



THE ACCOUNTABILITY WATCH



This project is supported by the Department For International Development (DFID)

CARL produces first monitoring bulletin on the Anti-Corruption Division on the high court

INTRODUCTION

The Public Finance Management (PFM) consortium, which includes the Centre for Accountability and Rule of Law (CARL), Christian Aid, Budget Advocacy Network and Restless Development is currently implementing the “Strengthening Public Financial Management, Anti-Corruption and Accountability Institutions in Sierra Leone” project. Funded by DFID, the overall objective of the project is to improve public revenue generation, strengthen public expenditure management systems, and strengthen anti-corruption institutions.

As part of the consortium’s collective effort to achieve these objectives, the consortium has conducted a series of studies aimed at informing the actions of the government and its development partners on revenue mobilization, public finance management and anti-corruption. These efforts are in line with the priorities of the Sierra Leone government, which has placed strong emphasis on increased tax collection, improved expenditure management, and effective delivery of education and health services.

To help strengthen the fight against corruption, an Anti-Corruption Division of the High Court has been established. Pursuant to a Constitutional Instrument dated 4th April, 2019, the court is mandated to hear and determine all anti-corruption matters instituted by the Anti-Corruption Commission. The new division, which is expected to be a model court for criminal cases, was set up as part of efforts to address some of the traditional challenges that confront the criminal justice system. These include undue delays in proceedings, limited courtrooms, and integrity deficit among some administrative staff.

The ACC Court, as it is dubbed, has three designated Judges. These Judges preside over corruption-related cases only. The court is supported by a separate registry, which is a subsection of the criminal registry. It also has a team of recorders, process servers, and office assistants. These personnel, with support from the DFID-sponsored Technical Assistants (TAs), support the adjudication process by preparing cause lists, assisting with the processing of bail applications, and preparing the court for sittings. DFID supported the recruitment of staff, as well as the procurement of equipment

Centre for Accountability and Rule of Law (CARL-SL), 145 Circular Road, Freetown Sierra Leone

Tel: (+232) 76 365 499 Email: info@carl-sl.org Website: www.carl-sl.org

**RESTLESS
DEVELOPMENT**
POWERED BY YOUNG PEOPLE



christian
aid

To support the Court deliver on its mandate – and at the same time hold it accountable – the Centre for Accountability and Rule of Law has hired three Court Monitors to follow the proceedings before the court. Principally, the terms of the reference for the Monitors is to update on proceedings before the Anti-Corruption Division (ACD) of the High Court and challenges confronting the administration of justice thereto. Using a monitoring tool jointly designed by CARL, the ACC and Technical Assistants assigned to the Court, the monitors are required to keep tabs on issues relating to case management, the conduct of prosecutors and defence counsel, rights of accused, and the integrity of the proceedings. The Monitors do not follow corruption-related matters before the Court of Appeal and Supreme Court.

The Monitors, each of whom has a legal background, are required to sit in the courtrooms to track progress of the matters adjudicated by the ACD.



SUMMARY OF KEY FINDINGS

The following is a summary of the key findings between November 2019 and February 2020:

Number of cases completed

In addition to the 17 cases inherited by the newly established Anti-Corruption Court, 19 cases have since been filed since the Court was set up in November 2019. A total of 6 cases were concluded between November 2019 and April 2020, all of which started before the establishment of the new division. None of the cases assigned to the designated Judges at the ACD has been concluded, but a quick comparative analysis shows an increase in the frequency of sittings and the conclusion of interlocutory applications. In general, we observed a significant increase in judicial proceedings relating to corruption-related cases.

Specifically our monitors observed the following:

Adjournments

We observed that 85.2% of the 36 cases monitored had been adjourned at least once, with 48.7% having been adjourned between 1 and 5 times. We observed that 29 sessions representing 18.8% of cases had been adjourned between 6 and 15 times. We observed that a significant percentage of the adjournments were granted at the request of prosecutors of the Anti-Corruption Commission.

B. THE ANTI-CORRUPTION COURT:

- To address the problem of absenteeism by prosecution lawyers, it is recommended that the staff strength of the prosecution team be reviewed to ascertain whether there is need to hire additional lawyers. As an interim measure, there is need to review the number of files assigned to each lawyer to be sure that they can handle the increasing demands on their time. It may be also useful to scale up supervision of the prosecuting counsel to ensure that they are regular and punctual in court as absenteeism by prosecutors is partly the reason for delays in proceedings.
- Given the number of times cases were adjourned because of the absence of Prosecution witnesses, it is recommended that the Anti-Corruption Commission set up a witness management unit or strengthen the existing unit (if any) to ensure the effective management and attendance of witnesses in court.

PHOTO REPORTS



Hon. Chief Justice, Babatunde Edwards.



ACC Commissioner, Francis Ben Kaifalla.

In spite of the early signs of progress, there is need for improvement on a number of issues. In this regard, we make the following recommendations to:

THE CHIEF JUSTICE

- It was observed that witness absenteeism accounted for at least 68 sessions representing 40% of all adjournments at the Anti-Corruption Division of the High Court. On occasions, both the Prosecution and the Defence appeared to be either ill-prepared or had genuine challenges in accessing witnesses. Sometimes, it was not even clear whether any witnesses had been lined up to testify. It is recommended, therefore, that a Witness Management Unit be developed for the Anti-Corruption Division of the Court to help manage particularly Defence witnesses.
- Unlike the Fast Track Commercial Court which has its own rules, no special rules have been developed and adopted for the Anti-Corruption Division of the High Court. The proceedings are governed by the Criminal Procedure Act, 1965. Given the nature of ACC cases, it is important that special rules are developed to guide its proceedings as the existing legal framework for criminal procedure is inadequate in many respects. Such rules may provide a framework for case management, including a pre-trial conference, sharing of witness statements, reviewing the charges based on the available evidence, number of witnesses to be called by both parties, guidelines for granting bail and the role of the ACD sub-registry, among others. This could help address the uncertainties surrounding witness attendance, duration of trials, adjudicating bail applications, regulating adjournments, and conferring powers on the ACD's division to process bail, among others.
- At the moment, all processes are centralised around the Office of the Master and Registrar of the High Court. The Master is evidently overburdened, given the huge volume of matters the office handles. We observed that this has sometimes slowed down certain processes and the functioning of the ACD sub-registry. It is recommended that the Chief Justice issues a Practice Direction enabling the sub-registry of the ACD to independently handle some issues, including bail and background check for sureties, among others.
- While the designated ACD-Judges have a rich prosecutorial background and depth of knowledge in criminal law, there is need for regular training in adjudicating anti-corruption cases. It would be useful to give them access to learning fora and provide them resources related to anti-corruption proceedings.

Specifically, 91 sessions were adjourned between 1 and 5 times at the instance of ACC prosecutors, whilst 59 sessions were adjourned at the instance of the defence lawyers. 39 sessions were adjourned because prosecution witnesses were absent, representing 20.6%; 38 sessions were adjourned because the accused was absent, representing 20.1%; 33 sessions were adjourned because the prosecution lawyers were absent, representing 17.5%; and 29 sessions were adjourned because defence witnesses were absent, representing 15.3%. In addition, 154 sessions were adjourned between 1 and 7 days, representing 84.6%, whilst 19 sessions were adjourned between 8 and 15 days, representing 10.4%

Of the 182 sessions monitored, 50 were adjourned between 6 and 15 times at the instance of the prosecution, while 24 sessions were adjourned for about the same number of times at the instance of defence lawyers. Of the 182 sessions monitored, 27 of them related to initial appearances of accused persons, while 155 sessions involved cases that had been previously adjourned. In other words, only 19 cases were filed during the period covered in this report.

While all the adjournments were based on procedural standards, the key reasons for the adjournments included the unavailability of prosecution witnesses in 39 sessions, representing 20.6%; absence of prosecution lawyers in 33 sessions, representing 17.5%; absence of defence witnesses in 29 sessions, representing 15.3%; and absence of the accused in 38 sessions, representing 20.1%. Witness absenteeism alone accounted for adjournments of nearly 68 sessions, representing 36% of all adjournments, accordingly making it the single biggest reason for all adjournments and delays in proceedings.

Role of Judges and public access to proceedings

Judges were present for nearly 180 sessions, representing 99% of all sessions, and they generally allowed proceedings to flow seamlessly, thanks to the Recorders who prepared transcripts of court proceedings. This contributed extensively to expediting proceedings. However, our Monitors observed a worrying frequency in the number of times Judges "stood down" cases, largely because the prosecutor or defence counsel was absent or for some unexplained reasons.

The Monitors observed the court rooms had functional public-address system during each session. This made it easier for accused persons and other court users to follow the proceedings. There is a lot that the other sub-divisions of the criminal division can learn from the Anti-Corruption Division of the High Court.

Bail, legal representation, and access to court documents

We observed that the Judges demonstrated willingness to grant bail and indeed, bail was granted to all accused persons before the Court. Nearly all of them were able to meet the bail conditions either on the same day or a few days thereafter. We also observed that at least 95% of accused persons were represented by at least a lawyer, which is remarkably higher than the percentage of legal representation in other criminal cases. The conditions for bail included a requirement for "high earning sureties" (60.2% of all cases); the requirement to "deposit of travelling documents" (36.7% of all cases) and the need to deposit "Title deeds" by sureties (3.1% of all cases). There was no instance where Judges requested accused persons to "deposit cash into the judiciary sub-treasury" as a condition for releasing them on bail. Court records are available to lawyers and the public for a reasonable fee.

Most common corruption offences

Of all the offences captured in our monitoring tools, we observed that “misappropriation of public funds or property” was the most prevalent, accounting for 52.7% of all offences charged. The joint second most prevalent offences are “abuse of office” and “soliciting, accepting or obtaining advantage from public officer”, which accounted for 39.0% of all offences. “Abuse of office” accounts for 36.1% of offences charged. At least 76% of the accused persons were men.

Nearly 80% of all cases before the Anti-Corruption Division of the High Court involve persons between the ages of 36 and 55 years old. This shows that most cases of corruption tried by the ACC involve persons outside the youth bracket.

Figure 1: Distribution of monitored sessions by type of offences (percentage).

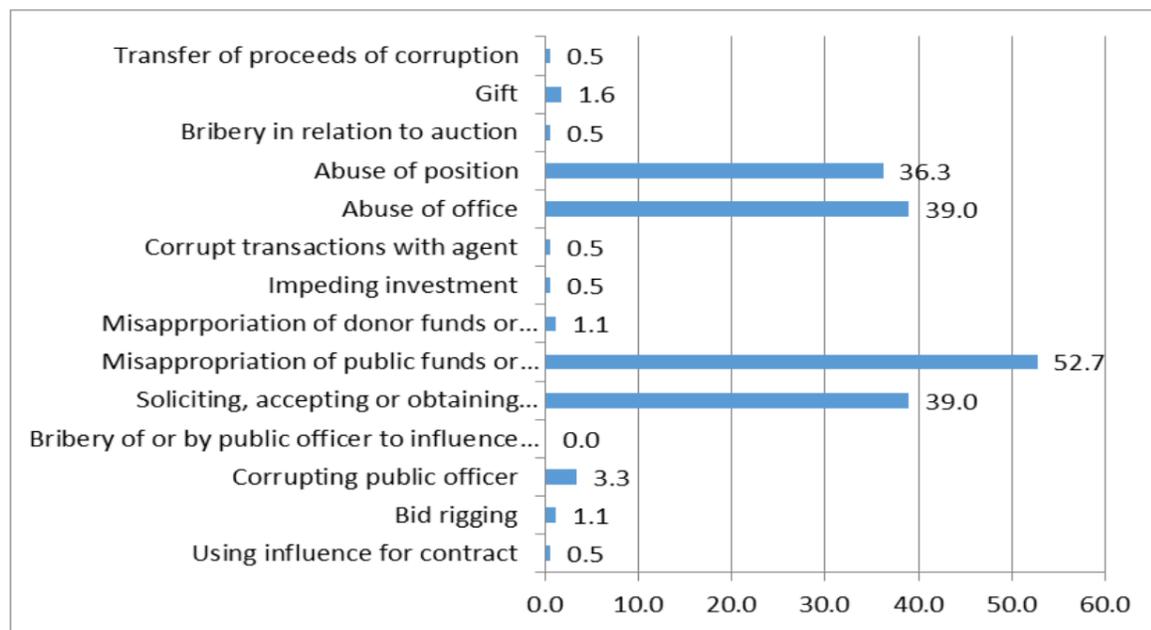
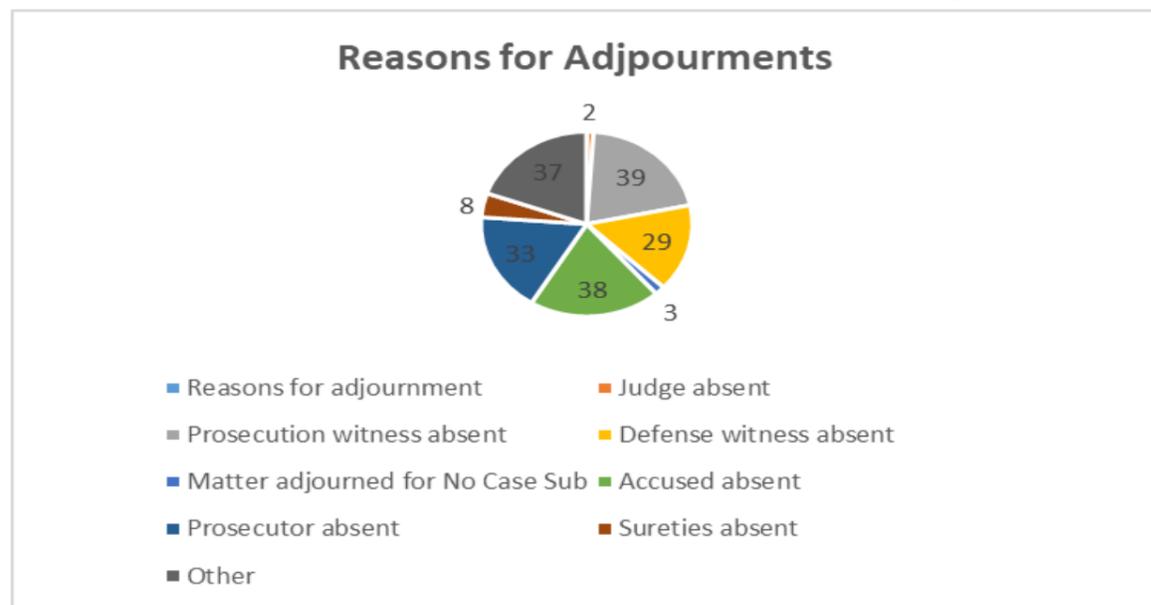
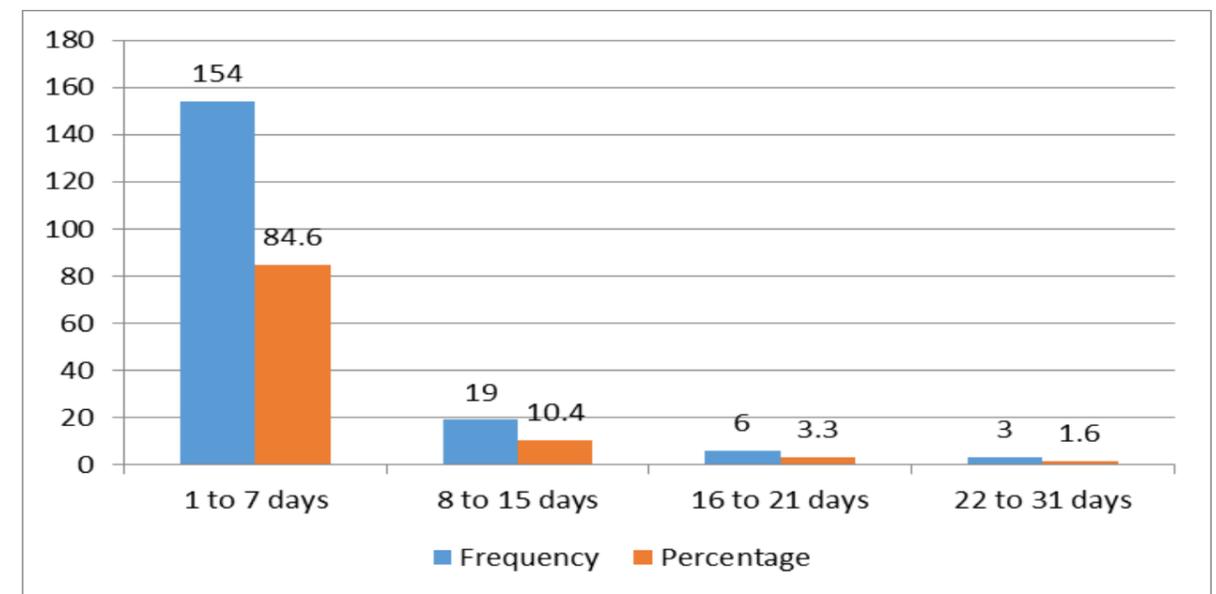


Figure 9: Distribution of monitored sessions by reasons for adjournments (percentage)



LENGTH OF ADJOURNMENTS

Figure 10: Distribution of monitored sessions by length of adjournments (percentage)



Witness management issues

Both the Prosecution and Defence face difficulty in managing witnesses, which is why we think there is need for a witness management unit within the ACC and the judiciary. For instance, in 100 sessions, representing 54.6% of the sessions monitored, no witnesses were available to testify. In most cases, it was either a result of the failure of witnesses to show up or the inability of the prosecution or Defence teams to contact witnesses to testify. During the period under review, at least 2 witnesses testified on behalf of the Prosecution, whilst at least one witness testified on behalf of the Defence in at least 77 sessions covered by the Monitors.

CONCLUSIONS AND RECOMMENDATIONS

We observed that the ACD’s registry is well-managed. The Court Recorders are quite effective, and we found their transcripts to be accurate. The recorders have made work much lighter for the Judges and helped expedite proceedings. In the same vein, the public-address system has helped accused persons and members of the gallery to follow proceedings before the Courts. There are more frequent sittings since the Court was set up, and the attendance rate of the Judges is very good. In addition, Cause lists are prepared and posted on the doors of the courtrooms on a regular basis, and the public-address system works well. We observed that there is a proper filing system, and the courtrooms are well-kept.