

AN OVERVIEW OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2014*

1.0 INTRODUCTION AND BACKGROUND

The legal foundation for administration of justice¹ in Nigeria is the Constitution particularly the portions that relate to the powers of the court,² or jurisdictional mandate of the courts. Also the sections of the Constitution that deal with fundamental rights³ are central to administration of justice, specifically the provisions on right to personal liberty,⁴ right to fair hearing.⁵

The issue of reforming the administration of justice especially criminal justice in Nigeria has over the years, engaged the attention of criminologists, legal practitioners, judges, academic writers, legislators, police officers/prosecutors, prison officials, other government officials, the media and members of the general community. Ideas have been expressed on the definition/ingredients of crime, the penal policy, the issue of payment of compensation to victims of crimes, the relationship between the culture of the people and the law of crime, sentencing practices, the prison system, the police, human rights and the issue of a uniform system of criminal justice in Nigeria in various writings on criminal justice.⁶

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¹ Administration of criminal justice in Nigeria is basically governed by two laws namely the Criminal Procedure Act applicable in the South and the Criminal Procedure Code which is applicable in the North. We also have the Police Act and the Evidence Act.

² See section 6 of the 1999 Constitution (as amended)

³ See chapter four of the Constitution comprising sections 33-44

⁴ Section 35

⁵ Section 36; see also Ugwuonye, Emeka, Ephraim. Nigeria's Criminal Justice System: Problems and Challenges at <http://www.elobah.com/index.php/articles-mainmenu/9135-nigerias-criminal-justice-system-problems-and-challenges-v15-9135> (accessed on 28th January, 2015)

⁶Ani, Comfort Chinyere. Reforms in the Nigerian Criminal Procedure Laws at <http://www.nials-nigeria.org/journals/comfort%20chinyere%20AniL.pdf> (accessed on 28th January, 2015)

Interestingly the Criminal Procedure Act and Criminal Procedure Code⁷ have never been subjected to thorough review. Also of significance are the challenges of having two different laws for the North and the South and the fact that some of the provisions are obsolete and in urgent need of amendment to reflect the intendment of the Constitution and dynamics of the society. Let us not also forget the outright abuse of the provisions of the laws by law enforcement agents namely the police, prosecutors and lawyers.

The euphoria that accompanied the passage of the Administration of Criminal Justice Act 2015 (ACJA 2015) should therefore be understood from these perspectives. The purpose of the ACJA 2015 is to ensure that the system of administration of criminal justice in Nigeria is efficient in the management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interest of the suspect, the defendant and the victim.

In the ACJA 2015 there is a deliberate effort to transform the criminal justice system from its present state of retributive justice into a restorative justice system. The ACJA 2015 also addresses a wide range of issues that had prior to this time slowed down the criminal justice system which in turn resulted in a poor output in terms of number of dispensed (either convicted, discharged or acquitted) criminal cases by the judiciary and an increased number of awaiting trial inmates. In addressing these issues the ACJA is divided into 49 parts addressing various fields of criminal justice administration.

This paper highlights provisions that are of primary concern to judicial officers and legal practitioners with a view to fostering a holistic interpretation and application of the provisions of the Act.

⁷ Being the principal legislations in the administration of criminal justice

2.0 ARREST AND RELATED POWERS

Unlawful arrest and detention are major problems in the system resulting in overcrowded police stations and prison facilities. The ACJA addresses the issue by pruning grounds for arrest and also subjecting the exercise of the power of arrest to judicial moderation. For example Section 10(1) of the Criminal Procedure Act (CPA) which authorises the police to arrest without a warrant any person who has no ostensible means of sustenance and who cannot give a satisfactory account of himself has been deleted. Section 7 of the ACJA 2015 also prohibits arrest of family and friends of a suspect in order to get the suspect to surrender.

The provisions on confessional statements are very important. Most often in a criminal trial the accused persons turn around to state that the confessional statement made by them was done under duress, thereby delaying trial as a trial within trial (TWT) is conducted. The ACJA has made it compulsory for confessional statements to be recorded either by video or audio recording. When these provisions are fully in operation, these measures will go a long way in helping the court to dispense with TWT cases faster in order to get back to the proceeding proper and also protect the accused from torture.

3.0 JUDICIAL MODERATION OF ARREST AND DETENTION PROCEDURES

3.1 Returns

Section 33 Police shall make report at the last working day of every month to the nearest magistrate the cases of all suspects arrested without warrant

within the limits of their respected stations or agency whether or not bail was granted

Likewise the Inspector General of police(IGP) is expected to make quarterly returns to the Attorney General of the federation (AGF) on all arrested persons within the period. This data is to be maintained electronically by the AGF. The Comptroller General of Prisons is also expected to make a report of all awaiting trial inmates for a period of 6 months from the date of arraignment to the Chief Judge and the AGF. These reports are meant to help the necessary institutions carry out measures to ensure that the objectives of ACJA 2015 are achieved.

3.2 Inventory of arrested persons property

The ACJA requires the Police to prepare an inventory of property of an arrested person. Section 10(6) provides that the court has discretion to review the inventory of property of an arrested person and may decide in the interest of justice to return such property to the owner or person having interest for safe keeping.

3.3 Visitation

By virtue of section 34 of the ACJA The Chief Magistrate shall visit at least every month the police stations within its jurisdiction for the purpose of conducting an inspection of detention centers. Visitations will facilitate recourse to section 32 of the ACJA, which applies to cases where a suspect is not released on bail after 24 hours on a non-capital offence, and an application is made to the court on behalf of the suspect. The court shall order the production of the suspect and inquire into the circumstances of detention and admit the suspect to bail at its discretion.

3.4 Bail

Bail is a very contentious issue in the administration of criminal justice be it administrative or court issued bail. The ACJA is very elaborate on the issues of bail, recognizances and surety and also introduced the use of bondsperson in criminal jurisprudence and legal practitioners may be interested in providing such services.⁸ The ACJA envisages that suspects who are held for offences other than a capital offence should be entitled to bail⁹ and where bail is not granted the Act provides that an application to be made either in writing or orally on behalf of the suspect.¹⁰ In some respects the ACJA liberalises the bail process. For example the ACJA eliminates the discrimination against women especially as it has to do with women standing as surety for suspects,¹¹ it also classified when bail can be granted into different classes such as offences with less than three¹² or more than three years¹³ imprisonment and in capital offences¹⁴.

3.4.1 Severity of Bail Conditions

Section 165 of the ACJA provides that the conditions for bail in any case shall be at the discretion of the court with due regard to the circumstances of the case and shall not be excessive. The court may require the deposit of a sum of money or other security as the court may specify from the defendant or his surety before the bail is approved. There is no template for measuring what will be considered excessive in terms of bail and recognizance in the ACJA.

⁸ Section 187 ACJA

⁹ Section 32 and 158 ACJA

¹⁰ Section 32(3) ACJA

¹¹ Section 167(3) ACJA

¹² Section 163 ACJA

¹³ Section 162 ACJA

¹⁴ Section 161 ACJA

Going by cases the gravity of the offence is not the sole consideration. In appropriate cases the court can vary these conditions.

3.4.2 Professional bondsmen

However if as has been canvassed bail is contingent on the payment of a deposit, it is unlikely that if bail is then granted in self recognisance the suspect would evade justice. A further suggestion is the use of professional bondsmen in order to address widespread reluctance on the part of citizens to stand as bail surety. ACJA incorporates some of these proposals and more. For example ACJA provides clear parameters for the guidance of the court in granting bail. It provides for a general right to bail in criminal proceedings but in respect of offences where punishment exceeds 3 years imprisonment provides that bail may be refused where there is reasonable ground to believe that the defendant will if released on bail –

- (a) commit an offence of like gravity;
- (b) attempt to evade trial;
- (c) attempt to influence, interfere with or intimidate witnesses;
- (d) interfere with the investigation of the case; or
- (e) attempt to destroy or conceal evidence

3.4.3 Remand Proceedings under section 294

An important innovation in the ACJA is the provisions on remand proceedings.¹⁵ Section 293 provides that a suspect arrested for an offence for which a magistrate court has no jurisdiction to try shall, within a reasonable time of arrest, be brought before a magistrate court for remand. The application for remand under this section shall be made *ex parte*. This process enables a yet to be charged suspect to be kept in custody pending his

¹⁵ Section 294 ACJA

bail, trial or release or pending when the legal advice from the Attorney General is issued. There must be some probable cause justifying the remand order, which in the first instance should not be more than fourteen (14) days renewable for another fourteen days up to a maximum of 56 days.

The effect of this is that there is a time frame in which the AG should provide legal advice as to whether there is a prima facie case against the accused or not. (s. 376 prescribes 14 days) The legal advice of the Attorney-General of the Federation shall in all cases be copied to the court, and the court may act solely on the copy of the advice to make any order that may be necessary in the circumstances.

Probable cause can be deduced from a consideration of the following factors:

- (a) the nature and seriousness of the alleged offence;
- (b) existence of reasonable grounds to suspect that the defendant has been involved in the commission of the alleged offence;
- (c) existence of reasonable grounds for believing that the suspect may abscond or commit further offence where he is not committed to custody; and
- (d) any other circumstance of the case that justifies the request for remand.

The tension over these provisions as evinced from some recent cases relates first to the fact that the order of remand proceeds from a court without jurisdiction and the propriety of that court granting bail and secondly the need for courts to carefully consider the these factors above in exercising the powers of remand. With regard to the first concern, the power to grant bail is statutory and these provisions will not be the first to grant powers of bail to courts or administrative bodies which are not seised of a matter. As to the second, it must be borne in mind that section 292 seeks to eliminate the unbridled recourse to holding charge by the police by ensuring that the court supervises the remand process of Awaiting Trial Inmates.

4.0 TRIAL PROCESS

4.1 Time Lines In Instituting Criminal Proceedings In Magistrate Courts

The provision deals with the mode of instituting criminal proceedings in a Magistrate court. However it introduces timelines and reporting obligations. Trial in a magistrate court is expected to commence within 30 days after filing charge. The provision also requires that where trial does not commence within 30 days or where it has commenced and not completed within 180 days the magistrate shall forward to the Chief Judge the particulars of charge and reasons for the failure to commence or complete the trial as the case may be.

Also a court seized of criminal proceedings shall make quarterly returns of the particulars of all charges, remand and other proceedings commenced and concluded in his court within the quarter to the Chief Judge. This is a very welcome development because it will help in reducing awaiting trial inmates, and the bulk of cases at the courts that ordinarily should be dispensed within record time as unnecessary delay tactics exhibited by some legal practitioners on issues that are within the control of either party or the court will be curtailed.

4.2 Information Procedure at the High Court

Section 377 of the Act governs the filing of Information before the High court. An Information shall be filed in the registry of the High Court before which the prosecution seeks to prosecute the offence, and shall include the proof of evidence, consisting of:

- a) the list of witnesses,
- b) the list of exhibits to be tendered,
- c) summary of statements of the witnesses,
- d) copies of statement of the defendant,

- e) any other document, report, or material that the prosecution intends to use in support of its case at the trial,
- f) particulars of bail or any recognizance, bond or cash deposit, if defendant is on bail,
- g) particulars of place of custody, where the defendant is in custody,
- h) particulars of any plea bargain arranged with the defendant;
- i) particulars of any previous interlocutory proceedings, including remand proceedings, in respect of the charge, and
- j) any other relevant document as may be directed by the court.

Section 381 provides that the following persons can file an information

- (a) the Attorney-General of the Federation or officers in his office;
- (b) a public officer acting in his official capacity;
- (c) a private legal practitioner authorised by the Attorney-General of the Federation; or
- (d) a private person, provided the information is endorsed by a law officer that he has seen such information and declined to prosecute at the public instance and the private person enters into a bond to prosecute diligently and to a logical conclusion.

Timelines are similarly prescribed for trial by information. Thus the Chief Judge shall take appropriate steps to ensure that the information filed is assigned to a court for trial within 15 working days of its filing and the court to which the information is assigned shall within 10 working days of the assignment issue notice of trial to the witnesses and defendants and a production warrant properly endorsed by the Judge in respect of the defendant charged, where he is in custody, for the purpose of ensuring his appearance on the date of

arraignment, and the Chief Registrar shall ensure the prompt service of the notice and information not more than 3 days from the date they are issued.

4.3 Case Management Enablers

Case management in courts can be described as a culture of responsibility, awareness, and appropriate collaboration with the aim of reducing delays in courts, it can be paper based or computer based management.¹⁶

Case management in criminal trials whether manual (paper based) or electronic (computer) means of recording information on an individual case (e.g. case number; name of parties; offence etc.) and tracking the case's progress through the court system.¹⁷

The information gathered through the system can then be analysed to inform decision making and policy with a view to improving efficiency and effectiveness of courts operations¹⁸. The aim of an efficient case management system is to achieve speedy dispensation of justice, reducing or eliminating "missing" or "stalled" cases, better working and coordination across the justice sector and more accountability Reference.¹⁹

The drivers of the process in case management includes the head of the court like the Chief Judge to decide what kind of courts performance information should be gathered in the case management systems. The senior officers and managers of the court like the chief registrar to ensure that sufficient resources (human, financial) are allocated for implementation of program. The Judges and magistrate to ensure correct information from their court is added in the program and to review and approve reports on their courts performance

¹⁶Justice for All, How to Guide available at http://www.britishcouncil.org.ng/sites/britishcouncil.ng2/files/c2_how_to_guide_051214_final2.pdf.

Accessed 28th September 2015

¹⁷ ibid

¹⁸ ibid

¹⁹ ibid

as well as the Court staff including clerks, data input officers and registry staff to complete forms and templates used to gather case information, Input case information to the program and generate reports on court performance for review by the head of court to be used in policy formulation and directions for the smooth operation of the court²⁰.

The ACJA envisages proper case management system hence the provisions below can help the court develop one which should ideally be electronic.

Day to Day trial

The purpose of the ACJA includes ensuring that the system of administering criminal justice runs efficiently in the speedy dispensation of justice.²¹ The act eliminates unnecessary delays hitherto experienced during criminal trials by providing for all preliminary objections to be taken along with trials²² and expressly stating that criminal trials upon arraignment shall proceed from day to day until its conclusion²³ and where this is impracticable, either party to the case shall be entitled to no more than five (5) adjournments.²⁴ The intervals between each adjournment is not to exceed fourteen days and where the trial has not been concluded then the court may award cost on any other frivolous application for adjournment as the case may be. The reason behind this provision is very obvious as this will lead to both parties to a criminal proceeding executing their duties expeditiously in order to obtain the best favourable results for their clients.

4.4 Stay of proceedings

²⁰How to guide; Case management to reduce trial delays available at www.j4a-nigeria.org accessed 28th September 2015

²¹ Section 1 ACJA 2015

²² Section 396 (2) ACJA 2015

²³ Section 396 (3) ACJA 2015

²⁴ Section 396 (4) ACJA 2015

The ACJA provisions in section 306 is very clear - any application for stay of proceedings in criminal cases shall not be entertained. This provision is also complimented by section 396 (2) which provides that –

After the plea has been taken the defendant may raise any objection to the validity of the charge or the information at any time before judgment provided that such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment. In these cases where counsel objects or appeals on any part of a trial, the substantive suit continues and will not be stopped for the appeal to be determined.²⁵Section 396 is a statutory reversal of the SC decision in *Ikomi v State* (1986) 3 NWLR Part 28 p. 340 where the Supreme Court held that the proper stage to bring a motion to quash an indictment is before the plea of the accused person. The court was among other things concerned that trial without jurisdiction would amount to an exercise in futility. Many questions will arise from these provisions what if the interlocutory appeal will alter or affect the final decision what then becomes of the judgment already delivered? Will the trial commence de novo? How does this affect the right to fair hearing in criminal trials²⁶ as a constitutional right? There are certainly issues of timely justice and the extent to which the defendant can freely espouse his rights. In *FRN v Tomolaju Okunomo* (2010) LPLR 4154 a provision in the EFCC Act which is identical to section 306 was declared unconstitutional by the Court of Appeal. This decision is no longer good law. Until we have a definite pronouncement on the constitutionality of section 306, Counsels' patience and cooperation will be required in order to make this provision work.

4.6.1 Day To Day Trial

²⁵ Section 306 ACJA

²⁶ Section 36 Constitution of the Federal Republic of Nigeria 1999 (CFRN)

One of the objectives of the ACJA is to ensure speedy trial for example section 396 of the ACJA provides for day to day trial for criminal cases or where this is not possible the number of adjournments is limited to five each and the intervals between each adjournment is not to exceed fourteen days and where the trial has not been concluded then the court may award cost on any other frivolous application for adjournment as the case may be. The reason behind this provision is very obvious as this will lead to both parties to a criminal proceeding executing their duties expeditiously in order to obtain the best favourable results for their clients.

5.0 PLEA BARGAN

Plea bargain is one of the tools employed in the criminal justice system. It helps the Court and State to manage caseloads. The reluctance to expressly sanction plea bargain is ingrained in many common law systems where the practice is viewed with suspicion as one susceptible to abuse and bring the justice system into disrepute. These kinds of cases are however covered by provisions that criminalize abuse of office and agreements to compound crimes in return for gratification or receipt of property²⁷.

The second reason for apprehension relates to whether ultimately the rule of law and the ends of justice are served when persons accused of grave and serious offences are in the end convicted for lesser offences and given sentences that are ridiculously light. The proponents of the practice however contend that given the resources at the disposal of some defendants and the complexity of the crime, it conduces more to public interest and justice to expedite conviction and recovery of the proceeds of the crime. The resources

²⁷ See e.g. section ss. 75 -76 Administration of Criminal Justice Law No. 10 of 2007 (Lagos)

of the state are not limitless and if trial is allowed to drag on interminably, not only does this drain resource, it can also whittle down the resolve of key prosecution witnesses.

Lastly is the question of whether plea bargaining does not abridge the rights of suspects particularly the right to fair hearing in public and the presumption of innocence. These objections are however partly met by the implicit recognition in *Ariori v Elemo*²⁸ that these personal rights fall into the category of rights that can be waived by the accused subject to the power of a court to be satisfied that a case of waiver firstly falls into the permitted category and secondly that it will not lead to injustice.

Although in the ACJA 2015 the discretion to accept a plea bargain lies with the prosecutor there are certain guidelines to prevent abuse especially as to what the prosecutor must consider before entering a plea bargain with the defendant. Diverse forms of discontinuance (more appropriately termed withdrawals) are permitted under the criminal procedural laws²⁹ in Nigeria although it is not always clear what the motives behind such withdrawals are. Lately there has been an increased propensity to resort to these powers in the context of prosecutorial discretion in order enter into plea agreements with accused person or a suspect. Plea bargains or agreement can either result into a guilty plea for a lesser offence or a reduced sentence for the offence charged. There is no express statutory authority for these agreements at the federal level³⁰ or in the laws of most of the states. Lagos state however has quite correctly enacted procedures for the negotiation and enforceability of plea bargains in criminal trials³¹.

²⁸ (2001) 36 WRN 94

²⁹ Section 180 of the Criminal Procedure Act Cap C LFN 2004

³⁰ Exceptionally EFCC has power under section 14 (2) of EFCC Act 2005 to compound.

³¹ See e.g. section ss. 75 -76 Administration of Criminal Justice Law No. 10 of 2007 (Lagos)
For a discussion of these rules see Akeem Bello: Plea bargaining and Criminal Justice

6.0 WITNESS PROTECTION

The important issue of witness protection is given explicit coverage in section 232 of the Act where a wide range of possible scenarios where the witness should be protected is listed. Section 232 of the ACJA permits witnesses to some offences to give evidence in camera. These include:

- (a) sexual related offences,
- (b) Terrorism offences,
- (c) offences relating to Economic and Financial Crimes,
- (d) Trafficking in Persons and related offences, and
- (e) any other offence in respect of which an Act of the National Assembly which permit the use of such protective measures.

Under this provision, the name and identity of the victims of such offences or witnesses shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witnesses with a combination of alphabets. It further provides that where in any proceedings the court determines it is necessary to protect the identity of the victim or a witness the court may take any or all of the following measures:

- (a) receive evidence by video link.
- (b) permit the witness to be screened or masked.
- (c) receive written deposition of expert evidence.
- (d) any other measure that the court considers appropriate in the circumstance.

In a recent case the court construed section 232 as inapplicable to justify the use of a mask to cover the face of a witness as this would interfere with the ability of the judge to have recourse to the witnesses' demeanor to assess the

in Nigeria: Issues, Problems and prospects (2006) Vol 1 Current Law Series (Faculty of Law University of Lagos, Lagos) p. 42

credibility of the testimony. Curiously however the same court reportedly allowed the witness to be screened from the view of members of the public other than the judge, the defendant and counsel.³²

7.0 NON-CUSTODIAL PENAL MEASURES

The ACJA in sections 453, 460 and 468 addresses the problem of excessive use of imprisonment as a disposal method by introducing some alternatives to imprisonment. These include the introduction of suspended sentence, community service, parole and probation. It also provides that the court, in exercising its power shall have regard to the need to:

- (a) reduce congestion in prisons;
- (b) rehabilitate prisoners by making them to undertake productive work;
and
- (c) Prevent convict who commit simple offences from mixing with hardened criminals.

By virtue of section 467 courts may sentence and order a convict to serve the sentence at a Rehabilitation and Correctional Centre established by the Federal Government in lieu of imprisonment. The court in making an order of confinement at a Rehabilitation and Correctional Centre shall have regard to the age of the convict; the fact that the convict is a first offender; and any other relevant circumstances necessitating an order of confinement at a Rehabilitation and Correctional Centre. The section further provides that the court may make an order directing that a child standing criminal trial be remanded at a Rehabilitation and Correctional Centre.

The current state of these institutions where they exist is unsatisfactory. There is no doubt that for the objectives of the ACJA to be realized significant

³² Ade Adesomoju "Court okays shielding of witnesses in Kanu's trial" Reported in PUNCH ONLINE <http://www.punchng.com/breaking-court-okays-shielding-of-witnesses-in-kanus-trial/> accessed 7th March 2016

institutional investments should be made in reviving probation services and revamping correctional institutions. It is noteworthy in this regard that section 457(2) provides that the Chief Judge of the Federal High Court, the Chief Judge of the High Court of the FCT and the President of the National Industrial Court may make regulations for the appointment of probation officers, including designation of persons of good character as probation officers. By the same token Section 461(1) of the Act mandates the Chief Judge to establish in each Judicial Division a Community Service Centre to be headed by a Registrar who shall be responsible for overseeing the execution of community service orders mad by the Courts. It is submitted therefore the ACJA provisions have created a new career scheme for Registrars. The FCT Judicial Service Committee should amend the establishment scheme to provide for this cadre of registrars

8.0 RESTITUTION

Also the award of cost and compensation to victims of crime has been properly covered by the Act and issue of non-custodial sentences, which will help in prison decongestion, has been taken care of by the Act.

9.0 MONITORING/COORDINATING MECHANISM

The ACJA also provides for a monitoring committee to ensure that the provisions of this Act are effectively complied with and this must be commended as it is a welcome development. Generally, lack of cooperation, communication and coordination between the different participants in the criminal justice system – judges, prison staff, police officers and social workers- is one of the main causes of malfunction in this sector. The criminal justice system must work as an integrated system. To achieve this, all the role players including the victims of crime and their communities, the police, the courts,

the Nigerian Prisons Services, should act together to make sure that there are no obstacles in the system, and that it works efficiently and effectively. There is need for these stakeholders to forge State, Zonal and National Criminal Justice Strategies aimed at Streamlining the criminal justice process and removing bottlenecks and administrative obstacles.

10.0 CONCLUSION

National adoption: The ACJA presents an opportunity to entrench common standards and principles in Criminal justice Administration Therefore States should make efforts to adopt the uniform criminal procedure Act which is the ACJA. Already states like Lagos (2011 as amended), Ekiti (2014) and Ondo (2015) have their Administration of Criminal Justice Law. The objectives of the Act will be considerably realised with the introduction of subsidiary rules to standardise practice and protocols in criminal proceedings