

## **ENHANCING TRANSPARENCY AND ACCOUNTABILITY IN THE JUDICIAL SECTOR**

### **REPORT OF FIRST QUARTER RELEASE OF FINDINGS- FCT**

**1<sup>ST</sup> MARCH 2018; NEW CHELSEA HOTEL ABUJA**

#### **Background**

The Enhancing Transparency and Accountability in the Judicial Sector project is a 3-year project being implemented by the Rule of the Law and Empowerment Initiative (also known as Partners West Africa – Nigeria) with support from MacArthur Foundation. The goal of the project is to enhance integrity in the Nigerian Judicial system through court observation; promote implementation of the Administration of Criminal Justice Act/Law in the Federal Capital Territory, Lagos & Ondo states; enhance citizen’s participation in judicial processes and improve access to information on judicial proceedings with regards to compliance of the Administration of Criminal Justice, Act (ACJA) 2015.

The data presented for the first quarter release of findings covers the observation from November 2017- February 2018. PWAN adapted 4 strategies to the observation process; Expert methodology workshop, Court Observation, Case Monitoring and Criminal Justice actors’ Survey on the ACJA. The findings for this quarter were obtained from analysis of the daily court observation templates, and criminal justice actors’ survey for the Federal Capital Territory

#### **Introduction**

The release of findings commenced with opening remarks from Barbara Maigari, Program Manager PWAN, who gave a brief background of the project and explained the methodology. A keynote address was delivered by Honorable Justice O. Adekeye JSC (Rtd), Vice-Chair PWAN Board of Directors She implored participants not to be discouraged by the few who try to whittle down the positive efforts made by the many, stating that findings from this release will be used to engage stakeholders for policy reform, ensure compliance to the ACJA, enhance speedy trials and decongest the prisons.

#### **Presentation of findings**

The project worked with the FCT Chief Judge, Supervising Judges, Registrars of the courts that were open to collaboration and approved access for the observers to be placed in the courts. The following are the key findings from the first quarter:



- The average number of cases on the day's cause list is 10, out of which 3 are criminal and 7 civil. Of the total on the day's cause list 8 cases are attended to on average. In situations where cases were not attended to in the courts, the major reasons include "one or all the parties were not available" (74% in Magistrate courts and 66% in High Courts) and "one or all the lawyers were not available" (51% for High courts and 56% for Magistrate courts).
- Some of the key principles for free and fair trial as stated in the Constitution of the Federal Republic of Nigeria 1999 and promoted by the ACJA include, interpretation and translation services (67%) , legal aid services / assistances (57%) and facilities to aid access with disabilities, which we observed to be rather poor at 8%.
- Upon analysis of the 190 criminal justice actors surveyed over a period of two weeks, worthy of note is that forty-two (42%) of the individuals surveyed were reluctant to indicate on the questionnaire which category they belong to. The Ministry of Justice was also reluctant to provide some information on its responsibilities provided in the ACJA. This is discouraging as the Ministry is the custodian of the Freedom of Information (FOI) Act, 2011.
- 63% of criminal justice actors surveyed have only "read some provisions of the ACJA that apply to their functions & powers." Also, only 72 respondents (39%) have been trained on the ACJA.
- One of the fundamental intentions of the drafters of the ACJA is to ensure speedy trials and dispensation of justice. Of the total of judges & magistrates, 18 said since ACJA they have disposed of 6-15 cases; 9 have disposed of less than 5 cases, while only 5 persons have disposed of over 30 and above. 59% of respondents also stated that it takes them above 180 days dispose of criminal matters in their courts.

## **Observations**

Deliberations from the findings revealed some systemic challenges with the ACJA that may not have been taken into consideration while it was being drafted. These include:

1. Section 396 (3) Day-to-day adjournment of criminal cases: Based on the findings and deliberations at the release, the practicability of this is questioned due to the peculiarity of the Nigerian system. Some judges may be hearing matters in different states, while as

was described in a practical example; a defendant may be party in more than 1 case in different courts. This makes it impossible to hear all matters daily.

2. Another significant point that was raised is the provision of the ACJA which does not allow police officers that are non-lawyers to prosecute cases as was the usual practice. All the cases previously prosecuted by the police have been transferred to the Ministry of Justice. This is however met with some challenges as the Ministry of Justice lacks the manpower to prosecute the workload of cases.
3. There are also issues of lack of cooperation and interagency coordination between former police prosecutors, and the Ministry of Justice prosecutors currently handling their cases. This has resulted in an accumulation of cases which goes against the major tenet of the ACJA- speedy dispensation of trials.
4. The ACJA also provides in Section 15 (4) that confessional statements **may** be recorded electronically. However, it was agreed at the release that video recordings do not ensure the voluntariness of confessional statements. The provision is supposed to ensure fair trial by ensuring suspects are not coerced to confess to charges but it may not be adequate. Also, resources to make video recordings might not be available at all police stations. This may be one of the reasons why the provision is permissive.

## **Recommendations**

The observation proffered some recommendations based on the findings of the first quarter of observation. Worthy of note is the need for employers of criminal justice actors and support from donor funded programs to provide capacity building on the ACJA for actors in the sector as way of ensuring its effective implementation. The following recommendations were also proffered at the release:

- There is a need for a practice direction to be developed to address confessional statements not given as at when due, thereby resulting in a trial within trial. It was suggested that disputes on confessional statement should be taken along with evaluation of general evidence at the end of the trial.
- The investigating agencies need to move away from collecting confessional statements on every case, and focus more on materially verifiable evidence. This will address the controversy surrounding confessional statements.

- Practitioners should go beyond the letters of the law and look at what will make for efficacy in the application of that law. Facilities ought to be put in place for the ACJA to achieve its principal goals.
- Most of the matters that have been transferred from the non- police lawyers to Ministry of Justice lawyers have been struck out. It is causing a delay in cases rather than speedy dispensation which was the intended goal.
- Criminal justice actors such as the Nigeria Prison Service and the Nigeria Police Force are faced with some institutional challenges that affect their productivity. The Keffi prison for example, has only one vehicle to convey suspects to court. Police lawyers are often left to cover all expenses for bringing witnesses to court, as well as type and print charge sheets with their own funds. There is a need to address these challenges by adequately appropriating budget to ensure efficiency in carrying out their duties.

## **Conclusion**

Closing remarks were delivered by ‘Kemi Okenyodo, Executive Director PWAN. She stated that there is a need to invest time into developing frameworks that take into cognizance cost implications of developing new initiatives. Steps also need to be taken to ensure a smooth, effective transition.

The ACJ Monitoring subcommittee at a meeting held on the 28<sup>th</sup> of February, received templates for recording confessional statements from the technical and investigation sub committees. The monitoring subcommittee intends to present these templates to the Commissioner of police FCT, as well as other prosecuting agencies to ensure uniformity across the agencies.

The report of the release will be shared with the National Judicial Council, Administration of Criminal Justice Monitoring committee as well as other relevant criminal justice actors.



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