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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 LAWYERS

MacArthur Foundation

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

for Lawyers

ACJA 2015

Developed by
Nigerian Institute of Advanced Legal Studies (NIALS)
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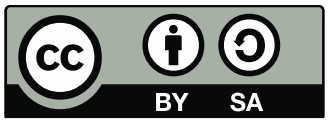




NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

(NIALS)

TRAINING MANUAL ON ACJA IMPLEMENTATION FOR LAWYERS



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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 administration 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 management. However, the success of the ACJA, 2015 and the State ACJLs hinges on a proper understanding and implementation of its provisions.

This Manual is specially designed by the Nigerian Institute of Advanced Legal Studies (NIALS) for legal practitioners to facilitate the effective handling of corruption matters under the new procedural frame work for the administration of criminal justice in Nigeria. First published in 2018, the Manual was compiled and printed to fill the knowledge gap experienced by legal practitioners as justice sector actors, arising from the absence of practical guidance on the implementation of ACJA with specific reference to anti-corruption. The Manual has subsequently been utilised for the training of practitioners 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 the anti-corruption theme.

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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High Court- Federal Capital Territory Practice Directions 2017
United Nations Guidelines on the Role of Prosecutors
Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors adopted by the International Association of Prosecutors in 1999

TREATY

United Nations Convention against Corruption (UNCAC)

ABBREVIATIONS AND 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
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
FHC CPD	Federal High Court (Criminal) Practice Directions
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
NDIC	Nigerian Deposit Insurance Corporation
NDLEA	National Drug Law Enforcement Agency Act
NCVS	National Crime Victimisation Survey
NPA	Non-Prosecution Agreement
RPCLP	Rules of Professional Conduct in the Legal Profession
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime

Manual on ACJA Implementation for Legal Practitioners

MODULE ONE: DEFENDING ANTI-CORRUPTION CASES UNDER THE ACJA

Unit One: Understanding the ACJA, 2015

1.0 Introduction

1.1 Objectives of the ACJA

1.2 Scope and Application of the ACJA

1.3 Self-Assessment Exercise

1.3.1 Case Scenario

1.4 Conclusion

1.5 Reference

1.0 Introduction.

The Unit provides an introduction to the ACJA, 2015 highlighting the objectives, content, application and scope of the Act in relation to the defence of corruption cases. At the end of this Unit, the reader will understand the challenges experienced under the old law and the nature of changes introduced by the ACJA.

1.1 Objectives of the ACJA.

The ACJA, 2015 was enacted to provide for the administration of criminal justice and related matters. The objective is to ensure that cases bordering on economic crimes and corruption are treated with utmost urgency by lawyers and stakeholders in criminal justice administration in Nigeria. Accordingly, the ACJA seeks to:

a. Achieve speedy dispensation of justice by eliminating undue delay[1] and forestalling situations where accused persons use frivolous interlocutory applications to delay trial. See section 306 of ACJA[2] - ***Olisa Metuh v. FGN*** [2017] 11 NWLR (pt. 1575) 157, 176-178 and ***FRN v. Babalola Borisade*** (1983] 3 SC. See also Order 1 of the Practice Directions on the Implementation of the ACJA, 2015 in Courts of the Federal Capital Territory[3] (HC-FCT Practice Directions 2017);

b. Promote efficient management of criminal justice institutions - section 1 of ACJA;[4] and

c. Protect the society from crimes and ensure the protection of the rights and interests of the defendant and the victim - section 1(1) of ACJA and ***Awelle v. People of Lagos State*** (2016) LPELR-41395(CA).

The Act repealed the Criminal Procedure Act (CPA)[5], the Criminal Procedure (Northern States) Act and the Administration of Criminal Justice Commission Act in section 493 and, introduced innovations that can be relied on by defence lawyers for example:

a. Application to the Magistrate by the defence lawyer to dispense with the personal attendance of the defendant in respect of any offence for which the penalty is a fine not exceeding ten thousand naira or six months imprisonment - section 135 of the ACJA.

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[1] Delayed trial of corrupt offences can be attributed to a number of factors such as administrative bottlenecks, lack of diligent investigation on the part of the investigating authority, insufficient evidence to establish the guilt of the suspect, delay tactics employed by the defence to frustrate the prosecution's case, judicial corruption and lack of funds to fast track the investigation process.

[2] Section 306 is an unprecedented provision that has put a stop to the delays occasioned by interlocutory applications for stay of proceedings pending appeal on preliminary matters when the substantive issues are yet to be tried on merit.

[3] Issued by Chief Judge of the FCT on 25 April, 2017

[4] Section1 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.

[5] See ***Akingbola v. FRN*** (2012) 9NWLR (Pt. 1306) 511 where the Court of Appeal held that any proceeding in Lagos State under the Criminal Procedure Law repealed by the Administration of Criminal Justice Law of Lagos State 2007 was void.

b. Plea bargain[6] which is an important tool in cases relating to economic crimes/corruption. A defence lawyer may enter into a plea bargain agreement with the prosecutor in order to secure a reduced sentence for his client. Plea bargain guidelines are provided in section 270 of the ACJA.

c. Provisions on speedy dispensation of justice - non-entertainment of stay of proceedings (section 306), objections to the validity of a charge (sections 221 and 396(2)), time lines for commencement and conclusion of trials (section 110(3) and (4)), criminal case management provisions including the provisions for day-to-day trial (section 396(3)) and maximum number of adjournments defence lawyers and the prosecution are entitled to (section 396(4)).

1.2 Scope and Application of the ACJA

The application of the ACJA extends to:

a. Criminal trials for offences established by laws enacted by the National Assembly - section 2 (1) of ACJA.

b. The courts in the Federal Capital Territory (FCT) and other Federal courts in Nigeria - section 2 (1) and the long title to the Act. (Order 1 HC-FCT Practice Directions 2017)

c. All criminal trials and inquiries in Part 8 of the Act unless there are specific provisions to the contrary (section 86 of ACJA).

d. Offences contained in federal legislation but do not apply to a Court Martial (section 1(2)). It is also implicit from section 86 that the provisions of the ACJA can be excluded by explicit or inconsistent provisions in another law.

e. State courts where the provisions of ACJA are adopted by the State House of Assembly. The Act may also apply in very limited situations such as where

[6] Plea bargains agreement can either result into a guilty plea for a lesser offence or a reduced sentence for the offence charged.

the court is seised over a federal offence or where a State counsel is authorised by the Federal Attorney General to prosecute a federal offence.

A number of States have adopted the ACJA by enacting similar provisions in their Administration of Criminal Justice Law (ACJL) while some have adopted with slight alterations in their ACJL. The ACJA did not expressly repeal the Criminal Procedure Code (CPC) but a substantial part of the CPC inconsistent with the ACJA is impliedly repealed. Part II of the CPC which deals with territorial jurisdiction and provides for the constitution, powers and substantive jurisdiction of courts is still in force. The courts in the FCT draw jurisdictional powers from the CPC thus; states where the CPC currently applies may expressly incorporate Part II of the CPC in their ACJL.

1.3 Self-Assessment Exercise

1.3.1 Questions

a. Examine the applicability or otherwise of the ACJA in the federal and states' courts.

b. Highlight the innovative provisions introduced by ACJA to help defence lawyers deal with corruption cases.

c. Critically appraise the character and role of plea bargain in anti-corruption cases in the context of the ACJA.

1.3.2 Case Scenario

Mr. Ibio was appointed as Commissioner for Finance in Cross River State in May 2015. Following allegations of fraudulent enrichment and misappropriation of state funds, he was arrested in March 2017 and arraigned before a high court judge sitting in Calabar, Cross River State which 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 lacks necessary provisions to enable it prosecute his case successfully; the court should grant him leave to rely on the provisions of the ACJA. The defence contested otherwise.

The judge has consulted you for advice. Will the defence lawyer's objection be sustained? Support your answer with statutory provisions and case law.

1.4 Conclusion

The unit outlined the innovative provisions of 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 as well as the victim. It also highlighted some provisions that will aid in the defence of corruption cases such as plea bargain guidelines and trial of the defendant in absentia in certain cases in the Magistrates Court.

1.5 References

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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 Exercise
2.4 Conclusion
2.5 References

2.0. Introduction

This unit introduces users to the nature of corrupt offences and typologies of corruption. At the end of this unit, the defence lawyer will be equipped with a deeper understanding of the nature and typologies of corruption to prepare adequately their defence.

2.1. Nature of Corrupt Offences

The nature and effects of corruption are particular to each nation and people just as the definition varies depending on the approaches, goals and requirements of policy-makers. In Nigeria, corruption relate to abuse of state offices for some kind of private gain as well as social behaviours of questionable activities carried out to amass wealth, power or prestige including mundane goals.

Corrupt offences can only be prosecuted after the commission of the act. Such prosecutions are usually burdensome, expensive (primarily borne by the State) and indefinite as successful prosecution is dependent on the availability of evidence at the disposal of the prosecutor. Corrupt offences are either classified

as criminal or administrative conduct. The prosecution of these offences is determined by the nature and the agency empowered to prosecute such matters. For example:

a. Where the corrupt offence deals with false declaration of assets, the Code of Conduct Bureau is empowered under the Code of Conduct Bureau and Tribunal Act to handle such matters - section 3(d) of the Code of Conduct Bureau and 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 - section 6 of the Economic and Financial Crimes Commission (EFCC) (Establishment) Act, 2004.

c. For bribery or corruption related offences, the Independent Corrupt Practices and other Related Offences Commission (ICPC) is empowered to prosecute such - section 6 of the Independent Corrupt Practices and other Related Offences Commission Act (ICPC Act), Cap C31 LFN 2004.

2.2. Some Typologies

The word typologies connote classification based on types or categories. In the context of corruption discourse, it means the various forms of corruption which include [7]:

a. Grand corruption: This term often referred to as "state capture" is used to label corruption that permeates the highest levels of government. It involves large sums of money and multinational corporations who engage in payoffs to politicians who use their power to shape policies in ways that benefit them. Grand corruption occurs mostly in construction, telecommunications,

[7] The discussion of forms of corruption here is not exhaustive.

extractive, defence, health and water sectors where huge contract sums are involved.

b. Petty corruption: This is sometimes referred to as "administrative corruption". It takes place at the citizen-state level and involves sharp practices or the abuse of discretionary power such as the exchange of very little amounts of money for the granting of small favours by lower level government officials. Section 8 of the ICPC Act prescribes 7 years imprisonment for receiving or obtaining of property or benefit of any kind for any act or favour done.

c. Active and passive corruption: The terms "active bribery" and "passive bribery" are often utilized to describe the act of offering or paying a bribe and the requesting or receiving of a bribe respectively.

d. Bribery: This is perhaps the most common type of corruption. It involves conferring a government official with a benefit improperly with the intention to influence an action or decision by the official - Article 15 of United Nations Convention Against Corruption (UNCAC), 2003 and section 2 of the ICPC Act.

e. Incidental corruption: This denotes corruption that occurs occasionally and is not prevalent.

f. Systemic corruption: Refers to corruption that is so deep and extensive as if it is innate in the system.

Lawyers may be arraigned for alleged corruption. The cases of Rickey Tarfa, SAN and Joseph Nwobike, SAN who were arraigned on counts of intentionally gratifying judicial officers are indications of alleged corruption against defence lawyers.[8] Thus, defence lawyers should avoid unlawful acts commonly seen in high profile corruption cases to obstruct justice because they are ministers in the temple of justice and the ethics of the profession. The scope of a lawyer's involvement or facilitation in any corrupt offence will depend on the

[8] Economic and Financial Crimes Commission (EFCC), 'EFCC Re-arraigns Rickey Tarfa, SAN on Graft Charges' < https://efccnigeria.org/efcc/news/2180-efcc-re-arraigns-rickey-tarfa-san-on-graft-charges > Last accessed 10 September 2020; Ramon Olademeji, 'EFCC arraigns Tarfa, Nwobike over bribery charges', *Punch Newspaper (Online)*, 10 March 2016.

circumstances of each case. Liability could arise through definite offences directed at the legal profession or generally, under criminal laws that either criminalise corrupt offences or acts related to corruption, for example, laundering of corrupt proceeds. Any lawyer involved in such corrupt practice will not only face criminal liability but may risk his name being struck off the roll - section 15 of the Money Laundering (Prohibition) Act, 2011 and section 11 of the Legal Practitioners Act, 1975.[9] This anomaly can be avoided if there is strict implementation of the Rules of Professional Conduct for Legal Practitioners[10] and the Legal Practitioners Act in Nigeria.

2.3. Self-Assessment Exercise

a. Evaluate the nature of corrupt offences with statutory provisions.

b. Discuss the various forms a lawyer may be guilty for corrupt offences.

2.4. Conclusion

This unit explained the nature of corrupt offences, their classification into different types and what determines the agency that prosecutes each conduct. We also examined the implication of the involvement of lawyers in acts of corruption, especially while conducting high profile corruption cases.

2.5. References

- "Corruption in Nigeria: Bribery - Public Experience and Response" <https://www.unodc.org/documents/data-and

[9] See also Sections 11 (1) (a) of the Legal Practitioners Act, Cap L11 LFN 2004, on punishment for infamous conduct in a professional respect.

[10] Rules of Professional Conduct for Legal Practitioners, 2007

analysis/Crimestatistics/Nigeria/Corruption_Nigeria_2017_07_31_web.pdf> accessed 4 June 2017

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- *United Nations Convention Against Corruption* https://www.unodc.org last accessed 10 September 2020
- *United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators* <https://www.unodc.org/pdf/crime/corruption/Handbook.pdf> last accessed 10 September, 2020

Unit Three: Duties of Counsel

3.0 Introduction

3.1 Duties of Counsel

3.2 Self-Assessment Exercise

3.2.1 Case Scenario

3.3 Conclusion

3.4 References

3.0. Introduction

The role of the defence counsel is different from that of a prosecutor in corruption cases. This unit examines the duties of a defence lawyer in corruption cases. At the end, the reader is taught the extensive duty of the defence lawyer and the excellent understanding required to enable effective and adequate preparation of a good defence for the client within the context of the relevant laws.

3.1. Duties of Counsel

Once trial has started, communication between the prosecution and the defence lawyer becomes limited. The witness gives his or her evidence regarding the facts and circumstances in the case and the defence lawyer has the duty to establish any contradictions in the evidence which the court may consider in favour of the client. He is enjoined by Rule 37(1) of the Rules of Professional Conduct for Legal Practitioners, 2007 to avail himself by all fair and reasonable

means to put before the court all matters that are necessary in the interest of justice. He must carry out the following duties:

a. Undertake the defence of a person who has allegedly committed an offence. He is to assume this duty irrespective of his personal opinion regarding the guilt of the defendant[11] and is not expected to refuse to defend a person standing trial for heinous crimes - ***Udofia v State*** (1988) LPELR-3305 (SC), sections 6 and 267(1) of the ACJA, section 36(6) (c) of the 1999 Constitution and section 9 (a) Legal Practitioners Act Cap L11 LFN 2004. The defence counsel that is engaged in the matter is bound to conduct the case until final judgment, unless allowed for any special reason to cease from acting by the Court - section 349(7) of the ACJA, ***Obiorah v. FRN*** [2016] LPELR-40965 (CA) and ***Udofia v. the State*** (1988) 3 NWLR 533. A defence counsel has the duty to be present at the taking of his client's statement but should however, not interfere with the process - section 17(2) of the ACJA and ***Awelle v. People of Lagos State*** (2016) LPELR-41395(CA). Also, by Rule 30 of the Rules of Professional Conduct, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice - ***Dariye v. FRN*** (2015) 6 NWLR (pt.1467) 325.

b. Undertake a good defence to prove his client's innocence. This is to be done by all fair and honourable means within the confines of the law and involves calling key witnesses and preparing and adducing credible evidence to counter the arguments of the prosecutor - section 301 of the ACJA. It may also include making a no case submission where there is no sufficient evidence against his client - section 303 of the ACJA.

c. Receive a copy of the inventory of property recovered from his client as an arrested suspect - section 10(3) of the ACJA.

d. Respect the rights of his client for example where the defendant chooses to remain silent when called upon to plead - ***Saka v. State*** (1981) 11-12 SC p.65 and section 276 ACJA.

[11] This duty is very important in order to ensure proper defence or representation for accused persons including the innocent ones or victims of suspicious circumstances.

e. Present the client's case with utmost professional discretion and devotion. The conduct of the case must not be dictated to him by his client; he should be a master of how to conduct the case. - ***Adewunmi v. Plastex Nig Ltd*** (1986) 6 SC p.214).

f. Never to knowingly mislead the court by falsifying evidence to secure the acquittal of his client at all costs. It is important to note that his foremost duty is to the court - Order 14 HC- FCT Practice Directions, 2017.

3.2. Self-Assessment Exercise

3.2.1. Questions

a. Using statutory authorities, examine the duties of a counsel in the defence of corruption cases?

b. When can a lawyer differ from that duty?

3.2.2. Case Scenario

Mr. Okoro was arrested by the police for defrauding the Central Bank of Nigeria of the sum of ₦100million. At the police station, Mr. Rotimi, the lawyer he engaged to defend him, failed to appear at the time his statement was taken, arguing that he must not be present and also refused to accept a copy of the inventory of his property from the police. He also, generally, failed to conduct the case diligently on behalf of the defendant.

With the aid of statutory provisions, list out the duties he disregarded and advise the defendant on what to do.

3.3. Conclusion

In this unit, we examined the duties of a counsel in the defence of corruption cases and highlighted the various steps he is to take in order to successfully accomplish the duties.

3.4. References

- *The Administration of Criminal Justice Act, 2015*
- *HC-FCT Practice Directions, 2017*
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Unit Four: Bail Considerations

4.0. Introduction

This unit examines the various bail considerations available in the ACJA for the defence in anti-corruption trials. Bail is a constitutional right and the objective is to ensure that the suspect is free and attends his trial thus; a defence lawyer must be knowledgeable with the various bail considerations in order to avoid prolonged detention of his client. At the end of this unit, the trainees should be acquainted with the various bail considerations available to the defence lawyer and his client in anti-corruption trials.

4.1. Bail Application by Defence Lawyers

The concept of bail is important in the administration of criminal justice in every democratic system because it affirms the fundamental human rights of freedom of the suspect. For definition of bail - ***Caleb Ojo v. FRN*** (2006) 9 NWLR (Pt.984) 103[12] and ***Shoneye v. State*** (2015) LPELR-25862 (CA). See sections 30 to 32 and section 158 of ACJA generally for rights to bail of the suspect/defendant in anti-corruption trials. Bail is at the discretion of the Court and section 165 of the ACJA enjoins the judicious and judicial exercise of discretion based on certain considerations. Defence lawyers in any anti-corruption trial should be abreast with the bail considerations stipulated in the ACJA.

[12]In this case, bail was defined as the "freeing or setting at liberty one arrested or imprisoned, upon others becoming sureties by recognisance for his appearance at a day and place certainly assigned, he also entering into self-recognisance. The Accused/convict is delivered into the hands of sureties, and is accounted by law to be in their custody, though, they may, if they will surrender him to the court before the date assigned and free themselves from further responsibility"

4.2. Bail Considerations

A person suspected of having committed an offence even a corruption offence has a right to bail. ACJA in sections 158, 161 and 162 highlight factors which the court must consider before granting or rejecting an application for bail by the defence in anti-corruption trials - ***Ibrahim v. FRN*** (2016) LPELR-41934 (CA), ***Theophilus v. FRN and Ors*** (2015) LPELR-25984 (CA), ***Amadikwa v. State*** (2015) LPELR-24569 (CA) *and* ***Amaga v. State*** (2015) LPELR-40645 (CA). The factors include the nature of the offence and severity of the punishment. With regard to capital offence, section 161 (1) of the ACJA provides that bail can only be granted under exceptional circumstances - section 161 (1), ***Dogo v. COP*** (1980) 1 NCLR 4; ***Abacha v. State*** (2002) 11 NWLR (pt.779) 437 and ***Anaekwe v. Commissioner of Police*** (1996) 3 NWLR (Pt. 436) 320. The exceptional circumstances stated in section 161(2) (a)-(c) of AJCA are:

a. Health ground: The ill health of a defendant must be confirmed and certified by a qualified government doctor who does not have medical facility provided for him by the detaining authority - ***Fawehinmi v. The State*** (1990) NWLR (Pt.127) 486, ***Amaga v. State*** (2015) LPELR-40645 (CA), ***Ikotun v. FRN and Anor*** (2015) LPELR-24684 (CA), ***Amadikwe v. State*** (2015) LPELR-24569 (CA), ***Okafor v. State*** (2015) LPELR-25681 (CA) *and* ***Okoyomon v. A.G of Federation*** (2015) LPELR-25976 (CA).

b. Extraordinary delay in investigation, arraignment and prosecution: A period exceeding one year constitute an exceptional ground for bail in respect of capital offences - section 161(2) (b) of the ACJA.

c. Any other circumstances that the Judge considers exceptional after taking the particular facts of the case – section 161(2) (c) of the ACJA.

d. Age of the Offender: This relates to child offenders especially in anti-corruption trials? - sections 160 and 452 of ACJA.

e. Deposit of some Money/other Security: The ACJA permits the court to order the suspects to deposit some money/other security to secure the

suspects/defendants attendance during his trial - sections 165 (1) of the ACJA. The security shall be returned to the defendant at the conclusion of the trial except in anti-corruption trials where the properties are found to be proceeds of crime - section 165 (3) of ACJA.

Under section 162 of the ACJA, bail will not be granted for anti-corruption offences punishable with imprisonment for a term exceeding three years where:

a. There is a reasonable ground that the suspect/defendant will likely commit another offence while on bail - section 162 (a) and ***R v. Jammal*** (1941) 16 N.L.R 54.
b. The suspect/defendant is attempting to evade his trial - section 162(b) and 174 of ACJA and the case of the ***State v. Kasimu*** (2014) LPELR -23468 (CA).
c. The suspect/defendant has attempted to influence, interfere with, intimidate witnesses or interfere in the investigation of the case - section 162 (c) - ***Bamaiyi v. State*** (2001) 3 S.C 53 and ***Dantata v. IGP*** (1958) NRNLR 3.
d. The defendant attempts to conceal or destroy evidence - section 162 (d).
e. There is proof by the prosecution that the suspect/defendant will prejudice the proper investigation of the offence - section 162 (f).
f. The defendant, if granted bail, will undermine or jeopardise the objectives or the purposes or the functioning of the criminal justice administration, including the bail system - section 162 (f).
g. The offence is prevalent in that region or more appropriately in a particular sector or industry.
h. The suspect/defendant has criminal antecedents of been convicted earlier on anti- corruption offence.

Other conditions under the ACJA for bail in anti-corruption trial are:

a. Reconsideration of bail by the court: Sections 169 and 175 of the ACJA empower the court to reconsider bail on application by the Attorney-General, law officer and the police.

b. Variation of a recognisance by the court where a surety is unsuitable - section 176 of the ACJA. The Court of Appeal discourages the involvement of civil servants in bail of persons accused of criminal offences, per Adah JCA, in **Dasuki v. Director General, SSS** (2020) 10 NWLR (Pt. 1731) 153

c. Variation of recognisance by the court where the sureties are discharged - section 177 of the ACJA.

d. The court has the power to order a fresh security upon the original Order - section 177 of the ACJA.

e. The court can order the suspect/defendant to pay penalty for Forfeiture of Recognisance - section 179 of the ACJA.

f. The court can make an order for continuous bail of the suspect/defendant - section 173 of the ACJA.

Bail is not automatic. The court has the discretion which must be exercised judicially and judiciously. Thus, a defendant who meets all the conditions but the application for bail is refused can appeal the refusal through the defence lawyer stating that the discretion of the court was wrongly exercised - ***Johnson v. FRN*** (2016) LPELR-41115 (CA).

4.3. Self-Assessment Exercise

4.3.1. Questions

a. When can bail be reconsidered under the ACJA?

b. What advise will you give a defendant who wants to travel abroad after being granted bail?

4.3.2. Case Scenario

Mr Udeh who is the principal of Girls Secondary School Dawaki is currently on bail. He is facing trial for misappropriating money allocated to the school for the construction of a modern library. The Nigerian Police Force acting on a tip off from one of the witnesses arrested Mr Udeh at the airport while he

was trying to board a flight to London. At his trial, Mr Udeh's lawyer, Nnamdi Esq, approached the court with another bail application on the ground that his client is ill and embarking on medical check-up abroad. The prosecutor has raised an objection to the bail application on the ground that the suspect is trying to evade trial.

a. What is the probability of the bail application being granted under the ACJA?
b. With reference to the provisions of the ACJA on bail, can the Court refuse the bail and why?

4.4. Conclusion

The essence of bail is to secure the attendance of the suspect at his trial. The defence lawyer should note that all the factors stated in unit 4.2 need not be satisfied in a corruption case before bail can be granted or denied. It is sufficient if any one of the factors or a combination of factors is met. The defence lawyer should remember his duty to the court to ensure that his client attends the trial. He should not seek to secure bail at all costs as the decision whether to grant or refuse bail applications is discretionary. See Order 14 of the Practice Directions on the Implementation of the ACJA, 2015 in the Courts in FCT.

4.5. References

- *Administration of Criminal Justice Act, 2015*
- *HC-FCT Practice Directions 2017*
- Bob Osamor, *Fundamentals of Criminal Procedure Law in Nigeria* (Dee-Sage Nigeria for Ella-B Ventures Nigeria, 2004)

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Unit Five: Prosecutorial Discretion

5.0 Introduction

5.1 Prosecutorial Discretion

5.2 Codes/Guidelines on Prosecutorial Discretion

5.3 Self-Assessment Exercise

5.4 Conclusion

5.5 References

5.0. Introduction

The purpose of this unit is to familiarise the user with the duty of the prosecutor to the defence when exercising discretionary powers. By virtue of section 104 of the ACJA, all prosecutorial powers are exercised in the public interest. Prosecutors owe the court, the defence and the society an obligation not to secure conviction at all costs but to ensure that justice is done in the exercise of discretionary powers. This unit will equip trainees and improve their knowledge and understanding on decision making powers of prosecutors.

5.1. Prosecutorial Discretion

Prosecutorial discretion means the decision-making power of prosecutors based on the wide range of choices available to them in the handling of criminal matters, the scheduling of cases for trial and the acceptance of negotiated pleas etc. Thus, it appears that prosecutors have control over life, liberty and reputation of suspects/defendants in the chain of criminal justice administration perhaps, with the exception of the judge. The exercise of prosecutorial discretion may be liable to abuse in plea bargain processes, in the exercise of power of *nolle prosequi* or in engaging in politically motivated prosecution and also, in mischievous scheduling of cases, charges and favourable or unfavourable dispositions towards defendants based on factors extraneous to the offence in issue

Section 174 of the 1999 Constitution vests the Attorney General of the Federation (AGF) with powers of public prosecution and prosecutorial discretion - per Justice Kayode Eso (JSC) as he then was in the ***State v. Ilori*** **(**1983) 1 SCNLR 94, 106. Ilori's case was qualified by three constitutional imperatives namely that in the exercise of his powers the Attorney General shall have regard to public interest, interest of justice and the need to prevent abuse of legal process. These imperatives appear nebulous to effectively moderate the powers of the AGF on the limits of prosecutorial discretion thus; recourse is often had to codes of practice or prosecutorial guidelines/standards. The powers of the AGF are not confined to cases where the State is a party as his powers to discontinue a criminal case or enter a *nolle prosequi* extend to cases instituted by any other person or authority. Also, this power is not subject to review by any court of law and is likely seen as a great ministerial prerogative coupled with grave responsibilities.

5.2. Codes/Guidelines on Prosecutorial Discretion

Prosecutorial guidelines have been found to be useful in protecting the interest of the defendants against the abuse of prosecutorial discretion. On the 21st January 2014, the United Nations Office on Drugs and Crime (UNODC), Nigeria Office, held a strategic meeting to finalise the works on the National Ethical Rules Governing the Professional Responsibility of Prosecutors in Nigeria. The document comprised three distinct documents namely, the National Policy on Prosecution, Guidelines for Prosecutor in the Federal Republic of Nigeria and Code of Conduct for Prosecutors in Nigeria.

The National Policy on Prosecution (in its draft form) provided value-driven devices for the checking of the abuse of prosecutorial discretion. Most of these provisions are couched in mandatory language for example, the first three states that the Prosecutor shall:

a. Be fair, impartial and objective;
b. Conduct his duties with integrity and due diligence and ensure that in each case the right to prosecutorial decision is made; and
c. Maintain the honour and dignity of the profession and exercise the highest standard of care.

Guidelines 17, 18 and 19 of the United Nations Guidelines on the Role of Prosecutors[13] lay down international best practices on the exercise of prosecutorial discretion. The Guidelines require countries to put in place a legal or regulatory framework that will guide prosecutors in the exercise of their discretion and relationship with the defence to ensure fairness and consistency during prosecution, especially during anti-corruption trial. The Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors adopted by the International Association of Prosecutors in 1999 also sets standards for prosecutorial work.[14] Some of the standards applicable to the prosecutor in exercise of prosecutorial discretion in anti-corruption trials and which have been incorporated into national instruments are:[15]

a. Prosecutorial discretion permitted in a particular jurisdiction should be exercised independently and free from political interference;[16]
b. Thorough review of the facts of the case, available evidence and the applicable law;
c. Diligent evaluation of the evidence with the elements of the crime in order to determine whether or not the evidence is sufficient to sustain prosecution; and
d. Thorough scrutinization of all reports, statements of victims, witnesses and suspects.

The prosecutor has a duty to draft a charge against the suspect where sufficient evidence exists.[17] As the representative of the state, he is expected to synergise with the defence to ensure that a defendant in an anti-corruption case receives a fair trial - section 36 of the 1999 Constitution,[18] section 6 of the ACJA and guideline 5.1 (a) of the Federal Ministry of Justice Prosecutors Guideline.[19] By the special role of a prosecutor, facts material to the defence but which the prosecutor does not intend to use should be disclosed

[13] United Nations, 'Guideline on the Role of Prosecutors,' 1990 < https://www.un.org/ruleoflaw/files/Guidelines%20on%20the%20Role%20of%20Prosecutors%20.pdf> last accessed 10 September 2020
[14] International Association of Prosecutors (IAP), 'Standards of professional responsibility and statement of the essential duties and rights of prosecutors' <http://www.iap-association.org/getattachment/16dc04cc-6751-4fde-9312-27a12ee884d9/IAP_Standards.aspx> last accessed 10 September 2020
[15] See generally Ikeazor Akaraiwe, *The Prosecutors Handbook for the Ministry of Justice Enugu*
[16] Paragraph 2 Code of Conduct for Federal Prosecutors, 2013
[17] See also paragraph 7.1 of the Guidelines for Federal Prosecutors (FMOJ, 2014) and paragraph 9 of the National Policy on Prosecutions (UNODC, 2014)
[18] The Constitution of Federal Republic of Nigeria, 1999
[19] Federal Ministry of Justice Prosecutors Guideline, 2013

to the defence to help ensure that the rule of law is respected and an innocent person is not convicted. See Order 5 HC-FCT practice Directions 2017.

5.2. Self-Assessment Exercise

5.2.1. Question(s)

List the various prosecutorial discretion standards examined in this unit and the guidelines as stated in the United Nations Guidelines on the Role of Prosecutors, 1990.ß

5.2.2. Case Scenario

Yusuf and Sani are brothers who are 16 years and 17 years old respectively. They were recently arrested for reckless driving along Lugbe. Being aware of the crime, Yusuf and the driver of the said vehicle attempted to bribe the police officer. The two were charged to court on a two-count charge of reckless driving and attempt to bribe an officer on duty. After spending 7 days in Kuje prison, the mother of the boys hurriedly engaged the services of Npam Esq, who she met at the court premises to defend her sons during the trial and also help them secure bail. The Prosecutor discovered along the line that Yusuf and Sani are children but failed to disclose this material fact to the defence. He proceeded with the trial and during the prosecutor's examination-in-chief, Npam Esq realised that the prosecutor was aware that the brothers were minors who should not have been in custody with adults and hardened criminals.

a. As a defence counsel what will you do in such a situation?
b. What will be your defence if the prosecutor had informed Npam Esq before the proceedings that the boys are minors and they were kept in juvenile home and not Kuje prison?
c. Will you give a different answer if the boys did not try to bribe the officer on duty?

5.3. Conclusion

The prosecutor is a representative of the State and should exercise his discretionary powers to ensure that only the guilty is punished. He owes this duty not just to the State but to the defence especially in prosecuting sensitive cases like corruption matters. The discretionary powers must be used in the interest of justice because prosecutorial discretion remains an important part of our criminal justice system.

5.4. References

- *The Constitution of Federal Republic of Nigeria, 1999*
- *The Administration of Criminal Justice Act, 2015*
- 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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Unit Six: Remand Time Limit and Rights of Detainees

6.1 Remand Proceedings under the ACJA

6.2 Time and Protocol for Remand and the Rights of Detainees in Corruption Cases

6.3 Self-Assessment Exercise

6.4 Conclusion

6.5 References

6.0. Introduction

This unit examines the provisions of section 296 of the ACJA on remand time limit for suspects in an investigation for a crime. The provision aids prison decongestion and affirms the fundamental human rights of detainees enshrined in the 1999 Constitution.[20] At the end of this unit, readers should be able to understand the provisions of the ACJA on remand time limit and take appropriate steps to prevent any abuse of detainee's fundamental human rights.

6.1. Remand Proceedings under the ACJA

Remand time limit is one of the innovations of the ACJA, 2015. By sections 293 to 296[21] provisions on application for remand order; a suspect should only

[20] The Constitution of Federal Republic of Nigeria 1999, sections 35, 36 and 41

[21] See sections 293 to 299 of the ACJA, 2015. Remand Proceeding refers to a process where a suspect who is yet to be-charged with an offence (for example, the offense of corruption) is ordered by a court to be kept in prison or police custody pending his bail, trial or acquittal. See Yemi-Akinseye-George, "The Administration of Criminal Justice Act (ACJA) 2015:An Overview in Relation to Criminal Cases Adjudication in the Federal High Court"<http://www.censolegs.org/publications/4.pdf> last accessed 11 September 2020

be remanded based on a "probable cause" in section 294 (2) of the ACJA.[22] For the meaning of remand orders - ***Lufadeju and Anor v Johnson*** (2007) LPELR- 1795 (SC).

6.2. Time and Protocol for Remand and the Rights of Detainees in corruption Cases

In Nigeria, suspects were habitually charged with serious offences and detained by the Police while little efforts were made to investigate or prosecute the case. As a result, over 70 per cent of Nigeria's prison population consisted of pretrial detainees and nearly a quarter of them had been held for at least one year.[23] For example, Sikuru Alade was held in pre-trial custody for more than nine years without being tried resulting in a finding by the Community Court of Justice of the Economic Community of West African States (ECOWAS) that this amounted to arbitrary detention and a violation of his right under the African Charter on Human and Peoples' Rights - ***Alade v FRN*****,** Suit No ECW/CCJ/APP/05/11).

6.2.1. Time and Protocol for Remand

The ACJA, 2015 contains time frame for remand orders. Section 296 provides that a suspect/defendant in criminal trials which include anti-corruption trials shall not be detained for more than 14 days in the first instance with an extension of 14 days and another final period of 14 days, an extension totaling about 56 days.[24] These provisions are not only novel but laudable as this will

[22] The nature and seriousness of the alleged offence, reasonable grounds to suspect that the suspect has been involved in the commission of the alleged offence, reasonable grounds for believing that the suspect may abscond or commit further offence where he is not committed to custody and any other circumstances of the case that justifies the request for remand.

[23] See *Alade v the Federal Republic of Nigeria* available at <https://www.justiceinitiative.org/litigation/alade-v-federal-republic-nigeria> accessed 10 August, 2020.

[24] See also Order 6 HC-FCT Practice Directions, 2017

no doubt address the problem of holding charge[25] and aid in prison decongestion.

6.2.2. Rights of detainees in corruption cases

Persons held in custody for the commission of offences are entitled to rights guaranteed under chapter IV of the 1999 Constitution - right to liberty, freedom from torture, degrading or other inhuman treatment and right to fair hearing etc. The rights in the ACJA and the 1999 Constitution include:

a. Right to be informed of the reason for his arrest except where he is apprehended in the course of committing the offence - sections 6 (1) of the ACJA[26] and 36 (6) (a) of the 1999 Constitution, ***Nwachukwu v. the State*** (1985) 2 NWLR, ***Adedeji v. Police*** (1967) LPELR-25362 (SC) and ***Ankwa v. State*** (1969) LPELR- 25460 (SC)

b. Right to be accorded humane treatment. This includes freedom from torture, cruel, inhuman or degrading treatment and arraignment before the court of law within a reasonable time - section 8 of the ACJA and sections 34, 35 and 36 of the 1999 Constitution.[27]

c. Right to an interpreter where he does not understand, speak or write the language used (which is usually English-the official language of the court) either at the point of taking his statement or at the trial proper - section 17(3) of the ACJA, section 36 (6) (e) of the 1999 Constitution, ***Gwonto v. the State*** [1983] 3 SC. ***Yerima v. Bornu*** (1968) LPELR-25425 (CA), ***Okoro v State*** (2012) LPELR-1846 (SC) *and* ***Umar v. FRN and Ors*** (2014) LPELR- 24051 (CA)

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[25] Holding Charge refers to a criminal charge of some minor offences filed to keep the accused in custody while the prosecutor takes time to build a bigger case or prepare a more serious offence. See the definition of holding charge by the Supreme Court in *Onagoruwa v State* (1992) 2 NWLR (Pt. 22)33 at 54.

[26] The provisions of section 6 of the ACJA retained the provisions of sections 5 of the CPA and 38 of the CPC which mandate a police officer or a person making an arrest to inform the arrested person of the reason for the arrest, except where he is being arrested in the course of the committing the offence or is pursued immediately after the offence is committed or escaped from lawful custody.

[27] These sections emphasise the right to freedom from torture, cruel or other inhuman treatment (respect for dignity of person), personal liberty and fair hearing at trial for suspects/defendants.

d. Right at the point of arrest to choose to make a statement or not. He cannot be compelled by the police to make such statement. By section 17(1) of the ACJA, where a detainee wishes to make a statement, the statement has to be made in the presence of a legal practitioner of his choice. Where he has no legal practitioner, the statement may be taken in the presence of an officer of the Legal Aid Council of Nigeria, an official of a Civil Society Organisation, a Justice of Peace or any other person of his choice. Section 17 ACJA emphasizes the need to have someone chosen by the detainee to be present while his statement is recorded.

e. Right to legal representation either appointed by him or for him by the state for the purpose of his defence or he may choose to defend himself - sections 6 (2) (b) & (c), 17(1), 267 and 349 of the ACJA and section 36 (6) (c) of the 1999 Constitution,[28] ***Ariori v. Elem*** [1983] SCNLR 1, ***Josiah v. State*** (1985) LPELR -1633 (SC), ***Ezea v. Queen*** (1963) LPELR-15439 (SC), ***Nwamba v. State*** (1995) LPELR 2100 (SC), ***Mohammed v. State*** (2013) LPELR-19822 (SC), ***Adigwe v FRN*** (2015) LPELR-24694 (SC), ***Comptr. (Nig) v. Adekanye & Ors*** (2002) LPELR-892 (SC), ***Nnakwe v. State*** (2013) LPELR -20941 (SC), *and* ***Ogboh & Anor v. FRN*** (2002) LPELR -2285 (SC).

At the expiration of the period allowed for remand orders and extended remand orders, the detainee has the right to apply to the court to issue a hearing notice on the police and Attorney General of the Federation to inquire as to the position of the case and for the Inspector-General of Police or the Commissioner of Police and the Attorney-General of the Federation to show cause why the remanded suspect should not be unconditionally released.

[28]A corollary to this right is for the defendant to be given ample time and facilities for the preparation of his defence as provided in section 36(6) (b) of the 1999 Constitution.

6.3. Self-Assessment Exercise

6.3.1. Questions

a. Is the time limit for remand orders provided under section 296 of ACJA, 2015 applicable to a suspect/defendant in anti-corruption cases?

b. Explain the importance of the remand time limit set out in section 296 of the ACJA, 2015.

c. Discuss the rights of detainees in corruption cases.

6.3.2. Case Scenarios

i. Mr Chike who works in Zee bank Plc. Abuja branch, is the account officer of a popular politician called Ichie. On the 3rd of April, 2017, Chike was arrested and remanded in prison by staff of EFCC for helping Ichie launder money through his company account known as Ichie and Sons Ltd. Chike's elder brother has engaged the services of a lawyer, who recently visited Chike in the prison on the 30th of October, 2017. The lawyer's visit revealed that Chike has been in the prison for 7 months and he was underfed, tortured, handcuffed and kept in a single cell. Outraged by Chike's condition, his lawyer has filed a suit against the State to enforce his client's fundamental human right under the Fundamental Rights (Enforcement Procedure) Rules 2009 and sections 6, 8 and 296 of the ACJA.

a. Can the action be sustained?

b. As a defence lawyer, will the duration of Chike's custody and his condition lead to a contrary opinion?

ii. Mr. Wilson, a pension commissioner was arrested at the Murtala Mohammed Airport, Lagos while trying to board a flight to London. $8 million dollars cash was found in his possession and he was taken to the police station on the allegation of money laundering. At his trial, his lawyer stated that his client was not informed of the reason for his arrest, was subjected to torture and compelled to make a statement.

a. What is the position of the ACJA and the 1999 Constitution on inhumane treatment of suspects and torture compelling the suspect to make a statement? Support your answer with statutory provisions.

b. Is the right to inform the suspect/defendant of the reason for his arrest a mandatory requirement for the Police? Give reasons for your answer?

6.4. Conclusion

The provisions of the ACJA, 2015 is salutary. The provision of time limit for remand orders in section 296 of the Act is applicable in all criminal offence including anti-corruption cases. The Act affirms the fundamental human rights[29] of detainees as enshrined in the Constitution and seeks to prevent their indefinite detention as awaiting trial inmates. The Act has been applauded for seeking to prevent the breach of suspects/defendants' fundamental human rights in our criminal justice system.

6.5. References

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- *The 1999 Constitution of the Federal Republic of Nigeria*

[29]. See the Constitution of Federal Republic of Nigeria, 1999, Chapter 4

MODULE TWO: CASE MANAGEMENT AND DISCLOSURE PROTOCOLS IN CORRUPTION CASES

Unit One: Role of Defence Counsel in Court Case Management System

1.0. Introduction
1.1. Role of Defence Counsel in Court Case Management System
1.2. Defendants Role in Ensuring Witness Attendance
1.3. Self-Assessment Exercise
1.4. Conclusion
1.5. References

1.0 Introduction

Case management in court is the culture of scheduling proceedings in matters before the court to reduce delays. It can be paper or computer based but whatever form it takes, the aim is to ensure that all stakeholders in a criminal trial follow their cases and are up to date at every stage of a trial in order to ensure speedy justice delivery. Disclosure of material evidence including witnesses is fundamental to an effective case management system in anti-corruption trials. This unit exposes the user to the role of the defence counsel in court case management system and the modalities to be followed to ensure speedy dispensation of criminal cases in Nigerian courts.

1.1. Role of Defence Counsel in Court Case Management System

The defence counsel has a duty to defend his/her client[30] effectively by establishing his innocence. He must ensure that the objectives of ACJA are achieved through effective case management. The HC-FCT Practice Directions contain important guidelines on case management that stakeholders in criminal justice administration, including defence counsel may explore. These are:

a. The defence counsel is required to open his defence and to adduce evidence in support where it is required, after the prosecution has closed its case. By virtue of being privy to the evidence and the list of witnesses made available by the prosecutor, the defence counsel should move on with the trial in the

[30]. Previously known as the accused in the Nigerian criminal justice system but now as the suspect/defendant in the Administration of Criminal Justice Act, 2015

interest of justice instead of making applications or seeking frivolous adjournments to stall trial - sections 300 and 301 ACJA, ***Innocent Nweke v. The State*** (2017) 15 NWLR (Pt. 1587) 120 and ***Okoye & Ors v. Commissioner of Police & Ors*** (2015) LPELR 24675

b. The defence counsel may voluntarily at the pre-trial hearing disclose to the prosecution and the court relevant material or information that will assist the court in narrowing the issues in dispute or identifying the issues to be decided in order to achieve speedy dispensation of justice for all parties - Order 5 rule 1 and 4 HC-FCT Practice Direction and ***Musa Ibrahim v The State*** SC. 652/2013 delivered on 5 May 2017.

c. The defence counsel must understand that he has a 30 days timeline from the date of filing of the charge for trial to commence and a 180 days deadline for trial to end from the date trial commenced. Thus, he must be prepared to represent his client within the stipulated time - section 110 (3) ACJA and Order 3 Rule 9 and 10 HC-FCT Practice Direction.

d. The defence counsel must understand that Paragraph 5 of the Federal High Court (Criminal) Practice Directions 2013 (FHC CPD) (a provision that predates the ACJA and the HC-FCT Practice Directions) applies to proceedings for an offence involving corruption and three other designated offences namely terrorism, kidnapping and rape. By paragraph 5, the defence is required to specify in writing the defence being raised, aspects of the prosecution's case which are agreed, aspects of the prosecution's case which are in dispute and the witnesses required for cross examination and why. He is also obliged to serve notice of an application on the prosecution before the date of the hearing because the court frowns at notices served on the hearing date - paragraph 3(d) FHC CPD. Defence counsel is also expected to furnish the Court Registrar with primary and secondary phone numbers and correct email address to enable contact of the defence in any urgency and case events and also, to ensure speedy dispensation of justice - paragraph 3(e) FHC CPD.

1.2. Defendants Role in Ensuring Witness Attendance

On arraignment, the defence counsel has the role to ensure that disputes arising out of the list of witnesses are concluded within 5 working days - Order 4 Rule 3(b) HC-FCT Practice Direction and generally, the defence must ensure that the witnesses respond to summons and attend court. A witness who deliberately fails to attend court may have cost awarded against him/her or imprisonment for a term not exceeding two months – section 246 ACJA. He must also ensure

that the witness for the defence who may be entitled to payment of reasonable expenses as may be prescribed and ascertained and paid by the Registrar of court from the vote of the judiciary is paid - sections 251 and 254 ACJA. He must comply with expedited trial - day-to-day trial until conclusion of trial in section 396 (3) - ***Olisa Metuh v. FRN*** (2017) 11NWLR (part 1575) 157 at 183. Day-to-day trial is practicable where the court, the prosecution and the defence are all prepared and this involves preparation of witnesses and evidence to support the claim of the defence. Day-to-day trial helps to eliminate maneuverings and mischief in criminal trials that engender delay - ***FRN v Mustapha*** (2016) FHC/YL/52C/2016 and the Indian Case of **Chaudhary *v State*** (Delhi Administration) (1984) 1 SCC 722.

By section 396 (4) of the ACJA, the Court has the mandate to allow adjournments only in situations where day-to-day trial is impossible and the defence counsel and the prosecution are each entitled to 5 adjournments during trial and no more - ***Commissioner of Police v Mustapha Ibrahim*** FCT/HC/CR/15/2013 ruling of 18 February 2016. Where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments, the interval between one adjournment to another shall not exceed seven days inclusive of weekends- section 396(5) ACJA. A defence counsel may apply for an award of cost on behalf of a witness, if the prosecution seeks adjournment during trial - section 243 ACJA.

1.3. Self-Assessment Exercise

a. What are the benefits and challenges of the Nigeria Case Management System (NCMS) for the prosecution of anti-corruption cases?
b. What is the role of the defence counsel in case management?
c. Are the timeline protocols in the ACJA implementable?
d. What are the likely problems encountered in your practice that the Act has addressed in relation to witnesses?

1.4. Conclusion

The defence counsel has a huge role in promoting case management for speedy dispensation of justice. The role extends to proper disclosure and control of witnesses and their expenses.

1.5. References

- Sections 243, 246, 251, 254, 300, 301 and 396 *Administration of Criminal Justice Act, 2015*
- Order 3 Rules 9 and 10, Order 4 Rule 3(b) *Practice Direction on the Implementation of the ACJA 2015 in the HC-FCT*
- Mahmud Adamu, 'Nigeria Case Management System', (National Workshop for Information and COmmmunication Technology Staff, 24 May 2017) <http://nji.gov.ng/images/Workshop_Papers/2017/IT_Workshop/s4.pdf> last accessed 20 September 2020

Unit Two: Disclosure Limits and the Interest of the Defence

2.0. Introduction
2.1. Disclosure Limits
2.2. The Interest of the Defence
2.3. Self-Assessment Exercise
2.4. Conclusion
2.5. References

2.0. Introduction

Speedy dispensation of justice raises the question of the rights to fair hearing and trial. The duty of the defence counsel to disclose relevant materials to the prosecution and the court during pre-trial conferencing also demands the consideration of his rights. At the end, this unit equips users on the limitations in disclosure in the interest of the defence.

2.1. Disclosure Limits

The defence has a duty to disclose to the prosecution documents relevant to the case - **Nweke v. State** (2017) LPELR-42103(SC)). However, there are limits to the nature of information to be disclosed in relation to disclosure in case management. The adversarial legal system implies that legal practitioners place their cards close to their chest in order to get favourable judgments for their clients however; defence counsel should accept disclosure measures which aid speedy dispensation of justice especially in corruption related offences. The limitations to disclosure in the interest of defence during case management and pre-trial hearings include:

a. Election by the defence to disclose or not to the prosecution and the court the defence he intends to raise at trial - Order 5 Rule 4 of the HC-FCT Practice Direction. A Federal High Court ruled in ***FRN v Francis Atuche*** FHC/369C/2009 that a direction which would compel the defence to disclose

his line of defence[31] offended section 36 of the Constitution of the Federal Republic of Nigeria, 1999.

b. Presumption of innocence until proven guilty. A defendant is not expected to disclose information that will aid the prosecution in convicting him as this will amount to the defence proving his own guilt - section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999; section 135 (1) Evidence (Amendment) Act 2011 and ***Osuagwu v. State*** (2013) 5 NWLR (Pt 1347) 369 SC.

2.2. The Interest of the Defence

The pursuit of speedy dispensation of justice should not infringe on the fundamental human rights of the suspect to fair hearing as guaranteed by the Constitution. There is need to balance fairness and speed in the interest of justice. By the combined effect of sections 36 of the 1999 Constitution of the Federal Republic of Nigeria and 110 (2) (3) (4) of the ACJA (on the need to complete the trial of a suspect in Magistrate court within reasonable time) where a charge is preferred under section 110 (1)(a) and (b) and the trial does not commence within 30 days of bringing the charge or trial has commenced but has not been completed after 180 days of arraignment on that charge, the Court shall forward to the Chief Judge the particulars of the charge and reasons for failure to commence the trial or to complete the trial. Also, where the anti-corruption matter is one whose penalty is a fine not exceeding ₦10, 000 or a prison term of six months, the trial may proceed without the personal presence of the defendant as long as he is represented by a legal practitioner to protect his interest in the proceedings - section 135 ACJA and Order 9 of HC-FCT Practice Direction.

[31] Section 5 of the Federal High Court (Criminal) Practice Directions, 2013

2.3. Self-Assessment Exercise

2.3.1. Question(s)

As a defence counsel, what is your opinion on the provisions that allow for the court to dispense with the presence of the defendant?

2.3.2. Case Scenario

Mr. Mathew, a banker helped a government official launder ₦200, 000, 000 and was subsequently arrested. On freezing of his account, he had the sum of ₦30, 000,000 extra making a total of ₦230, 000,000 in his account. During pre-trial hearing, he stated that the ₦30, 000,000 was his money which was an inheritance and provided proof to that effect but the prosecution insisted on charging him for laundering the sum of ₦230, 000,000.

a. Advise Mr. Mathew on his obligation in terms of disclosure
b. Advise your client on the non-contentious evidence
c. What laws are you likely to rely on?
d. Will you allow your client to disclose his proof of innocence to the prosecution before trial and why?

2.4. Conclusion

This unit expounded on the limitations to the disclosure protocols in case management. The defence counsel has an important role in case management in anti-corruption cases and there is the need to balance fairness and speed in the dispensation of criminal justice.

2.5. References

- *Constitution of the Federal Republic of Nigeria, 1999*
- Order 5 Rule 4 of the *HC-FCT Practice Direction on the Implementation of Criminal Justice Act 2015*
- Section 135 ACJA, 2015
- Section 135 (1) Evidence (Amendment Act) 2011.

Unit Three: Adjournments, Delays and Punitive Costs

3.0. Introduction
3.1. Adjournments and Delays
3.2. Award of Punitive Costs
3.3. Self-Assessment Exercise
3.3.1 Question(s)
3.3.2. Case Scenario
3.4. Conclusion
3.5. References

3.0. Introduction

This unit addresses the issues concerning adjournments and its use to cause delays in criminal trials. It also discusses provisions relating to the use of punitive costs in curbing delays.

3.1. Adjournments and Delays

Adjournment[32] adds an extra day, week or month to a trial resulting in delays and clogging the wheels of criminal justice in Nigeria. The reforms in ACJA to prevent adjournments and aid case management in corruption cases include provisions on:

a. Day to day trials which means that justice should be dispensed quickly. The ACJA limits the number of adjournments in criminal trial to five for each party within 14 days interval - section 396 (4) ACJA, Order 7 Rule 3 HC-FCT Practice Directions and ***FRN v Mustapha*** (2016) FHC/YL/52C/2016

b. Balancing the need for speedy dispensation of justice and the rights of the defence to adequate time and facilities to prepare for his defence. This includes provision for further adjournments after the specified 5 times. Such

[32]The Black's Law Dictionary defines adjournment as the specific act of putting off a court session until a later day.

adjournments can only be granted within 7 days intervals and with costs - section 396 (5) ACJA.

3.2. Award of Punitive Costs

Where there is a deliberate use of adjournment by the defence counsel to cause delays in criminal trials, the court shall, in granting adjournment, award punitive costs against the defence counsel - section 396 (6) ACJA and Order 7 Rule 4 HC-FCT Practice Direction. It is important to note the following:

a. Defence counsel should know that when a court grants adjournment on his application he may be ordered to pay costs to the witness of the other party and vice versa - section 253 ACJA.

b. There is also punitive cost for non-appearance of the defendant and the ACJA views this cost awarded at the court's discretion as a fine.

c. The provisions also apply to the prosecution thus, the defence counsel can rely on them in ensuring that where the prosecution fails to attend court, the court may also award punitive cost against the prosecution - section 353 ACJA.

3.3. Self-Assessment Exercise

3.3.1. Question(s)

a. The limits placed on adjournments will help speed up criminal trial. Do you agree?

b. What is your view on the constitutionality or otherwise of the 7 days and 14 days maximum period for which adjournments are allowed?

3.3.2. Case Scenario

Prosecutor Mark arraigned your client for an offence bothering on misappropriation of public fund. After taking his plea, the prosecutor sought for adjournment within his rights to five adjournments. The court awarded cost against him on two occasions but he claimed that since he was entitled to five adjournments the court had no right to award cost against him. At the end of the five adjournments, he sought for further adjournments.

a. Does the defendant have the right to further adjournments after the stipulated five?
b. Does the court have powers to award cost within the five adjournments?

3.4. Conclusion

This unit has highlighted the provisions that mitigate undue delays resulting from frivolous applications for adjournments. It also showed the limits put in place by the ACJA to allow for additional adjournments on the grounds that it is within short periods and that punitive costs are granted.

3.5. References

- Sections 253, 353, 396 *Administration of Criminal Justice Act 2015*
- Order 7 *HC-FCT Practice Direction*

Unit Four: Interlocutory Applications and Transfer of Cases under ACJA

4.0. Introduction
4.1. Interlocutory Applications under the ACJA
4.2. Transfer of Cases and Judges under the ACJA
4.3. Self-Assessment Exercise
4.4. Conclusion
4.5. References

4.0. Introduction

This unit addresses issues on interlocutory applications under the ACJA especially in anti-corruption cases. At the end, the defence counsel is equipped with knowledge of the provisions that address concerns on interlocutory applications.

4.1. Interlocutory Applications under the ACJA

All applications after the commencement of an action in a matter are referred to as interlocutory application.[33] Interlocutory applications help parties pursue their cases especially in clarifying some issues before and during trial - ***Omonuwa v. Oshodin*** (1985) 2 NWLR (Pt.10) 924. The application may seek to dispose part of a case or address interim or temporary issues which do not constitute a final resolution of the case. The decision on interlocutory application may sometimes affect the final outcome of a case; thus the need to consider the orders emanating from them. The norm has been for criminal proceedings to be stayed while the interlocutory applications are resolved and sometimes, appeals on interlocutory applications go up to the Supreme Court for example, the case of ***Abacha v The State*** (2002) 11 NWLR (pt. 779) p.

[33]. The Black's Law Dictionary defines interlocutory applications to mean a motion for equitable or legal relief sought before a final decision in a matter.

437. This causes undue delays especially in cases affecting politically exposed persons accused of corruption. The ACJA reformed the process as follows:

a. The court will not grant a stay of proceedings to entertain any such application rather, all applications will be taken and judgment delivered with the final judgment at the end of trial - section 306 ACJA, Order 11 HC-FCT Practice Directions and ***Olisa Metuh v. Federal Republic of Nigeria*** (2017) 11 NWLR (Pt. 1575) 157 at 176-178. The provision of section 306 ACJA is mandatory and not permissive. It is also, not an impediment to the constitutional right of appeal - ***FRN v AVM Saliu Atawodi and 2 Ors*** FCT/HC/CR60/15 delivered 26 April 2017. The purport of section 306 is that where a party wishes to appeal against the decision of the court, the party could do so upon delivery of the judgment so that the proceedings would have been concluded as well as tha determination of the substantive issues - ***Mustapha v FRN*** (2017) LPELR-43131(CA)

b. Where there is a question as to the interpretation of the Constitution during the course of trial, the court has the discretion to adjourn till the question has been determined by the Court of Appeal, conclude trial but not deliver judgment or conclude trial, deliver judgment and suspend execution until the question has been determined by the Appeal Court - section 305 of the ACJA, ***Rickey Tafar Mustapha (SAN) v Federal Republic of Nigeria*** (2017) LPELR-43131(CA) and ***Mustapha v FRN*** (2017) LPELR-43131(CA).

c. The inherent power to combine hearing of an interlocutory application and the petition cannot be faulted - ***AP Plc v. Adeniyi & ors.*** (2011) LPELR-3642 (CA).

d. On case management, once there is an application challenging competency of an action or jurisdiction of the court, the issue of jurisdiction must be considered first before consideration of the substantive matter. The rationale is that any order made in a matter where the court does not have jurisdiction amounts to a nullity as jurisdiction is a thresh hold issue which should be decided upon first before other matters in a case.

4.2. Transfer of Cases and Judges

An application for the transfer of a case will not result in a stay of proceedings until there is a specific order or direction. See Order 10 HC-FCT Practice Direction. However, where a judge has been elevated to a higher court or transferred to another jurisdiction of the court, the judge shall continue to sit in the high court until he dispenses of such a pending matter, this is to avoid trial *de novo* - section 396 (7) ACJA and ***Slok Nigeria Limited v. Federal Republic of Nigeria & Ors*** CA/L/1043C/2018. This provision was declared inconsistent with section 290 (1) of the 1999 Constitution by the Supreme Court in ***Udeogu v Federal Republic of Nigeria & 2 Others*** SC622c/2019, delivered on May 8, 2020. The Supreme Court held that the Honourable Justice having being elevated to the Court of Appeal had ceased to be a Judge of the Federal High Court and was thus deprived of the jurisdiction he had as a Judge of the Federal High Court to conclude the hearing and ultimate determination of the part-heard criminal case. The Supreme Court stated that section 396 (7) of the ACJA was set out to frontally contradict and challenge the letters, substance and spirit of section 290 (1) of the 1999 Constitution. The ACJA also provides for another judge or magistrate to read the judgment of a judge or magistrate who has written a judgment in a matter but is unavoidably absent - sections 315 and 367 of the ACJA.

4.3. Self-Assessment Exercise

Mr. John, the defence counsel to the former Military Chief has filed an interlocutory application stating that the court has no jurisdiction to hear the matter concerning his client. He also applied for a stay of proceeding which the court has granted pending the decision of the Court of Appeal as it will affect its decision if it goes the other way. Advise the court?

4.4. Conclusion

This unit discussed the status of interlocutory applications under the ACJA. It makes it clear that the court will entertain interlocutory applications as well as

allow such applications to go on appeal. This unit also reiterates the Supreme Court's decision confirming the effect of section 306 ACJA in criminal matters, that the trial will go on regardless of the application.

4.5. References

- Section 306 *Administration of Criminal Justice Act*
- Order 10, and 11 *HC-FCT Practice Directions*
- Chukwuemeka Nwabuzor, "Reforms to Speed up Criminal Trials" Paper presented at -ACJMC AND A2JUSTICE Training Workshop on the Implementation of Administration of Criminal Justice Act (Abuja) 21-23 February, 2017
- Yemi Akinseye George, 'Inordinate Delay of High-Profile Criminal Case: Response of the Administration of Criminal Justice Act (ACJA), 2015,' in Yemi Akinseye-George and Bolaji Owasanye (eds), *Perspectives on Sections 306 and 396 of the Administration of Criminal Justice Act, 2015* (Centre for Socio-Legal Studies 2015) 69
- ***AP Plc v. Adeniyi & ors.*** (2011) LPELR-3642 (CA) ***Associates Ltd v. NNPC*** (1991) 8 NWL R (Pt 212) 657
- ***Olisa Metuh v. Federal Republic of Nigeria*** *(2017) 11 NWLR (Pt. 1575) 157 at 176-178*
- ***Slok Nigeria Limited v. Federal Republic Of Nigeria & Ors*** CA/L/1043C/2018
- ***Udeogu v Federal Republic of Nigeria & 2 Others*** SC 622c/2019

MODULE THREE: PLEA BARGAINING IN THE CRIMINAL JUSTICE SYSTEM OF NIGERIA

Unit One: Initiating Plea-Bargaining Agreement

1.0 Introduction
1.1 Initiating Plea Bargaining Agreement
1.1.1 Conditions Precedent to Entering into a Plea Bargaining by the Prosecution
1.2 Negotiating a Plea-Bargaining Agreement
1.2.1 The Concept of Reasonableness under the ACJA
1.3 Self-Assessment Exercise
1.4 Conclusion
1.5 References

1.0 Introduction

The unit examines the principles that govern the practice of plea bargaining as envisaged by the ACJA. The objectives of the unit include enhancing the ability of defence counsel to appreciate the circumstances under which the plea bargain option may be explored, understand the roles assigned to respective parties in the process and develop skills in initiating and negotiating plea bargaining agreements. One of the expected outcomes of this unit is that the reader will appreciate the need to balance competing public interests in justice and responsible public spending.

1.1 Initiating Plea Bargaining Agreement

Plea bargaining was introduced into Nigerian criminal justice administration in 2004 by section 14 (2) of the EFCC Act to facilitate the speedy recovery of proceeds of corruption from suspects charged with offences under the Act -

section 494 (1) of the ACJA for the definition of plea bargain and ***Federal Republic of Nigeria v. Nkechi Caroline Amadi (Alias Onyemachi Uchechi)*** FCT/HC/CR/16/2018

Section 14 (2) of the EFCC Act envisaged the defendant as the initiator of plea bargain while the prosecutor has the discretion to "accept" or reject the offer but ACJA has extended the option of plea to all offences in section 270 (1) giving both parties the power to initiate a plea bargain - ***PML (Securities) Co. Ltd v. FRN*** (2018) LPELR-47993(SC). By section 270 (2) ACJA, the prosecutor must obtain the consent of the victim before entering into a plea-bargaining agreement while plea bargain must be initiated and concluded during or after the presentation of the evidence of the prosecution but before the presentation of the evidence of the defence. The ACJA is silent on the form or mode of offer of a plea bargain. An offer of a plea bargain may be made orally or in writing but the plea-bargaining agreement must be reduced into writing - ***Romrig Nigeria ltd v FRN*** SC. 254/2014 delivered 15 December 2017. In ***Federal Republic of Nigeria v. Lucky Igbinedion*** [2014] All FWLR Pt. 734, 101 at 144, the Court of Appeal sitting in Benin reiterated that a plea-bargaining agreement is a contract between the prosecution and an accused person. The court further stated that the law has placed on a party who has asserted the existence of a contract the onus to prove it. The contract, whether oral or written must be clearly stated and proved by the claimant to the letter - per Ogunwumiju,J.C.A. (pp. 78-79, paras. F-A).

1.1.1 Conditions Precedent to Entering into a Plea Bargain by the Prosecution

a. The evidence of the prosecution is insufficient to prove the offence beyond reasonable doubt;

b. The defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representatives; and

c. 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 - section 270 (2) ACJA and ***Federal Republic of Nigeria v Ran-Yaks Nigeria Limited*** FHC/MKD/CR/33/2010

1.2 Negotiating a Plea-Bargaining Agreement

The prosecutor must be satisfied that the terms of the plea bargaining agreement are in the interest of justice, the public interest, public policy and the need to prevent legal process before offering or accepting them - section 270 (3) ACJA.

1.2.1 The Concept of Reasonableness under ACJA

The ACJA envisages a plea bargain that is mutually accepted by all the stakeholders in litigation that is, the victim, prosecutor, defendant, defence counsel and the court. The concept of reasonableness presupposes the existence of some standards thus; the ACJA provides guidelines in section 270 as standards to ensure the reasonableness of the plea bargain process - ***FRN v Michael Ogun*** FCT/HC/CR/15/14**.** The ACJA also provided a three- pronged safeguard procedure to ensure that:

a. The consent of the victim is obtained - section 270 (2) (a) ACJA;
b. The defendant enters an agreement to make restitution - section 270 (2) (b) ACJA - ***Federal Republic of Nigeria v Ran-Yaks Nigeria Limited.*** FHC/MKD/CR/33/2010; and
c. The discretion of the judge to accept or reject the plea agreement is not contested - section 270 (6) (b) and (11) - ***FRN v Michael Ogun*** FCT/HC/CR/15/14.

It is also important to note that the:
a. Prosecution must consult the police that investigated the case as well as the victim or his representative before entering into a plea bargain agreement - section 270 (5) (a) ACJA.

b. Factors to be considered when determining whether a plea bargain is in the public interest includes the:

- Defendant's willingness to cooperate in the investigation and prosecution of others;
- Defendant's criminal record;
- Defendant's remorse and willingness to assume responsibility for his conduct;
- Desirability of prompt and certain disposition of the case;
- Likelihood of obtaining a conviction at trial and the probable effect on witnesses;
- Probable sentence or consequences if the defendant is convicted;
- Need to avoid delay in the disposition of other pending cases;
- Cost of trial and appeal; and
- Defendant's willingness to make restitution or pay compensation to the victim - section 270 (5) (b) ACJA.

c. Victim or his representative must be given opportunity to make representation - section 270 (6) ACJA.

d. Defendant must be informed of the terms of the agreement and educated on his rights to fair hearing to avoid self-incrimination - section 270 (7) ACJA.

e. Agreement must be reduced into writing and signed by the prosecutor, the defendant, the legal practitioner and interpreter (if any) - section 270 (7) ACJA.

f. Copy of the agreement is forwarded to the Attorney General of the Federation - section 270 (7) (c) ACJA.

g. Conviction on a plea bargain agreement constitutes *autrefois* convict - ***Michael Igbinedion v. FRN*** (2014) All FWLR (Pt. 736). Although this case was decided under section 14 (2) of the EFCC Act, the same principles apply to cases decided under the ACJA. This is due to the constitutional safeguard against double jeopardy in section 36 (9) of the 1999 Constitution of the Federal Republic of Nigeria

1.3 Self-Assessment Exercise

1.3.1 Questions

a. How does plea bargain affect the rights of crime victims?

b. Is plea bargaining a contravention of the constitutional right that no person shall not be compelled to incriminate himself or say things he does not want especially where the defendant is threatened or unduly persuaded or unfairly induced to admit to an offence under a plea bargain agreement?

c. Justify plea bargain in the light of the fact that the State either has (strong) evidence against the accused and that it can prove its case as required by law?

1.3.2 Case Scenario

a. Colonel Nelson was the Quarter-master General of the Nigerian Army. He was given the duty of purchasing Kevlar vests for the infantry unit of the army at a cost of ₦200 million. The Colonel bought fake vests for a quarter of the amount he received and pocketed the balance. Some soldiers were injured during operations as a consequence of wearing the fake vest. Colonel Nelson was later arrested and arraigned on charges of embezzlement, money laundering and contract fraud etc.

i. Identify the Colonel's victim in this case that deserve to be consulted in the course of plea bargain negotiation

ii. Assuming the Colonel offers to plead guilty in exchange of 6 months imprisonment out of a maximum 10 years provided for the offence with an option of ₦1million fine plus another ₦50million in restitution.

- Comment on the reasonableness of the offer
- Briefly discuss the public interest issues that would likely influence the acceptance or otherwise of the offer.

b. Dr. Williams, the Chief Medical Director of Nigeria General Hospital, Abuja, awarded a ₦2 billion contract for the construction of an orthopaedic ward for the hospital to Messrs Hercules Construction Ltd without following

the guidelines contained in the Public Procurement Act implemented by the Bureau for Public Procurement Office. The actual cost of the project was ₦1.2 billion. Dr. Williams agreed with Hercules that he would take ₦500 million of the remaining ₦800 million while Hercules would take the balance of ₦300 million. The contract was funded from government coffers. On receipt of the contract sum, Hercules delivered ₦500 million cash to Mr. John, a junior staff of the hospital for onward delivery to Dr. Williams. John was privy to the deal between Dr. Williams and Hercules. Dr. Williams rewarded John with ₦5 million for his part in the transaction and John promptly paid it into his bank account for safekeeping. Six months later, a whistle blower notified the EFCC of the transaction and Dr. Williams was arrested alongside the CEO of Hercules and Mr. John. After investigation, there was doubt by the EFCC as to whether John was aware of the illicit origin of the ₦5 million he received. The EFCC has now arraigned Dr. Williams, Hercules Construction Ltd and John on multiple counts of conspiracy, official corruption, abuse of office, corrupt enrichment, stealing, money laundering, award of contracts beyond authorised threshold and criminal conversion.

i. With reference to the ACJA, advise John on the procedure open to him in order to avoid a full trial on all the counts
ii. When should John adopt this procedure?
iii. Advise John on what offers to make to the prosecutor with reference to the 8 counts preferred against the defendants
iv. As the prosecutor, identify the factors that would influence your response to John's offer.

1.4 Conclusion

Plea bargain is available to both the prosecution and the defence. Either party can initiate it in the interest of protecting the public and justice. The prosecution must ensure that the victim is involved in negotiations process

1.5 References

- *Administration of Criminal Justice Act, 2015*
- *The Economic Financial Crimes Commission (Establishment) Act, 2004*
- *The Constitution of the Federal Republic of Nigeria, 1999*
- *Practice Direction on the Implementation of the Administration of Criminal Justice Act, 2015 in the Courts of the Federal Capital Territory*, 2017.
- ***Federal Republic of Nigeria v. Lucky Igbinedion*** [2014] All FWLR Pt. 734, 101 at 144.
- Michael M. O' Hear, 'Plea Bargaining and Victims: From Consultation to Guidelines' (2007) 91 Marquette Law Review 323 <http://scholarship.law.marquette.edu/mulr/vol91/iss1/14> accessed 12 September 2020

Unit Two: Role of the Defence Counsel in Plea Bargaining Process

2.0. Introduction
2.1 Role of Defence Counsel in the Plea-Bargaining Process
2.2 Defence Counsel as "Equaliser"
2.3 Self-Assessment Exercise
2.3.1 Questions(s)
2.3.1. Case Scenario
2.4 Conclusion
2.5 References

2.0. Introduction

The defence counsel is commonly regarded as the primary safeguard of fairness in plea bargaining and, the "equalizer" in the bargaining process[34] to assure the court that a guilty plea is truthful, based on consent and entered with awareness of its consequences on rights of the defendant. However, the ACJA requires the judge to evaluate the agreement and disregard it where the sentence or offence agreed upon is inappropriate. This unit highlights the role of defence counsel in the plea bargain process against the fears that the prosecution is usually eager to obtain a conviction through fair or foul means. At the end, it equips the reader to reject the strength of an overzealous prosecutor to coerce or intimidate the defendant into pleading guilty.

2.1. Role of Defence Counsel in the Plea-Bargaining Process

The right to counsel is a fundamental right provided in section 36 (6) of the 1999 Constitution of the Federal Republic of Nigeria. A defence counsel who represents the suspect/defendant at pre-trial, trial and post-trial stages may enter a plea bargain by negotiating with the prosecution on behalf of the defendant. A counsel once engaged must use his best professional ability to

[34] Skelly Wright, 'The New Role of Defense Counsel under Escobedo and Miranda,' (1996) 52 A.B.A.J. 1117, 1120 .

discharge his obligation to his client - Rules 14 and 16 of the Rules of Professional Conduct for Legal Practitioners (RPCLP) 2007.

2.2. Defence Lawyer as "Equaliser"

The concept of "equaliser" was developed as a fallout of the celebrated US case of ***Miranda v. Arizona*** 384, US 436, 466 (1966). The central issue was the privilege of a defendant against self-incrimination and the view was that where a defence counsel is involved in the plea bargain process, the fear of abuses by the prosecution is eliminated.[35] There are general notions of under hand tactics and intimidation of defendants by the prosecution in a plea bargain thus, the defence counsel is expected to play the role of protecting the rights and interest of the defendant thereby "equalising" whatever advantages the prosecution might attempt to take of the defendant. Where the prosecution may "overcharge" the defendant in order to force him to plead guilty to a smaller number of counts in the charge, it is the duty of the defence counsel to sift the wheat from the chaff and discount the irrelevant counts from consideration during plea bargain. Proliferation of charges is bargaining tactics that should not be accepted by the defence counsel.

The defence counsel must adhere strictly to the provisions of the ACJA in section 270 (7) and (10) pertaining to the rights of the defendant so that the process of plea bargain does not result to injustice to the defendant. As an officer of the court, he should not urge a position that he knows to be manifestly false or unjust - Rule 37 RPCLP 2007 and must understand the following principles:

a. He has the power to compromise a client's case if it is in the interest of the client and justice to do so - ***Afegbai v AG Edo State*** (2001) 14 NWLR (Pt. 733) 425. However, he must be convinced that it is in the interest of justice to

[35] See Albert W. Alschuler, 'The Defence Attorney's Role in Plea Bargaining,' (1974) 84 Yale Law Journal 1179.

bring an end to trial thus, the need to initiate a plea bargain at the earliest opportunity.

b. He has the duty to advise his client frankly on the best options available to him.

c. A plea bargain is not intended to discharge the prosecution of its burden of proof beyond reasonable doubt rather; it is intended to do justice to all parties concerned without undue delay and cost. Thus, a defence counsel should not be eager to throw his client to the wolves.

2.3. Self-Assessment Exercise

2.3.1. Questions

a. One of the advantages of plea bargaining is that it saves time. How does this impact on a defence counsel's motivation to offer or accept a plea bargain bearing in mind the economic consequence of the decision for the counsel who is able to handle more cases if he can successfully plea bargain?

b. How does the concept of expediency affect the right of victims?

c. Defence counsel should have a genuine sense of the duty of representation. How can you justify plea bargaining in this light?

2.3.2. Case Scenario

Chief Basil was the Governor of Gulf State for 8 years. After his tenure, he was arrested by the EFCC and arraigned at the Federal High Court on a 200-count charge of fraudulent enrichment, embezzlement, abuse of office, money laundering and false declaration of assets, conspiracy, stealing and concealment of felony among other grievous offences. There was evidence to prove only five of the 200 counts. On arraignment, Chief Basil was granted bail by the judge. The EFCC has refused to release him from detention claiming that he is being detained on other charges unrelated to the instant case. Indications are that Chief Basil is desperate to regain his freedom thus; the prosecution has approached him for a plea bargain. Notwithstanding the paucity of evidence, the prosecution has offered to drop the rest of the counts if Chief Basil pleads

guilty to 50 of the 200 counts in exchange for an aggregate of 2 years jail term with an option of fine.

As defence counsel-

a. Advise Chief Basil

b. How would you balance the interest of Chief Basil with the interest of justice?

c. Highlight the position of the defence counsel as "equaliser" to the defendant in this case.

2.4. Conclusion

Plea bargaining is susceptible to abuse by the prosecution. A defence counsel engaged in the process of plea bargain is expected to act as an "equaliser" by checkmating any attempt by the prosecution to take an undue advantage of the defendant's disposition to plead guilty. Specifically, a defence counsel should not allow a defendant to plead guilty to a charge unless the defendant is convinced that he is actually guilty. Justice should never be sacrificed on the altar of speed. Hasty justice through plea bargain is injustice.

2.5. References

- Skelly Wright, 'The New Role of Defense Counsel under Escobedo and Miranda,' (1996) 52 A.B.A.J. 1117, 1120 .
- Albert W. Alschuler, 'The Defence Attorney's Role in Plea Bargaining,' (1974) 84 Yale Law Journal 1179.
- Asher Fynn, 'Fortunately We in Victoria are not in that U.K Situation: Australian and United Kingdom Perspectives on Plea Bargain' (2011) 16 (2) *Deakin Law Review* https://doi.org/10.21153/dlr2011vol16no2art107
- Teresa Ablao, 'Plea Bargaining, Purposes, Strategies and Constraints' available online at https://www.cml.org/docs/default-source/uploadedfiles/issues/criminal-justice/courts/081514-plea-presentation.pdf?sfvrsn=d9ba5c6b_0 accessed 18 September 2020

- Kseniya Evgenievna Kovalenko, 'Some Aspects of Reasonableness in Law' *World Applied Science Journal* 29 (7) (2014) 916,
- M A A Ozekhome, 'Coercion to Compromise: The Imperatives of Plea bargain' in E Azinge and L Ani (eds), *Plea bargain in Nigeria: Law and Practice* (NIALS 2012) 227. See also Samuel Oguche, "Plea Bargain in Nigeria: Constitutional Questions" in *ibid* at 26 – 55; Samuel Oguche, 'Development of Plea Bargain in the Administration of Criminal Justice in Nigeria: A Revolution, Vaccination against Punishment or Mere Expediency' *ibid* at 56 – 86, A.U Kalu' 'The Role Plea Bargain in Modern Criminal Law' in *ibid* at 134 – 191; Chinyere Ani, 'Plea Bargain: Immunity from Punishment?' in *ibid* at 267 – 301; Fatima Waziri, 'The Paradox of Plea Bargain' in *ibid* at 319 – 337
- Ibrahim Danjuma and Gan Ching Chuan, 'The Extent of the Voluntariness in Plea Bargaining for Economic and Financial Crimes in Nigeria' 23 (3) *International Islamic University of Malaysia Law Journal* 485
- Section 75 and 76 of the *Administration of Criminal Justice Law 2015 Lagos State*
- *Plea and Sentence Bargain in Lagos State* (Office of the Honourable Attorney – General and Commissioner for Justice 2017)

Unit Three: Plea Bargaining in Corruption Cases

3.0 Introduction
3.1 Use of Plea Bargaining in Corruption Cases
3.2 Self-Assessment Exercise
3.2.1 Case Scenario
3.3 Conclusion
3.4 References

3.0. Introduction

This unit examines the application of plea bargain to corruption cases and discusses how the provision of plea bargain in the ACJA attempts to resolve the controversies surrounding plea bargain in corruption cases in Nigeria. Plea bargaining helps both sides to compromise in order to obtain substantial justice but corruption cases often involve high profile individuals with sufficient resources to frustrate the prosecution's effort to secure conviction after a full trial. Even after securing a conviction, it may be impossible to recover the proceeds of corruption without the cooperation of the defendant. At the end of this unit, the reader is expected to have a full grasp of the concept of plea bargaining and how it has greatly influenced the outcome of some corruption cases.

3.1. Use of Plea Bargaining in Corruption Cases

The concept of plea bargain introduced by section 14 (2) of the EFCC Act, 2004 is now complemented by the robust provisions in the ACJA that guide practice and procedure relating to plea bargaining. Plea bargaining under ACJA is illustrated in the following cases:

a. **Federal Republic of Nigeria v Nkechi Caroline Amadi (Alias Onyemachi Uchechi)** FCT/ HC/CR/16/2018: On the issue of sentencing

pursuant to plea bargaining, the Court posited that plea bargain agreement and repayment of moneys involved in a crime does not exonerate a convict or stand as a prison term. Plea bargain does not take the place of a prison term. It is not the intendment of the draftsmen of the Administration of Criminal Justice Act, 2015 that once a convict has repaid or restored all the money in issue, he should not be sentenced

b. ***Federal Republic of Nigeria v. Michael Ogun*** Charge No: FCT/HC/CR/15/14: The Court lent credence to the provisions of section 270 (11) of the ACJA to the effect that the Court is not bound to impose the sentence agreed upon in the Plea Bargain Agreement. The Court reserves the discretion to impose a sentence considered as appropriate on the basis of the totality of the circumstances of the case

c. ***Federal Republic of Nigeria v Salihu Abdullahi.*** FHC/BAU/25C/2016: The Court in this case expounded on the effect of plea of guilty as contained in section 274 (2) of the ACJA and held that a defendant can be convicted on his plea of guilty provided the plea is voluntary and unambiguous and by it, the defendant intends to admit the commission of all the essential ingredients of the offence

d. ***FRN v Chinaka Promise*** CA/A/767c/2019: The Court of Appeal in this case declared section 270 (18) unconstitutional. The section is to the effect that no appeal shall lie in any court against such judgment except where fraud is alleged. The Court declared that the section contravened the provision of section 241(1) (a) and (b) of the Constitution, which gave the appellant in the case the right of appeal. Accordingly, "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."

Plea bargain is also illustrated in the following cases decided pursuant to section 14 (2) of the EFCC Act:

a. ***Igbinedion v. Federal Republic of Nigeria*** (2014) LPELR-22760 (CA)

b. ***FRN v. Nwude*** (2015) LPELR – 25858 (CA) [36]

c. ***FRN v. Cecilia Ibru*** FHC /L/297C/2009[37]

d. ***FRN v. Igbinedion*** (2014) LPELR- 22766[38]

e. ***Federal Republic of Nigeria v. Tafa Balogun*** (2005) 4 NWLR (Pt. 324) 190[39]

The value of plea bargaining in corruption cases is grounded in technical issues and challenges of conflict of laws associated with money laundering that make conviction on a full trial very difficult, time consuming and expensive.[40] These cases reveal the advantages of plea bargaining in corruption cases for example,

- The defendant avoids the time and cost of full trial and the risk of stiffer punishment and attendant publicity
- The prosecution saves time and cost of a lengthy trial
- Both sides are spared the uncertainty of going to trial

[36] Defendants were accused of defrauding one Nelon Sagakuchi of $242 million and were charged under the Advanced Fee Fraud Act. The prosecution could not make any headway in the case after more than a year of trial, which began in April 2004. On 18th November 2005, after agreeing to a plea deal with the defendant, the prosecution amended the information and brought the charges under section 419 of the Criminal Code which provided for a maximum punishment of 7 years with discretion to impose fine. The defendants pleaded guilty to the amended charge and the first convict was sentenced to a total of 25 years imprisonment on multiple counts. The prison terms were made to run concurrently meaning that the first accused was to serve a term of 5 years imprisonment with effect from the date of arrest. 1st convict was ordered to pay the sum of ₦110 million to the victim of the fraud in addition to forfeiting his properties in Nigeria and in the United Kingdom, including his equity holdings in Union Bank Plc and the Nigeria Bottling Company Plc.

[37] Defendant was arraigned on a 25-count charge bordering on corruption. After plea bargaining, the charges were reduced to 3 to which she pleaded guilty. She was sentenced to 6 months imprisonment on each count to run concurrently. She also forfeited ₦191 billion in assets and cash.

[38] Defendant was arraigned on 191-count of corruption, money laundry and embezzlement. The charge was later reduced to a single count of false declaration of assets to which he pleaded guilty. He was sentenced to a fine of ₦3.5 million plus forfeiture of 3 houses and ₦500 million.

[39] The accused (a former Inspector-General of Police) was charged with several counts of offences under the EFCC Act, 2004 and the Money Laundering (Prohibition) Act, 2004. He agreed to plead guilty to the charges in return for a light sentence of six months imprisonment. The sentence was however, coupled with an order of forfeiture of a sizeable part of his property and assets, which were said to have been acquired through the proceeds of the offences with which he was charged.

[40] David A. Akintimoye, "Should Plea Bargaining be Abolished or Encouraged in Nigeria" *The Vanguard Newspaper*,7 March, 2012.

- The court system is spared the burden of conducting trial on every crime charged

Plea bargain has been applied mostly in cases involving allegations of corruption such as embezzlement of public funds, money laundering and other economic and financial crimes. The ACJA has provided a standard procedure and condition for the application of plea bargain which reduces the arbitrariness of its application to corruption case.

3.2. Self-Assessment Exercise

3.2.1. Questions

Explain how the provisions on plea bargain in the ACJA prevent corruption?

3.2.2. Case scenario

Hon. Musa served as Nigeria's Minister of State for Finance for 3 years. While in office, he fraudulently obtained $500 million which he converted to his personal use. He paid the money into Hyper Tech Nig. Ltd's bank account in Lagos. Hyper Tech Nig. Ltd is a company owned by Hon. Musa with his two sons Ifeanyi and Adebayo acting as shareholders and directors. Although Hon. Musa is not officially on the Board of the company, he is the sole signatory to the account using a pseudonym. Hon. Musa's girlfriend, Anna is a Russian living in London, UK. Hon. Musa instructed Anna to incorporate a company, Victoria Genetics Ltd, in the British Territory of Gibraltar, which in turn acquired El Amin Inc. of Bahrain. All these companies are shell bubbles without any real assets. Hon. Musa transferred the $500 million in Hyper Tech's account in Lagos to Victoria Genetics Ltd's account in Gibraltar, ostensibly for the supply of technology for the development of genetically modified organisms in Nigeria. Victoria Genetics Ltd sent the money to El Amin Inc. through its London Office as purchase price for vital machinery parts for delivery to Hyper Tech Ltd in Lagos. El Amin Inc. then paid one half of the money over to Anna's modelling agency in London for advertising and consultancy jobs the agency purportedly did for El Amin Inc. The balance of

the money was sent to El Amin's bank account in Bahrain as profits. Anna is the sole signatory to all Victoria Genetics' and El Amin's bank accounts. Anna used part of the money to buy choice properties in London and Dubai for Hon. Musa using her name while she kept the balance for him in her agency's accounts in her new bank in London and Dubai. Hon. Musa is the beneficial owner of all the funds in the various bank accounts. After Hon. Musa left office, the EFCC discovered that he had indeed embezzled public funds but could not trace the whereabouts of the money. The EFCC has charged Hon. Musa for money laundering offences under the Money Laundering Act and for offences under sections 17 and 18 of the EFCC Act. The government is eager to recover the money but the procedure for the tracing and recovery of the money is too cumbersome and time consuming.

a. With relevant examples, discuss how plea bargaining can help the government to recover Hon. Musa's loot while also protecting Hon. Musa's interest

b. What are the risks associated with the adoption of plea bargaining in corruption cases?

3.3. Conclusion

The provisions of the Administration of Criminal Justice Act, 2015 on plea bargain are in-depth and comprehensive. These provisions are augmented by the provisions in EFCC Act on plea bargaining in corruption cases. The combined effect of these provisions and the judicial decisions on plea bargain in Nigeria generates suitable structure for the application of plea bargain in corruption cases.

3.4. References

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- Taiwo Osipitan and Abiodun Odusote, "Nigeria: Challenges of Defence Counsel in Corruption Prosecution" (2014) 10 (3) *Acta Universitatis Danubius Juridica* <http://journals.univ-danubius.ro/index.php/juridica/article/view/2626/2741> accessed 16 September 2020

MODULE FOUR: SENTENCING AND CONSEQUENTIAL ORDERS

Unit One: Guidelines and Directions on Sentencing

1.0 Introduction
1.1 Objectives of Sentencing Guidelines
1.2 Application of Sentencing Guidelines by the Defence
1.3 Self-Assessment Exercises
1.4 Conclusion
1.5 References

1.0 Introduction

This Unit examines the scope and nature of sentencing guidelines under the Administration of Criminal Justice Act 2015 (ACJA) as it relates to the defence. The unit focuses on the role of the defence in sentencing for corruption and related offences pursuant to sections 416 and 311 of the ACJA. At the end of the Unit, the defence should be able to appreciate the importance of sentencing to the defendant and the duty of the defence to assist the court at the stage of sentencing.

1.1 Objectives of Sentencing Guidelines

Sentencing is the prescription of a particular punishment by a court for someone convicted of a crime.[41] Generally, the objectives of sentencing include to punish offenders, to provide restitution or reparation to victims of crimes and to rehabilitate offenders.[42] It is targeted at protecting the society through crime

[41] Leonard C. Opara, 'The Law and Policy in Criminal Justice System and Sentencing in Nigeria' *International Journal of Asian Social Scie*nce, [2014] (4) (7) 886-897.
[42] Nora V. Demleitner, *Sentencing Law and Policy Cases, Statutes, and Guidelines* (Wolters Kluwer, 2018) 4.

prevention and helping the offender become a better person through reformation. This is achieved when the objectives of punishment - deterrence, incapacitation or rehabilitation of the offender, etc. are achieved. Justification for sentencing is that demotivating the offender and likely offenders could result in reduction of future incidence of such offences. The essence of sentencing is to meet the society's legitimate expectation of retribution, to deter potential offenders and make the commission of crime unattractive, to protect the public and society by ensuring that dare devil criminals and recalcitrant offenders are taken out of circulation and given the time to reflect pending their rehabilitation to normalcy. See ***Adamu Ali Karumi v. FRN*** (2016) LPELR-40473 (CA). See also ***Yakubu v. State*** (2015) LPELR-40867 (CA) 36

The Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016[43] was developed to help the court attain uniformity in sentencing while maintaining the objectives of sentencing in line with the ACJA. The major objective of sentencing guidelines (in the context of anti-corruption trial) is to set out the procedure for sentencing of persons convicted of corruption and related offences for the purposes of ensuring uniformity in sentencing, pursuant to the provisions of sections 416 and 311 of the ACJA[44]. It is a comprehensive template that will guide the Court in arriving at the sentence to be imposed.[45] Ordinarily, penal statutes prescribe maximum range of punishments, thus leaving judges with some discretion in imposing sentences that are appropriate in particular cases. Guidelines on sentencing assist judges by providing detailed parameters that should be considered in determining appropriate sentences. The guidelines also aim at achieving more objectivity and uniformity in the sentencing process. The defence represents the interest of the defendant/convict. Therefore, he/she has a duty to ensure that the

[43] Hereafter referred to as FCT Sentencing Guidelines.
[44] Para. 1, Sentencing Guidelines.
[45] Hon. Justice O.O Goodluck 'Sentencing: Practice and Procedure under Administration of Criminal Justice Act and Laws,' Paper presented at the Annual Refresher Course for Judges and Khadis, (National Judicial Institute, Abuja, 12 March, 2019)

defendant is given a sentence that is commensurate with the offence he/she was convicted of as provided under paragraph 1 of the FCT Sentencing Guidelines. See sections 401(2)(f) and 416(2) of the ACJA.

1.2 Application of the Sentencing Guidelines by the Defence

a. At the stage of sentencing, the responsibility of the defence extends to protecting the defendant's interest in the acceptance of pleas and the sentencing exercise. See section 270, ACJA. Defence counsel has a duty to ensure that the court does not deviate from treating his/her client's case in a distinct manner and on its own merit. See section 416 (2)(a) ACJA.

b. The defence should notify the court of any mitigating factors which will guide the court in deciding the nature and extent of the sentence to impose. See section 310 ACJA and paragraph 6 of the FCT Sentencing Guidelines.

c. It is the duty of defence counsel to ensure that the court does not pass the maximum sentence on his/her client, who is a first offender. Excessive sentence refers to a situation where the trial court imposes a sentence more than, or in excess of, the term allowed by law – ***Emmanuel v. FRN*** (2019) LPELR-47925, 2 (CA). See section 416(2)(d) ACJA. Where the court exceeds the specified sentence, the defence can appeal. The defence should know the statutory provisions relevant to the offender and the offences under consideration to ensure that the court does not exceed the punishment prescribed by law. See paragraphs 4-11 of the FCT Sentencing Guidelines, See also section 416 (1) ACJA.

d. The defence ought to also know that a defendant may not be given consecutive sentences for two or more offences committed in the same transaction. See section 416(2)(i) ACJA. This is called the one transaction rule which however is not mandatory.[46]

e. The defence counsel should equally make a case for the level of culpability of his/her client as a mitigating factor. This will be relevant where the level of

[46] National Judicial College of Australia 'One Transaction Rule' <https://csd.njca.com.au/principles-practice/general_sentencing_principles/one_transaction_rule/#note--3> accessed 13 August 2020

culpability of the client is low. A convict will be deemed to have low culpability where he/she (i) is involved in acts of corruption through coercion, intimidation or exploitation, (ii) is not motivated by personal gain, (iii) played a peripheral role in planning and executing the corrupt act, (iv) commits a 'one-off' offence with very little or no planning and (v) the offence is opportunistic or spontaneous or has a limited awareness or understanding of corrupt activity. See paragraph 4(2)(b) FHC Sentencing Guidelines.

f. During the sentencing hearing, it is the duty of the defence counsel to recall the objectives of sentencing, including the principle of reformation. He may recall other mitigating factors, including absence of previous convictions, remorse (particularly evidenced by restitution or reparation to victim), evidence of good character, certified debilitating medical condition, and the appropriateness of non-custodial sentence or treatment in lieu of imprisonment. See paragraph 6(3) FHC Sentencing Guidelines and section 311(2) ACJA.

g. The defence shall bring to the notice of the court the period the defendant spent in prison custody while awaiting trial. See section 416 (2)(e) ACJA and paragraph 10 of the FCT Sentencing Guidelines.

1.3 Self-Assessment Exercises

1.3.1 Questions

a. With the aid of statutory authorities, discuss the role of the defence in the sentencing of the defendant.

b. Is there any circumstance in which the court is allowed to impose a sentence higher than the limit specified by law?

1.3.2 Case Scenario

Mr Olu, a staff in the Procurement Department of the Energy Commission of country XYZ was charged with the offence of corruption under the country's corruption law which carries a maximum punishment of 7 years. The defendant pleaded guilty. During the trial, the defence was able to establish that the

defendant has been on awaiting trial for about four years and has never been charged with or convicted of an offence bothering on corruption in the country. Mr Olu, was, however, convicted of the offence of corruption and sentenced to 7 years imprisonment.

a) What information should the defence make available to the court during sentencing hearing?
b) What can the defence do to ensure the judge or court administers the sentencing without applying the maximum sentence to the defendant?
c) Do you think the defence can appeal the sentence? If yes, on what grounds?
d) What role does the defence play in sentencing?

1.4 Conclusion

Sentencing is the most important aspect of a criminal trial. Therefore, it is expedient for the defence to be acquainted with the various guidelines and provisions on sentencing to enable the defendant get a sentence that is commensurate with the offence charged. Defence counsel should present to the court any mitigating factor(s) which will assist in reaching a decision most appropriate for the accused. The defence should be acquainted with the various forms of sentencing applicable under the ACJA.

1.5 References

- Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016.
- B. Weintraub, 'The Role of Defense Counsel at Sentencing' 51 Fed. Probation 25(1987) <http://heinonline.org/HOL/LandingPage?handle=hein.journals/fedpro51&div=8&id=&page=enson> accessed 10 August 2020.
- Leonard C. Opara, 'The Law and Policy in Criminal Justice System and Sentencing in Nigeria' *International Journal of Asian Social Science*, [2014] (4)(7) 886-897.

- Hon. Justice O.O Goodluck 'Sentencing: Practice and Procedure under Administration of Criminal Justice Act and Laws,' Paper presented at the Annual Refresher Course for Judges and Khadis, (National Judicial Institute,Abuja, 12 March, 2019)
- National Judicial College of Australia 'One Transaction Rule' <https://csd.njca.com.au/principles-practice/general_sentencing_principles/one_transaction_rule/#note--3> last accessed 10 August 2020

Unit Two: Non-Custodial Punishment

2.0 Introduction

2.1 The objective, Scope and Application of Non-custodial Sentencing

2.2 Forms of Non-custodial punishments

2.3 Self-Assessment Exercises

2.4 Conclusion

2.5 References

2.0 Introduction

This Unit seeks to introduce the role of the defence in non-custodial punishment. It is expedient for the defence counsel to be aware of the various non-custodial punishments to be able to defend his/her client and avoid an excessive sentencing. At the end of the Unit, the defence counsel should appreciate the different non-custodial punishments and their application for the rehabilitation of offenders.

2.1 The Objectives, Scope and Application of Non-custodial Sentencing

Non-custodial punishment is a rehabilitative form of criminal sentence not requiring confinement or a prison term. It is the kind of punishment that is reformative in nature and not punitive. See ***Aliagwu Lawrence v. FRN*** (2018) LPELR-44510 (CA) 1. It includes probation, parole, community service and suspended sentence as provided under parts 44 and 45 of the ACJA. See sections 453, 460 and 468 of the ACJA. Non-custodial punishments are alternatives to incarceration of defendants and are often imposed as a penalty for non-violent convicts and for trivial offences which do not pose serious threat to the public. See section 454(1) of the ACJA. The purpose of non-

custodial measures, which serve as effective alternatives to imprisonment, in general, and under the ACJA includes to address the problem of excessive use of imprisonment resulting in prison congestion, prevent convicts of trivial offences from mixing with hardened criminals, and enable the authorities adjust penal sanctions to the needs of the individual offender in a manner proportionate to the offence committed. Non-custodial punishment also aims at rehabilitating the offender and helping him/her reintegrate into the community. Accordingly, it is founded on the reasoning that it will serve no good to the appellant to spend a life of incarceration when he can still be useful to himself and the society. See ***Aliagwu Lawrence v. FRN*** (2018) LPELR-44510 (CA) 1.

2.2 Forms of Non-custodial Punishments

a) *Community sentence* - an order of community service is one given in place of a prison sentence. The court may, with or without conditions, direct the convict to perform specific services in his or other community or place. See section 460(2). Such services include environmental sanitation and washing of drainages[47]. The ACJA envisages that a convict sent to community service shall not, at the same time, be sentenced to a term of imprisonment for the same offence, unless he defaults in carrying out his community sentence. See section 461(7) ACJA.

b) *Suspended sentence* – this is where the court imposes a sentence on a convict and then, for justifiable reason, suspends the execution of the sentence. The suspension may be conditional or unconditional. The implication of this is that where the suspension is conditional, the convict's freedom from serving the sentence must be within the limits of the condition set by the court. Section 460(1) ACJA.

c) *Parole*: this is often granted upon the recommendation of the Controller-General of Correctional Facilities that a convict sentenced for life or at least 15 years imprisonment has exhibited good behaviour or has served at least one-

[47] Nigerian Institute of Advanced Legal Studies 'Non-Custodial Sentencing Under Administration of Criminal Justice Act, 2015' *NIALS Policy Bulletin* (Vol. 9 July 2020) 8

third of the prison term. A convict released under parole usually undergoes rehabilitation programme under the supervision of the Controller-General. See Section 468 ACJA and section 40 of the Nigerian Correctional Service Act, 2019.

d) *Probation*- this is where the defendant is released under a recognisance order by the court and put under the supervision of a probation officer for a specified period of time. The recognisance may contain further conditions relating to residence, abstention from intoxicants and any other issue the court considers relevant for preventing a repetition of the offence by the defendant. The conditions the defendant is required to observe must be furnished to him in writing by the court. See sections 453 and 455 ACJA.

The defence represents the interest of the defendant. It is, therefore, expedient that the defence has a good knowledge of non-custodial punishments, especially in situations where the court may apply them. This is to ensure that the defendant has options and that a proper punishment is given to him/her. If the judge fails to take into consideration the conditions under section 454 of the ACJA, the defence can appeal against the sentence.

2.3 Self-Assessment Exercises

2.3.1 Questions

a) Why is it useful for the defence to have a good knowledge of the various non-custodial measures?

b) In your role as a defence lawyer, advise the defendant on the various non-custodial measures available to him, highlighting the conditions attached to each.

c) Are there special groups of people or offences that are more likely to benefit from the use of non-custodial measures of sentencing?

d) What are the sanctions for violations of the conditions attached to non-custodial measures under the ACJA?

2.3.2 Case Scenario

Mr Ola, a procurement officer in the Ministry of Works was charged with the offence of buying substandard materials for the renovation of water pipes in the Ministry. During the trial, it was proved that he bought substandard material and kept the sum of ₦1,000 to himself, he was convicted and sentenced to prison.

a) With reference to statutory provisions, what alternative form of sentencing/punishment is applicable in this circumstance?
b) What are the necessary factors the defence will need to bring before the judge?

2.4 Conclusion

Non-Custodial punishment is an alternative form of sentencing that seeks to rehabilitate the defendant without confining him/her to prison. The defendant serving the sentence term engages in activities that will help rehabilitate and reintegrate him/her back into the society. Non-custodial punishment applies to offences that are trivial in nature. The age, mental and health condition of the defendant are some of the factors to be considered in applying these forms of alternative punishment. There are, however, sanctions for violations of the conditions attached to non-custodial punishment. All these should be considered and the defence should have a good knowledge of non-custodial punishment and when it applies.

2.5 References

- Ifeoluwa Etomilade-Oduola, 'The Non-Custodial Sanctions Regime under the Administration of Criminal Justice Act 2015 in Adedeji Adekunle, Emeka Nwabuzor and Susan Oyakhire (eds): *Issues on Criminal Justice Administration in Nigeria* (NIALS Abuja, 2016) 166.

- Office of the High Commissioner for Human Rights (OCHR) and international Bar Association (IBA), *The use of Non-custodial Measures in the Administration of Justice, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*. (United Nations Publication, 2003) <http://www.ohchr.org/Documents/Publications/training9chapter9en.pdf> accessed 10 August 2020
- United Nations General Assembly, *United Nations Standard Minimum Rules for Non-Custodial Measures* (The Tokyo Rules), A/RES/45/110, 2 April 1991
- Abubakri O. Yekini and Mashkur Salisu, 'Probation as a Non-custodial Measure in Nigeria: Making a case for Adult Probation Service' (2013) 7 *African Journal of Criminology and Justice Studies*.
- Nigerian Institute of Advanced Legal Studies 'Non-Custodial Sentencing Under Administration of Criminal Justice Act, 2015' *NIALS Policy Bulletin* Vol. 9, July 2020.

Unit Three: Defending Forfeiture Orders

3.0 Introduction

3.1 Consideration for Forfeiture Orders

3.2 General Principles and Procedure for Forfeiture Order and Seizure

3.3 Self-Assessment Exercises

3.4 Conclusion

3.5 References

3.0 Introduction

This Unit explains the factors that courts will consider before making a forfeiture order and the extent third parties are protected by the law. The Unit is intended to guide the defendant on the relevant and necessary guidelines which will encourage practices that will accomplish the intendment of forfeiture orders.

3.1 Consideration for Forfeiture Order

A forfeiture order is a judicial order by which title in property is transferred to the State. It is the divesture of property without compensation because there is a breach of an obligation – ***Laarokun & Ors v. Kadir*** (2019) LPELR-47715 (CA) 1. Penal law provides for diverse circumstances where the State may confiscate/seize and dispose of property that is alleged to have been used in, or in connection with, or is intended to be used for the commission of a serious offence. Generally, it is the court that makes an order of interim or final forfeiture on the request of a prosecutor – See UNODC 'Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime' New York 2012 2; section 333 ACJA. The defence should be adequately educated on the factors that are considered for either the civil or

criminal forfeiture requests to be granted. This will aid the defendant in objecting to the order or appealing against it.

3.1.1 Proceeds of Crime and Instrumentality of Crime

Proceeds of crime is defined under Article 2 of the United Nations Convention against Corruption (UNCAC) and section 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. Nigeria is a member State of the United Nations and has ratified the United Nations Convention against Corruption (UNCAC). See ***Jonathan v. FRN*** (2019) LPELR-46944 (SC).

An instrumentality of crime (IOC) refers to any property used or intended to be used to wholly or in part commit an offence. IOCs include any instrument, material or thing that there is reason to believe is provided or prepared, or being prepared, with a view to the commission of an offence. See section 333 ACJA.

IOCs can be temporarily seized as evidence in the course of a search. They are, however, also liable to forfeiture by court order under many penal statutes. Such property seized in the course of a search or arrest should, within 48 hours, be reported to the court, which will make relevant orders regarding the property. Such orders may entail a disposal of the property or its delivery to the person entitled to its possession. See section 337 ACJA.

3.1.2 Interim Forfeiture and Final Forfeiture

Interim forfeiture involves the temporary taking of the profits (property) from criminal conduct from persons suspected of committing an offence or persons convicted of an offence, by a court order. Interim forfeiture empowers the state

to hold seized property while the suit is pending, ***La Wari Furnuture & Baths Ltd v. FRN*** (2019) LPELR-49011 (SC) 3. Final forfeiture involves the permanent deprivation of property by order of a court. See Article 2 of UNCAC. See ***Dangabar v. FRN*** (2012) LPELR-19732(CA) on the constitutionality of interim forfeiture orders; sections 27-29 EFCC Act and sections 37-39 ICPC Act.

3.1.3 Civil Forfeiture and Criminal Forfeiture

Civil forfeiture is also known as 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. It can also be initiated where no charge has been laid against a person unlike criminal forfeiture that must be imposed as part of sentence. A conviction is required under criminal forfeiture whereas a conviction is not required under civil forfeiture. While civil forfeiture requires the lesser standard of proof – 'proof on a balance of probabilities', criminal forfeiture requires proof 'beyond reasonable doubt'.

The important points that the defence counsel must note are as follows:

a. A lower burden of proof is required in civil forfeiture cases while a higher burden of 'proof beyond reasonable doubt' is required in criminal forfeiture.
b. Where the prosecution proves - on a balance of probability in a civil forfeiture matter that the property in question is a tainted property, the onus to prove otherwise shifts to the defence counsel who must show cause why the property should not be forfeited.
c. In corruption cases relating to unclaimed properties, the prosecution will rely on section 17 of the Advanced Fee Fraud (and other Related Offences) Act, Cap A6 LFN 2004 (AFFA).

d. Conviction is not required under sections 337 and 338 of ACJA before the court can order the disposal/sale and subsequent forfeiture of seized property.

3.1.4 Compensation

Section 319 (a) and (b) of the ACJA provides for compensation. It provides that the court may, during the proceeding or while passing judgment, order the defendant or convict to pay a sum of money as compensation to any person injured by the offence. This is irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict, where substantial compensation is in the opinion of the court recoverable by civil suit. The court can also order the defendant or convict to pay a sum of money in compensating a bona fide purchaser for value without notice of the defect of the title in any property in respect of which the offence was committed, who was compelled to give it up. An order can be made by the court for money to be paid in defraying expenses incurred on the medical treatment of a victim injured by the convict in connection with the offence. Furthermore, the court may order the defendant to pay a sum of money to discharge expenses incurred in the prosecution of the case. These provisions are laudable, especially compensating a *bona fide* purchaser for value without notice of defect in the property, who had to forfeit his or her property.

Note that the order of cost or compensation may be made irrespective of the fact that no fine has been imposed on the defendant in the judgment. See section 319(3) of the ACJA. Also, in a subsequent civil suit in respect of the same subject in the criminal proceeding, the court shall take into consideration any sum paid or recovered as compensation under the criminal proceeding. See section 320(1) of the ACJA. Section 323 (1), (2) and (3) empowers the court to award cost or compensation in favour of the defendant, if it appears to the court that the charge upon which the trial was commenced is false, vexatious or frivolous.

For more on compensation, see sections 314, 341, 433 and 454 ACJA

3.2 General Principles and Procedure for Forfeiture Order and Seizure

The prosecution brings an application for forfeiture in a forfeiture proceeding. This arises where a property in question is suspected to be a proceed of crime. In such situation the prosecution is charged with the responsibility of establishing that the property has a criminal origin upon which the court has a power to grant interim forfeiture orders. On conviction of the defendant, final order for forfeiture of such proceed of crime would be given by the court, and in such situation such properties are usually forfeited to the Federal Government as provided by section 20 (2) of the Economic and Financial Crimes Commission Act, Cap E1 LFN 2004 (EFCC Act). See also section 27(1)(c) of National Drug Law Enforcement Agency Act, Cap N30 LFN 2004 (NDLEA Act).

In ***Alhassan v. FRN*** (2016) LPELR 40787 (CA), the NDLEA brought an application seeking an order forfeiting two vehicles belonging to the appellants to the Federal Government of Nigeria pursuant to section 32(c), 33(1)(a) and 27(1)(c) of the NDLEA Act. The application was granted by the court with an interim order granted for one of the vehicles pending an investigation into its procurement by the appellants. The appellant's prayers for the release of the vehicle by the Federal High Court was denied. On appeal to the Court of Appeal, the Court, after perusing relevant laws, held that the NDLEA is empowered to arrest and investigate any person it reasonably suspects to have committed an offence under the Act and to inspect any means used in carrying out such offence which the agency believes is connected to the commission of such offence. More so, in the event of the conviction of the persons for the offence at the Federal High Court, the agency shall apply to the same court for an order of final forfeiture of the property seized to the Federal Government, including assets and properties of the convict that are already subject to an interim order.

3.2.1 Protection of Third Parties

It is the 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 in the absence of a third party. See sections 336 and 337 ACJA. Accordingly, the defence counsel can (a) maximise the 6 months-notice period under section 337(1) of ACJA to make valid claims to property already subjected to an interim forfeiture order (a shorter period of 14 days is allowed under section 17(4) (AFFA); and (b) engage due diligence in complying with this provision, particularly where the legitimate property of his client or a tangible third party claim in relation to the property is at stake.

Note that the Court can 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. The defence at this point is expected to prove that the property in question is not connected to the crime under section 337 and 338 ACJA.

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 property be applied to the payment of any costs or compensation directed to be paid by the defendant. See section 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 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. See section 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. See section 321 ACJA and ***Nnamuchi v. State*** (2015) LPELR-25744 (CA).[48]

3.2.2 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, and 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. See sections 168 and 169 ACJA 2015. 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.

The law is settled as regards whether a court can set aside or vary its own judgment. In ***Anozie v. IGP and Ors*** (2016) LPElR -40427 (CA), the Court of Appeal held:

> The law is that, the powers of the High Court or Federal High Court as in this case, to correct its own record are set out in the various rules of Court applicable to that Court. What is of general application to all the rules is that, clerical mistakes, in judgments or orders or errors arising therein from any accidental slip, or omission may at any time be corrected by the Court on motion or summons without an appeal. The rule envisages the correction or amendment of (a) clerical mistakes and (b) errors arising from any accidental slip or omission … On correction of errors on matters of

[48]The ACJA is, however, 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.

law in a judgment, [t]he Supreme Court had decided "Where there had been an error or omissions by a court on matter of law, the court would not have jurisdiction to correct such errors or omission even though apparent on the face of the judgment or order. In other words, the extent and scope of the exercise of power of court to correct clerical error, accidental slips or omissions should not be used as an excuse to review, reverse, or rehear the case afresh. Per Bage JCA 24-25, paras B-D citing ***Auto Supply Co Ltd v. Akibu*** (2006) 6 SC 1; See also ***Alaya v. Isaac*** (2019) LPELR-46881(CA) 2.

Ogunwumiju JCA held in ***Umezulike v. Chairman EFCC*** (2017) LPELR - 43454 (CA) 11-27, paras B-B:

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 ... in whatever circumstance, whether it is a matter involving criminal prosecution under the EFCC 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 …By the provisions of Sections 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 *in rem* not *in personam* being not 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, take care of his health etc.

See also ***Bulus v. Okpala and Anor*** (2017) LPELR-43423 (CA) and ***Holborn Nigeria Ltd v. O. C. Chris Enterprises Ltd.*** (2014) LPELR -23972.

3.3 Self-Assessment Exercises

1) Mr. Johnson's property was sealed up by the anti-graft agency on suspicion that it belonged to the former State Governor who is currently undergoing trial for graft because the Governor has a private office in the premises. The anti-graft agency has applied for a forfeiture order. Mr. Johnson has engaged you.

a. What are the conditions precedent to the court granting the order?
b. Going by the conditions precedent, will the court grant this order?
c. What are the rights of a third party in cases of forfeiture?
d. If the property seized were perishable goods how will you, as a defence counsel, secure compensation for your client within the context of the ACJA?

3.4 Conclusion

This unit has exposed the trainee to the issues and complexities surrounding forfeiture orders as it relates to defendants in corruption cases and innocent third parties, as well as varying orders and the limits of the powers of the Court

as it relates to such orders. A forfeiture order divests the defendant of property without compensation for breaching an obligation. The serious implications of this for the defendant makes it imperative for the defence to fully understand how to deal with such issues in the course of trial in order to forestall every avoidable loss for the defendant.

3.5 References

- Sections 168, 169, 314, 335, 337, 338, 339, 341, 342, 343, 344, 433 and 454 of ACJA.
- Section 135 Evidence Act 2011.
- Adedeji Adekunle, 'Proceeds of Crime in Nigeria: Getting our Act Right', being the Second Inaugural Lecture of the Nigerian Institute of Advanced Legal Studies (NIALS Publication, 2011).
- C C Nwabuzor, 'Legislative Impact Analysis: Seizure, Forfeiture and Confiscation of the Proceeds and Instrumentality of Crime under the ACJA 2015, EFCC Act and Code of Conduct Bureau (CCB) Act'- NIALS/UNODC Workshop on Legislative Analysis for Federal Prosecutors, 24-27 October 2016.
- C C Nwabuzor, 'Using Civil Forfeiture to Recover Proceeds of Crime'- NIALS Workshop on Practice and Procedure Relating to the Seizure and Forfeiture of the Proceeds of Crime - July 2016.
- C C Nwabuzor, 'An Examination of the Provisions of the Administration of Criminal Justice Act 2015 on Seizure, Forfeiture and Confiscation of the Proceeds and Instrumentality of Crime' NIALS Staff Seminar Series 20 April, 2017.
- Fatima Waziri-Azi, 'The Scope of "in Rem" Forfeiture under Nigerian Law: Issues Arising' *World Journal of Social Sciences* Vol. 7 No. 1, 2020
- Zagaris Bruce, *International White Collar Crime Cases and Materials* (Cambridge University Press 2010)86

MODULE FIVE: CORPORATE CRIMINAL LIABILITY UNDER THE ACJA

Unit One: Scope of Corporate Criminal Liability under the ACJA

1.0 Introduction

1.1 Scope of Corporate Criminal Liability under the ACJA

1.2 Self-Assessment Exercises

1.3 Conclusion

1.4 References

1.0 Introduction

This Unit exposes defence counsel to the scope of a corporation's criminal liability under the ACJA. It examines how a corporation, which has an artificial legal personality separate from its owners, can be liable for the acts and omissions of its employees in criminal law. At the end of the Unit, trainees will understand the basics of prosecuting a corporation under the ACJA, especially the conditions precedent to doing so.

1.1 Scope of Corporate Criminal Liability under the ACJA

Nigerian laws have recognised that even though companies lack the natural attributes of natural persons, they can be criminally liable to the same extent as natural persons (see sections 89 and 90 of Companies and Allied Matters Act 2020 (CAMA); Mohammed Suleh-Yusuf 'Criminal Liability of Corporate Persons in Nigeria' (2017) 3 (4) *International Journal of Law* 32).

In ***Abacha v. Attorney General of the Federation*** (2014) 18 NWLR Pt 1438, 21 the Court held that by virtue of section 65 of Companies and Allied Matters Act 1990, a company may be liable in crime to the same extent as a natural person and it can be prosecuted for the common law offence of conspiracy to defraud even though *mens rea* is an important ingredient of that offence. Corporate criminal liability became evident with the introduction of strict liability offences. This refers to offences which the mental state is not required for their commission and the penalty (fine) is such that it could be imposed upon a corporation. See David Folorunsho Tom, *Nigerian Corporation Law: The Criminal Liability of Bodies Corporate in Nigerian Law* (Chenglo Ltd 2005) and Mohammed Suleh-Yusuf, 'Criminal liability of corporate persons in Nigeria'.

A corporation can, therefore, be tried like a natural person in which case:

i. An information which may include lawfully joined counts maybe preferred against it after the preparation of proofs of evidence with respect to the charge. See sections 479 and 480 ACJA.
ii. The corporation is also required to take a plea through its representative appointed for that purpose.[49] See section 478 ACJA.
iii. A representative of the corporation is empowered to notify the Court whether the corporation is ready to be tried on a charge or information upon which it has taken a plea, has consented to the hearing and determination of a complaint prior to return date of a summons or express assent to the trial of the corporation on information.[50] See section 481 ACJA.

[49] Section 477(2) of the ACJA provides that a representative in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this Part authorised to do, but a person so 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.
[50] This is notwithstanding the fact that a copy of the information and notice of trial have not been served on the corporation 3 days or more before the date on which the corporation is to be tried.

iv. A corporation, upon appearance through its representative, shall have matters read, said or explained as is ordinarily required to be done in the presence of a defendant. See section 482 ACJA.
v. Where a representative does not appear, the provisions on plea by corporation shall not apply. See section 483 ACJA.
vi. Provisions relating to the inquiry into and trial of offences shall apply to the corporation as they apply to a natural person and it may be charged and tried jointly with an individual for any offence. See section 484 ACJA and ***FRN v. Awe Odessa, All States Bank Plc. and Ors.*** FHC/KD/143/04.

1.2 Self-Assessment Exercises

1.2.1 Questions

a. What do you understand by corporate criminal liability?
b. Examine the scope of corporate criminal liability under the ACJA

1.2.2 Case Scenario

Mr. Amos and three other officials of ABC Bank were arraigned before the Federal High Court for opening an account for Swiss Company Ltd. without verifying the company's identity and address of business. The said unverified account was uitlised to launder huge sums of money to various banks in America.

a. Advise the defence counsel on how to go about representing the corporation in the trial.
b. Is it permissible for a corporation to be jointly tried with individuals for an offence?
c. Assuming ABC Bank fails to appear to make a plea, what option does the Court have?

1.3 Conclusion

The unit has examined the extent to which a corporation can be held liable for the criminal acts of its officers and also looked at the procedure for trial of a corporation for crimes under the ACJA. It makes it clear that though companies lack the attributes of a natural person, they are as liable as natural persons for criminal acts committed by them.

1.3 References

- Administration of Criminal Justice Act, 2015
- David Folorunsho Tom, 'Corporate Crimes and Liability under Nigerian Laws' <http://www.nigerianlawguru.com/articles/company%20law/CORPORATE%20CRIMES%20AND%20LIABILITY%20UNDER%20NIGERIAN%20LAWS.pdf> accessed 10 August 2020.
- Mohammed Suleh-Yusuf, 'Criminal liability of corporate persons in Nigeria' (2017) *IJL* 3(4)
- Mohammed Suleh-Yusuf, 'Corporate Criminal Liability, Willful Blindness and Lifting the Veil under Nigerian Law' (2017) 22 (4) *IOSR Journal of Humanities and Social Science* 48-58
- David Folorunsho Tom, *Nigerian Corporation Law: The Criminal Liability of Bodies Corporate in Nigerian Law,* (Chenglo Ltd 2005).

Unit Two: Corporate Criminal Liability for Human Rights Abuses

2.0 Introduction

2.1 Corporate Criminal Liability for Human Rights Abuses

2.2 Self-Assessment Exercises

2.3 Conclusion

2.4 References

2.0. Introduction

This Unit explains the position of law, including the ACJA, on corporate criminal liability for human rights abuses in Nigeria. At the end of the Unit, trainees will appreciate how corporations can be held accountable for human rights abuses.

2.1. Corporate Criminal Liability for Human Rights Abuses

There have been several documented instances of human rights abuses by corporations. Instances of such abuses include engagement in child labour, condonement of slavery, profiting from illegal expropriation of oil, and generally carrying out operations which are harmful to humans and the environment. Even though there is no single international regime of human rights law which is directly applicable to, and governing the operation of corporations, the core principle that companies should respect human rights was formally recognised by the UN Human Rights Council in 2008. Corporate responsibility for human rights abuses is now an important part of international law. The liability of corporations for human rights abuses has, thus, received

universal recognition across all legal systems and is so compelling that it in fact forms the basis for a rule under international law. Under the "general principle of law," governments can and should use domestic means to hold corporations responsible for acts which violate international human rights. See ***Kiobel v. Royal Dutch Petroleum (Shell)*** 133 S Ct. 1659 (2013).

There is no law in Nigeria that specifically deals with the issue of corporate responsibility and culpability in cases of human rights abuses. Such actions are, however, usually brought under Chapter IV provisions of the Constitution and other legal regimes protecting the environment such as the National Environmental Standards and Regulations Enforcement Agency Act, (NESREA) Cap N164 LFN 2004, Environmental Impact Assessment Act (EIA Act) Cap E12, LFN 2004; the Harmful Waste (Special Criminal Provisions) Act (HWSCP Act) Cap H1, LFN 2004; and the National Oil Spill Detection and Response Agency Act, 2006 (NOSDRA Act), Associated Gas Re-injection Act, Cap. A25 2004, etc. as well as international and regional instruments which Nigeria has ratified such as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.[51] See ***Gbemre v. Shell Petroleum Development Company Nig. Ltd & Ors*** (2005) AHRLR 151 (NgHC 2005).

2.2. Self-Assessment Exercises

2.2.1. Questions

1. Can corporations be held liable for human rights Abuses under international law?

[51] An illustration of human rights abuses carried out by corporations in the Niger Delta communities under the African Charter was made in the ruling of the African Commission on Human and Peoples' Rights (African Commission) in *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (SERAC case) (2001) AHRLR 60 (ACHPR 2001)

2. Is there any specific law in Nigeria that deals with human rights abuses by corporations?

3. How can human right abuses be read into Chapter IV of the Constitution?

2.2.2. Case Scenario

Elevate Oil Ltd. was given a license to carry out oil exploration activities in Kpompi community in Delta State by the Government. In the course of exploration, they engaged child labour, polluted the waters and the entire environment with harmful chemicals, thus making their lands and waters uninhabitable and unusable.

i. Can Elevate Oil Ltd be held accountable for the human rights abuses carried out in Kpompi community?
ii. If yes, under what laws can they be sued?

2.3. Conclusion

This Unit looked at human rights abuses by corporations which have received international recognition upon which corporations can now be liable for such acts of violations. It noted that though there is no law in Nigeria dealing specifically with corporate responsibility and culpability in cases of human rights abuses, such actions are usually brought under Chapter IV provisions of the Constitution and other legal regimes protecting the environment. The Unit highlighted these legal regimes.

2.4. References

- Martin-Joe Ezeudu, 'Revisiting Corporate Violations of Human Rights in Nigeria's Niger Delta Region: Canvassing the potential role of the International Criminal Court' *AHRLJ* < http://www.scielo.org.za/pdf/ahrlj/v11n1/03.pdf> accessed 15 August 2020.
- Felix Ebruba Ayanruoh, 'Corporate Responsibility and Human Rights Abuse in the Niger Delta' < https://www.globalpolicy.org/security-council/dark-side-of-natural-resources/oil-and-natural-gas-in-

conflict/africa/48470-corporate-responsibility-and-human-rights-abuse-in-the-niger-delta.html> accessed 7 August 2020.

- 'Corporations must be held accountable for human rights violations' http://www.ohchr.org/EN/NewsEvents/Pages/CorporationsMustBeHeldAccountableForHRViolations.aspx accessed 8 August 2020.
- Sean Hawkey, 'Corporate Human Rights Abuses State or Business Responsibility?' < https://www.uib.no/en/globalchallenges/112844/corporate-human-rights-abuses> accessed 14 August 2020.

Unit Three: Financial Malpractices by Corporate Entities

3.0 Introduction

3.1 Financial Malpractices by Corporations

3.2 Self-Assessment Exercise

3.3 Conclusion

3.4 References

3.0. Introduction

This Unit focuses on financial malpractices by corporate entities, how the ACJA and other relevant laws address the problems and what options are available to defence counsel who represent corporate entities involved in financial malpractices. The major expected outcome of the Unit is that trainees will understand the three ways by which corporate entities can be involved in financial malpractices. The Unit's objective and expected outcome is predicated on the fact that Unit one of this module has already examined corporate criminal liability under the ACJA, how corporate entities can be tried and the procedure that must be followed.

3.1. Financial Malpractices by Corporate Entities

It is no longer news that Nigeria's economy has become enmeshed in financial malpractices by corporate entities. This is responsible for the distress in the banking and financial sector, which plays a major role in the economic development and growth of the country. [52]Corporate financial malpractices can be described as those financial acts committed or undertaken with the aim of

[52] James Ese Ighoroje and Henry Egedi, 'An Evaluation of the role of financial Institutions in the Development of Nigeria Economy,' (2015) 4(4) *Global Journal of Interdisciplinary Social Sciences*, 1-4

amassing wealth illegally by corporate entities, thereby breaching existing laws, financial guidelines or Code of Conduct.[53] Some of the illegal financial acts include any form of fraud, embezzlement, bribery, looting or any form of corrupt malpractices. These illegal financial acts can be undertaken by an individual company or group of companies.

There are three ways by which corporate entities can be involved in financial malpractices, namely: as victims, as perpetrators or as instruments.

a. Victims: corporate entities can become subjects (victims) of various types of fraud, including misrepresentation of financial information, embezzlement, cheque and credit card fraud, securities fraud, insurance fraud, etc.

b. Perpetrators: corporate entities can be involved in the commission of different types of fraud on others. These include the sale of fraudulent financial products, self-dealing and misappropriation of client funds or unauthorised use of depositors' funds to trade in securities, unauthorised cash payments or acceptance of cash in excess of N2 million and failure to report to CBN international transactions involving a sum greater than $10,000 or its equivalent. See section 2 of the Money Laundering Prohibition Act, Cap M18 LFN 2004. Failure of insured banks in Nigeria to render to the Nigerian Deposit Insurance Corporation (NDIC) returns on frauds and forgeries or outright theft occurring in their organisations and make reports on any staff who has been dismissed or advised to retire on grounds of frauds also fall within this head. See sections 35 and 36(1) of the Nigerian Deposit Insurance Corporation Act, Cap N102 LFN 2004.

c. Instruments: This features cases where corporate entities are either knowingly or unknowingly utilised to keep or transfer funds that are themselves the profits or proceeds of a crime, regardless of whether the crime is itself

[53] Investopedia, Financial Statement Manipulation, Laws % Regulations Crime & Fraud. https://www.investopedia.com/laws-and-regulations-4427769last accessed 16 September 2020

financial in nature. See sections 17 and 18 of the Economic and Financial Crimes Commissions (Establishment) Act, Cap E1 LFN 2004. See, generally, section 14 of the EFCC Act on offences relating to financial malpractices. See also section 10 of the Advanced Fee Fraud and other Related Offences Act, Cap A6 LFN 2004 and section 19 of the Money Laundering Prohibition Act, Cap M18 LFN 2004 for offences by bodies corporate and the prescribed sanctions.

3.2. Self-Assessment Exercises

3.2.1. Question

a. What do you understand by corporate financial malpractices?
b. In what ways can corporate financial malpractices be carried out?

3.2.2. Case Scenario

Success Bank made an international transaction to the tune of $10,000 Dollars on behalf of Erastus Nig. Ltd. Success Bank failed to report to the CBN the international transactions made by Erastus Nig. Ltd. The Bank representative claimed that the Bank had done nothing wrong and that it was not obliged to inform CBN of such transactions. Advise the defence counsel on how to best represent Success Bank.

3.3. Conclusion

In this Unit, we looked at the involvement of corporate entities in financial malpractices, which can hinder economic growth. The Unit underscores the rampancy and diverse forms of such malpractices.

3.4. References

- Ade Thompson Ojo, Olusegun Felix Ayadi, 'Financial malpractices and stock market development in Nigeria An Exploratory Study'

< https://www.emeraldinsight.com/doi/10.1108/JFC-05-2013-0034 >
accessed 8 August 2020

- Money Laundering Prohibition Act, Cap M18 LFN 2004.
- Nigerian Deposit Insurance Corporation Act, Cap N102 LFN 2004.
- Economic and Financial Crimes Commission (Establishment) Act, Cap E1 LFN 2004
- Advanced Fee Fraud and other Related Offences Act, Cap A6 LFN 2004.

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

4.0 Introduction

4.1 Meaning of Non-Prosecution Agreements or Deferred Prosecution Agreements

4.2 Non-Prosecution Agreements (NPA) or Deferred Prosecution Agreements (DPA) in Nigeria

4.3 Self-Assessment Exercises

4.4 Conclusion

4.5 References

4.0. Introduction

The purpose of this Unit is to help the defence counsel to understand what Non-Prosecution Agreement (NPA) or Deferred Prosecution Agreement (DPA) entails. At the end of the Unit, the defence counsel will be able to identify how they can engage prosecution counsel with these alternative schemes (NPA and DPA) to the traditional system of prosecution of corporate entities for alleged corporate crimes or misconducts.

4.1. Meaning of Non-Prosecution Agreements or Deferred Prosecution Agreements

DPAs and NPAs share similar characteristics, but differ procedurally (a DPA is usually filed with a court along with charge documents). They are alternative means of adjudication, which are generally voluntary. They are standard pre-

trial arrangement in which a prosecutor agrees to grant amnesty in exchange for the defendant agreeing to fulfil certain requirements. They hinge upon the principle of reciprocity under which the defendant reciprocates the gesture of the prosecutor by fulfilling a positive requirement. It should be noted that charges are not filed against the defendant as long as there is no breach in the terms of the agreement.

NPAs do not normally require an admission of wrongdoing and are, in addition, generally less detailed than DPAs. In this case, the prosecutor grants amnesty in exchange for the defendant's agreement to provide full cooperation in the investigation and to meet certain requirements such as payment of fines, implementation of corporate reforms and in some situations, appointment of an independent monitor to oversee compliance. The NPA scheme does not require filing with court, review by a court or a corporate monitor. It is not to be made public, unless the prosecutors seek to publicise their investigation results or the company or individual is mandated to disclose the agreement. Both schemes allow prosecutors, without obtaining a criminal conviction, to guarantee that corporations receive punishment, including often huge financial penalties, deep reforms to corporate culture through compliance requirements, and independent monitoring or self-reporting arrangements.

NPAs and DPAs are designed to avoid the severe consequences that a conviction would have on a company, its shareholders as well as its employees.[54] Federal prosecutors in some countries like Australia, US and Nigeria have significantly embraced NPAs and DPAs while the debate as to whether companies should be punished for unlawful conducts continues. See

[54] Gibson Dunn '2020 Mid-year update on Corporate Non-Prosecution Agreements and Deferred Prosecution Agreements' 15 July 2020 < https://www.gibsondunn.com/wp-content/uploads/2020/07/2020-mid-year-npa-dpa-update.pdf> assessed 8 August, 2020

Alchuler Albert, 'Two Ways to Think about the Punishment of Corporations' (2009) *Northwestern University School of Law Faculty Working Paper 192,* 3.

4.2. Non- Prosecution Agreements (NPA) or Deferred Prosecution Agreements (DPA) in Nigeria

As indicated in 4.1 NPA and DPA are similar in character, but differ procedurally. Although there is no law that specifically provides for such agreements in Nigeria, the power of the Attorney General to enter them is derived from his power to enter a *nolle prosequi*. See section 174 (1)(c) of the 1999 Constitution.[55] Thus, in 2011, a non-prosecution Agreement was executed between the Federal Government and Tidex Nigeria Ltd (a company that was alleged to have committed the offence of importing toxins into the country).[56]

4.3. Self-Assessment Exercises

1. What do you understand by NPAs and DPAs?

2. Explain how NPAs and DPAs can be utilised by prosecutors and companies in corporate misconducts.

[55] See also section 211(1)(c) for similar provisions on the State Attorney General

[56] A similar NPA was entered into between Pfizer Incorporated and Kano State Government in 2011. Following the death of 11 children and various degrees of deformity suffered by 22 others as a result of the Trovan drug trial, the company and Kano state government entered into an NPA, the terms of which included re-imbursing the Kano State government for all legal expenses, construction of a modern Diagnostic and Disease Control Centre in Kano, recommendation to Pfizer the amount to be paid to participants ($175, 000), etc. For further reading see Maduabuchi Nmeribeh, 'Pfizer Compensates Trovan Victims' <https://www.pmnewsnigeria.com> accessed 7 August 2020. This was also employed in the Halliburton's bribery scandal. For further reading see, Soni Daniel, 'Halliburton $185m M Bribery Scandal EFCC yet to locate Refund' <https://www.vanguardngr.com/2016/02/halliburton-185m-bribery-scandal-efcc-yet-to-locate-refund/> accessed 7 August 2020.

4.4. Conclusion

The Unit examined how NPAs and DPAs can be utilised as an alternative to prosecution in the settlement of alleged corporate criminal wrongdoing. It highlighted their similarities and differences and established the basis for their application in Nigeria.

4.5. References

- Mike Koehler, 'Measuring the Impact of Non-Prosecution and Deferred Prosecution Agreements on Foreign Corrupt Practices Act Enforcement' <https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Koehler.pdf> accessed 7 August 2020.
- Gibson Dunn '2020 Mid-year update on Corporate Non-Prosecution Agreements and Deferred Prosecution Agreements' 15 July 2020 <https://www.gibsondunn.com/wp-content/uploads/2020/07/2020-mid-year-npa-dpa-update.pdf> assessed 8 August, 2020.
- Cindy R Alexander, Mark A Cohen 'Report on Trends in the use of Non-prosecution, Deferred Prosecution, and Plea Agreements in the Settlement of Alleged Corporate Criminal Wrongdoing' <http://masonlec.org/site/rte_uploads/files/Full%20Report%20-%20SCJI%20NPA-DPA%2C%20April%202015%281%29.pdf-> accessed 8 August 2020.
- Len Lyons, Audra Marino, 'Deferred Prosecution Agreements, Non-Prosecution Agreements and Monitoring Services' <http://www.marcumllp.com/insights-news/deferred-prosecution-agreements-non-prosecution-agreements-and-monitoring-services> accessed 7 August 2020 .
- Alchuler Albert, 'Two Ways to Think about the Punishment of Corporations' (2009) https://scholarlycommons.law.northwestern.edu/facultyworkingpapers/192/ last accessed 17 September 2020

Unit Five: Impact of NPAs on Establishing Corporate Criminal Liability,

5.0 Introduction

5.1 Impact of NPAs on Establishing Corporate Criminal Liability

5.2 Procedure for NPA

5.3 Self-Assessment Exercises

5.4 Conclusion

5.5 References

5.0. Introduction

Unit four discussed how NPAs and DPAs are fast becoming alternative resolutions or as vehicles utilised by prosecutors and companies to resolve company related misconducts. The Unit focuses specifically on NPAs and their impact in establishing criminal liability of corporations. It is expected that at the end of the Unit, the defence counsel will be able to appreciate and have a better understanding of the relevance of NPAs, as well as the procedure for entering into an NPA.

5.1. Impact of NPAs on Establishing Corporate Criminal Liability

NPAs provide prosecutors with the necessary discretion of considering the mitigating factors when coming up with a resolution that will achieve the desired result. It precisely allows corporations to acknowledge employee misconducts, and affords prosecutors the opportunity to fashion out a solution that will suit the particular circumstances of a given case. This is done without the attendant disproportionate effects that could follow a guilty plea, such as debarment, devastating reputational damage, and unrestricted collateral

application in other litigation. They apply only to organisations and not to individuals.

NPAs allow the criminal justice system to target specific acts such as fraud, forgery and other economic crimes without undue negative impacts on upright corporate citizens and their employees, shareholders, and communities. Furthermore, such discretion allows prosecutors to examine factors that the Sentencing Guidelines do not ordinarily consider which are nevertheless important, e.g. fines paid by a corporation to a foreign jurisdiction in a similar enforcement proceeding. While NPAs offer extra flexibility, which is not generally available in a traditional prosecution, they also avoid lengthy and costly trials and the reputational damage of the corporation. This, however, does not necessarily mean they are lenient. In fact, upon establishment of corporate criminal liability, NPAs often impose substantial fines which negatively impact a company's lifeline, while also regularly imposing stringent terms which span multiple years and may involve reporting mechanism and widespread corporate reforms.

5.2. Procedure for Entering into an NPA

Generally, an NPA would usually navigate three stages to become effective:

a) ***Negotiation-*** there is neither any compulsion on the defendant to accept an NPA nor on the prosecutor to offer one. It is voluntary on both sides. If an NPA is entered into, the defendant agrees to comply with the requirements imposed and the prosecutor agrees that upon approval by the court/judge, proceedings against the defendant will be suspended. The suspension can only be lifted if the requirement of the agreement is breached.

b) ***Approval-*** before the terms of the NPA are agreed, the prosecutor must apply to the court for a declaration that the terms of the NPA are in the interest of justice and that the terms are fair, reasonable and proportionate.

c) ***Enforcement-*** enforcement is limited to the terms of the agreement. The entire enforcement is based on balance of probability.

5.3. Self-Assessment Exercises

1. Evaluate the impact of NPAs on establishing corporate criminal liability.

2. How voluntary is the process of NPA?

5.4. Conclusion

This Unit has highlighted the impact of NPAs on establishing corporate criminal liability and how a prosecutor can exercise his discretion in fashioning out the best mechanism to suit each case. It also outlined the procedure for the effectiveness of NPAs.

5.5. References

- Gibson Dunn, '2017 Year-End Update on Corporate Non-Prosecution Agreements (NPAs) and Deferred Prosecution Agreements (DPAs)' <https://www.gibsondunn.com/wp-content/uploads/2018/01/2017-year-end-NPA-DPA-update.pdf> accessed 8 August 2020.
- Mike Koehler, 'Measuring the Impact of Non-Prosecution and Deferred Prosecution Agreements on Foreign Corrupt Practices Act Enforcement' <https://lawreview.law.ucdavis.edu/issues/49/2/Symposium/49-2_Koehler.pdf> accessed 8 August 2020.
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