

# ROLE OF THE JUDICIARY IN THE FIGHT AGAINST CORRUPTION IN NIGERIA IN CONTEXT OF THE ACJA 2015

By  
Professor Yemi Akinseye-George, SAN, FCI Arb.  
*President, Centre for Socio-Legal Studies (CSLS)*

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# OUTLINE OF PRESENTATION

- The Struggle for accountability and transparency in Nigeria
- The Old dispensation: Pre-ACJA
- The New dispensation: Since ACJA
- Persistent challenges
- Way Forward

# BACKGROUND

Previous MacArthur Foundation support for criminal justice (CJ) reform started in 2003;

This culminated in the historic signing of the ACJA 2015 by the former President Goodluck Jonathan.

Since then the Foundation has supported diverse interventions aimed at strengthening the fight against corruption;

Our organization, the Centre for Socio-Legal Studies (CSLS), mainly with the support of MacArthur Foundation championed the processes that led to the introduction of the ACJA in the country.

We are really elated at the rate at which the Act is spreading round the country- the FCT and 24 States at the last count.

# CONCERTED EFFORT BY VARIOUS STAKEHOLDERS WAS NECESSARY FOR CRIMINAL JUSTICE REFORMS



# THE STRUGGLE FOR ACCOUNTABILITY AND TRANSPARENCY IN NIGERIA

Most right-thinking Nigerians would readily agree that at the heart of most problems facing our country is the lack of transparency and accountability.

This challenge is commonly described as ‘corruption.’

Until this challenge is significantly reduced, the country may not record any appreciable progress in improving human rights, security, infrastructure and in meeting the needs of the great majority of the population.

# OLD DISPENSATION

- There is virtually no example of a politician or wealthy person who has been convicted of corruption in Nigeria. But we know many of them are very corrupt' –Prof Fidelis Oditah, QC, SAN; (2015)
- Judicial process tolerates influential accused persons to endlessly rigmarole the criminal justice system'–Prof. Bolaji Owasanoye, formerly ES, PACAC. (2015)
- In **AG Ondo State v. AG Fed.**, (2002) 9 NWLR (Pt. 772), the Supreme Court rejected the attempt to impose a time frame within which to conclude corruption cases.

# OLD DISPENSATION(CONTND.)

- The Supreme Court by that decision early in the country's struggle against corruption, inadvertently set the stage for the delay of cases, which later became the order of the day.
- Consequently, several corruption cases were stalled as most investigators, prosecutors, defence lawyers and even courts went about their respective tasks with no sense of urgency.
- Section 40 of the EFCC Establishment Act which attempted to regulate the exercise of judicial discretion in respect of grant of stay of proceedings was also subsequently struck down.

# ACJA USHERED IN A NEW DISPENSATION

With ACJA 2015, a quiet revolution began.

The improvements so far recorded include:

- Faster speed in the trial of corruption cases;
- Reduction in the level of impunity;
- Greater recoveries of looted funds by the anti-corruption agencies (ACAs);
- Stemming the tide towards state failure and anarchy.

# THE NEW DISPENSATION

- In **Metuh v. FRN** [2017] 11 NWLR (part 1575) 157, the Supreme Court approved the most important provision of the ACJA, section 306 which prohibited Stay of Proceedings. In a historic pronouncement, Ogunbiyi, JSC declared,

*‘the Supreme Court, like the two lower courts, also lacks the powers to stay proceedings under section 22 Supreme Court Act or under its inherent powers’.*

# CONSOLIDATING THE NEW DISPENSATION

- In **Destra investments v. FRN**, (2018) 8NWLR (pt.1621) 335-the SC held that a trial court may defer the determination of a preliminary objection to jurisdiction until the time of delivering judgment on the substantive matter. Thus upholding and expanding section s.396 (2), ACJA.
- Section 396(7) has also been utilised to ensure that Judges who have been elevated or transferred during the pendency of a trial, continue to sit and dispose of such trial. This has helped in preventing such trials from being conducted De Novo. This position was given Judicial approval in **Orji Uzor Kolu v FRN** CA/L/1043C/2018

# KEY IMPROVEMENTS IN THE CRIMINAL JUSTICE SECTOR

These include:

- adoption of improved versions of the ACJ Law by about 24 States;
- improvement in the attitude of the Judiciary towards the anti-corruption fight.
- Establishment by the Former Chief Justice of Nigeria of Corruption Cases Trial Monitoring Committee (COTRIMCO);
- Designation of specialized courts for speedy trial of corruption cases.
- Award of punitive costs against senior lawyers once considered untouchable: In *Abubakar v. Usman* (2017) 12 NWLR (Pt.1587) 36 at 52 the Supreme Court awarded N1m costs against a senior advocate.

# CONCLUSION OF HIGH PROFILE CASES

- upsurge in the number of financial crimes and corruption cases concluded. The EFCC has recorded 1,192 convictions between 2015 to 2019 which is a whopping 110% increase from the number of convictions secured between 2010 to 2014. some of the high profile cases concluded include:
  - **Joshua Dariye:** sentenced to 14 years in prison for diverting N1.162 billion meant for state ecological fund.
  - **Jolly Nyame:** sentenced to prison for 14 years for criminal breach of trust, 2 years for criminal misappropriation, 7 years for Gratification and 5 years for obtaining by dishonesty.



# CONCLUSION OF HIGH PROFILE CASES

- **Joseph Nwobike**: Senior lawyer sentenced to 1 month in prison, on grounds of perversion of justice.
- **Bala Ngilari**: Former governor of Adamawa was convicted in a record time of 7 months and sentenced to 5 years in prison for Procurement fraud.
- **Calistus Obi**: Former DG of NIMASA was sentenced for conspiracy, conversion and money laundering to the tune of N136 million.



# UNPRECEDENTED RECOVERY OF STOLEN ASSETS

- According to the Chairman of the EFCC, Ibrahim Magu, the Nation has successfully traced and recovered \$2.9 billion or N738.9 billion from looters between May 2015 and October 2017.



# PERSISTENT CHALLENGES

Despite the Salient innovations of the ACJA there are still challenges:

- The decision in **Shema v FRN** (Unreported) which affirms that fundamental issues of jurisdiction constitutes an exception to the provisions of Section 306 and 396 ACJA has the potential of creating a loophole for mischievous defendants to once again delay trials.

# PERSISTENT CHALLENGES: JUDICIARY

- Low level of public trust in the judiciary exacerbated by the politically-motivated trial and conviction of the former Chief Justice.
- Extreme pressure on the judiciary from the political and economic elite- the sack of the former president of the Court of Appeal-Hon. Justice salami by the former President.

# PERSISTENT CHALLENGES: JUDICIARY (CONTD.)

Low level of transparency and accountability in matters of:

- appointment,
- assignment and management of cases,
- measuring of productivity;
- discipline,
- promotion,
- transfer and
- Removal of judges.

Abysmal pay and retirement benefits-

# PERSISTENT CHALLENGES: JUDICIARY (CONTD.)

- **poor state of physical infrastructure;**
- **inefficient filing systems and case management;**
- **old fashioned mode (longhand) of taking evidence;**
- **dismal continuing judicial education;**
- **congested court dockets.**

# PERSISTENT CHALLENGES: DEFENCE

Defendants use various tactics to frustrate criminal trials such as:

- Trial within trial;
- Starting trials de-novo;
- Extensive and gruesome cross-examination of prosecution witnesses;
- Intimidation of 'hard working' and uncompromising judges through petition-writing.

# PERSISTENT CHALLENGES: PROSECUTION

- Poor remuneration for prosecutor which makes them less motivated compared to defence counsel who earn millions of Naira.
- Excessive workload for prosecutors.
- Limited training and capacity building.
- Lack of witnesses and other requirements for speedy trial
- Poor knowledge of the ACJA provisions

# WAY FORWARD

There are 2 broad categories of recommendations-

- Internal Reforms of the Judiciary to reduce vulnerability to external pressures;
- Reform of the ecology of the Judiciary to improve working environment

# CATEGORY 1: INTERNAL REFORMS OF THE JUDICIARY

- Strengthening transparency and accountability of the Judiciary in appointment, assignment of cases, discipline, promotion, removal and transfer of judges.
- Advocacy for improved reward systems or incentives;
- Advocacy for structural reforms;
- Monitor judiciary budgeting and utilization of funds;
- Need for a comprehensive judicial reform plan-including drafting amendments to the Constitution.

# CATEGORY 1: INTERNAL REFORMS OF THE JUDICIARY (CONTD.)

- Case management-
- Practice directions-
- disclosure protocols;
- Capacity building- Judges including appellate courts

## CATEGORY 2: REFORM OF THE ECOLOGY OF THE JUDICIARY

- Strengthening Civil Society support for the judiciary marginalized in the current scheme of things;
- Revamping the Ethics of the Legal Profession;
- Capacity building of Investigators, prosecutors,
- Witness support systems

# WHAT IS MOST NEEDED TO IMPROVE IMPLEMENTATION OF REFORM MEASURES?

- Sustain the struggle for transparency and accountability by strengthening the Judiciary;
- Promote understanding, positive attitude and improved implementation by all stakeholders of the ACJA/ACJL provisions and anti-graft laws;
- Continued support to Civil Society groups to conduct capacity building, public education and foster citizens demand for the sustenance of anti-corruption measures.

# CONCLUSION

- There is visible evidence of improvements in the justice sector since 2015.
- The interventions by MacArthur and CSOs have impacted the sector significantly.
- However, more resources are required to build trust in the judiciary, advocate and push for concrete reforms aimed at making judges less vulnerable to external pressures. The centrality of the judiciary to the sustainability of reforms in every sector of the economy justifies greater investments in improving the judiciary.



THANK YOU