

National Minimum Standards:

TOWARD
IN THE
IMPLEMENTATION
THE ACJA AND



Clarification of concepts:

Introduction: Criminal Justice system in the Nigerian federal system.

The Desirability of uniformity.

How can uniformity be achieved?

What are National Minimum Standards (NMS)?

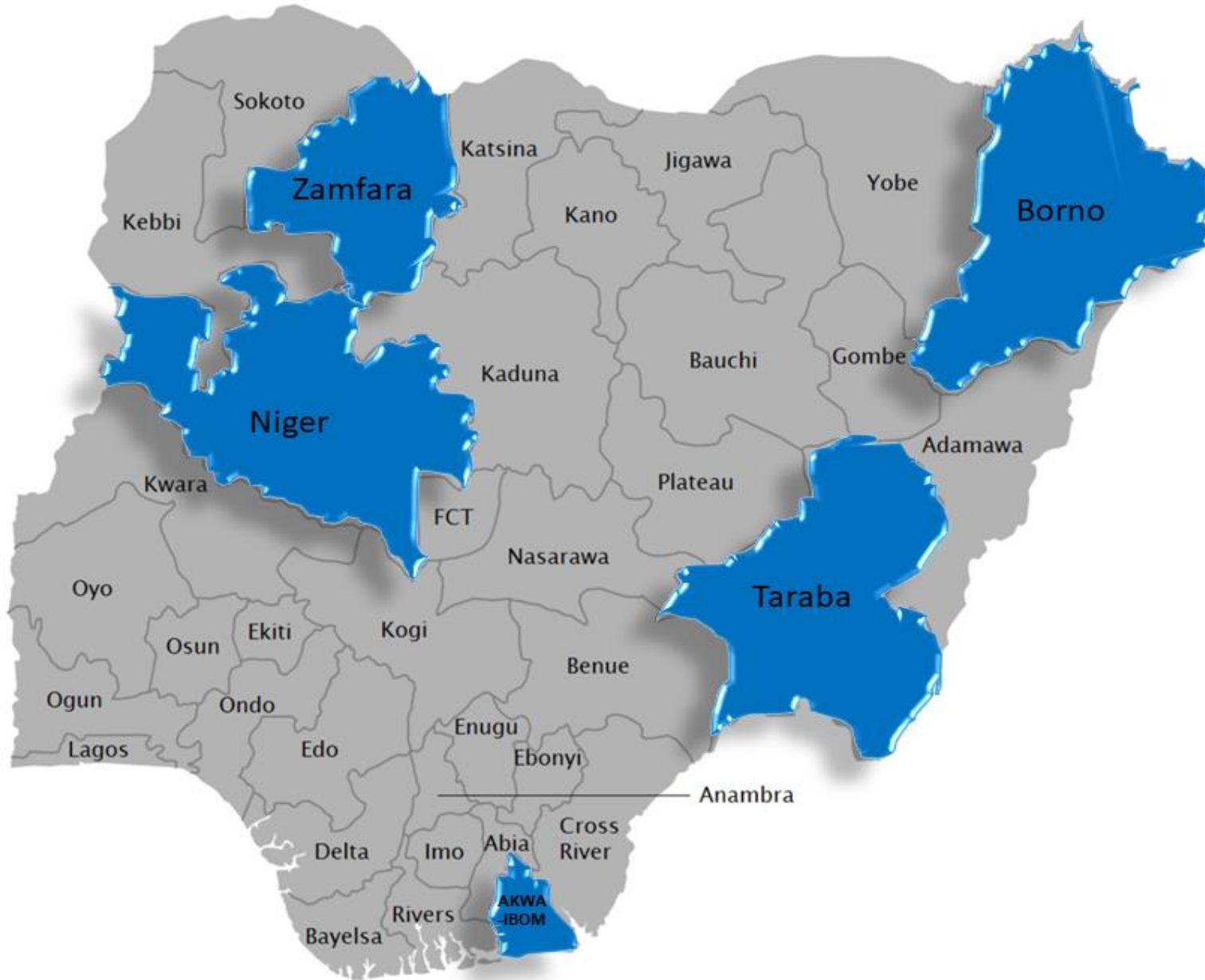
What are the Core, Unifying and Essential elements of the ACJA?

The nexus between compliance with the ACJA and its implementation-

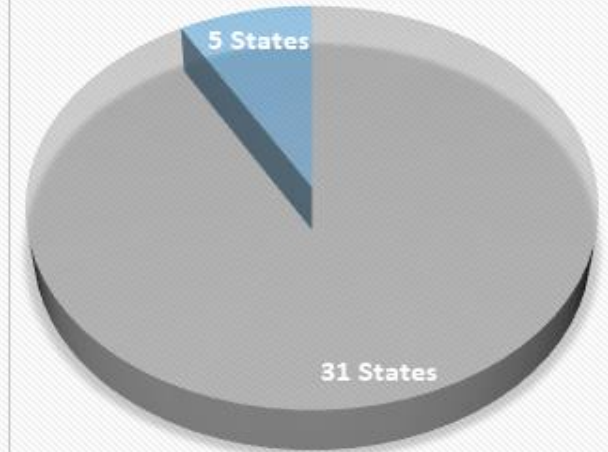
Framework for the development of NMS.



ACJA STATE ADOPTION MAP – 2021



ACJ Laws



- States that have adopted
- States yet to adopt

Niger	No significant movement
Zamfara	Bill pending in the House of Assembly
Borno	Bill ready for transmission to the House of Assembly
Taraba	Bill awaiting Governors assent
Akwa Ibom	Bill awaiting Governors assent

Introduction

The Nigerian Criminal Justice System provides for a unified criminal justice system.

Although criminal justice is on the concurrent legislative list on which both the federal government and the State governments can legislate, the unifying elements of the criminal justice system include:

A single Appellate Court system for the entire federation with jurisdiction over the criminal laws of all the States;

A single or unitary police with enforcement powers covering the entire federation;

A single Evidence Act applicable in the courts of all the States of the Federation.

The Nig Criminal Justice system and the US Criminal Justice System compared

Unlike their counterparts in the United States, the States of Nigeria do not have a separate appellate court system.

Each state in the US has a complete court system consisting of Courts of first instance and appellate courts with final jurisdiction over the laws of each state.

Each US State also has a complete and separate criminal justice system including criminal evidence and law enforcement system.

There are also local police forces under the control of counties.

Nigeria is probably the only Federal System in the world with a single police force for the entire Federation!!!

Unity or Uniformity? What is the goal of the Nigerian Criminal Justice System?

Unity means separate but connected, cooperating and coordinated for the purpose of achieving the common good of all.

Uniformity means having the similar features.

At Independence, the Nigerian Criminal justice system operated along regional lines in keeping with the Constitutional structure of the country which recognized a Federal Constitution and three regional Constitutions.

With the introduction of the Presidential Constitution by the Military Government in 1979, the criminal justice system has strenuously pursued the objective of uniformity.

Is uniformity desirable in the Nigerian Criminal Justice System?

In the pre-ACJA era, different laws were applied in the states – Criminal Procedure Code Laws in the laws in Northern states, and the Criminal Procedure Act/Laws in the Southern states.

From one state to another, there were significant variations in the procedures, which left gaps in the effective and efficient prosecution of crimes.

As criminal activities are usually carried out across state borders and their investigation and prosecution processes require a level of certainty and uniformity across the country, the ACJA reforms are intended to **achieve harmonized or uniform criminal justice system across Nigeria.**

What are National Minimum Standards?

The minimum standards of ACJA are those basic elements that will ensure that the content and operations of ACJA, and its adoption in states as ACJL, comply with those standards in a uniform and harmonized way.

If all states adopting ACJA prioritize these minimum standards or core elements, both in adoption, compliance and implementation, there will be increased positive impact of the ACJA on the criminal justice system.



1) RATIONALE BEHIND THE NMS

- ❑ The purpose of identifying the core essential elements of the ACJA is to articulate the ~~minimum standards a jurisdiction's criminal justice system should attain to effectively function in the best interest of citizens as well as aid the fight against corruption.~~**
- ❑ These minimum standards are priority provisions in the ACJA/ACJLs, which must be implemented/complied with for the benefits in the law to be effectively realized.**
- ❑ The minimum standards will ensure that the content and operations of the Federal Act, and State ACJLs, operate in a uniform and harmonized way.**
- ❑ If all states passing the ACJL prioritize these minimum standards, by adopting and implementing them, the state of criminal justice administration in Nigeria will be significantly improved.**

2) RATIONALE BEHIND THE NMS (CONTD.)

- ❑ crimes cut across state lines and criminal cases can be prosecuted in both federal and state courts,**
- ❑ therefore, investigations and prosecutions require coordinated, concerted, and cooperative framework, using the same national standards, rules, procedures, and practices.**
- ❑ The ACJA and ACJLs offer the opportunity to increase inter-agency coordination and cooperation among criminal justice institutions.**
- ❑ Nationwide Adoption of the ACJL would mean that prosecutors and practitioners would not encounter complex difficulties in handling cases in different states with different rules, procedures, and methods.**

**Tracks of the
ACJA/ACJL core
elements/Minimum
Standards**

There are four key tracks or clusters of provisions that are essential elements of the law, namely, provisions around:

- **Pre-trial processes**
- **Trial proceedings**
- **Case management processes and timeframes**
- **Institutional framework for sustainable reforms**

Four Key, Core & Essential Elements

Observers of the Nigerian Criminal Justice System have identified ‘four key, core and essential elements of the ACJA system which form the fulcrum of the minimum standards elaborated below, and fall under each of the four tracks: namely:

Section 106 – prosecutions of crimes are handled by legally trained persons, thereby abolishing lay police prosecutors

Section 306 – prohibits stay of trial proceedings on account of an interlocutory appeal.

Section 396 – provides the time frame for trials, and other trial case managements including day-to-day trials and limitations on number and duration of adjournment of criminal cases.

Section 496 – creates the Administration of Criminal Justice Monitoring Committee (ACJMC), as the institution to monitor and coordinate compliance and implementation of the Act/laws

Core Element 1: S. 106 – Abolition of lay police prosecution

Section 106 of the ACJA: prosecution of crimes are handled by legally trained persons, thereby abolishing lay police prosecutors:

Complaints about police transfer;

The issue of affordability by some states- most states did not adopt this element.

Even though there are still challenges- most observers believe that this is the way to go.

Discuss: Section 66(1)&(2) of the Police Act 2020 -

ASSESSING COMPLIANCE WITH S. 106 OF THE ACJA OR EQUIVALENT ACJL PROVISIONS

Firstly, as most Jurisdictions have not adopted this provision and those which have adopted it are facing implementation challenges, this standard will be assessed by considering the measures put in place to ensure quality control of prosecution by lay police officers.

Secondly, the NMS process will consider the extent of compliance with quality control measures.

(Refer to the draft standard operating procedure between the FMOJ & IGP on collaboration for effective investigation and prosecution)

Core Element 2: S. 306

This section prohibits stay of trial proceedings on account of an interlocutory appeal.

Most of the states of the Federation have adopted this provision.

The provision has been upheld by the Supreme Court in ***Olisa Metuh v. FRN & Destra Investments v. FRN.***

It is the most important provision of the ACJA and ACJLs.

ASSESSING COMPLIANCE WITH S. 306, ACJA OR EQUIVALENT PROVISION OF ACJLs

Being the most important provision of the ACJA/ACJL compliance will be assessed with reference to;

- a) Clarity of the statutory provision (extent of consistency with section 306 of ACJA)
- b) Practical compliance (monitoring of the outcome of applications filed for stay and time of ruling on such applications).

Core Element 3: S. 396

This section provides: the time frame for trials, and other trial case managements including day-to-day trials and

limitations on number and duration of adjournment of criminal cases.

NB: S.396 (7) was struck down by the Supreme Court in *Udeogu v FRN* (Orji Kalu case)

Core Element 4: S. 496

This provision— creates the Administration of Criminal Justice Monitoring Committee (ACJMC), as the institution to monitor and coordinate compliance and implementation of the Act/laws.

Most States of the federation have also adopted this provision. Those who passed the ACJL before 2015 are now updating their laws to include the ACJMC or similar body.

Categories of National Minimum Standards

Category A: elements of those fundamental aspects, considered **most essential and critical** to the proper functioning of criminal justice system under ACJA, and which at the same time will lead to efficient and effective fight against corruption in Nigeria.

Category B: elements that are essential in realizing gender equity and social inclusion in the criminal justice system, and

Category C: elements that will ensure the criminal justice system adjusts to the challenges posed by the COVID-19 Pandemic.

CATEGORY A

Cluster	Section	Provision	impact level	Justification for impact level
Pre-trial	106	Abolition of lay prosecutions	Medium	It will raise the quality of prosecutions and increase efficiency. Some states claim they have no funds to employ lawyers and refuse to adopt the provision. They are advised to legally train the lay prosecutors
	7	Prohibition of arrest in lieu of suspect	High	Reduces abuses by law enforcement on arbitrary arrests
	5-17	Arrest Protocols s.6- Notification of reason of arrest s.7-prohibition of arrest in lieu of suspect 8-humane treatment of arrested person 9-decency in search of persons and properties including search by same sex 10-mandatory inventory of properties of arrested person 15-video recording of facilities for recording interrogation process and confessional statements 16- mandatory record of arrest and data of arrested persons and availability of central criminal records at state and federal levels 17-provision of legal support to arrested person and access to lawyers of his/her choice, legal aid or civil society organization	High	Reduces abuses by law enforcement officials and increases public confidence in the justice system, required for citizens to support the fight against corruption.
	34	Police report to supervising magistrates		
	34	Magistrate's oversight of police stations	High	It creates oversight of police detention and bail practices. The CJN has issued practice direction on modalities.

	16	Updated statistics/data on arrests, trials, and judgement including non-custodial sentences	Medium	Criminal records are important for planning and reform initiatives.
	293-294	Remand proceedings	High	The timeframe for remand of defendants will reduce indefinite pre-trial <u>detention</u> and abolish holding charges.
	17(2), 110(7)	Engagement with National Human Rights Commission, Civil society organizations, and the public	High	Develops civil oversight of criminal justice <u>institutions</u> and promote public accountability of duty bearers in the justice sector.
	187	Bondsmen engagement in bail management	Medium	Makes defendants securing bail easier, thus, reducing pre-trial custody
	15	Mandatory inventory of data of arrested persons	Medium	Improves protection of rights of arrested persons, especially to their properties
	270	Effective use of plea bargain	High	Increases case management and recovery of proceeds of crimes
Trial processes	306	Abolition of stay of criminal trial proceedings on account of interlocutory appeal	High	Reduces the potential for cases to stall.
	396(7)	Dispensation to elevated appellate justice to complete part-heard matters	High	Reduces trials starting over (de novo) which most times results in failed second trials <u>as a result of</u> witness fatigue
Processes/time frames	376(2)	Timeliness for issuance of legal advice/filing of information by the Attorney General	High	Timely issuance of legal advice (<u>14 day</u> limit) ensures trials commence on time and reduces delays in awaiting trial custody
	396(3)	Day to day trials	High	Encourages speedy trials
	396(4-5)	Restricted intervals of adjournments	High	Encourages speedy trials and reduced delays
	110	Timeframe to commence and complete trials/assignment of cases to court within 15 days of filing (or within timeframe stipulated by state ACJL)	High	Most criminal cases are in magistrate courts, with commencement time limits of 30 days, and conclusion limit of 180 days will reduce delays

CATEGORY A

	246-254	Mandatory attendance of witnesses in court and sanction for default including payment of witness expenses	High	
	395	Mandatory legal aid/free legal representation to defendants in capital case or offences punishable by life imprisonment	High	Increases speed of trials in cases with reduced breach of right to counsel of choice.
	319	Compensation to victims of crime		
	396(6)	Award of costs against defense and prosecution	High	
		Misconduct proceedings for violating the Act or Law		
	364	Electronic recording of court proceedings		
	232	Protection of witnesses including in economic and financial crimes cases	High	Encourages witnesses and whistle blowers to participate in proceeding without fear of reprisals.
	328	Seizure or forfeiture of proceeds of crimes		
		Return by Controller General of Correctional Services to AG		
	401	Sentencing guidelines		
		Prohibition of objections during trials		
	396(2)	Ruling of preliminary objections to charges deferred till judgment	High	
Institutional capacity/ strengthening	469	Functioning of Administration of Criminal Justice Monitoring Committee	High	Creates an oversight body to monitor implementation of the law.
		Exercise of powers of heads of court to make supplementary rules and guidelines		

Category B

CATEGORY B & C

Provisions related to GESI

Cluster/track	Section	Provision	impact level	Justification for impact level
	9(3)	Search by same sex	Medium	Reduces abuse of right of privacy of women during search and investigations.
	12(3)	Search of private premises occupied by a woman	medium	Reduces intrusion into right to privacy of a woman who by custom or religion ought to be secluded
	167(3)	Women standing sureties for bail	High	Increases bail processes and stops violation of rights and discrimination against women
	191	Married woman rights over her personal properties including against her spouse of customary marriage	Medium	Ends discrimination against married women in property disputes.
	415	Sentence of death of a pregnant woman to be suspended	TBD	Humane treatment

Category C

Compliance with Covid-19 protection requirements



Cluster/track	Section	Provision	impact level	Justification for impact level
	364	Electronic recording of court proceedings	High	Introduces IT in court proceedings
	17	Electronic/video recording of interrogations and confessions	High	Reduces pretrial ill treatment, and reduces objections to defendants' statements during trials
	232	Use of virtual court hearing tools such as video conference in trials	High	Introduces virtual court proceedings and reduces physical contacts of court users



BASELINE ASSESSMENT ON IMPLEMENTATION OF ACJA/ACJL

Name of state.....

Organization.....

INTRODUCTION

The purpose of this study is to collect data which will enable us access the state of your justice sector infrastructure and to make recommendation to the authorities for necessary improvements.

Please be as factual as possible. Our organization will verify the accuracy of the information provided.

It is expected that the person completing this questionnaire will liaise with the agencies concerned to obtain the accurate information needed to answer the questions correctly.

BASELINE ASSESSMENT QUESTIONNAIRE

Part 1: Passage of Administration of Criminal Justice Law (ACJL)

1) A.Has your state passed the ACJL? YES NO

If yes, when?

B.If no, how far has your state gone with its passage?

Have a draft bill? Bill passed but awaiting assent?

No draft bill yet?

2) Efforts made to create public awareness about the law/bill.

Has your state conducted:

A. Stakeholders' sensitization meeting/workshop? YES NO

B. Sensitization of the general public? YES NO

C. Training of the stakeholders on the new law? YES NO

D. Assessments of the needs of the implementation agencies for effective use of the law? YES NO

Part 2: PRE-TRIAL

3) A.Does your state ACJL provide for the establishment of a criminal records registry to receive criminal justice data from various police stations and other arresting agencies in the state? YES

If yes, what form does data collation by the registry take?

A. Manual

B. Electronic

B.Does the registry remit record of arrests made in the state to the Attorney-General or any other oversight body? YES NO

4) A.Do the police stations in your state make use of e-recording in taking confessional statement? YES NO

If yes, tick the available facilities:

A. Dedicated statement taking room

B. Video recorder

C. CCTV camera

D. Mobile phone

E. Specify any other.....

B.How many police stations have and use these facilities?

5) A.Do the other law enforcement agencies in your state make use of e-recording in taking confessional statement?

YES NO

If yes, tick the available facilities:

A. Dedicated statement taking room

B. Video recorder

C. CCTV camera

D. Mobile phone

E. Specify any other.....

B.How many law enforcement agencies in your state have and use these facilities?

6) Do police officers who are not lawyers prosecute cases in your state?

YES NO

If yes, what safeguards/measures are in place to avoid abuse?

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.....
.....

7) On the average, how long does it usually take the police to send case file to the DPP in your state?

8) On the average, how long does it take the DPP in your state to issue legal advice to the police on receipt of the police case file?

.....

9) Is there in existence a forum for meeting or coordination between the police and the ministry of justice in your state?

YES NO

10) Do the police in your state involve the ministry of justice early (beyond seeking legal advice) in the investigation of cases?

YES NO

11) On the average, how long does it take for a criminal case to be assigned to a court after filing?

.....

12) A.How many legal aid officers are available to render legal services in your

state?

B.How often are indigent suspects provided legal aid in your state before the matter gets to court?

VERY OFTEN OFTEN RARELY NEVER

13) Does the Nigerian correctional service in your state remit quarterly reports of persons awaiting trial for more than 180 days to the Attorney-General and other oversight offices?

YES NO

Part 3: TRIAL

14) A.Do the courts in your state make use of electronic facilities?

YES NO

If yes, specify

A. Electronic recording machines: YES NO

B. Video recording machines: YES NO

C. Projectors: YES NO

D. Copiers: YES NO

E. Public address systems: YES NO

F. E-library: YES NO

15) Do the courts in your state record court proceedings electronically?

YES NO

If yes, specify devices that are used by the courts for this purpose

A.

B.

C.

D.

16) What facilities are in place in your state for witness protection in criminal cases?

Tick the facility available:

- A. Video link
- B. Screen/ Mask to hide witness' identity
- C. Written deposition of witness
- D. Specify any other.....

17) Do magistrates conduct periodic visits to police stations and other places of detention (other than correctional centres) in your state?

YES NO

If yes, how often do they carry out their inspection visits?

VERY OFTEN OFTEN RARELY NEVER

18) On the average, how long does the trial of a criminal case take from arraignment to judgment in your state?

- A. In the Magistrate court.....
- B. In the High court.....

19) Do courts in your state conduct individual cases on day-to-day basis?

(*day-to-day means effective management or scheduling of cases. It does not mean trial of individual cases on consecutive days.)

YES NO

20) How often are criminal proceedings stayed on account of interlocutory applications?

VERY OFTEN OFTEN RARELY NEVER

21) Do courts in your state rule on objections immediately they are moved?

YES NO

or

Defer their rulings to the time of their judgments?

YES NO

Part 4: POST TRIAL

22) Are there formal structures or designated personnel in your state for:

- A. Community service? YES NO
- B. Rehabilitation? YES NO
- C. Suspended sentence? YES NO
- D. Parole? YES NO

GENERAL QUESTIONS

23) Does your state have complimentary policy or regulation?

Such as:

- A. Practice Directions for the effective application of the ACJL
- B. Sentencing Guidelines
- C. Plea Bargaining Guidelines
- D. Bondsperson Regulation

24) Does your state have a committee called Administration of Criminal Justice Monitoring Committee (ACJMC) or its equivalent?

YES NO

If yes, what is the committee called?.....

If yes,

- A. Are there standing rules and operational guidelines that govern the operation of the Committee? YES NO
- B. Is there a specific budget provision for the Committee in your state? YES NO
- C. Does the Committee have a secretariat as provided for under the ACJL? YES NO
- D. Does this Committee submit quarterly report to the Chief Judge in your state? YES NO

If your state has not established the ACJMC or its equivalent, what measures are being put in place to establish it?

.....
.....
.....

25) What statistics are available in your state:

A. Number of arrests made in the last 3 years?

2020
2019
2018

B. The number of criminal cases filed in court in the last 3 year?

2020
2019
2018

C. The number of final judgments delivered in criminal cases in the last 3 years?

2020
2019
2018

D. Number of judicial support staff available in your state

E. Number of lower court judges conducting criminal cases.....

F. Number of high court judges conducting criminal cases

G. Number of court rooms available to the Lower Courts conducting criminal cases

H. Number of court rooms available to the High Courts conducting criminal cases

I. Number of functional toilet facilities

J. Number of functional air conditioners and fans

K. Number of accommodations available to judges, magistrates and judges of the area courts

Judges

Magistrates

Area court judges

L. Record of the funding of judicial officers and support staff by the government in your state:

Judiciary budget and percentage of the budget released in the last 3 years
2020

A. Budget approved

B. Percentage released

2019

A. Budget approved.....

B. Percentage released.....

2018

A. Budget approved.....

B. Percentage released.....

Stages of the ACJA/ACJL NMS Process

Stage 1: Road Map and baseline Study; (Status of current facilities available in states, statistics of implementation as well as comparative analysis of ACJL's with ACJA)

Stage 2: Baseline Report; dissemination of the Baseline Report-

Stage 3: Peer Review Workshop; (States reporting on progress recorded since the base line study)

Stage 4: National Assessment stage (Identify minimum standards each state is yet to comply with, assess the strength of each ACJL and if it improves on or departs from NMS of the ACJA, assess the infrastructural facilities of each state to implement)

Stage 5: Score card: Marks will be awarded to states, as well as federal agencies and awards given accordingly.

Conclusion

The National Minimum standards conceptualization is just beginning. The above categorizations will therefore undergo extensive consultation with stakeholders and further fine-tuning.

The objective of the NMS project is to create a national scheme for assessing and evaluating the implementation of the ACJA/ACJLs as well as a National Scoresheet which will clearly indicate the performance and score of each state.

Conclusion (Contd.)

The enthusiastic response by the Stakeholders from the various States to the first-ever ACJA/ACJLs National Minimum Standards Workshop convened in December 2019, shows that the idea of promoting a healthy competition amongst states is welcome as a desirable mechanism for ensuring proper implementation of the ACJA/ACJLs.