugatory. "

4.1.4 Civil Forfeiture v. Criminal Forfeiture

Civil forfeiture is otherwise termed non-conviction-based forfeiture. Civil forfeiture actions are against the property (*in rem*) and not against the person as is the case with criminal forfeiture. A civil forfeiture action can be initiated before, during, or even after criminal conviction. The action can also be initiated where no charge has been laid against a person unlike criminal forfeiture that is imposed as part of sentence. A conviction is required under criminal forfeiture but not under a civil forfeiture. While civil forfeiture

[44] Senator Peter Nwabobshi & Anor v FRN (2018) LPELR 45107 (CA) [E-F] 29

[45] Nothing in sub-section (1) of this Section shall be construed as affecting any general law; (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or inquiry.

requires the lesser standard of proof that is based on 'a balance of probabilities', criminal forfeiture requires proof 'beyond reasonable doubt'.

The judge should note the lower burden of proof that is required in civil forfeiture cases unlike the criminal forfeiture where the higher burden of proof is required. Where the prosecution proves on a balance of probability, in a civil forfeiture matter, that the property is a crime-tainted property, the reverse onus will be on the defence counsel to show cause why the property should not be forfeited. The judge should also note that in corruption cases, especially cases regarding unclaimed properties, the prosecution will utilise the provisions of s. 17 of the Advanced Fee Fraud (and other Related Offences) Act, 2006 (AFFA). Conviction is not required under ss. 337 and 338 of ACJA before the court can order the disposal/sale and subsequent forfeiture of seized property.[46]

4.2 Protection of Third Parties and Varying Orders

4.2.1 Protection of Third Parties

It is duty of the court to order for the restoration of immovable property to an innocent victim who has been dispossessed of his property, or for the disposal of the property on condition in the absence of a third party. See ss 336 and 337 of ACJA. There is a 6 months' notice period under s. 337(2) ACJA to make valid claims to property already subject to an interim forfeiture order. The period for making claim under the AFFA is shorter – 14 days (s. 17(4) AFFA). It is the duty of the court is to detain the property and issue a public notice specifying the details and the content of the property for the rightful owner to come forward to claim it within 6 months from the date of the notice. Where no claim is made within the period, the court can issue a final forfeiture order (ss. 337(2) and 338 (2) ACJA).

[46] The ACJA is silent on the complexities of seizing an on-going business, combined with the potential for substantial losses and liabilities resulting from a forfeiture of the business. It might be at the discretion of the court to mandate that before seizing, restraining, or otherwise seeking forfeiture of the business, the police or the appropriate security agency seeking a forfeiture order should consult widely to see if the restraint, seizure, and/or forfeiture of a business could create a net loss to the business and reports of such consultation should be submitted to the court.

Where, on the arrest of a defendant charged with an offence, any property, other than that used in the commission of the offence, is taken from the defendant, the court may order that the property or any part of it be restored to the person who appears to the court to be entitled to it, be it the defendant or any other person the defendant may direct. The court may also order that the defendant apply the property to the payment of any costs or compensation payable (s. 341 ACJA). Even where a defendant is convicted, the court may order that the property or any part of it be restored to the person who appears to it to be the owner of it. The owner may, however, be required under the order to make or refrain from making payment to any person initially in possession of the property (s. 342 (1) ACJA). After conviction, the court may order the convict to make restitution to the victim or the victim's estate or order for the restitution or compensation for the loss or destruction of the victim's property (s. 321 ACJA and ***Nnamuchi v. State*** (2015) LPELR-25744 (CA)).

4.2.2 Varying Orders

These are orders that are made to change a previously issued order, usually interim orders, given by the court in the course of trial. It could be in terms of bail conditions, confiscation or seizure amongst others. These orders may be made on appeal or by the same court depending on the conditions in which the applications were made (ss. 168 and 169 ACJA). The general law is that a variation order can only be made on the basis that all the findings are correct but the judgment can, and should be, varied without detracting from any of those findings, sometimes in order to properly bring out some aspects of the court's decision, which have been overlooked.

As a general rule, apart from the few exceptions, judgments or orders, which have been formally recorded or entered, can only be varied or discharged on appeal. Once an order disposing of a proceeding has been perfected by being drawn up as the record of a court, that proceeding, apart from any specific and relevant statutory provision, is at an end in that court and is, in its substance … beyond recall by that court.[47] In other words, no Court or Judge has the power of rehearing, reviewing or varying any judgment or order

47 *Bailey v. Marinoff* (1971) 125 CLR 529 at 530.

either in an application made in the original action or in a fresh action brought for that purpose as that is a task for the Appellate Courts. See ***Holborn Nigeria Ltd v O. C. Chris Enterprise Ltd*** (2014) LPELR -23972; ***Anozie v. IGP and ors*** (2016) LPELR -40427 (CA)and ***Bulus v. Okpala and Anor*** **(**2017) LPELR-43423 (CA)**.**

In ***Holborn Nigeria Ltd v. O C Chris Enterprise Ltd*** (2014) LPELR -23972, Orji-Abadua J.C.A. held as follows

> Rightly, by the provisions of Order 27 Rule 7 of the Federal High Court Civil Procedure Rules, 2000, the lower Court may correct in chambers on Motion or Summons clerical mistakes in judgments or orders or errors arising therein from any accidental slip or omission … It is an established principle of law that once a Court or tribunal delivered its final judgment in a case before it, it becomes funtus officio with respect to that case. It has no power to reopen the case for the purpose re there is need to make minor permissible correction under the slip rule. As was stated by Akintan, J.S.C. in ***Nigeria Army vs. Major Jacob Iyela*** (2005 of making corrections or changing any opinion expressed in its earlier judgment in the case. The only exception to the rule is whe) 7-12 SC page 35 or (2005) 18 NWLR (Part 1118) page 115, what can be altered under the slip rule is not as to the substance of the judgment earlier delivered that limited in minor errors such as spelling errors, typographical or mathematical errors wherein correct figures can be entered. Every judgment takes effect on pronouncement. (pp. 32-34, paras C-E)

Other cases referred to by Orji-Abadua J.C.A. are ***Minister of Lagos Affairs Mines and Power & anor vs. Chief Akin-Olugbade & ors*** (1974) ALL NLR 745; ***Thynne vs. Thynne*** (1955) 3 ALL ER 129 at 146 and ***Preston Banking Co. vs. Williams Usup & Sons*** (1985) 1 CH. D at page 143.

In ***Anozie v IGP and Ors*** (supra), Sidi Dauda Bage J.C.A also adopted the slip rule (pp. 24-25 paras B-D).However, in ***Umezulike v. Chairman, EFCC***

(2017) LPELR -43454 (CA), the appeal bordered on whether the court can vary or set aside order of forfeiture, attachment of property and freezing of accounts made under the EFCC Act.

> A prayer to vary an order is quite different from a prayer to set aside, quash or vacate an order. A prayer to vary the terms of an order concedes that the order was properly made but for certain reasons, the terms should be varied. An application to set aside, quash or vacate an order is in effect attacking the validity of the order. It is my humble view that in whatever circumstances, whether it is a matter involving criminal prosecution under the EFCC Act or not, an order of attachment of property can be set aside, quashed or vacated where there is proof that there has been suppression of material facts or misrepresentation of facts or where the Court which made the order had no jurisdiction to make the order. I must also say that I cannot agree that the order made to freeze an account pursuant to s. 34 of the EFCC Act cannot be varied. As I said earlier, I would not submit to any interpretation of the law that would feter the discretion and powers of the Court to review, where necessary, its own orders to meet the justice of prevailing circumstances. By the provisions of ss. 329-346 of the Administration of Criminal Justice Act 2015, a Court trying any case including a corruption case has a wide discretion to deal with the property attached as alleged proceeds of crime and brought before it. An order to attach a defendant's property is an order not *in rem* but *in personam* being against the defendant personally and not against the whole world. Thus, the mere making of the order does not divest the defendant of his legal title to the moveable or immoveable property or chose in action. The reason why the Court retains the power to vary its orders is that although the money or property is frozen, the right of ownership still resides in the defendant who still enjoys the constitutionally guaranteed presumption of innocence pending judgment. Where an application to vary the terms of an attachment or freezing order is made, the Court must consider

> the whole circumstances in order to determine whether the terms of the order can be varied to allow the defendant some limited access to the funds in order to maintain his livelihood, pay legal fees and take care of his health etc. The ruling arose from an application on notice. (Per Helen Moronkeji Ogunwumiju J.C.A., pp 11-27, para. B)

The Supreme Court of Nigeria held in ***Ede v. Mba*** **(**2011) LPELR-8234 (SC) relying on Order 8 Rule 16 of the Rules of the Supreme Court 1999 (as amended) and series of its previous judgments reaffirmed the slip rule thus:

> The Court shall not review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from accidental slip or omission, or to vary, the judgment or Order so as to give effect to its meaning or intention. A judgment or Order shall not be varied when it correctly represents what the Court decided nor shall the operative and substantive part of it be varied and a different from substituted. (Per Ibrahim Tanko Muhammad, J.S.C, pp. 23-26, paras. C-E)

4.2.3 Example of Forfeiture Cases

Proceedings for Civil Forfeiture under s. 338 of ACJA may be instituted *in rem*. This was the case in ***In Re Application for Final Forfeiture Order of the Sums of $43,449,947, £27,800 AND N23, 218, 000 Recovered in an Apartment at Osborne Road, Ikoyi, Lagos,*** Suit No. FHC/L/CS/600/17 at the Federal High Court on 6 July, 2017. The EFCC had on 12 April 2017 seized the above sums and on 13 April was granted an order temporarily forfeiting the monies to the Federal Government. A notice was published in the newspaper for anyone with interest in the property to show cause why the money should not be permanently forfeited. No one showed up to challenge the interim order and the monies were finally forfeited to the FG. Also in ***Jonathan v. FRN*** (2018) LPELR-43505 (CA), the court held that s. 17 of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006 does not require a trial and conviction before its application, rather, it

provides in the fashion of non-conviction based forfeiture and such is not inconsistent with the fair hearing provisions of s. 36 (1) (2) and (5) of the 1999 Constitution, but rather in line with the provision of s. 44 (2) (b) and (k) of the Constitution. It is not the law that "the only time a citizen's property can be forfeited under the Constitution is after conviction for an offence.

4.3 Self-Assessment Exercises

4.3.1 Questions

a. Where a corrupt public officer is found to have 700 million Naira in his account, but was accused of diverting 300 million Naira and you are asked to issue a seizure and forfeiture order.

i. Would you issue the order if he shows proof that the extra 400 million Naira was legally earned?

ii. If there is evidence that there are properties tied to him that were purchased with the 300 million Naira, what would you do about the extra 400 million Naira and the property?

iii. How do you deal with funds realised from sale after a forfeiture order?

b. What is your opinion about confiscating and forfeiting property belonging to a spouse or jointly purchased by the family of a corrupt individual, bearing in mind that such third party might be innocent and rightly earned the money used to jointly purchase such property?

c. Discuss the following cases illustrating the key legal issues and challenges in the recovery of proceeds of illicit enrichment:

i. *Abacha v. The State* (2002) vol. 32 WRN 1 at 61

ii. *Dariye v. FRN* (2015) LPELR-24398

iii. *FRN v. Ibori & Ors* (2014) LPELR -23214 (CA)

4.4 Conclusion

This unit has exposed the trainee to the issues and complexities affecting forfeiture orders as it relates to corrupt individuals, innocent third parties as well as varying orders.

4.5 References

- Administration of Criminal Justice Act 2015.
- High Court of Federal Capital Territory Bench Book of Best Practices 2017.

- Section 135 Evidence Act 2011.
- C.M. Clarkson on *H.M. Keating Criminal Law Text and Materials,* (3rd ed Sweet and Maxwell, 1994).
- H. Parker, *The Limits of Criminal Sanctions* (Stanford University Press, 1968).
- Martin Wasik and Andrew Von, 'Non-Custodial Penalties and the Principles of Desert,' (1988) *Crim. I.R.* 555.
- William J, Chamblis *Types of Deviance and the Effectiveness of Law* (1967) Wisconsin Law Review.

MODULE SIX: CORPORATE CRIMINAL LIABILITY

Unit One: Scope of Corporate liability Under ACJA

1.0 Introduction

1.1 Scope of Corporate Liability

1.2 Trials by representation

1.3 Self-Assessment Exercises

1.4 Conclusion

1.5 References

1.0 Introduction

Ordinarily, a company cannot be said to commit a crime as the law requires the presence of the *mens rea* and *actus reus* in order to ground a charge of crime. See ***Utteh v. State*** [1992] 2 NWLR (Pt 223) 257 -274. However, with the innovation provisions in the ACJA, corporations can now be tried under certain conditions. This unit provides a guide into relevant sections of the ACJA as well as other legislation governing corporate criminal liability for proper administration of justice in criminal matters. The unit includes practical exercises and makes use of reference materials, which are intended to support trainees learning process. It is expected that at the end of this unit, the user is able to understand the scope of corporate liability under the ACJA.

1.1 Scope of Corporate Liability

Generally, a corporation is defined as a legal entity separate from its members and shareholders. The Company and Allied Matters Act 2020 (CAMA 2020) has given effect to this principle in its s. 42 which provides that "As from the date of incorporation, the subscriber of the memorandum together with such other persons as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land, and having perpetual succession

and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act". See ***Salomon v. Salomon*** [1897] A.C 22 at 51; ***Bullet Int'l (Nig) Ltd & Anor v Olaniyi & Anor*** (2017) LPELR-42475(SC) [F-D] 39-40 and ***Atlantic Dawn Ltd & Ors v G-NET Communications*** (2019) LPELR-47772(CA)

Definition of a body corporate under the ACJA. See s. 477(1) ACJA 2015 defines 'corporation' as anybody corporate, incorporated in Nigeria or elsewhere. On the other hand, s 868 (1) of CAMA 2020 uses the term company for companies formed and registered under the Act or in Nigeria. The same section uses the term foreign companies to refer to companies incorporated elsewhere other than Nigeria

The legal personality concept under the Companies and Allied Matters Act presupposes criminal culpability of a corporation. See s. 89 CAMA 2020 which provides to the effect that acts of members in general meeting, board of directors and the Managing Director (alter ego of the company – Oho JCA in ***Rainson Industries Ltd v Abia State Commissioner for Health & Social Welfare & Ors*** (2014) LPELR-23771 (CA) [F-B] 26-27 citing Nnaemka-Agu JSC in ***N.N.S.C. v Sabana*** (1988) NWLR (Pt 74) 23) shall be treated as the acts of the company itself and the company is criminally and civilly liable to the same extent as if it were a natural person.

To determine the *mens rea* of a body corporate, the state of mind of the principal agent of a corporation can be imputed on it. See ***Orji Uzor Kalu v FRN*** (SC.215/2012) [2016] NGSC 34 (18 March 2016) and ***Yesufu v. Kupper International N.*** **V** (1996) 5 NWLR (Pt. 416) 17, 29. It is on this basis that s. 2 ICPC Act 2003 and s. 7 EFCC Act 2004 which empowers the Commission to investigate and prosecute any person, body corporate and organisation who commits an offence under the Act.[48] See ***Lennard's Carrying Company Ltd. v. Asiatic Petroleum Company Ltd*** **(**1915) A.C. 705.

[48] Akinola Bukola, "A Critical Appraisal of the Doctrine of Corporate Personality Under the Nigerian Company Law" *NLII working Paper Series 02* <https://www.nlii.org/files/NLIIWPS002.pdf > accessed 19 September 2020. See Also Gerry Ferguson, "Corruption and Corporate Criminal Liability" Being a paper presented at the New global and Canadian Standards on corruption and bribery in Foreign Business Transactions < https://icclr.law.ubc.ca/wp-content/uploads/2017/06/FergusonG.pdf> accessed 19 September 2020.

Excluding the organs and the managing director mentioned in s. 89, the criminal act of the officers or agents shall not be deemed to be act of the Company, except the company, acting through its members in general meeting, board of directors or managing director, shall have expressly or impliedly authorized such officer or agent to act in the matter (s. 90(1) CAMA 2020).

An information can be preferred against a corporation after the preparation of proof of evidence relating to the charge (s. 479 ACJA 2015).

Counts may be lawfully joined based on the facts or evidence disclosed in the proof of evidence in the same information preferred against the corporation (ss. 479 and 480 ACJA 2015).

The doctrine of alter ego is the adopted approach in determining the actual intentions and corporate liability of *mens rea*. See Oho JCA in ***Rainson Industries Ltd*** **v** ***Abia State Commissioner for Health & Social Welfare & Ors*** (2014) LPELR-23771 (CA) [F-B] 26-27 citing Nnaemka-Agu JSC in ***N.N.S.C. v Sabana*** (1988) NWLR (Pt 74) 23

1.2 Trials by Representation

The perception that criminal law and its processes are inadequate in dealing with corporations whose activities result in more serious crime has been overtaken by the innovations in ACJA, which allows the trial of a corporation in representative capacity. In ***Atake v. Afejuku*** **(**1994) LPELR-585(SC), the Supreme Court of Nigeria held that a body corporate may not be able to conduct its case in Court without being represented by counsel owing to its inability to appear in person. Per Iguh JSC [E-F] 47.

Section 477 (2) and (3) identifies who a representative of a body corporate should be and makes provisions for the trial of a corporation with its representative appearing on its behalf. A representative of a corporation is a person duly appointed in writing by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation. Such appointment need not be under the seal of the corporation. However, a person appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before any court for any other purpose.

A representative may, on behalf of the corporation, decide whether to be tried or assent to the trial of the corporation on a charge or information to which

the corporation has been called to plead, in spite of any failure to be served three days prior to the trial (s. 481 ACJA).

A plea shall be entered by the representative on behalf of the corporation and such a plea shall be in writing (s. 478 ACJA).

Where a corporation or its representative fails to enter a plea, the judge shall order a plea of not guilty so that trial can commence as though the corporation has duly entered a plea of not guilty (s. 478 ACJA). Note that this does not apply in the absence of a representative (s. 483 ACJA)

The representative stands trial in the capacity of the defendant (s. 482 ACJA).

1.3 Self-Assessment Exercises

1.3.1 Questions

- What options are available to a Judge when a representative to a corporation fails to enter a plea on behalf of the corporation?
- How many days before the commencement of trial should corporation be served upon?
- How should a plea be taken on behalf of a corporation?

1.3.2 Case Scenario

'U' Corporation was charged with the offence of producing poisonous meat for sale contrary to the Consumer Protection Act. The actions of 'U' Corporation resulted in the death of K, Y, and X.

a) Discuss the scope of corporate criminal liability under the ACJA.
b) Who can appear on behalf of 'U' Corporation and in what capacity?

1.4 Conclusion

This unit has highlighted the relevant provisions of ACJA relating to corporation criminal liability. It defines the scope of such liability and the conditions under which the trial of corporation can be conducted.

1.5 References

- *Salomon v. Salomon* [1897] A.C 22 at 51.
- *Buhari & Ors v. Obasanjo & Ors* [2003] 17 NWLR (Pt. 850) 510.
- *B.B Apugo & Sons Ltd* v. *OHMB* (2016) LPELR -40598(SC).

- *Atake v. Afejuku* [1994] 9 NWLR (Pt. 368) 379.
- *Lennard's Carrying Company Ltd. v. Asiatic Petroleum Company Ltd* (1915) A.C. 705.
- *Yesufu v. Kupper International N. V* (1996) 5 NWLR (Pt. 416) 17 at p. 29.
- CAMA 2020, Section 90.
- Administration of Criminal Justice Act 2015.
- Akinola Bukola, "A Critical Appraisal of the Doctrine of Corporate Personality under the Nigerian Company Law" *NLII working Paper Series 02* <https://www.nlii.org/files/NLIIWPS002.pdf >accessed 19 September 2020.
- Gerry Ferguson, "Corruption and Corporate Criminal Liability" Being a paper presented at the New global and Canadian Standards on Corruption and Bribery in Foreign Business Transactions < https://icclr.law.ubc.ca/wp-content/uploads/2017/06/FergusonG.pdf>accessed 19 September 2020.
- Mohammed Yusef-Saleh, Criminal Liability of Cooperate persons in Nigeria, (2017) 3(4) *International Journal of Law* 32-38

Unit Two: Doctrine of Vicarious Liability and Identification in Corporate Criminal Liability

2.0 Introduction
2.1 Vicarious Liability of Companies
2.2 Doctrine of Identification
2.3 Self-Assessment Exercises
2.4 Conclusion
2.5 References

2.0 Introduction

"Vicarious Liability" means **'Liability that a supervisory party (such as an employer) bears for the actionable conduct of subordinate or associate (such as an employee) because of the relationship between the two parties' (***Black's Law Dictionary 10th Edition, 1055***; *Bello v Dadah & Anor (2016) LPELR-40337 (CA) [A-B] 38*.** Legally, the requirements for *actus reus* and *mens rea* elements in a crime are personal. The doctrine of vicarious liability does not require the imputation of human thoughts, acts and omissions to the corporation. It regards corporations as themselves capable of committing crimes through established internal patterns of decision-making (corporate culture or corporate organisation).

2.1 Vicarious Liability of Companies

Legally, because the requirement for *mens rea* element in a crime is personal, there is no gainsaying that as a general rule in criminal law liability is personal not vicarious. In other words, one is liable only for one's own action and not the actions of others. Section 90(i) of ACJA reiterate this principle to the effect that except as provided in Section 89 of this Act, the acts of any officer or agent of a Company shall not be deemed to be acts of the company. There are statutory exceptions to this principle recognised under Companies and Allied Matters Act (CAMA) 2020 and Advance Fee Fraud & Other Related Offences Act.

2.1.1 Vicarious Liability of a Company for its employees, agents, etc.

A company may be liable for the acts of its employees, agents or any person for whom it is responsible. See s. 90 (1) (a) (b) CAMA 2020 which provides thus: (1) except as provided in s. 89 of this Act, the acts of any officer or

agent of a Company shall not be deemed to be acts of the company; unless (a) The Company, acting through its members in general meeting, board of directors, or managing director, shall have expressly or impliedly authorized such officer or agent to act in the manner. Subsection 3 of s. 90 of ACJA unequivocally provides that "nothing in this section shall derogate from the vicarious liability of the company for the acts of its servant while acting within the scope of their employment". **United *States v. Bank of New England* (**1987) 821 F2d at p. 844[49] and ***R v Great North of England Railway*** (1846) E.R. 115.

Majority of the Judges of the High Court of Australia considered the circumstances in which an employer is vicariously liable for the criminal acts of an employee in ***Prince Alfred College Incorporated v ADC*** (2016) HCA 37 when they held that the relevant approach is to consider any special role that the employer has assigned to the employee and whether that role gave rise to the "occasion" for the wrongful act. The court stated that "factors such as authority, power, trust, control and the ability to achieve intimacy with the victim" were particularly important.

2.1.2 Vicarious Liability of a Company for the Fraud and other crimes of its officers

Section 316 of the CAMA 2020 provides that "where a company -

(a) receives money by way of loan for specific purpose;

(b) receives money or other property by way of advance payment for the execution of a Contract or project; or

(c) with intent to defraud, fails to apply the money or other property for the purpose for which it was received,

Every director or other officer of the Company who is in default is personally liable to the party from whom the money or property was received for a refund of the money or property so received and not applied for the purpose for which it was received and nothing in this section affects the liability of the Company itself".

[49] C. Wells, "Criminal Responsibility of Legal Person in Common Law Jurisdiction" A paper for OECD Anti-Corruption Unit Working Group on Bribery in International Business Transactions. Paris 4th October, 2000.

Section 10(1) of the Advance Fee Fraud & Other Related Offences Act provides thus:

> "When an offence under this Act which has been committed by a body corporate is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, where practicable, shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly".

First, these provisions allow the court to lift the veil of incorporation of a company[50] in order to hold directors or other officers of the company liable for using the company to commit fraud.

The circumstances in which the veil of incorporation of a company may be lifted was succinctly stated in the case of ***Alade v Alice (Nig) Ltd & Anor*** (2010) 19 NWLR (Pt 1226) 111, [E-H] 130 and [C-E] 142 where this court held thus "One of the occasions when the veil of incorporation will be lifted is when the company is liable for fraud as in the instance case. In ***FDB Financial Services Ltd v Adesola*** (2002) 8 NWLR (Pt 668) 170, 174, the court considering the power of a court to lift the veil of incorporation held thus: "The consequence of recognising the separate personality of a company is to draw a veil of incorporation over the company, one is therefore generally not entitled to go behind or lift this veil. However, since a state will not be allowed to be used as an excuse to justify illegality or fraud it is in the quest to avoid the normal consequences of the statute which may result in grave injustice that the court as occasion demands have a look behind or pierce the corporate veil" (***Oyebanji v State*** (2015) LPELR-24751 (SC) per Kekere-Ekun JSC [D] 41-42). The doctrine lifting of the veil of incorporation simply fastens liability on the individual who uses the corporation merely as an instrumentality in conducting his own personal business. Liability springs from fraud perpetrated not to the corporation but on third person dealing with

[50] Lifting the 'veil of incorporation' or 'piercing the corporate veil's defined in Black's Law Dictionary (10th edi) as "the judicial act of imposing personal liability on otherwise immune corporate officers, directors or shareholders for the corporation's wrongful act.

corporation. (***Oyebanji v State*** (2015) LPELR-24751 (SC) per Fabiyi JSC [E-F] 25).

Second and more importantly, from the text of s. 316 of CAMA and s. 10(1) of the Advance Fee Fraud & Other Related Offences Act, the company is not complete exonerated as it could still be held criminally liable for the acts of such directors or other officers.

2.2 Doctrine of Identification

This doctrine is also known as the 'directing mind theory'. According to this theory, the solution for the problem of attributing fault to a corporation for offences that require intention was to merge the individual within the corporation with the corporation itself. The principal agent of a company is the alter ego. (***Oyebanji v State).*** Kekere-Ekun JSC went further in his judgment to say in ***Oyebanlo v State*** (2011) LPELR - 3765 (CA), the Court held that the rule of a corporation is well stated in the case of ***Trenco (Nig) Ltd v African Real Estate*** (1978) 7 Law Reports of Nigeria 146,153; (1978) LPELR-3264(SC) as follows

> "But a company, although a legal person is an artificial one which can only act through its human agents and officers. Viscount Huldane in Lennard's Carrying Co v Asiatic Petroleum Co Ltd (1919) A.C. 705 stated: - My Lords, a Corporation is an abstraction. It has no mind of its own any more than it has a body of its own. Its active and directing will must consequently be sought in the person of somebody who for some purpose may be called an agent; but who is really the directing mind and will of the Corporation, the very ego and centre of the personality of the Corporation." **See** ADEDIPE v. FRAMEINENDUR (supra)**,** therefore there is a vicarious liability in law where fraud is imposed. Furthermore, there is a statutory backing to this point of law. In section 290 (now s. 316) of the CAMA …"

See also Nnaemeka-Agu JSC in the case of **N. N. S. C. v. Sabana** (1988) NWLR (PT. 74) 23.

A director of a company is the very *corpus*, the think tank, the alter ego and the directing mind and will of the company. See ***Yesufu v. Kupper International N. V.*** (1996) 5 NWLR (Pt. 416) 17 at p. 29.

2.2 Self-Assessment Exercises

i. Discuss the effect of applying the doctrine of Vicarious Liability to corporate criminal liability
ii. Can the doctrine of Identification be invoked to determine the representative of a company?

2.3 Conclusion

This unit has noted the basis for the criminal liability of corporations through the doctrines of vicarious liability and identification. By these doctrines, corporations are deemed capable of committing crimes through their established internal pattern of decision making.

2.4 References

- Sections 89, 90 (1)(a) and (b) and 316 CAMA 2020.
- Section 10(1) Advance Fee Fraud & Other Related Offences Act
- *United States v. Bank of New England* (1987) 821 F2d at p. 844.
- *R v Great North of England Railway* (1846) E.R. at p. 115.
- C. Wells, 'Criminal Responsibility of Legal Person in Common Law Jurisdiction,' (A paper for OECD Anti-Corruption Unit Working Group on Bribery in International Business Transactions. Paris 4 October, 2000).

Unit Three: Non- Prosecution Agreement (NPA) or Deferred Prosecution Agreements (DPA) in Nigeria

3.0 Introduction

3.1 Uses of Non-Prosecution Agreement (NPA) or Deferred Prosecution Agreement (DPA) in Nigeria

3.2 Impact of NPA and DPA on Establishing Corporate Criminal Liability

3.3 Self-Assessment Exercises

3.4 Conclusion

3.5 References

3.0 Introduction

Since the inception of the Administration of Criminal Justice Act (ACJA) in 2015, questions have been raised on corporate criminal liability in Nigeria and two novel approaches developed- Non- Prosecution Agreement (NPA) and Deferred Prosecution Agreements (DPA). This unit expounds on the effective applicability of these two approaches towards the speedy administration of criminal justice in Nigeria.

3.1 Uses of Non-Prosecution Agreement (NPA) or Deferred Prosecution Agreements in Nigeria

a) NPAs are usually entered between Agencies of government such as SEC or EFCC and a body corporate of individual facing criminal or civil investigation.[51]

b) Under the NPA or DPA, the agency refrains from filling charges to allow the company to demonstrate good conduct

c) In exchange, the NPA or DPA requires the company to agree to either pay a fine, waive the statute of limitation, cooperate with the government, admit relevant facts or enter into reliance or remediation commitment potentially including a corporate compliance monitor. See the Foreign Corrupt Practices Act

[51] Jay Holtmeier, "Cross Boarder Corruption Enforcement: A Case for Measured Coordination Among Multiple Enforcement Authority"
< Https://Www.Law.Gwu.Edu/Sites/G/Files/Zaxdzs2351/F/Downloads/Panel1materials.Pdf> accessed 19 September 2020

d) Currently, with the United States of America (USA) investigation of corruption cases, the EFCC has opened an investigation against the consortium and associated persons for the same corruption scheme. The Nigerian government entered into settlement with four companies in exchange for approximately 126 million dollars in fines and disgorgement. [52]

e) Even though the settlement agreements with the Nigerian government are not publicly available, Halliburton announced that it agreed to pay $35 million to settle all lawsuits and charges against KBR and Halliburton corporate entities and that the Nigerian government agreed not to bring any further criminal charges or civil claims against those entities.[53]

3.2 Impact of NPA and DPA in Establishing Corporate Criminal Liability

a) Owing to the concept of legal personality, it is difficult for the courts to enforce capital punishment on corporations for culpable corporate crimes for example, corruption and other financial crimes.[54]

b) NPA and DPA are pre-trial settlements through which government and corporations avoid the cost of trial.

c) With a DPA, the prosecutor and the corporation agree that although the prosecutor will charge the corporation in a federal court, the prosecutor will defer the continued prosecution of the charges until the end of a certain period of time agreed upon by both parties. If, at the end of the term of the agreement, the corporation has followed through on its obligations, the prosecutor will dismiss the charges.[55]

d) NPA's and DPA's can serve as an alternative resolution vehicle in the enforcement of corporate criminal liability.

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[52] Jacinta Anyango Oduor et al., *Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery,* (World Bank 2014) 32

[53] Press Release, 'Halliburton Confirms Agreement to Settle with Fed. Gov't of Nigeria,' (Dec. 21, 2010), <http://www.halliburton.com/publicnews/pubsdata/press_release/2010/corpnws_12212010.html > accessed 19 September 2020/

[54] Idem Udosem Jacob, "Developing an Effective Legal Framework for Corporate Criminal liability Administration in Nigeria" Being PhD thesis submitted to University of Nigeria Nsukka < http://repository.unn.edu.ng:8080/xmlui/bitstream/handle/123456789/5214/IDEM%2c%20UDOSEN%20JACOB.pdf?sequence=1&isAllowed=y>

[55] ***United States v. Biomet Orthopedics, Inc***., No. 07-8133, 2007 WL 2964201, 1 (D.N.J. Sept. 28, 2007) (noting Exhibit A, which defines a period of eighteen months for the DPA to remain in effect).

3.3 Self-Assessment Exercises

3.3.1 Questions

i. What is the difference between NPA, DPA and Plea agreements?

ii. In the absence of specific legislation or guideline on NPA and DPA, can the ACJA guidelines on Plea-bargaining be said to cover the field?

iii. Many corporations reluctantly prefer NPAs and DPAs rather than risk the adverse collateral consequences to the company, its innocent employees, and its shareholders from a prosecution and possible conviction…Discuss

3.4 Conclusion

From the foregoing, NPA's and DPA are important to reduce the problems associated with establishing corporate criminal liability. Note, that there is no legislative recognition of the concepts of NPA and DPA in Nigerian law.

3.5 References

- Jay Holtmeier, "Cross Boarder Corruption Enforcement: A Case for Measured Coordination Among Multiple Enforcement Authority" https://Www.Law.Gwu.Edu/Sites/G/Files/Zaxdzs2351/F/Downloads/Panel1materials.Pdf accessed 19 September 2020
- Jacinta Anyango Oduor et al, *Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery* (World Bank 2014)32
- See Press Release, "Halliburton Confirms Agreement to Settle with Federal. Government of Nigeria" (Dec. 21, 2010), http://www.halliburton.com/public/news/pubsdata/press_release/2010/corpnws_12212010.html [http://perma.cc/2CDQ-59DF]
- Idem Udosem Jacob, "Developing an Effective Legal Framework for Corporate Criminal Liability Administration in Nigeria" Being PhD Thesis submitted to University of Nigeria Nsukka <http://repository.unn.edu.ng:8080/xmlui/bitstream/handle/123456789/5214/IDEM%2c%20UDOSEN%20JACOB.pdf?sequence=1&isAllowed=y>
- ***United States v. Biomet Orthopedics, Inc.,*** No. 07-8133, 2007 WL 2964201

Unit Four: Collateral Consequences of DPA's and NPA's

4.0 Introduction
4.1 Collateral Consequences of Failure to Comply with Non-Prosecution Agreements (NPAs) or Deferred Prosecution Agreements (DPAs)
4.2 Key Determinants for Charges under NPA and DPA
4.3 Self-Assessment Exercises
4.4 Conclusion
4.5 References

4.0 Introduction

The benefit of DPAs and NPAs does outweigh any desire of a company to refuse the corporate liability imposed by them. This is because failure to comply with the terms of the agreement might result in significant collateral consequences. This unit exposes such collateral consequences and also the key determinants for fixing a charge under the NPA and DPA

4.1 Collateral Consequences of Failure to Comply with an NPA or DPA

a. Disclosure on Public Filings
b. Subsequent Litigation
c. Suspension and Debarment

4.2 Key Determinants for Charges under NPA's and DPA's

One of the most appealing aspects of DPA's and NPA's is the ability to tailor each one according to the specific needs of the respective parties, with both sides bargaining for what is most important to each party. These include:

a) Nature and seriousness of the offense
b) Pervasiveness of wrongdoing within the corporation
c) Corporation's history of similar conduct

d) Corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agents
e) Existence and adequacy of the corporation's pre-existing compliance program
f) Corporation's remedial actions
g) Collateral consequences on shareholders, employees, pension holders and the public impact of a prosecution
h) Adequacy of the prosecution of the individuals responsible for the corporation's malfeasance
i) Adequacy of remedies such as civil or regulatory enforcement actions

4.3 Self-Assessment Exercises

List three factors that determine charge under DPA's and NPA's

4.4 Conclusion

This unit has highlighted the collateral consequences of non-compliance with an NPA and DPA as well as what determines charges under such agreements. Parties on both sides must be careful to protect their interests in the drafting the agreements, just like corporations must be careful in breaching them because of the consequences.

4.5 References

- Gibson Dunn, 'Update on Non-Prosecution Agreements and Deferred Prosecution Agreements'

< https://www.gibsondunn.com/wp-content/uploads/2018/01/2017-year-end-NPA-DPA-update.pdf> accessed 19 September 2020.

Unit Five: Financial Malpractices by Corporate Entities

5.0 Introduction

5.1 Financial Malpractices by Corporate Entities

5.2 Doctrine of Collective Knowledge under Financial Crime

5.3 Self-Assessment Exercises

5.4 Conclusion

5.5 References

5.0 Introduction

This unit exposes facilitators and trainees to the role of law in the enforcement of corporate criminal liability on corporate entities for financial malpractice.

5.1 Financial Malpractice of Corporate Entities

a. A person is defined to include a natural person, a juristic person, or any body of persons corporate (s. 2 Independent Corrupt Practices Commission Act (ICPC) 2010)

b. Financial malpractice by all persons which includes corporations in Nigeria is prohibited by Law (ss. 14, 16, 17, 18 and 46 Economic and Financial Crimes Commission (Establishment) Act, ss. 8- 21 of ICPC Act 2010 and s. 1 Money Laundering Prohibition Act 2004)

c. The EFCC can cause investigations to be conducted as to whether a corporate body or organisation has committed an offence with regards to financial crimes and malpractice (ss. 6 (a) and (h) and 7(1) EFCC Act).

d. The Commission shall seek and receive information from any authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce (s. 38 EFCC Act).

5.2 Collective Knowledge of Financial Crime

a) Corporate liability for acts of Directors, Officers and Employees: A corporation and its individual directors, officers and employees can be charged with violations of financial crimes

b) The Doctrine of Collective Knowledge stipulates that a corporation can be charged with a crime where directors, officers and employees of the organisation together had the requisite knowledge to make out the elements of the crime (see ***United States v. Pac. Gas & Elec. Co., N.D.*** Cal., 2016 BL 240175, No. 3:14-cr-00175, 8/9/16).

5.3 Self-Assessment Exercises

5.3.1 Questions

- What is the implication of describing a body corporate as a person?
- How does the statutory prohibition of financial crime affect corporate criminal liability?

5.3.2 Case Scenario

G Communication Enterprise raised a mandate for the purchase of four vehicles for the company's transportation business. The money was paid into the director's private account and only a quarter of it was used in the purchase of fairly used vehicles. The poor state of the vehicles resulted in a fatal accident, which recorded the loss of lives and property.

How does the action of the director impute on the mind of the company?

5.4 Conclusion

This unit has dealt with the role of law in the enforcement of corporate criminal liability for financial malpractices. The ability to establish the link between collective knowledge and the imputation of *mens rea* on a corporation is critical to a proper understanding this discourse.

5.5 References

- *United States v. Pac. Gas & Elec. Co., N.D.* Cal., 2016 BL 240175, No. 3:14-cr-00175, 8/9/16).
- ICPC Act 2010.

- EFCC Act 2010
- Money Laundering Prohibition Act 2010.

MODULE SEVEN: WITNESSES PROTECTION

Unit One: Witness Protection in Criminal Justice System

1.0 Introduction
1.1 What is Witness Protection?
1.2 Why Witness Protection?
1.3 Self-Assessment Exercises
1.4 Conclusion
1.5 References

1.0 Introduction

In Nigeria, one of the ways to guarantee fair hearing under the Constitution is to conduct a trial in an open court. However, there are instances in which a witness needs to be protected as a result of safety, confidentiality and public policy. In such instances trial in an open court becomes inappropriate. Judges are, therefore, expected to provide protection for such a witness in the most possible way. In this Unit, users will understand what witness protection entails and why it is needed in our criminal justice system.

1.1 What is Witness Protection?

Recently, there has been an increased attention on the role of witnesses in criminal proceedings due to a significant rise in terrorism and organised crimes. See Karen Kramar 'Witness Protection as a Key Tool in Addressing Serious and Organised Crime' <https://www.unafei.or.jp>. Witness protection is the provision of security to a threatened person whose crucial evidence is needed in a criminal proceeding, on behalf of the state. Witness protection involves various measures; it may include concealing the identity of a witness through the use of facial concealment and voice distortion; closed trials; giving a witness a pseudonym, and expunging a witness' name and other information that may allow him or her to be identified from record.

Witnesses that may require protection fall into three categories:

- Justice collaborators (informants, other participants in the criminal conduct who know the activities and method of operation etc. of the criminals),

- Victim-witnesses (the complainants or prosecution witnesses), and
- Other types of witnesses such as innocent bystanders and expert witnesses.

See Fatima Waziri-Azi, 'Legal Framework of Witness Protection Measures During Criminal Trials in Nigeria and Emerging Practices (2020) 7(1) *European Journal of Research in Social Sciences*, 2.

1.2 Why Witness Protection?

Since the prosecution must prove its case by leading evidence which can then be challenged by the defence, effective protection of witnesses is critically important to ensure the successful investigation and prosecution. The entire process of investigating and prosecuting offenses depends principally on the information and testimony of reliable and truthful witnesses. Therefore, witnesses must feel safe and secure to be able to assist the prosecution. See Karen Kramar 'Witness Protection as a Key Tool in Addressing Serious and Organised Crime'

Witness protection is, therefore, an essential tool in the fight against crime, especially corruption and other organized crimes and the lack of it undermines the quality of justice, sought to be achieved. In recognition of the risk of intimidation of witnesses and victims or retaliation against them, the ACJA provides protective measures for witnesses in the trial of offences involving rape, defilement, incest, unnatural or indecent assault, offences under the Terrorism (Prevention) (Amendment) Act 2013, offences relating to Economic and Financial Crimes, Trafficking in Persons and related offences, and any other offence so prescribed by the National Assembly or which the judge may consider appropriate in any circumstance.

The reason for protection of witnesses is to permit a witness to give evidence in a judicial setting, or to cooperate with law enforcement investigations, without fear or threat of intimidation or reprisal. Such protection is essential to maintaining the rule of law.

1.3 Self-Assessment Exercise

1.3.1 Questions

i. Why is witness protection necessary?
ii. What categories of witnesses need to be protected?

1.3.2 Case Scenario

Mr. Okpompi is a member of a notorious syndicate suspected to be involved in the trafficking of young girls from Nigeria to Libya. Members of the syndicate have been apprehended and charged to court. Mr. Okpompi has opted to testify for the prosecution at the trial, but he is terrified of the risk this will constitute to his life. As a prosecutor, how can you allay his fears?

1.4 Conclusion

Sometimes witnesses in criminal trials risk being harmed for testifying against certain defendants. The law has, therefore, provided protection for such witnesses. Adequate protection can play a crucial role in bringing offenders to justice, since the successful conclusion of criminal proceedings often depends on the cooperation of witnesses.

1.5 References

- Section 232(1-4) of Administration of Criminal Justice Act 2015
- Karen Kramar 'Witness Protection as a Key Tool in Addressing Serious and Organised Crime' <https://www.unafei.or.jp> accessed 26 August 2020.
- Fatima Waziri – Azi, Legal Framework of Witness Protection Measures During Criminal Trial in Nigeria and Emerging Practices, (2019), European Journal of Research in Social Sciences Vol. 7 No. 1, pp1-12
- United Nations Office on Drugs and Crime (2008) "Good Practices of Protection of Witnesses in Criminal Proceedings Involving Organised Crime", United Nations, New York, available at www.unodc.org/ documents/southeastasiaandpacific//, accessed 25 August 2020.

Unit Two: Role of Judges in Witness Protection.

2.0 Introduction
2.1 Role of Judges in Witness Protection
2.2 Judges to Ensure a Congenial Atmosphere for a Fair Trial
2.3 Self-Assessment Exercises
2.4 Conclusion
2.5 References

2.0 Introduction

The Administration of Criminal Justice Act 2015 (ACJA) contains provisions on the procedure for trial in which witness protection is required. In this Unit, users will learn and understand the role of judges in ensuring an effective witness protection. The Unit includes practical exercises and makes use of reference materials to support trainees learning process. At the end of the Unit, it is expected that facilitators, trainees and other users will better understand the role of judges in witness protection and are able to advise or recommend to the court/judge on witness protection when and where necessary, especially in the administration of child justice.

2.1 Role of Judges in Witness Protection

In ensuring that witnesses are effectively protected, judges are required to:

a. At their discretion not sit in an open court for cases provided in section 232(4) ACJA. See section 232 (1) ACJA.

b. Take any or all of the following measures to protect the identity of a witness, where necessary: receive evidence by video link, permit the witness to be screened or masked, receive written deposition of expert evidence and any other measure that the court considers appropriate (section 232(3)(a) – (d)).

c. Where a person who, in the opinion of the court has not attained the age of 18 is called as a witness in any proceeding in relation to an offence against or any conduct contrary to decency or morality, the court may direct that all or any person not being members or officers of the court or parties to the

case, their legal representatives or persons otherwise directly concerned in the case be excluded from the court during the taking of the evidence. See ss. 260 and 262 ACJA. Also, sections 154 (3), 155-158 and 205 of the Child Rights Act, Cap C50 LFN 2010 which deal effectively with protection of child victims.

2.2 Judges to Ensure a Congenial Atmosphere for a Fair Trial

In playing its crucial role in the dispensation of justice, the judge should watch out for witnesses that turn hostile, as this could be due to threats, coercion, lures and monetary considerations at the instance of those in power. This should be a red flag to make further observations as to whether the witness may be in danger to require protection.

The judge must ensure that there is a congenial atmosphere for a fair and impartial trial, for both the accused and the witnesses. The judge must ensure that witnesses freely give their testimonies, without any apprehension of threat or coercion from any person. See section 259 (2) ACJA on excluding the public at any stage of the hearing on the grounds of public policy, decency or expedience.

The elements usually taken into account by Judges when considering the application of procedural measures are the nature of the crime, type of victim, relationship with the accused, degree of perceived fear and stress of the witness, and the importance of the witness's testimony.

2.3 Self-Assessment Exercise

2.3.1 Questions

i. Outline the roles judges are to play in witness protection?

ii. What should the court take into account when considering the application of procedural measures?

2.3.2 Case Scenario

Honourable Justice Tunde is the trial judge in an on-going case that involves a child of 7 years. Because of the nature of the case, he is desirous of protecting the child.

How would you advise Honourable Justice Tunde in this matter?

2.4 Conclusion

Witnesses under the provision of section 232 ACJA can give evidence in court without fear of their safety because of measures that can be provided to safeguard them. Judges' role in the protection of witnesses is significant as provision for witness protection is at their discretion.

2.5 References

- Section 232(1) - (3) of Administration of Criminal Justice Act 2015.
- Sections 154 (3), 155-158 and 205 of the Child Rights Act, Cap C50 LFN 2010.
- Legislative and Judicial Response towards Witness Protection, <https://shodhganga.inflibnet.ac.in/bitstream/10603/103375/11/11_chapter%204%20judicial%20trend%20towards%20witness%20protection.pdf> accessed 12 August, 2020.

Unit Three: When Judges Can Recommend Witness Protection

3.0 Introduction
3.1 When Judges Can Recommend Witness Protection
3.2 Essentials of Witness Protection
3.3 Self-Assessment Exercises
3.4 Conclusion
3.5 References

3.0 Introduction

Witness intimidation or interference of any kind is a serious threat to criminal cases and other judicial proceedings. It is for this reason that judges should recommend the protection of witnesses in certain cases. The purpose of this Unit is to help facilitators, trainees and other users to know the circumstances in which judges can recommend witness protection.

3.1 When Judges Can Recommend Witness Protection

Judges can recommend witness protection in the interest of defence, public safety, public order and public morality, the welfare of persons who have not attained the age of eighteen, protection of private lives or special circumstances in which publicity would be contrary to the interest of justice (section 36(4)(a) 1999 Constitution as altered). On the whole, judges can also recommend witness protection when it involves the following offences:

a) Rape, defilement, incest, unnatural or indecent offences against a person (section 232(4)(a) ACJA).
b) Offences under the Terrorism (Prevention) (Amendment) Act (section 232(4)(b) ACJA).
c) Offences relating to economic and financial crimes (section 232(4)(c) ACJA).
d) Trafficking in persons and other related offences (section 232 (4)(d) ACJA).
e) Any other offence an Act of the National Assembly permits or at the discretion of the Judge in any circumstance (section 232(4)(e) ACJA).

In addition, sections 38 and 39 of Violence Against Persons Prohibition Act, (VAPPA) 2015 provide for the rights of victims of violence and the protection to be given to such victims and their witnesses. Sections 46 and 47 of the Trafficking in Persons (Prohibition, Enforcement and Administration) Act 2015 also provide for the protection of informants, witnesses and treatment of victims of trafficking as ways of ensuring the safety of victims and witnesses.

3.2 Essentials of Witness Protection

Victims to a crime may suffer from physical, mental, emotional and financial harm, from which some may never recover. The lives of witnesses or victims to these crimes may be threatened or injuries inflicted upon them or their families. There are human rights and criminal justice incentives in assisting and protecting people who have fallen victim or witnessed serious crimes.

The cooperation of victims and witnesses is crucial in achieving successful prosecution, especially when the crime has to do with organised crimes, including terrorism and child trafficking, amongst others. See Karen Kramar 'Witness Protection as a Key Tool in Addressing Serious and Organised Crime' <https://www.unafei.or.jp>. Victims and witnesses may be reluctant to give information and evidence because of perceived or actual intimidation or threats against themselves or members of their family. This concern may be exacerbated where people who come into contact with the criminal justice system are particularly vulnerable. For instance, by virtue of their age and level of maturity, children require that special measures to be taken to ensure that they are appropriately assisted and protected by criminal justice processes. Therefore, where the court believes that it is necessary to protect a victim or a witness to a crime, the court may disallow the disclosure of the details of witness in the record of proceedings, receive evidence with video link, permit the witness to be screened or masked, receive written deposition of expert and any other measure that the court considers appropriate in the circumstances (section 232(3) ACJA).

3.3 Self-Assessment Exercise

3.3.1 Question(s)

In what circumstances can a trial judge recommend witness protection for a witness?

3.3.2 Case Scenario

Mr Dada is contesting for the position of Local Government Chairman of Alto Local Government. He has just been invited to court as a witness in a case which involves the embezzlement of funds by a popular political chieftain from his locality, Chief Ambrose. Mr Dada fears for his political ambitions.

i. Can a judge recommend witness protection for Mr. Dada?

ii. If yes, how can the judge protect Mr Dada?

iii. Would your answer be different if Chief Ambrose were a contractor from a different state of origin?

3.4 Conclusion

From the foregoing, it can be appreciated that in order to encourage vulnerable witnesses to testify at trials, judges can recommend witness protection when necessary. This provides witnesses safety to testify in court without any form of fear.

3.5 References

- Administration of Criminal Justice Act 2015 (s. 232 (4)).
- CFRN, 1999 (s. 36(4)(a)).
- Violence Against Persons Prohibition Act, (VAPPA) 2015, sections 38 and 39.
- Trafficking in Persons (Prohibition, Enforcement and Administration) Act 2015, sections 46 and 47.
- Karen Kramar 'Witness Protection as a Key Tool in Addressing Serious and Organised Crime' <https://www.unafei.or.jp> accessed 26 August 2020.

Unit Four: Protection and Assistance to Witnesses under the ACJA

4.0 Introduction
4.1 Protection of Witnesses under the ACJA
4.2 Assistance of Witnesses under ACJA
4.3 Self-assessment Exercise
4.4 Conclusion
4.5 References

4.0 Introduction

Under the Administration of Criminal Justice Act 2015 (ACJA), there are provisions for the protection and assistance of witnesses. These provisions constitute measures which the judge can adopt to ensure that the protection and safety of witnesses are not jeopardised. This Unit helps facilitators and trainees to explore the measures available for the protection and assistance of witnesses.

4.1 Protection of Witnesses under ACJA

In order to protect a witness in a trial, the records and proceedings of certain trials must not contain the names, addresses, telephone numbers and identity of the witness (section 232 (2) ACJA). This applies to trials for rape, defilement, incest, unnatural or indecent offences against a person; offences under the Terrorism (Prevention) (Amendment) Act; offences relating to Economic and Financial Crimes; trafficking in Persons and related offences and; any other offence in respect of which an Act of the National Assembly permits the use of such protective measures or as the Judge may consider appropriate in the circumstances.

Furthermore, any or all of the following measures may be taken to assist and protect the witness:

a) Receive evidence by video link;
b) Permit the witness to be screened or masked; During the trial of ***Kabiru Umar v Federal Government*** on alleged bombing of St. Theresa's Catholic Church, Madalla, Niger State, on 25th December, 2011, the Federal High court allowed the use of identity-protecting measures - use of masks,

pseudonyms for witnesses and excluded the public from court. See https://www.vanguardngr.com/2013/12/catholic-church-bombing-court-sentences-kabiru-sokoto-life-imprisonment/.[56] In ***Nnamdi Kalu & Ors v. FRN***, the court also granted the application by the prosecution permitting it to use some protective measures for its witnesses while testifying. The screened witnesses would, however, be visible to the defendants and their counsel;[57]

c) Receive written deposition of expert evidence; and

d) Any other measure that the court considers appropriate in the circumstance (section 232 (3)(a)-(d) ACJA)

4.2 Assistance to Witnesses under the ACJA

a) The court shall order the payment of appropriate sum to a witness who testifies as a state witness as compensation for his/her expenses, trouble and loss of time (section 251 ACJA).

b) On application, the court may, in its discretion, order the Registrar to pay a witness who attends court to testify on behalf of a defendant a reasonable and sufficient sum as compensation for his/her expenses in that regard (section 252 ACJA).

c) The court may direct the party at whose instance an adjournment is granted to pay such sum as the court may fix to a witness whose evidence could not be taken as a result of the adjournment (section 253 ACJA).

d) The amount of expenses and compensation payable to a witness under sections 251 and 252 of ACJA shall be processed and paid by the Registrar of the Court out of the relevant vote as appropriated by the Judiciary (section 254 ACJA).

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[56] Fatima Waziri–Azi, 'Legal Framework of Witness Protection Measures During Criminal Trial in Nigeria and Emerging Practices,' (2019) 7(1) European Journal of Research in Social Sciences 1-12, 7

[57] Evelyn Okakwu, 'Court clears Nigerian govt to bring masked witnesses in Nnamdi Kanu's trial, (Premium Times, 7 March, 2016), < https://www.premiumtimesng.com/news/top-news/199703-court-clears-nigerian-govt-bring-masked-witnesses-nnamdi-kanus-trial.html>.

4.3 Self-Assessment Exercise

4.3.1 Questions

- What is the difference between witness protection and witness assistance?
- How may witness assistance be applied and to what classes of witnesses can it be applied?

4.3.2 Case Scenario

Mrs Rosie Indy is a farmer. On the 22nd of June 2018, Mrs Rosie entered Mr Duru's store to pick up her cutlass and saw explosive materials similar to those she saw displayed on the television by the Armed Forces when some Boko Haram suspects were caught. Meanwhile, Mr Duru is presently in the custody of the Police and would be tried by the court for offences relating to terrorism. Mrs Rosie is a patriotic Nigerian and would love to give evidence in court, but Mr Duru is the son of her husband's sister.

What measures are available for the protection of Mrs Rosie as a witness?

4.4 Conclusion

The ACJA has provided several measures for the protection and assistance of witnesses. If diligently and appropriately applied, these measures will go a long way to encourage witnesses to speak up and provide evidence without fear for their safety. It has been suggested that assistance and support measures should be employed before, during and after a trial to help witnesses in coping with the psychological and practical issues they may have in testifying.[58]

4.5 References

- Administration of Criminal Justice Act 2015 (sections 232 and 251 - 254 ACJA).
- Karen Kramar 'Witness Protection as a Key Tool in Addressing Serious and Organised Crime' <https://www.unafei.or.jp> accessed 26 August 2020.

[58] Karen Kramar 'Witness Protection as a Key Tool in Addressing Serious and Organised Crime' https://www.unafei.or.jp, 5 accessed 26 August 2020.

Unit Five: Witness Protection in Serious Crimes

5.0 Introduction
5.1 Witness Protection in Serious Crimes
5.2 Penalty for Contravention of Witness Protection
5.3 Self-Assessment Exercise
5.4 Conclusion
5.5 References

5.0 Introduction

Serious crimes in Nigeria range from terrorism, kidnapping and economic and financial crimes to armed robbery and rape etc. It is not enough that perpetrators of these crimes are brought to book; it is also necessary that witnesses that testify in these trials are protected. The ACJA 2015 (ACJA) has provided for protection of witnesses in some serious crimes. This Unit helps the facilitator, trainees and other users to become acquainted with the provisions of ACJA relating to the protection of witnesses in serious crimes.

5.1 Witness Protection in Serious Crimes

Witness protection can be granted where there has been a serious crime - one usually having grievous bodily harm to an individual or masses, such as terrorism. It can also be granted in cases involving trafficking in persons and economic and financial crimes, particularly to protect the whistle blower or key witnesses who work within the organisation being investigated (section 232(4) ACJA).

Note, generally, that there are serious crimes in Nigeria in which the ACJA has provided protection for witnesses. The crimes include:

a) Rape, refinement, incest, unnatural or indecent offences against a person (s. 232 (4)(a) ACJA)
b) Offences under the Terrorism (Prevention) (Amendment) Act (s. 232 (4)(b) ACJA).
c) Offences relating to economic and financial crimes (section 232 (4)(c) ACJA). In ***Sambo Dasuki v. Federal Republic of Nigeria (2018) LPELR-***

43969(CA) charge no FHC/ABJ/CR/319/2015, delivered on 15th June, 2017, the Federal High Court granted an application to allow witnesses to testify behind a screen, shielding them from the public. This was upheld on appeal by the Court of Appeal in ***Col. Mohammed Sambo Dasuki (Rtd) v. Federal Republic of Nigeria*** (2018) LPELR-43969.

d) Trafficking in persons and other related offences (s. 232(4)(d) ACJA).

e) Any other offence an Act of the National Assembly permits or at the discretion of the Judge (section 232(4)(e) ACJA).

5.2 Penalty for Contravention of Witness Protection

Impunity thrives where offenders are not held accountable for infraction of the law. One of the ways to hold offenders accountable is through the provision of penalty for offences, even though the utility of punishment as a deterrent to infraction of the law is still debateable. See National Institute of Justice 'Five Things about Deterrence', U.S. Department of Justice, Office of Justice Programs
<https://ncjrs.gov/pdffiles1/247350.pdf.>.

ACJA, therefore, penalises anyone who contravenes the requirement of its section 232(2) not to disclose the names, addresses, telephone numbers and identity of victims and witnesses of designated offences to a minimum term of one-year imprisonment on conviction. See section 232(5) ACJA.

5.3 Self-Assessment Exercises

5.3.1 Questions

- What are serious crimes?
- What is the penalty for contravening section 232 (2) of ACJA?

5.3.2 Case Scenario

Miss Ene has just been invited by the Court to testify against Miracle in a crime that involves trafficking of children for forced begging and hawking which is punishable with 10 years' imprisonment. Miss Ene's safety is, however, threatened by the traffickers' syndicate.

What means are available to Miss Ene for her protection?

5.4Conclusion

The ACJA's provisions for protection of witnesses of serious crime are not exhaustive, but they will go a long way in the protection of witness of serious crimes.

5.5References

- Administration of Criminal Justice Act 2015, ss. 231 and 232.
- National Institute of Justice 'Five Things about Deterrence', U.S. Department of Justice, Office of Justice Programs, available at <https://ncjrs.gov/pdffiles1/247350.pdf> accessed 26 August 2020.
- Daniel S. Nagin, 'Deterrence in the Twenty-First Century, *Crime and Justice* (2013) 42(1), 199-263.
- Karen Kramar 'Witness Protection as a Key Tool in Addressing Serious and Organised Crime' <https://www.unafei.or.jp> accessed 26 August 2020.

Unit Six: Impact of Witness Protection on the Defence of Right to Fair Hearing

6.0 Introduction
6.1 Defendant's Right to Fair Hearing
6.2 Impact of Witness Protection on the Right to Fair Hearing
6.3 Self-Assessment Exercises
6.4 Conclusion
6.5 References

6.0 Introduction

Fair hearing is one of the rights guaranteed under the 1999 Constitution of the Federal Republic of Nigeria. In order to ensure fair hearing, the Constitution provides for trials to be held in public. However, this provision is not without exceptions. With the Court's exercise of the exemptions required for effective protection of witnesses, it would seem like there has been a violation of the right of the defence. At the end of this Unit, the user is expected to comprehend the intricacies of fair hearing and the impact of witness protection on the defence's constitutional right to fair hearing.

6.1 Defence's Right to Fair Hearing

The defence's right to fair hearing is guaranteed in section 36 of the CFRN 1999 (as altered), Section 36(4) provides that a person charged with a criminal offence shall be entitled to fair hearing in public within a reasonable time by a court or tribunal. See ***Nweke v. State*** (2017) LPELR-42103 (SC)). In recognition of this right, section 396 ACJA provides that on arraignment, the trial of a defendant shall proceed from day to day until its conclusion.

6.2 Impact of Witness Protection on the Defence's Right to Fair Hearing

a. The ACJA provides measures in which the defence can disprove the evidence of the protected witness. Fair hearing constitutes cross-examination of witnesses in which the defence assesses the veracity of evidence brought before the court by the prosecution witnesses.

b. Abuse of the use of a screen or mask may prevent the defendant and the court from assessing the authenticity of the witness, through observance of his/her countenance. In ***Aminu Ogwuche v. Federal Government*** on a two-count charge of allegedly bombing a crowded motor park on 14 April, 2014 at Nyanya, Abuja, the judge did not allow witnesses to wear mask, due to opposition from the defence. Instead, the prosecution was allowed to make use of pseudonyms and camera testimony.
See < https://www.premiumtimesng.com/news/headlines/171825-alleged-nyanya-bomber-clearedcourt.html >.[59]

c. The general rule is that all the evidence should be produced in the presence of the accused at a public hearing in court and the accused has a right to examine and have examined the witnesses against him/her (section 259(1) ACJA).

d. The court has the discretion to exclude the public on the grounds of public policy, decency or expedience (section 259(2) ACJA).

6.3 Self- Assessment Exercises

6.3.1 Questions

- What is the impact of the defence of right to fair hearing in witness protection?
- Is this impact favourable or detrimental to the defence?

6.3.2 Case Scenarios

i. Emma Ben is a Counsel to Simi in a rape case. The prosecution, in order to protect his underage witness, provides a video link, which is in connection with the crime. Emma Ben is of the opinion that the content of the video clips kiss is false.

- What can Emma Ben do in this case?
- What can be said of Timi's right to fair hearing

ii. John and his gang robbed a family on a street in Mamfe. The gang was apprehended weeks after. The gang denied participating in the robbery. A

[59] Fatima Waziri – Azi, Legal Framework of Witness Protection Measures During Criminal Trial in Nigeria and Emerging Practices, (2019), European Journal of Research in Social Sciences Vol. 7 No. 1, pp1-12, p. 8

witness wishes to testify that she saw the same gang murder 5 members of a family of six and raped their 15-year-old daughter. She would only testify if there is assurance of her safety. The 15-year-old rape victim wants to testify but is afraid because she feels the society would victimise her.

- Advise the court on the probability of witness protection.
- Advise the court on the need to guarantee the defence's right to fair hearing.

6.4 Conclusion

This Unit has discussed the impact of witness protection on the right of the defence to fair hearing. As much as witness protection is important, the law needs to also protect the right of the defence.

6.5 References

- Administration of Criminal Justice Act 2015.
- Sections 36 (6) (d), 34 (a), 35(1-7) and 36(4) and (6) CFRN 1999 (as altered)
- *Olaolu v. FRN* (2015) LPELR – 24778 (SC).

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