



Accountability Brief

A Policy Brief from the Enhancing Transparency and Accountability in the Justice Sector Project

29th March 2019

Enhancing Transparency and Accountability in the Justice Sector:

Implementation of the Administration of Criminal Justice Act/Laws in the FCT, Lagos, and Ondo States

About the Project

The Rule of Law and Empowerment Initiative (also known as Partners West Africa-Nigeria, PWAN) promotes good governance, accountability and transparency by expanding opportunities for citizens to engage.

As part of its Rule of Law Program, PWAN commenced the Enhancing Transparency and Accountability in the Justice Sector project to observe the level of compliance of the Administration of Criminal Justice Act, (ACJ Act) 2015 and Administration Criminal Justice Law, 2011 and 2015 in courts across the FCT, Lagos and Ondo states respectively.

The goal of the project is to enhance integrity in the Nigerian judicial system through court observation. The project will promote implementation of the ACJ Act/Law in FCT, Lagos and Ondo States; and enhance citizen's participation in judicial processes through daily observation of court processes, case monitoring and user satisfaction survey. A total of 65 court rooms will be observed in the three states (FCT -20, Lagos-25 and Ondo – 20).

Executive Summary

This policy brief highlights and reviews the findings of the various surveys conducted by Rule of Law and Empowerment Initiative, also known as Partners West Africa Nigeria (PWAN) in 2017 and 2018 on the implementation of the Administration of the Criminal Justice Act applicable to the Federal Capital Territory, Abuja and the respective Administration of Criminal Justice Laws in Lagos and Ondo States (ACJA/L). This transparency and accountability project aims at enhancing integrity in the justice sector by examining the implementation of the ACJA/L to engender citizen's participation in the judicial process.

Introduction

The main objects of the various ACJA/L are (for example) listed in section 1 (1) of the ACJA, which are to “*Promote efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime; and protection of the rights and interests of the suspect, the defendant, and the victim.*”

These objectives justify the survey in order to determine, from the generated data, whether the objectives are being realized. The methods employed in the study are experts' workshops, court observations, case monitoring and criminal justice actors' survey. With respect to court observations and case monitoring for example, PWAN engaged volunteers in 65 courtrooms in the FCT, and in Lagos and Ondo States to monitor and report on processes and proceedings.

The strength of these methods is experiential; the reports of the research support the findings and conclusions. Areas covered under the policy brief are categorized under pre-trial processes; case management; and prosecutorial accountability.

Pre-Trial Processes

Average knowledge of the provisions of the ACJA

All the studies demonstrate an average dissemination and comprehension of the provisions of the ACJA/L; this is despite its importance. Justice sector actors (judges and court registrars) have a higher knowledge, than prosecutors. This finding goes to the root of administration of criminal justice, because without excellent grasps of the provisions of the legislation, implementation becomes a challenge.

Video Interview of Suspects

The results of the survey show that there is an average or no compliance with the requirement for video recording of suspects during interviews by the investigating agencies, with the effect that in 97% of cases, confessional statements were presented by investigators/prosecutors, without concomitant video evidence. Reasons for this failure was not empirically determined; there is no evidence though that the FCT, Lagos and Ondo States have provided these facilities for the realization of the principles in the legislation. The result is that there is no appreciable departure from the situation prior to introducing the ACJA/L. A determination should be made on why this requirement (with its many advantages) is not being observed, in order to proffer solutions.

Oversight of arrest by the police

The findings reveal certain challenges with the duties of the Federal Ministry of Justice. First, core respondents who were present in court from the Federal Ministry of Justice were relatively fewer compared with those from other departments. For instance, in the FCT, the Nigerian Police prosecuted 35% of cases compared to 12% by the Federal Ministry of Justice. Considering that the Ministry of Justice should be the foremost prosecuting agency, its dismal presence in prosecution, leaves a lot to be desired.

Case Management and Accountability

Filing and Assignment of Cases

The survey found out that the requirements that all cases filed should be assigned to the trial judge within 15 days was largely complied with in the FCT. However, this commendable effort seems defeated by the unnecessarily longer period for service of processes after the case is assigned which is 27 days and 106 days for arraignment after service. In Lagos State however, there was no compliance as the findings show that the average number of days is 30 days. The effect is that commencement of trial of cases is delayed. This is an administrative lapse, with little justification.

Court Sitting

The recurrent reasons for failure of courts to sit include court vacations, official assignments, and lack of scheduling of cases, adjournments and lack of service of processes. There is little change in the findings on this challenge even in 2018, demonstrating that innovative measures such as

introducing 'court managers or administrators' in the justice sector should be undertaken. To easily realise this, an assessment test could be conducted for present day court clerks. Those that pass these assessment tests could be trained to become court managers or administrators. These individuals would be responsible for ensuring that vacation times, official assignments are properly scheduled so as to ensure they do not conflict with court sittings. This measure should extend to scheduling and follow up of service

of processes. They will, however, do so in consultation with the trial judge/magistrates, who may also require some training in case management.

Attendance to Cause List

The chief reason for not dealing with matters on the cause list is unavailability of parties or lawyers in the courts. This implies that the practice of awarding cost due to absence of parties or lawyers have not cured these delaying tactics because the cost is not punitive enough. While the study did not disclose why parties who institute actions are unwilling to proceed with cases, it is reasonably deduced that it may



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be occasioned by lack of preparations, economic factors, and lack of confidence in justice sector. These challenges require further examination in order to devise solutions to them.

Recess and Time of Court Sittings

Despite the advantages of recess by courts (recess is important for writing rulings, at the request of parties, to rest or ease from a long trial), the study found that there are variegated periods for recess by the courts ranging between 45 minutes to 1hr. 30 Mins. There is need to harmonise the recess periods undertaken by the High Courts and the Magistrate Courts for consistency. It will also help court users (parties, witnesses, prosecutors, counsel, etc) to be more organized.

The average time for court sittings (three hours for courts not on recess); and four hours (courts that go on recess): We consider this sitting time inadequate, considering that the traditional working hours of the courts is seven hours (9am-4pm). The courts expend an estimated 55% of working hours only. Devoting more hours to court sittings would decongest cases and delays in trials.

A reason for adjournment of cases by counsel is because of other engagements before higher courts and adjournments of cases by counsel. We note that this practice is borne out of the tradition of law practice, without any legal justification. The duty a lawyer owes to his client supersedes the duty of that lawyer before other courts.

Special Case Management Trends in Ondo State

♦A notable finding in Ondo State is that no case was dismissed due to non-appearance of the prosecution, based on cases observed; implying there was diligent prosecution of the cases. Lessons applied in managing these cases are recommended for other States. However, the 100% death sentence passed by the High court in Ondo State for those convicted of capital offences suggest that other options for custodial and non-custodial penal measures in line with global trends were not explored. This inquiry is peculiar to Ondo State and its value should be stated. It undermines the innovations under the ACJA/L, which provides for alternatives to custodial and penal measures.

Transparency and Accountability of Judicial Officials

Duty to volunteer information

We note that officials in the justice sector were consistently reluctant to indicate the sector (department) they work with. While no value was stated for this inquiry, the unwillingness of the actors to answer a

seemingly innocuous issue is indicative of some fear of official retribution in the event of disclosure of “unfavourable” information about their organization to the researchers. It mirrors the general problem of accountability of public officials to the citizen and lack of compliance to the Freedom of Information Act. We commend the survey for finding innovative ways to determine the issue. PWAN needs to engage public officials on the need for accountability to the citizens they serve.

Second, the ACJA requires that the police make quarterly reports of arrest to the Attorney General of the Federation. As the chief law officer of the Federation, this requirement is to ensure prevention of unlawful arrest and detention. The respondents reveal that there is dismal compliance with this requirement, even though the responses are not empirical. Methods for determining compliance need to be devised, rather than responses of respondents.



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Further, the findings further reveal discrepancy in the claim by prosecutors that Judges and Magistrates inspect detention facilities (monthly and quarterly); this contrast with the findings from the Judges who refute the prosecutors’ claim. Most of the Judges pay below average visits to detention facilities. Lastly, the removal of prosecutorial powers from policemen who are not lawyers and conferring these powers on the Ministry of Justice has not added value as it was discovered

that these cases were simply struck-off.

Manpower, technical and other support

Manpower support in both the High Courts and Magistrate courts averages 99%. This is commendable. The findings rightly identified the technical support required for courts, such as electricity, ACs, fans, public address systems, recording devices. The study shows that these supports are better provided for High Courts than the lower Magistrate Courts. For instance, there are no electronic recording devices in some Magistrate Courts. There is a need for the courts to take seriously the process of automating its systems, training its personnel to use the automated systems, including having appropriate costing and procurement process in place. The Chief Judges’ of States (who are High Court Judges) should ensure a fair and equitable distribution of assets between the High Courts and lower courts in the States.

Policy Recommendations for Reform

1. The 15-day period for assignment of cases could be shortened or effectively complied with through the employment and deployment of technology. We

recommend that an ICT-driven process, which would assist with court administration including assignment of cases, should be put in place. This will obviate delays and assist the Chief Judge in managing his administrative responsibilities effectively.

2. On the absence of lawyers during trials and frequent applications for adjournments, while the Rules of Professional Conduct in the Legal Profession 2007, prohibit such actions, these have not abated. Majority of complaints of professional misconduct made to the Nigerian Bar Association border on financial misconduct. There is need to sensitize litigants and parties on their rights with respect to legal representations in court to enable them make complaints. Judges should also be mandated to make reports to the Nigerian Bar Association where a lawyer consistently fails to represent a client in court or consistently seeks for the adjournment of a matter. We suggest that PWAN collaborates with the NBA and the Judiciary to publish a Manual on Rights of Litigants and Parties for Legal Representation in the Courts for distribution to court users.

3. Make ACJA/L a mandatory program in legal training institutions. Suggestions have been made that donor agencies be involved in the training of operators of the various ACJA/L to upscale their knowledge and skills. In addition, we recommend that the law be made a core program of the National Judicial Institute, the Nigerian Institute of Advanced Legal Studies, Nigerian Law School, Faculties of Law of the Universities and Police Training colleges, to ensure learnings from the start.

4. We note that there are still cases of detention at the order of magistrates pending trials. This may be due to the fact that the ACJA/L permits Magistrates, even without jurisdiction, to remand defendants brought before them, pending when proper charges are filed. [See for example section 293 (1) of the ACJA]. The law requires amendment to ensure that a Magistrate without jurisdiction cannot order for a remand of suspect. Such person may be taken before a Chief Judge of a State who would take cognizance of him and the offence and make an order, either remanding him or releasing him on bail pending completion of investigation and commencement of trial.

5. The preponderance of police and other prosecuting agencies compared to prosecutors from the Federal Ministry of Justice is indicative of certain disturbing trends such as inadequate staff and facilities. We recommend a reverse of the situation. This can be achieved by an accelerated recruitment of lawyers for the ministry and procurement of equipment and tools for the discharge of their functions. This is imperative considering that lay prosecution by policemen has been abolished.

6. In order to ensure that inspections of detention facilities are undertaken periodically, the Chief Judges of these States should produce rosters stating the dates and time when these inspections would be undertaken. Visitation should be factored into the Judges' programme within the legal year. Failure of a Judge or Magistrate to do so would constitute dereliction of duty, subject to query.

7. Introduce 'court managers or administrators' in the justice sector. Court clerks may be assessed and retrained for that purpose. They will be responsible for, amongst things, harmonising periods/rosters for inspection of detention facilities, vacation times, official assignments to avoid conflicts and adjournments of cases.

Conclusion

In conclusion, the findings substantially validate the initial concerns on implementation of the law country-wide. However, steps undertaken by some criminal justice actors such as assignment of cases by Chief Judges within stipulated timelines are commendable and should be emulated by other actors. We call on the National Judicial Council and the Nigerian Bar Association to adopt these findings in assessing adherence to the laws by their officers and members, while promoting compliance at all times.