

JUDGE TRANSFERS

AND THEIR ADVERSE IMPACTS ON JUSTICE DELIVERY

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REPORT SUMMARY

1. THE PROJECT

Between August and September 2019, Access to Justice (A2Justice) conducted a study of two Nigerian courts - the Federal High Court ("FHC") and the National Industrial Court ("NIC")- exercising different jurisdictions to investigate the practice and modes of transferring judges from one judicial division to another and the problems associated with those transfers. This report highlights the challenges which routine transfers of Judges have on the delivery of justice and it hopes to contribute towards reforming the practice and ameliorating its far-reaching adverse effects. The research sample comprised lawyers practising at those Courts, litigants and court administrative staff.

(For the details of the research and its method, please see Research Method, p. 37).

2. THE PRACTICE OF JUDGE TRANSFERS

The term "judge transfers" (alternatively "judicial transfers," "judge shuffling," or "judicial shuffling" in this report) refers to the "moving" of Judges of these Courts from one division of the court to another, or across different divisions of the court from time to time. While every instance of such movement does not involve every Judge, Judges of these courts can generally be transferred at any time as the head of the court sees fit. Another way the Judges are taken out of their courts is through elevation to higher (appellate) courts, but this incidence is not covered by this inquiry. This study found that, although the practice of transferring judges is a tradition at these Courts, there exists neither an official policy guiding the practice and setting out its modalities nor a fixed protocol for its implementation. The power of judicial transfers lies with the head of each Court¹ and its exercise is at their discretion. (See Chapter One: The Practice of Judge Transfers, p. 7).

3. THE IMPACTS OF JUDGE TRANSFERS

The study found that judicial transfers have deep, adverse impacts on justice delivery and public confidence in the judiciary and judicature. These

¹ The President in the case of the National Industrial Court and the Chief Judge in that of the Federal High Court.

impacts derive from the huge trial delays entailed in the process of getting cases affected by the transfer of Judges back on track for resolution. There are often, overly lengthy delays, either in reassigning those part-heard cases or in recommencing them before new Judges. The wide time gaps attending the completion of these seemingly "simple" functions are oftentimes staggering, exacting a heavy toll on the overall time taken to conclude the cases.

The delays further amplify costs of seeking justice, adding more burdens to litigants who struggle with resources. Furthermore, they undermine fair hearing rights because the length of time often involved in putting cases back on track towards a resolution after a judge is transferred interferes with the ability of litigants to present their cases effectively. For example, within that period, evidence may have been lost or damaged, and vital witnesses may either be dead, may have relocated, or have come under some incapacity that affects their ability to be re-called to testify in court again. All of this erodes public confidence in the judiciary and encourages the resort to extra-judicial mechanisms to find other forms of justice. (Chapter Two: The Impacts of Judge Transfers, p. 10).

4. TOWARD REFORM OF THE PRACTICE

This study concluded that, regardless of the justification, the manner judges of the courts are transferred have, oftentimes, devastating impacts on the delivery of justice services in the courts surveyed. It is up to the Judiciary to mitigate the scope of this impact and reform how judges are moved in order to respect constitutionally protected rights of access to justice, fair hearing, and equal access to judicial service. The obligation to ensure a fair and speedy trial is an international responsibility as well, and the Judiciary must play its part in exercising that State obligation - in fact, own that duty and lead the charge towards removing controllable factors contributing to trial delays. The Judiciary needs to re-think how it transfers Judges from one division to another; how it prepares for those transfers and how active case dockets are readied for the transition, so that the incident of a transfer does not grievously hurt court

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users; it also needs to re-think how part-heard cases can move forward rather than backwards where a new Judge is introduced to a court. Reforms should also aim to minimise administrative delays in case re-assignment and the processing of "fiat" applications, where these are unavoidable, and to minimise the frequency and length of adjournments of case proceedings. (Chapter Three: Recommendations for Reform, p. 22).

5. FINDINGS AND CONCLUSIONS

A. *Current system of transferring judges has serious adverse impacts on justice delivery and leads to widespread court user dissatisfaction*

The report establishes that the current practice of judicial transfers at the FHC and the NIC exerts serious strains on the adjudicatory process in a variety of ways, the most important being the delays it enforces on court users who, through no fault of theirs, bear the brunt of administrative inefficiencies they have little to do with. Delays associated with judges' transfers are caused by significant lapses of time it usually takes to complete processes necessary to getting active cases back on the hearing track. They include delays in; (a) informing parties about the transfer; (b) reassigning the case to another Judge; (c) applying for and approving applications for a fiat enabling the transferred judge continue the hearing and determination of the case and (d) having a new Judge receive the casefile and set the case down for hearing.

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These delays occur in sometimes lock-step order, and tax court users enormously. They increase costs of using the judicial system and undercut rights of fair hearing. In some cases, the delays are of such a duration that by the time hearings are back on track, vital sources of evidence have been irreparably lost, and litigants find themselves no longer able to prove their cases on account of such losses

These delays occur in sometimes lock-step order, and tax court users enormously. They increase costs of using the judicial system and undercut rights of fair hearing. In some cases, the delays are of such a duration that by the time hearings are back on track, vital sources of evidence have been irreparably lost, and litigants find themselves no longer able to prove their cases

on account of such losses. Besides these, the delays cause deep frustration in court users about the dependability of the Judiciary as a vehicle of justice.

B. *The absence of a "guiding" policy framework on Judge transfers creates an "implementation standards" gap in the practice of transferring Judges, leaving room for misuse, lack of accountability to court users for poor oversight of the process, and other administrative problems*

Besides provisions in rules of court making reference to the subject of transfers, there are no policy frameworks guiding how heads of the courts under review - or, for that matter, other heads of court - who exercise powers over transfers should use those powers in order to properly manage the impact of those transfers on the delivery of justice, and reduce delays which are often associated with judge transfers.

Quite apart from its impact on court users, transfer powers can be abused - at least potentially - although this study did not pursue inquiries on this theme. It is quite possible to imagine that certain judicial divisions within a court's overall geographical spread might be regarded more favourably than others, whether because of their environment, climate, security situation, or simply personal predilection of individual judges and would represent more attractive postings than others. Nothing - outside a head of court's personal integrity - precludes him or her from exercising transfer powers in a manner that gratifies personal sentiments felt towards particular Judges of their court, particularly given the varied textures in the relationships that form among members of a vocational collegial body. Transfers, therefore, can offer pegs on which to hang personal biases and prejudices towards particular judges. And when it comes to transfers, there is no independent authority that a Judge subject to a transfer directive can appeal the decision to.

C. *Considerable reforms are required to limit extensive impact of judge transfers on the delivery of justice*

In light of the impact which judicial transfers have on the trial process, and, by extension, public perceptions of the judicial system, the Judiciary cannot afford to remain indifferent to the way those powers are exercised. Reforming how that power is invoked is therefore, absolutely exigent. Key

reforms recommended in this report include:

1. Providing a clear and publicly-accessible official policy around judge transfers. Such a policy may be made by the National Judicial Council and should delineate an administrative framework for effecting judicial transfers, while stipulating minimum conditions to be met before transfers are undertaken so that the impact of transfers on active dockets is controlled and minimized.
2. Protecting the power to effect judicial transfers from being abused by heads of court by ensuring that transfer decisions are made transparently, objectively and accountably, while instating a system of complaints for Judges who feel victimized by transfer decisions.
3. Reforming case and records management to expedite case re-assignments and enhance the security of case files and related documents.

. Where a transfer situation cannot be managed quickly enough and a new Judge must take over the hearing of a part-heard matter, a case needs not be started afresh. New rules, similar to those practiced in some jurisdictions can be instated requiring Judges to make notations, in record books, of their impression of witnesses when they give evidence; that way, a new Judge can use the previous Judge's notes of his or her perceptions of the credibility of witnesses, as guidance in assessing how much weight can be attached to their testimonies

4. Reforming how legal principles (i.e. the rule requiring de-novo commencements of trial in part-heard before new Judges) are applied. Where a transfer situation cannot be managed quickly enough and a new Judge must take over the hearing of a part-heard matter, a case needs not be started afresh. New rules, similar to those practiced in some jurisdictions can be instated requiring Judges to make notations, in record books, of their impression of witnesses when they give evidence; that way, a new Judge can use the previous Judge's notes of his or her perceptions of the credibility of witnesses, as guidance in assessing how much weight can be attached to their testimonies. Courts where Judges may be subject to quick transfers could be required to adopt this

practice.

6. **STRUCTURE OF THIS REPORT**

This report has three principal Chapters. Chapter One introduces the practice of judge transfers at the FHC and the NIC and presents research findings of its frequency. Chapter two describes the adverse impacts of the practice on justice delivery and public trust in the judiciary and judicature. Chapter three documents ideas for reform of the practice and other judicial processes related to it. Finally, the Conclusion articulates the principal conclusions and findings from the research and indicates possible lines of further inquiries.

CHAPTER ONE

The Practice of Judge Transfers

Judge transfers at the Federal High Court ("FHC") and the National Industrial Court ("NIC") often cause very serious problems for the dockets of the affected courts although their impacts differ among individual cases. In some cases, cases go through successive cycles of transfers from one Judge to another before they are resolved.

The practice of shuffling judges is a judicial tradition of colonial provenance. In keeping with this tradition, the FHC and NIC transfer judges between their divisional jurisdictions, numbering thirty-six and thirty-four respectively. The period between transfers generally reckons in years but the number of those years seems indeterminate, as a judge might be transferred at any time after serving in a division for between two and four years. This practice - as indicated above - has been particularly disruptive of the process of justice delivery at these Courts, impacting case proceedings irrespective of their stage. For instance, 55% of the cases reviewed for this research were at the trial stage when the presiding judge was transferred, 40% of the cases had pending applications, and 5% at the commencement stages. In other words, for the cases at the trial stage, hearing had progressed significantly - witnesses had been called and evidence taken from them - before they were disrupted by the transfer of the presiding Judge.

Case Studies

A few instances may be cited. At the NIC, the case of *Chisara Nwosu v. Henley Industries Ltd. and Anor.*² passed from Hon. Justice K. I. Amadi to Hon. Justice N. C. S. Ogbuanya who was himself later transferred from the Lagos to the Port Harcourt division of the Court so that the case was thereafter transferred to another Judge.

Another example is the labour matter with Suit Number NICN/LA/148/2011. Filed on 10 November 2011, it was assigned to

² NICN/LA/282/2012. Hereinafter *Nwosu v. Henley & Anor.*

Justice Obaseki on 21 Nov. 2011, coming up for hearing before the Judge on 19 Dec. 2011. It was re-assigned subsequently to Justice Oyewunmi on 1 July 2013 following Justice Obaseki's transfer that year. Justice Oyewunmi was later transferred to the Akure Division in October 2016 with the case yet to commence, even though the Judge had adjourned it for definite hearing. Justice Ubaka, who inherited the case, resumed proceedings de novo. The case was adjourned for defence as of 26 September 2019, eight years after it was filed at the time of this study. Similarly, another case with Suit Number NICN/LA/148/2011 has been nine years in court largely on account of the transfer of one presiding judge after presiding judge.

At the FHC, the story is not any different. Many cases at this court have passed through numerous presiding judges in their lifetime. The case of *Elder Wopara and 43 Ors. v. NDDC*³ came before four presiding judges before it was concluded.

Also, Hon. Justice John T. Tsoho, then presiding judge in *Ojafco International Ltd. and Ors. v. Folashade Omotade and Ors.*,⁴ was transferred from Lagos to Abuja five years into proceedings and with only one witness left to testify in the case. Also, the case of *Marcel Eze and Anor. v. UBM Property Company Ltd. and Anor.*⁵ was disrupted when the presiding judge, Hon. Justice Ankawho, was transferred soon after ordering the parties to call oral evidence but before they could do so. Other cases which this research found with similar trajectories include Suit Number FHC/L/369c/2009 which passed from Justice Nyako to Justice Ajumogobia to Justice Seidu, and finally, to Justice Faji. The case with Suit Number FHC/L/CS/87/2001 also passed through four presiding judges and was still on the docket as of 16 August 2019. Actual case names have been withheld.

Eighty-three per cent of lawyer-respondents in this research, all of them practising at the FHC or the NIC, reported that at least one of their cases had been interrupted by the transfer of the presiding judge and only 17% reported otherwise.

3 FHC/PH/CS/447/2013. Hereinafter *Wopara & Ors. v. NDDC*.

4 FHC/L/CS/5271/08. Hereinafter *Ojafco & Ors. v. Omotade & Ors.*

5 FHC/L/CP/1271/16. Hereinafter *Eze & Anor. v. UBM & Anor.*

Survey Indications

Considerable data from this study establishes the widespread incidence of judge transfers at these Courts. Eighty-three per cent of lawyer-respondents in this research, all of them practising at the FHC or the NIC, reported that at least one of their cases had been interrupted by the transfer of the presiding judge and only 17% reported otherwise.

CHAPTER TWO

The Impacts of Judge Transfers

The study for this report found that judicial transfers have, whether intended or not, profound adverse impacts on justice delivery and public confidence in the judiciary, complicating the Judiciary's chronic and daunting problems of trial delays. Transfers exacerbate trial delays in many ways but three can be particularly noted: The first is the time taken to re-assign part-heard cases to other Judges. (As a background, it may be noted that, after a Judge is transferred, pending cases in the affected court are often re-assigned to other courts within the division). This situation is further compounded by another need. When cases are re-assigned to other courts, the Judges before whom the cases come also often adjourn the cases for significant periods in order to get properly acquainted with their facts and history.

Second, where any of the parties to the case desires that the transferred Judge continues with adjudicating the case even after the Judge has been posted out of the judicial division where the case was being heard, an application for a "fiat" is then required to be made to the head of court for approval.⁶ Given the tardiness of judicial bureaucracy, it often takes extended lengths of time - many months in some cases - to obtain the approvals from the heads of court, during which time case proceedings come to a halt.

The third and possibly the most far-reaching impact is that once a Judge is transferred, part-heard cases, outside of what has been noted above, would need to re-commence "de novo" irrespective of how much progress had earlier been made in the course of hearing the cases.

The investigation for this report found that judges' transfers cause severe trial prolongation and delays. Litigants have a constitutional and

⁶ A fiat is a formal authorisation issued by a head of court permitting a judge transferred from a division in that court to continue presiding over a case they were hearing before their transfer. For the fiat procedure at the National Industrial Court, see National industrial court of Nigeria (Civil Procedure) Rules Sec. 26. Order 49 of the Federal High Court (Civil Procedure) Rules, which deals with the transfer of causes or matters, does not seem to contain an equivalent provision.

internationally protected right to a reasonably speedy trial. Long delays, following from judge transfers, undermine this right. The delays also undermine the fairness of the trial in other significant ways. The passage of long periods of time alter contexts required for a just resolution of the case, oftentimes irretrievably and this can be fatal for litigants in proving their cases. Evidence may be lost, and, in cases where a trial is required to start de-novo before a new Judge, witnesses may no longer be within the jurisdiction/country or even be alive, after prolonged delays. This subversion of justice delivery erodes public confidence in the judiciary and encourages - or even compels - the resort to informal and extra-judicial justice mechanisms.

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Second, transfers *undermine access to justice* for poor and (even) not-so-poor litigants by significantly increasing the costs of litigation - either in prosecuting or defending cases. Prolonged trials increase professional, administrative and other costs of litigation, and, for poor people, this can have traumatizing financial and psychological effects. Increased costs of using the judicial process would disproportionately affect poorer users of the judicial system who have lesser capacity to cope with increased expenses of litigation.

This chapter addresses these issues in three sections. The first presents the study findings on how judicial transfers cause long delays in justice delivery. The second describes the impacts of these delays on justice delivery and the related rights of litigants. Finally, the third presents the impacts on public trust in the judiciary and judicature.

Long delays: The impact of Judge transfers on cases

The legal practitioners interviewed or surveyed in this study agreed that judge transfers result in the inordinate protraction of cases at the FHC and the NIC. Over 90% of the cases involving a transfer of a trial Judge, reviewed at these Courts in this study had taken five years on the average, from the date of filing to trial, and some had been on the court docket for even as long as a decade or more. Nine of the ten extant cases examined at Court 7 (formerly Court 5) of the Lagos division of the NIC were filed in

2015 and one in 2014. Among cases that had lasted a decade or longer were those (without their case titles) with Suit Numbers FHC/L/CS/87/2001 and FHC/L/369^c/2009.

A case in point is that of *Ojafco & Ors. v. Omotade & Ors.* (supra). Five years into proceedings in this case, and with only one witness left to be taken, the presiding judge, Hon. Justice Tsoho, was transferred from the Lagos division of the FHC to the Federal Capital Territory (FCT) division. An application for a fiat by the claimant's counsel was granted about six months after the application was made, and hearing in the matter only recommenced in Abuja before Justice Tsoho a whole year after the fiat was granted. The case was at the stage of the adoption of final written addresses at the time of this research. Similarly, the case of *Nwosu v. Henley & Anor.* had been eight years at the NIC mainly because of the successive transfers of presiding Judges adjudicating the matter.⁷ The case of *Biobele William Georgewill v. Aero Contractors Company Nig. Ltd.*⁸ was pending for six years at the FHC on similar grounds, alongside that of *Asset Management Company of Nigeria v. Mr Ibe Vitalis Chukwujindu*⁹ which was pending for five years at the same court.

An application for a fiat by the claimant's counsel was granted about six months after the application was made, and hearing in the matter only recommenced in Abuja before Justice Tsoho a whole year after the fiat was granted

The above references are not meant to suggest that trial delays are peculiar to cases involving a transfer of the presiding judge or - for that matter to the FHC and NIC. The problem of delays is, unfortunately, endemic to Nigeria's judicial system, afflicting State and Federal courts alike. The point rather is that transferring Judges from one division to another in ways that exact a disproportionately heavy toll on pending cases does not seem like a proper thing to do.

Similarly, the case of *Nwosu v. Henley & Anor.* had been eight years at the NIC mainly because of the successive transfers of presiding Judges adjudicating the matter.

7 The transfer of the presiding judge in this case prompted A2Justice, which was representing the plaintiff to write two successive letters to the President of the National Industrial Court seeking a fiat. When there was no response from the Court's President, A2Justice wrote to the National Judicial Council (NJC), through the Chief Justice of Nigeria, describing the frustrations being caused by the transfer of successive presiding judges in the case, and asking the Council to take a policy decision on transfers of Judges. Unfortunately, the NJC declined to take up the matter but asked A2Justice to direct its concerns to the President of the NIC, who had failed to respond to previous communications on the subject!

8 FHC/PH/CS/203/2014. Hereinafter *Georgewill v. Aero.*

9 FHC/L/CS/1429/2015. Hereinafter *Asset v. Chukwujindu.*

Causes of trial protraction

Evidence from the field research suggests that transfer-caused case delays arise from administrative factors contingent on the very act of the transfer. The administrative processes involved relate to: (a) reassigning the cases affected by a transfer; (b) applying for and approving a fiat application, and (c) commencing cases afresh or "de novo". These are considered separately below.

Case re-assignment: The divisional administrative Judge of both courts has responsibility for the re-assignment of cases in the docket of a transferred Judge after the departure of the transferred Judge. Most cases affected by a transfer seemed to be re-assigned relatively quickly, especially when the cases were still in their early stages and witnesses were yet to testify. There were a considerable number of cases, however, that awaited re-assignment for extended periods, some for as long as a year. The delay in implementing this routine administrative task, lawyers interviewed for this investigation argued, is one of the principal sources of trial delays at these Courts. As such, cases that should ordinarily take a year or two to conclude may take upwards of five or six years following a transfer (or multiple transfers) of presiding Judges manning courts where the cases were being tried.

Eighty-one per cent (81%) of lawyer-respondents interviewed for this study had been involved in cases re-assigned to another judge upon the transfer of the original presiding judge, and 67% of them reported that it took 1-3 months between the transfer of the presiding judge and their cases' re-assignment to another Judge; 29% said it took 4-8 months, and 5% said it took between 9-12 months to do so. A2Justice found, for example, that ten matters over which Justice J. D. Peters was presiding at Court 7 of the National Industrial Court before his transfer in July 2018 were not re-assigned until 13 March 2019, i.e. nine months later.

Fiat applications: The parties in a case at either of these courts have two options where the presiding judge is transferred. The first is, where a matter is part-heard - i.e. the trial has commenced - before the transfer, they could accept the fates and begin their cases de novo before a new presiding judge. The second option is for a party to apply for a fiat from the head of the Court¹⁰ requesting the transferred judge to continue hearing of the case, either in their new division or in the former, entailing, in the

¹⁰ This is the Chief Judge in the case of the Federal High Court or the President in that of the National Industrial Court.

case of the latter, that the Judge would return - i.e. occasionally sit in - the former division to continue the hearing. This investigation found a distinct bias against the use of the latter option: most of the lawyers surveyed preferred to wait for the re-assignment of their cases to other judges rather than apply for a fiat. Seventy-five per cent of those interviewed said they would rather not apply for a fiat in cases interrupted by judicial transfers, because of the simple fact that obtaining a fiat could be a lengthy process. 25% of respondents said they would.

A "Fiat" application is initiated by an application to the head of the particular court, by a party in a case. In the absence of an objection by the opposing party, the head of court may grant the application. On doing this, the head of court notifies the applicant as well as the transferred judge of its approval. The Rules of the National Industrial Court sets out the process in some detail.¹¹ According to the NIC Court Rules, the President of the Court may grant approval that a transferred presiding judge in a part-heard case should continue hearing it in their former or new division, upon the application for a fiat to this effect by any party to the case. The steps in the procedure for this are:

1. A party to the case applies to the President for a fiat, stating the reasons for the application and forwards an advance copy to the counsel of the other party;
2. That counsel is formally served the application;
3. The served counsel sends a written response indicating their acceptance or objection to the application and stating their reasons where it is the latter;
4. The President decides on the strength of the reasons given by both parties whether to grant the application;
5. If the President grants the fiat, he or she may set a period of its validity.

Completing this string of steps might take any indeterminate amount of time and there are no time protocols or responsiveness standards governing when any action should be taken or completed on the part of the head of court. In some cases, the time taken to do this could be a reasonably modest one. For instance, the fiat application by the defence counsel in two on-going cases between the *State v. Patrick Akpobolokemi* in the FHC¹² following the transfer of the presiding Judge, Justice I. N. Buba, was granted within a month. In other cases, the response timeline can be very

¹¹ National industrial Court of Nigeria (Civil Procedure) Rules, Section 26.

¹² FRN v. Patrick Akpobolokemi (FHC/L/553C/2015; hereinafter FRN v. Akpobolokemi-1) and FRN v. Patrick Akpobolokemi (FHC/L/31C/2015; hereinafter FRN v. Akpobolokemi-2)

elastic. It took six months, for instance, in the case of *Ojafco & Ors. v. Omotade & Ors.* to obtain the order. Also, it took the Chief Judge of the Court over nine months to grant the claimant's application for a fiat in *Wopara & Ors. v. NDDC*. It had taken even longer in *Edu Peter Emem v. Cotek Integrated Ltd.*¹³ where the fiat application was still pending after two years as at the time of this research.

Completing this string of steps might take any indeterminate amount of time and there are no time protocols or responsibility standards governing when any action should be taken or completed on the part of the head of court.

Commencement de novo: All the legal practitioners and court registrars interviewed for this research agreed that the re-commencing cases afresh on their re-assignment to new judges was a key cause of protracted litigation at the Courts under study. The rationale for such re-commencement, which is a long-standing judicial rule of practice with regard to part-heard cases, is that judges should be able to observe the demeanour of witnesses during their testimony as part of the process of evaluating the veracity of what the witnesses said. Thus, when a judge is assigned a part-heard case upon the transfer of its Judge previously trying the case, the hearing and related proceedings start afresh. That was the decision of Hon. Justice Liman, on being re-assigned the case of *Chevron Employees Multi-purpose v. Nicon Town Management Company Plc.*¹⁴ following the transfer of the presiding judge, Hon. Justice Buba.

It was that also of Hon. Justice Faji on being assigned the case with Suit Number FHC/L/369c/2009 after four different judges had previously presided over it. Similarly, Justice Ubaka ordered the case with Suit Number NICN/LA/148/2011 re-commenced afresh although it had already been nine years in court. Similarly, the four successive presiding judges in the case with Suit Number FHC/L/CS/87/2001, which was still in the docket as of 16 August 2019, commenced proceedings *de novo* in the matter when it was re-assigned to them on the transfer of their predecessors.

The staggering, even sometimes scandalous, impact of re-commencing cases *de novo* must be evident from these examples. So must the enormous waste of resources, both of the court and the parties to the case

¹³ NICN/ABJ/42/2015. Hereinafter *Emem v. Cotek*.

¹⁴ FHC/L/CS/618/18. Hereinafter *Chevron Employees v. Nicon*.

which they entail. For instance, at the time of Justice Peters transfer from Court 7 of the Lagos division of the National Industrial Court, four of the ten cases inspected at the court for this study were at the hearing stage; one was for definite hearing/trial, three for continuation of trial, and two for defence. Further, four witnesses had already given testimony in one of them (NICN/LA/90/2014). Nonetheless, these cases were all still being re-heard as of 26 September 2019 because they were commenced *de novo*, with all the implications of this for the expenditure of judicial resources.

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Lengthy adjournments: Findings from this study suggest that the practice of judicial transfer is a major driver of court congestion both at the FHC and NIC. Court registrars interviewed for this study identified docket congestion as one peculiar outcome of the practice, accounting for some courts having a daily cause list of as many as thirty cases. They attributed this situation to the fact that fresh cases are continuously assigned to judges although they [the judges] already have a backlog of uncompleted ones inherited from other judges who had been transferred. These judges also have to review case files and their associated records of proceedings before recommencing these cases by directing the court registrar to issue a notice of hearing on them.

Doing this for all the cases newly re-assigned to them may, according to a senior registrar at the FHC, take up to two years leading to overloaded dockets and lengthy adjournments of proceedings, especially in cases that are recommenced *de novo*. The case of *Nwosu v. Henley Industries & Anor.* typifies this situation. The eight years the case spent at the NIC before three or more judges in succession were marked by lengthy adjournments as each of the Judges had first to familiarise themselves with its details before fixing hearing dates.

Impact on the delivery of justice and right to fair hearing

The inordinate protraction of litigation described in the previous section has impacts that grievously impair justice delivery in both courts. Most significant among these impairments is the negative effect they have on rights of access to justice, due to the additional layers of expense prolonged delays add to the costs of litigation. The longer a case runs, the

more the litigation costs escalate - costs of professional services, transport costs, filing costs, service fees, photocopying and printing charges, and other (illicit) payments for service delivery by bailiffs and secretarial personnel, etc.

All the lawyers surveyed acknowledged that the excessive protraction of cases at both courts occasioned greater financial and non-financial burdens on their clients. Asked to identify the biggest problem they experienced arising from judicial transfers, 40.9% of the respondents named additional financial burdens. More holistically, 74% of them reported that their organisations/firms incurred additional costs due to the transfer of the presiding judges in their cases, and 26% said they did not. Those that incurred additional costs generally transferred them to their clients where this was possible. There were exceptions to this though, with some law firms providing their services *pro bono* and taking most of the weight of the financial burdens. These firms were few, though, and non-governmental organisations were predominant among legal services providers who did not pass all or most of the additional burdens to their clients.¹⁵

These costs arise mainly from the commencement of cases *de novo*, or their adjournment, or the extra costs of completing the cases in the new judicial division where the presiding Judge has been transferred to. A little more can be said of the last point. Eighty-four per cent of lawyers interviewed in this research reported that the presiding Judge in their cases took the casefiles along with them upon being transferred, while 16% said they did not. This in itself forced lawyers, their clients, and witnesses to travel to the division of the court where the transferred Judge now sits for purposes of continuing with the hearing of their cases. In other words, parties and their witnesses have sometimes to travel long distance - sometimes across State lines - to attend court.

Instances of these kinds of situations include the case of *Sotonia Fisheries Ltd. v. West African Marine Products Ltd. and 4 Ors.*¹⁶ In

. The direct implication of this is that Judge transfers create a huge upward spiral in the costs of litigation for court users, and represent a major access to justice barrier for poor people.

¹⁵ This has not been without some cost to them. Mrs Chinelo Chinweze of Access to Justice and Mrs Ubongabasi Eddy Obot of the International Federation of Women Lawyers (FIDA) decried the adverse impact of additional cost burdens due to judicial shuffling on the finances of their organisations, as such burdens were usually not provided for in grants from their donors.

¹⁶ FHC/L/CS/115/2001. Hereinafter *Sotonia v. West African Marine & Ors.*

this particular case, witnesses had to travel from Warri to Lagos every time the case came up, on most of which occasions the judge was said not to have sat.¹⁷

These cost burdens, all or most of which pass to the litigants, float with the tide, and rise according to the lengthiness of the case. The direct implication of this is that Judge transfers create a huge upward spiral in the costs of litigation for court users, and represent a major access to justice barrier for poor people. Therefore, while at the beginning, a litigation may appear to be an affordable expense, Judge transfers can readily alter this dynamic and push costs beyond what certain classes of litigants can afford. Judge transfers therefore can result in - or at least significantly contribute to - closing doors of access to justice against many vulnerable litigants.

A United Nations Office on Drugs and Crime (UNODC) report states that case delays could impede citizens' use of courts in two ways. It could do this either by increasing the cost of litigation or by frustrating complainants and causing them to give up the pursuit of justice entirely or to seek it by informal means.¹⁸ Put simply, if the first condition for access to justice is affordability and the cost of justice increases with the length of adjudication, then for the means-limited segments of Nigeria's population, the degree of access to justice is generally inversely proportional to the length of time cases take to conclude, declining as the latter increases and vice versa.

Another impact of Judge transfers is the effect it has on the ability of litigants to put forward their cases as effectively as possible. Long delays accommodate spaces for unpredictable changes of existential human conditions and social situations. After long periods of delay, critical witnesses may no longer be able, available or even willing to give (or re-give) testimonies required in proof of a litigant's cause. Furthermore, evidential proofs may be lost during the period, or their quality severely and irreparably diminished

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¹⁷ Justice Shagari finally gave judgement in the matter in 2018, after almost 18 years since initial filing.

over and after a long period of time. That is why Mr A. Lawal, a senior lawyer interviewed for this research, argued that restarting cases de novo was a breach of the right to fair hearing and was unnecessary given that the jurisdiction of both the FHC and NIC is nationwide.

It is noteworthy in this regard that a 50% majority of lawyers surveyed for this study named the unavailability of witnesses as the biggest problem experienced following from judicial transfers. The case of *Mrs Bilikisu Adekoya and 10 Ors. v. IGP and 4 Ors.*¹⁹ provides an apt illustration of the problem. Witness testimony for the claimants had been taken before the transfer of the presiding judge in the case, but the new judge to whom it was re-assigned began the hearing afresh, entailing the recall of earlier witnesses. By this time, however, the most important witness for the claimant was not disposed to testifying anew. The case was concluded without her testimony, with uncertain implications for the way the case would be adjudicated.

Another problem closely related to this is the harm caused to the interest of litigants in obtaining a fair hearing of their cases within a reasonable time, which, above all, is a constitutional right. Everyone is entitled to have their day in court. Not decades in court! This adumbrates the larger question of the fairness and impartiality of the judiciary and judicature in Nigeria.²⁰

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It is noteworthy in this regard that 50% lawyers surveyed in this investigation named the unavailability of witnesses as the biggest problem they experienced arising from judicial transfers. The case of *Mrs Bilikisu Adekoya and 10 Ors. v. IGP and 4 Ors.*²¹ provides an apt illustration of the problem. Witness testimonies for the claimant had

19 FHC/L/CS/5568/08. Hereinafter Adekoya & Ors. v. IGP & Ors.

20 The United Nations Office on Drugs and Crime (UNODC) conducted a study of justice system integrity and capacity in three Nigerian states in 2006. The authors of the report noted that "Access to justice is conditioned by multiple factors, including the quality, timeliness, and affordability of justice delivery...as well as the public's trust in the justice system to uphold the rule of law."

The highly respected Justice Chukwudifu Oputa JSC already observed in 1993 that "Today, the administration of justice in our courts suffers from two major constraints, namely delay and expense. If it takes 7-10 years to determine a case, a prospective litigant may decide not to go to court at all. But the one thing that frightens litigants away from the courts is the inordinate expense which has to be incurred, with the result that a very large proportion of our countrymen are, as it were, priced out of our legal system." Indeed, in the UNODC study, 78.3% of court users in Lagos State and 63.4% in Borno State held the lengthiness of cases to be the most important obstacle to their using the court, while this factor was rated the third most important by 32.8% of them.

21 FHC/L/CS/5568/08. Hereinafter Adekoya & Ors. v. IGP & Ors.

been taken before the transfer of the presiding judge in this case but the new judge to whom it was re-assigned elected to call witnesses afresh. By this time, however, the most important witness for the claimant was not disposed to testify anew. The case was concluded without her testimony, possibly damaging the interest of the claimant.

Impact of Judge Transfers on public trust in Judiciary

As with justice delivery, the trial delay effects of judge transfers erode public trust in the judiciary and undermine the use of courts as vehicles of justice in favour of alternative forms of justice.

Findings from this investigation suggest that judicial transfers harm court user sentiments regarding the judicial system. Lawyers surveyed for this study reported that 83% of their clients expressed dissatisfaction on news of the transfer of the presiding judge in their case, while 17% said their clients were neutral, and 9% said theirs were satisfied.

The lawyers were themselves not immune to the impacts of judge transfers. 73% of lawyers interviewed reported that judicial transfers extremely impacted the quality of delivering their professional services while 18% reported they had a negligible impact, and 9% reported that they had no impact at all. In one instance, a litigant in the five-year-old case of *Georgewill v. Aero* corroborated this saying his counsel became demoralised following news that the Judge presiding over the case had been transferred again, given that it was the third time this was happening in the lifetime of the case. The matter was yet to reach the hearing stage at the time of this research.

These responses to judicial transfers by persons affected by them only prefigure the broader negative perceptions among court users of the way law is applied and its otherwise important social function. Salihu and Gholami have observed that most Nigerians have no trust in the police and judiciary.²² The sources and essence of this attitude to these institutions are well expressed in the words of one of their sources:

"It is an understatement to say that the administration of justice in Nigeria is poor or below average: the entire system is a complete failure. The various apparatuses of justice (i.e.

²² Respondent 2, quoted in Salihu and Gholami, "Mob Justice, Corrupt and Unproductive Justice System in Nigeria," p.8.

*police and judiciary) have failed to provide or quench the thirst of Nigerians for justice because of corruption and despicable conducts. It is no more news that countless numbers of people who have committed heinous crimes such as kidnapping, murder, robbery, and so on have been let off the hook - perhaps because they have bribed the police, or they have influence or connection with those in power (usually relatives) - or have been given a slap on the wrist by the judiciary for offences punishable by at least 15 years imprisonment or death."*²³

This is cause for great concern regarding the proper operation of the judicature in a democratic society. Echoing the words of Justice Frankfurter, Hon. Justice Kayode Eso expressed this concern in his opinion in *Garba v. F.S.C.S.*: "For the judiciary, a powerful arm of government, to operate under the rule of law," he wrote, "full confidence - and this must be unadulterated - must exist in that institution. It must indeed be demonstrably shown..."²⁴

²³ Respondent 1, quoted in Salihu and Gholami, p.8 The text has been edited for punctuation and grammar.

²⁴ Kayode Eso JSC, in *Garba v. F.S.C.S.*, quoted in Aka-Bashorun, "The Supreme Court and the Challenges of the 1990s," p.117. The original text has been edited for punctuation.

CHAPTER THREE

Recommendations for Reform

Imperative and responsibility for reform

The profoundness of the adverse impacts of judge transfers described in this report demand a deep and extensive reflection over the way transfers are effected. To fail to review the practice of judge transfers when the practice so seriously hampers justice delivery and undermines public confidence in the courts, as this report has demonstrated, would be bluntly indefensible.

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The task before such a review will be to find a way the judiciary - or more specifically the courts of this study - can manage transfers of its Judges in a more seamless and less disruptive order. This report demonstrates that, in broad strokes, four administrative/judicial

processes account for the many problems in this area: these are (a) delays in case re-assignment (b) delays in processing applications for "fiats", (c) delays occasioned by recommending part-heard cases *de novo* and (d) unduly lengthy adjournment of proceedings by fresh trial

. Given that it is expedient for these courts to undertake transfers of their Judges from time to time, the leadership of the courts must assume and discharge the corollary obligation to ensure that the movements of their Judges do not negatively affect the conduct of pending cases in courts. It is a breach of this duty for these Courts to transfer any part of this responsibility to litigants by placing upon them the duty or burden of applying for their cases to be reassigned to another Judge, or for a "fiat" if they want a (transferred) presiding judge to continue hearing their case after the transfer.

Judges. The purpose of reviewing the practice of judicial transfers, in the light of its impact, will be to enhance the efficiency of procedures related to transferring judges from one division to another. The urgency and importance of judicial efficiency can hardly be overstated, for, as the afore-referenced UNODC report acknowledges, Nigeria's judicial system

must enhance its efficiency to improve public trust in the judiciary, because that trust is influenced as much by judicial efficiency as by judicial independence, impartiality and fairness.²⁵

It follows, inexorably, that courts themselves must organise these transfers in a manner that eliminates (or substantially minimises) the necessity for litigants to chase after the court in order to get their cases on track again

This task of reforming the practice of judge transfers in mitigation of its adverse impacts rests squarely with the Courts under study. Given that it is expedient for these courts to undertake transfers of their Judges from time to time, the leadership of the courts must assume and discharge the corollary obligation to ensure that the movements of their Judges do not negatively affect the conduct of pending cases in courts. It is a breach of this duty for these Courts to transfer any part of this responsibility to litigants by placing upon them the duty or burden of applying for their cases to be reassigned to another Judge, or for a "fiat" if they want a (transferred) presiding judge to continue hearing their case after the transfer.

Proceeding from the principle that it is the State's responsibility to guarantee the right to a reasonably speedy trial, the Courts have a duty to avoid implementing actions that have the potential of infringing the right to a fair and speedy trial. It follows, inexorably, that courts themselves must organise these transfers in a manner that eliminates (or substantially minimises) the necessity for litigants to chase after the court in order to get their cases on track again. That Courts should impose upon litigants the need and burden of applying for a fiat, or applying to get the case re-assigned is shirking its responsibilities and hanging them on others.

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Detail recommendations

This section contains detail recommendations for reform of the current system of judicial transfers in the courts under reference. They include proposals from this organization as well as others - lawyers and court staff - interviewed or surveyed for this report. These recommendations - many of which overlap - cover issues related to policy frameworks, administration, case management, applications management, and transfers management. They may be summarised thus:

²⁵ Broussard et al., p.46.

Courts undertaking the transfer of Judges from one division to another must, at a minimum:

1. Provide a clear and publicly-accessible policy framework for the transfer of judges that covers how transfer powers of heads of courts can be exercised, alongside outlining the corollary responsibilities of those exercising those powers to court users.
2. Provide safeguards against the abuse of judicial transfer powers in order to ensure that its exercise does not serve illicit purposes or simply provide a peg on which to hang some personal favour, bias or prejudice,
3. Enhance transfers management and reform the way cases affected by judge transfers are managed in order to facilitate their continuation, protect access to justice and fair hearing, enhance justice administration while enhancing the security of case files and related documents.
4. In cases where it is absolutely necessary, improve applications management to expedite decisions on fiat applications.
5. Reform existing Law requiring de-novo commencement of trials (Trial status management) to enhance access to justice and fair hearing, and expedite justice delivery.
6. Reform procedure management to discourage unnecessary adjournments and frivolous applications and petitions.

The details of these proposals are provided in the sections below.

Recommendation 1: Adopting an appropriate policy framework on transfers

There is an urgent need to formulate appropriate policies to address the practice of judge transfers and mitigate the toll it takes on court users. The following measures can be pursued to achieved this:

1. The National Judicial Council (NJC) should develop a policy framework on the practice of judge transfers and outline a mandatory protocol for its exercise in order to eliminate or minimise its adverse impacts on justice delivery and the constitutional rights of litigants. This policy should set out the basis for, and conditions under which Judges may be transferred from one division to another and the specific steps to be followed in implementing such transfers.

2. Recognising that it may take some time for the NJC to adopt and issue the recommended policies, there is need for the heads of NIC and FHC, in the meantime, to take matters into their own hands and order immediate action to mitigate the adverse impact of transfers on pending cases by implementing transfer management protocols which incorporate the following steps or elements:
 - i. **Transfer planning:** Judicial transfer decisions should allow a reasonable period to take effect in order to allow sufficient time for the implementation of all the steps outlined below. As such, transfers should be scheduled at least a year ahead and notice given to the affected Judges as well as litigants and lawyers in cases before them.
 - ii. **Impact assessment:** There should be an impact assessment of the likely effects of any transfer on the docket of the court before a transfer decision is made. Where a transfer will exact a serious effect on the court's docket, or where the Judge subject to the transfer will be unable to complete the determination of part-heard matters in the court, such a transfer should not ordinarily take place before all the cases are disposed-off.
 - iii. **Fast-tracking trial-stage cases:** Where the docket of a Judge due for a transfer consists of part-heard cases, the Judge should be required to fast-track their hearing and completion before the transfer takes effect. The Judge should not be assigned any new case(s) during this time.
 - iv. **Arrangement for return:** If, for some reason, a transfer has some urgency to it, the head of Court should make immediate and appropriate arrangements for the Judge to return to the former division for the completion of the hearing and final determination of part-heard cases.

There should be an impact assessment of the likely effects of any transfer on the docket of the court before a transfer decision is made. Where a transfer will exact a serious effect on the court's docket, or where the Judge subject to the transfer will be unable to complete the determination of part-heard matters in the court, such a transfer should not ordinarily take place before all the cases are disposed-off.

- v. **Re-assignment of pre-trial cases:** While a Judge subject to a transfer order is making effort to determine the part-heard docket, the head of court (or administrative head of court division) should immediately reassign cases whose trial have not commenced but are pending in the soon-to-be relocating Judge's court. This will eliminate the delays associated with post-transfer case re-assignment and applications for fiats. It also alerts litigants and their lawyers of the fact of a judge's transfer well ahead of the event and gives them case management information while the Judge is still in the division. Therefore, time which would have been wasted through administrative delays in case re-assignments and consideration of fiat applications is saved.

Recommendation 2: Provide safeguards against the abuse of judicial transfer powers

It is accepted that judicial authorities must have the power to transfer judges on occasion, particularly when certain compelling circumstances arise. A judge's safety for example. A key aspect of any reform effort in this area is to prevent the abuse of the power to transfer Judges by establishing a transparent framework for its exercise. This is in order to ensure that its exercise does not serve illicit purposes or simply provide a peg on which to hang some personal favour, bias or prejudice. Which judges are selected for any round of transfers? Who identifies them and by what criteria? How frequently should a Judge be transferred? How much time should be given before transfers take effect? How are transfer decisions communicated to judges, lawyers, litigants, and other court users? What provisions are made against perverting the use of transfer powers? There are no policies which address these questions, and no available safeguards against the misuse of the power of transfer.

Like all powers, the transfer power may be abused or misused. And in fact, there are whispers that it is frequently misused. It is important therefore, to establish policies and protocols guiding the use of judicial transfer powers, that provide better transparency of its exercise, to ensure that transfer decisions are not affected by malice or bias, and provide avenues of redress for Judges who are genuinely aggrieved by the way they have been transferred.

A key aspect of any reform effort in this area is to prevent the abuse of the power to transfer Judges by establishing a transparent framework for its exercise. This is in order to ensure that its exercise does not serve illicit purposes or simply provide a peg on which to hang some personal favour, bias or prejudice.

Recommendation 3: Reform transfers management to minimize trial delays, safeguard fair hearing rights, and prevent needless justice costs escalation on litigants, as well as enhance justice administration

The management of judicial transfers at the Courts under study was a subject of concern among all the legal practitioners interviewed for this report. This concern centred the inadequacy or outright absence of prior notification about such transfers to court users. 90% of the lawyers surveyed reported that they were notified of the transfer of the presiding judge in their cases only after the transfer had taken effect, while 10% said they were informed beforehand. Lawyers and court registrars reported that there existed no specified mode of prior notification to litigants and lawyers about judicial transfers at the courts, and any approach adopted was adhoc, at the discretion of each court. Of the lawyers who received prior notice, 95% of them said got it from the court registrar and 5% said they were notified by the judge. Of this latter group, only 2% of them reported that they were informed by the judge in open court of their imminent transfer.

This situation accounts, in significant part, for the frequency and lengthiness of adjournments in matters arising from transfers at these courts. For lawyers, litigants, and witnesses would often arrive at court for hearings in their matters only to be informed that the presiding Judge has been transferred out of the jurisdiction. Inexorably, the time and resources expended in preparing for the trial and commuting to court on that day would be wasted. Such resources were sometimes quite significant - as in the already-mentioned cases of *Sotonia v. West African Marine & Ors.* and *Nyoho v. Mod Maritime* where parties had to travel across state borders for the hearing. Some lawyers interviewed reported that the delays occasioned by such adjournments caused their clients to become frustrated and abandon their cases, which suggests that the lack of prior notice and contingency arrangements following judge transfers harm access to justice.

Proposed recommendations on transfers management are the following:

1. *Consideration of fixed station tenures for judges in a division, say, of five to six years. Where there are such fixed station timelines, it is easier to manage cases and their assignments to particular Judges. Judges will also take greater responsibility to see that they conclude all part-heard cases before they relocate to their new divisions.*

2. *Provide adequate advance notice of transfers to judges who are the subject of the transfers. This should not be less than 9 months in advance in non-urgent cases.*
3. *Provide adequate advance notice of transfers to litigants about pending transfers. The court should notify litigants/their counsel in advance about transfer decisions made regarding the presiding Judges in their cases to enable them plan their cases effectively and expedite action on finalizing them.*

There is also need to reform case and record management aspects of transfers, both prior to, and after the transfers take effect. There have been concerns raised about re-assigning cases following judge transfers as well as the security of case files taken by the Judges to their new jurisdictions. Therefore, the following recommendations are proposed:

1. **Modulate the assignment of cases to Judges awaiting transfers:** The head of court (or administrative head of court division) should not continue to assign fresh cases to Judges awaiting transfers, except those cases involve only routine and simple proceedings that can be disposed-off relatively quickly or those that do not involve contested testimonies. This will also give judges who will be transferring from the division the time and focus needed to complete their part-heard dockets.
2. **Adopt Proactive Docket Management System on Cases Requiring to be Reassigned:** It is improper for courts to wait for an application by litigants in order for their cases to be reassigned after the presiding Judge has been transferred, before such steps are taken. Reassigning cases is a basic function of courts and ought not to be performed or triggered only when litigants formally request the court to do so. The reassignment ought to occur as an intrinsic part of the Judiciary's responsibility to manage cases filed in courts. In other words, it ought to be a self-willed and propelled function. Waiting for parties to make formal applications before that duty is performed misconceives the nature of the duty-relation in the "service contract" between courts and court users. Where courts effectively undertake this duty, it

will minimize long delays often associated with re-assigning cases after a judge transfer takes place and reduce opportunities for graft - or extortion - in the process of getting the cases back on track.

3. Improve records management: There have been reported cases of documents in casefiles going missing in the course of transferred Judges taking those files with them while proceeding on transfers. Courts should improve security of casefiles while ensuring that there are back-up records of the entries in those files in case of missing records

Recommendation 4: Reform existing Law requiring de-novo commencement of trials (Trial status management)

As already demonstrated, commencing case proceedings afresh (de novo) either on their re-assignment or when a new Judge takes over the court of the former Judge was a key concern among court users, particularly legal practitioners interviewed for this report. The practice of commencing cases afresh - or de-novo in technical parlance - is, as already shown, based on legal evidentiary rules outlining the importance of the Judge's observation of witness' demeanour when they enter the witness box to testify or give evidence in a suit.

It is evident, however, that commencing part-heard cases afresh while discountenancing prior trial records of proceedings of a case deals a cruel blow to litigants who have to absorb the extra costs and time of repeating processes that had previously been completed, and will lead to understandable frustration with the delivery of justice.

There is a strong case than can be made against the rule requiring that a new Judge re-hear the testimonies already given in a pending case as part of the process of commencing the case de-novo. First, it is to be noted that the Evidence Act 2015 does not require previous testimonies in a cause to be re-heard when the case is reassigned to another judge in order to validate those testimonies. In fact, records of testimonies given previously in a case is admissible in the same case if sought to be tendered, and the implication is that a new presiding judge in a part-heard case needs not insist on re-commencing the suit as a matter of law.

It is true that the combined effect of Sections 125 and 126 of that Evidence

Act²⁶ represents a requirement of the presence of a witness in court to testify to a fact seen, heard, or otherwise perceived, or an opinion held by them. These sections nonetheless do not - at least expressly - exclude reliance on evidence given by witnesses at a previous stage in the proceedings. On the contrary, Section 46(1) of the Evidence Act allows the admissibility of such evidence:

"Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is admissible for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding the truth of the facts which it states, when the witness cannot be called for any of the reasons specified in section 39, or is kept out of the way by the adverse party: Provided that (a) The proceeding was between the same parties or their representatives in interest (b) The adverse party in the first proceeding had the right and opportunity to cross-examine; (c) The questions in issue were substantially the same in the first as in the second proceeding."

Furthermore, procedural rules of the FHC and the NIC similarly allow such evidence. Rule 49(4) of the former allows evidence given in a case before the retirement or transfer of the presiding judge to be read at its re-hearing de novo by another judge without the witness who gave the evidence being recalled.²⁷ And according to Order 40 Rule 21 of the National Industrial Court of Nigeria (Civil Procedure) Rules 2017, "Subject to the provisions of Section 46 of the Evidence Act 2011, all evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter."

In the particular case of the latter Court, its rules of procedure only allow two scenarios in which judges may recommence cases de novo, neither of which implicate or involve the transfer of the Judge:

1. Order 39 Rule 6 allows recommencement de novo where a case has reached the trial stage before it was re-assigned;²⁸
2. Order 47 Rule 3(4) allows recommencement de novo where a judge

26 "125. All facts, except the contents of documents, may be proved by oral evidence. "126. Subject to the provisions of Part III oral evidence in all cases whatever, be direct (a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw that fact....."

27 Federal High Court (Civil Procedure) Rules 2009, r.49(4).

28 "Order 39 Rule 6: where a case has proceeded to trial before the withdrawal and reassignment in line with the provisions of rule 3 of this Order, the Judge to whom the case is reassigned, shall set down the hearing of the matter de novo"

has type-written their judgement or ruling but dies before the date of its delivery.²⁹

The Practice in India

If further inspiration is needed to change course on the application of this rule, India provides one. India, like Nigeria, is a Common Law jurisdiction but has passed legislation amending the application of the commencement de novo rule following the reassignment of a part-heard casefile. Section 280 of the Code of Criminal Procedure (1973) of India provides that: "...when a presiding Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such whilst under examination."

Thus, in the rape case of *Munjam Prasad v. The State of Andra Pradesh*³⁰ the trial judge recorded his observations on the demeanour of the victim (code-named P.W.2) during her testimony. "The witness," the learned judge wrote,

"[appears] to be innocent and not very worldly-wise.... There are some important aspects that are to be noted from the evidence of P.W.2. In fact, P.W.2 is an innocent girl aged about 17 year. It is also to be noted that this victim is not worldly-wise. I have clearly observed her while she was giving evidence in the court. I have noted this fact in the deposition of P.W.2. The victim is not able to understand the questions clearly and after taking some time she was giving answers, that is the mental and physical condition of P.W.2. This particular situation has to be kept in mind while considering the evidence of P.W.2."

In its findings of 11 October 2004 dismissing an appeal brought by the accused person, the Court commented on the recording of the witness' demeanour. It said:

"In view of the fact that the trial judge would have the advantage of observing the demeanour of witness and recording demeanour of the witness while recording the evidence of such witness always would be suggestible since in certain matters the

29 "Order 47 Rule 3 (4): where a judge has typed-written his judgement or ruling but has not signed the judgement or ruling but died before the date fixed for the delivery of the judgement or ruling, the President of the Court may assign another Judge to hear and determine the matter de novo."

30 Hereinafter Prasad v. Andra Pradesh.

same judicial officer who records the evidence may not be able to dispose of the matter finally in all cases. In such matters, if the remarks relating to the demeanour of the witness are not recorded, these essentials may be lost sight of while giving final verdict and, on the other hand, if such remarks of demeanour are recorded, the same may be the guiding factor for the subsequent officer or even to the Appellate Court or the Revisional Court, as the case may be. Hence the demeanour observed by the learned trial judge and the findings recorded by the learned judge in this regard may have to be given due weight by the Appellate Court."

The Court stated further that the purpose of the section under consideration here - i.e., Section 280 of the Code of Criminal Procedure 1973 of India - was to aid the Appellate Court in estimating the value of evidence.

Given these considerations and background, the following recommendations are advanced:

1. Adopt textual recording of witness demeanour by judges while they give evidence; this will enable any other Judge(s) who take over the case to use records of those observations of demeanour to assess the evidence, should it be necessary.
2. Adopt video recording of witness demeanour during testimony-giving as a collateral option;
3. Allow judges to conclude cases at advanced stages by delaying the coming into effect of their transfer for specific periods.

CONCLUSION

Being probably the pioneer study of its subject, this work is mostly an interrogative exploration of a chronic justice delivery problem that has - and is still - causing major service disruptions all in a muted, insidious and pervasive way. The work is only an outline, not a full or systematic treatment of the subject but hopefully indicates possible lines of future investigation.

A2Justice will hope that this study inspires the search for a better managed system of judge transfers in the FHC and NIC, and perhaps also, in other courts of Nigeria's judicature where judicial transfers are a feature of the administration of any court. It also hopes that the recommendations advanced by this report offer meaningful propositions for the Judiciary's consideration in remedying the many problems associated with the routine transfer of judges from one division to another.

Lines for further research

This report has repeatedly asserted the dearth of literature on the internal governance of Nigeria's judicial system overlapping, in some way, the subject of this study. Studies of judicial capacity have focused on the admittedly important issues of the quality and quantity of judicial resources, including personnel, equipment, and infrastructure. In contrast, investigators have paid little attention to issues related to the mode of the judiciary's operation.

Neglecting issues related to judicial governance in the study of Nigeria's judicial system is unfortunate, and runs contrary to the general concern for judicial efficiency. This is because efficiency is not a function only of technology and skill but also of method (in the sense of work-flows and the distribution of work) and the structure of power that undergirds it. Issues such as these have material impacts on outcomes, as this report has shown. What seems immediately to be only a simple device of administrative convenience is revealed upon scrutiny to have profound implications for justice delivery and the reputation of the judiciary and judicature.

This suggests lines of further investigation by students of law and the judiciary. The narrow remit of the present study necessitates a broader and deeper investigation into the practice of judge transfers. The two courts under study have nation-wide jurisdiction but the majority of cases reviewed and most of the persons interviewed or surveyed were predominantly in Lagos. Also, most of these persons were lawyers and court administrators: judges were absent from the sample. These shortcomings need to be made good by a larger and more detailed study.

REFERENCES

Ademola, Adetokunbo. "Personnel Problems in the Administration of Justice in Nigeria." *Law and Contemporary Problems* 27, no. 4 (January 1, 1962): 576-80. <https://doi.org/10.2307/1190793>.

Ajomo, M. Ayo, and Isabella E. Okagbue, eds. *Human Rights and the Administration of Criminal Justice in Nigeria*. N.I.A.L.S. Research Series 1. Lagos, Nigeria: Nigerian Institute of Advanced Legal Studies, 1991.

Aka-Bashorun, Alao. "The Supreme Court and the Challenges of the 1990s." In *Law, Justice and Stability in Nigeria: Essays in Honour of Justice Kayode Eso*, edited by Yemi Akinseye-George, 111-25. Ibadan, Nigeria: J. Shalom Multiserve Bureau, 1993.

Federal High Court. "Appoint More Judges to Abuja Federal High Court - Acting CJ," September 18, 2019. <http://fhc.gov.ng/fhc-news/appoint-more-judges-to-abuja-federal-high-court-acting-cj/>.

Broussard, Giovanni, Philippa Burgess-Arcos, Peter Langseth, Fabrizio Sarrica, Abdullahi Shehu, Oliver Stolpe, Juliet Ume-Ezeoke, Peter Akper, I. A. Ayua, and Epiphany Azinge. "Assessment of the Integrity and Capacity of the Justice System in Three Nigerian States: Technical Assessment Report." New York: United Nations, January 2006. https://www.un.org/ruleoflaw/files/corruption_publications_nigeria_assessment%5B1%5D.pdf.

Federal High Court (Civil Procedure) Rules 2009. http://files.transparency.org/content/download/173/695/file/2007_GC_R_EN.pdf.

Vanguard News. "Judge's Transfer Stalls Commencement of Saraki Aide's Trial," January 10, 2019.

<https://www.vanguardngr.com/2019/01/judges-transfer-stalls-commencement-of-saraki-aides-trial/>.

http://files.transparency.org/content/download/173/695/file/2007_GC_R_EN.pdf.

National Industrial Court of Nigeria (Civil Procedure) Rules 2017. <https://nicn.gov.ng/officialGazette/National%20Industrial%20Court%20of%20%20Nigeria%20Civil%20Procedure%20Rules%202017.pdf>.

National Judicial Council. "Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria." National Judicial Council, February 24, 2016. <https://njc.gov.ng/code-of-conduct>.

"New Postings of Federal High Court Judges." Federal High Court, February 4, 2018. <https://www.fhc-ng.com/pdf/NEW%20POSTINGS.pdf>.
https://www.unodc.org/documents/treaties/gpacpublications/judicial_integrity_lagos.pdf.

Pepys, Mary Noel. "Corruption within the Judiciary: Causes and Remedies." In *Corruption in Judicial Systems*, by Transparency International, 3-11. edited by Diana Rodriguez and Linda Ehrichs. *Global Corruption Report 2007*. Cambridge: Cambridge University Press, 2007. http://files.transparency.org/content/download/173/695/file/2007_GC_R_EN.pdf.

https://www.unodc.org/documents/treaties/gpacpublications/judicial_integrity_lagos.pdf.

TVC News Nigeria. "Sacked NEPA Staff: Judge Transfer Stalls Case," October 23, 2016. <https://www.tvcnews.tv/sacked-nepa-staff-judge-transfer-stalls-case/>.

"The Bangalore Principles of Judicial Conduct." Judicial Group on Strengthening Judicial Integrity, 2002.\

https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf?

RESEARCH METHOD

Research for this report was conducted over five weeks in August and September 2019. The research sample was drawn from lawyers involved in cases at the Federal High Court and the National Industrial Court, as well as judicial staff at these Courts. It comprised:

1. Forty legal practitioners
2. Ten registrars (five from each of the Courts, including the Deputy-chief Registrar of the Federal High Court and the Senior Registrar of the National Industrial Court)
3. Court users

Most of the human sources were located in Lagos State, with a smaller portion in Abuja and other divisions of the Courts under study.

Information was collected from these sources by a questionnaire survey and structured interviews. Documentary information was collected from certified-true-copies of cases, approved fiat applications, judgements, enrolment orders, and filed court processes. Additional information was gathered from published sources.

A key limitation of the study was the dearth of published materials on the Federal High Court and the National Industrial Court that are directly relevant to the subject of this report. The information gathered from desk research does not pertain directly to these Courts but rather to State courts. It also does not address the particular subject of this report but rather deals with general issues of judicial capacity and integrity. It nevertheless provides quantitative and qualitative data as well as expert perspectives that help to situate the concerns in this report within the wider context of the capacity issues afflicting Nigeria's justice system and impacting on its justice delivery performance. (See Supplement: The paucity of research data).

A second key limitation of this study was the absence of a mechanism in Nigerian judicial studies for measuring the impact of judicial administrative practices, such as judge transfer, on justice delivery or its

constituent factors such as judicial impartiality and integrity, the accessibility and timeliness of justice, etc. This limitation is perhaps inseparable from the nature of this study as a pioneering initiative in this area. Access to Justice acknowledges the general persuasion among persons interviewed or surveyed for this study that the practice has a salutary impact on justice delivery. In the absence of a scientific method and mechanism for determining this, there is room to question whether this persuasion is not only a function of professional ideology and culture.

**Questionnaires for Research on Impact of Transfer of
Judges of the Federal High Court and National Industrial Court**

INTRODUCTION

Name:

[.....ANSWER.....]

Status: Legal Practitioner, Court Registrar, Litigant (please indicate in the box below)

[.....ANSWER.....]

SUIT NO and date of filing:

[.....ANSWER.....]

HISTORY OF CASE

1. Was the judge presiding over the suit ever transferred outside jurisdiction during the pendency of the suit? Yes/No (please indicate answer in the box below):
[.....ANSWER.....]
2. If Yes, were you notified of the judge's transfer and how?
[.....ANSWER.....]
3. Who notified you and was the notification prior to the transfer or after the transfer?
[.....ANSWER.....]
4. How long was it between time of transfer of the judge and reassignment of the case?
[.....ANSWER.....]
5. Did you make an application for reassignment of the matter or it was reassigned by the court on its own volition?
[.....ANSWER.....]
6. At what stage of the suit was the presiding judge transferred?
[.....ANSWER.....]
7. If the suit was at the trial stage or final address stage, was there a

flat for the presiding judge to return to the original jurisdiction to conclude the case or was the case file sent to the judge in His Lordship's current jurisdiction to conclude same?

[.....ANSWER.....]

8. Was there a time lag between date of transfer of the judge and when proceedings resume in the suit? Yes or No? If Yes How long?

[.....ANSWER.....]

9. How would you rate the time of reassignment? Please tick appropriate answer (short, moderate, long, too long, inordinately protracted)

[.....ANSWER.....]

10. What effect has the transfer of the presiding judge and time taken to reassign the case had on the suit generally and on the litigant?

[.....ANSWER.....]

11. What effect has the transfer on the docket of the court?

[.....ANSWER.....]

12. What solutions can you proffer which in your opinion would best address the problems identified with the transfer of judges from one jurisdiction to another before conclusion of matters they are presiding over?

[.....ANSWER.....]?

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Access to Justice appreciates the work of Osaze Lanre Nosaze in writing this report. Mr Nosaze is the Executive Director of the Asoro Centre for Development and Citizenship and was from 2006 to 2009 Executive Director of the Civil Liberties Organisation, Nigeria's premier human rights NGO. He has authored numerous reports on human rights and governance issues in Nigeria.

ABOUT ACCESS TO JUSTICE

Access to Justice (A2Justice) defends rights of equal and non-discriminatory access to courts of law, works to expand access by marginalised people to equal and impartial justice, attacks corruption in justice administration, supports legal struggles for human dignity and disseminates legal resources that help achieve these purposes. Using three mutually reinforcing programmes - The Judicial Integrity and Independence Programme (JIIP), the Legal Access Programme (LAP), and the Legal Resources Programme (LRP), all of the organization's work addresses critical problems in justice administration and human rights, serve important public needs and targets important achievements in democratic reform.

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The organization welcomes public participation in, and support for its advocacy. To find ways of getting involved, please write to The Director at the address or email below.

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