

An overview of the Administration of Criminal Justice Act, 2015

**By
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1.0. Application of the Act

The Administration of Criminal Justice Act is divided into 48 parts with 495 sections. It merges the two principal legislations i.e. the Criminal Procedure Act (CPA)¹ and the Criminal Procedure Code (CPC)². Thus, the ACJ Act, 2015 repealed the CPA, CPC and the Administration of Criminal Justice Act³. Substantially, the provisions of the Act preserved the existing criminal procedure systems. But it introduces innovative provisions that could enhance the efficiency of the justice system. It is important to note that unlike the CPA and the CPC, the ACJ the Act adopts a more acceptable trend used in the Evidence Act, 2011, where persons standing trial for criminal offences are not described as “accused persons”, but as “defendants”.

The provisions of the Act apply to criminal trials for any offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja, however it does not apply to a Court Martial as stated in section 2(2) of the Act.

2.0. Objectives of the Act

The objective of the Act is captured in section 1 which read thus:

“The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim”.

The purpose of the Act as captured above is a deliberate shift from punishment as the main goal of our criminal justice to restorative justice

¹ CAP C41, LFN 2004

² CAP C42, LFN 2004

³ CAP A3, LFN 2004

which pays attention to the needs of the society, the victims, vulnerable persons and the rights and interest of a defendant.

3.0. Unlawful Arrests and Constitutional Rights of a suspect

Unlawful arrest is one of the major problems of our criminal process. It is one of the reasons why police stations and prisons are overcrowded. Arrests are sometimes made on allegation that are purely civil in nature or on a frivolous ground. By section 10(1) of the CPA, the police could arrest without a warrant, any person who has no ostensible means of sustenance and who cannot give a satisfactory account of himself. This particular provision has been greatly abused by the police who use it as a ground to arrest people indiscriminately. The ACJ Act has deleted this provision.

There were several instances where the police arrested relations or friends or close associate of a crime suspect to compel the suspect to give himself up even though that person was not linked in any way to the crime alleged against the suspect. Section 7 of the ACJ Act specifically prohibits arrest in lieu.

The ACJ Act also made elaborate provision for the protection of the constitutional rights of an arrested person. For instance, Section 6 of the Act provides that a suspect shall be informed of the reason for the arrest. The Act places a duty on the police officer to notify the suspect of his right to remain silent or avoid answering any question or making, endorsing, or writing any statement until after consultation with a legal practitioner or any other person of his own choice; and his rights to free legal representation by the Legal Aid Council of Nigeria where applicable.

The provision of the section has a proviso which mandates the authority having custody of the suspect to notify the next of kin or relative of the suspect of the arrest at no cost to the suspect.

Moreso, the Act states that a suspect shall be brought to court within a reasonable time or released on bail whether conditionally or unconditionally. This provision will go a long to curbing unnecessary detention. Another brilliant provision is that of humane treatment of the arrested person. This section reiterates the right of the arrested person to dignity of his person which conforms to **Section 34** of the 1999 Constitution of the Federal Republic of Nigeria (as amended)⁴.

Furthermore, the ACJ Act clearly provides that a suspect shall not be arrested merely on a civil wrong or breach of contract⁵, thus preventing a

⁴ See section 8 of the Administration of Criminal Justice Act, 2015

⁵ See section 8(2) of the Administration of Criminal Act, 2015

situation whereby complainants uses law enforcement agencies as a tool to recover debts or enforce contractual agreements.

4.0. Establishment of the Administration of Criminal Justice Monitoring Committee

The Act establishes the Administration of Criminal Justice Monitoring Committee (the Committee) in section 469(1). The body is charged with the responsibility of ensuring effective application of the Act. It comprises of nine members with representatives drawn from the Judiciary, Federal Ministry of Justice, Police, Prisons, Legal Aid, Nigeria Bar Association, civil society organization and National Human Rights Commission with the Chief Judge of the Federal Capital Territory as the Chairman and a Secretary appointed by the Attorney-General of Federation. The Committee has the responsibility of ensuring effective and efficient application of the Act by the relevant agencies. In doing this, the Committee shall among other things ensure that criminal matters are speedily dealt with; congestion of criminal cases in courts is drastically reduced; congestion in prisons is reduced to the barest minimum; and persons awaiting trial are, as far as possible, not detained in prison custody.

5.0. Mandatory Inventory of Property

In order to encourage accountability and transparency, the Act introduced in section 10, a provision which mandates a law enforcement officer to take inventory of all items or properties recovered from a suspect. The inventory must be signed by the police officer and the suspect. However, where the suspect refuses to sign, it will not invalidate the inventory. A copy of the inventory shall be given to the suspect, his legal practitioner, or such other person as he may direct.

This section further provides that where the suspect is not charged but is released on the ground that there is no sufficient reason to charge him, any property taken from him shall be returned to him, provided the property is neither connected to nor a proceed of crime.

It is interesting to note that the ACJ Act makes provision for the procedure on seizure of property during arrest or investigation⁶.

6.0. Recording of Arrest and confessional statement

⁶ See section 337 of the Administration of Criminal Justice Act, 2015

The Act makes provisions for mandatory record of personal data of an arrested person in section 15. Subsection 2 further provides that the process of recording arrest shall be concluded within a reasonable time, not exceeding forty-eight hours. Section 15(4) of the Act provides that where a suspect volunteers to make a confessional statement, the confessional statement shall be in writing or may be electronically recorded on a retrievable video compact disc or such other audio visual means. However, an oral confession of an arrested suspect may also be admissible in evidence. Section 17 of the Act re-enacts the existing constitutional provision on recording of statement of the suspect in the presence of his legal practitioner or any person of his choice.

7.0. Establishment of a Police Central Criminal Registry

Section 16 of the Act makes provision for the establishment, within Nigeria Police, a Central Criminal Record Registry of all arrest made by the police. The registry is to be located at the Police Headquarters and at every state police command. The Act further states that every state including the Federal Capital Territory is to ensure that the decisions of the court in all criminal trials are transmitted to the Central Criminal Records Registry within thirty-days after delivery of judgment.

The establishment of Central Criminal Record Registry will ensure that all arrests and judgments are well documented. This is intended to avoid a repeat of what happened in the case of *Agbi v. Ibori*⁷. The central figure in this case was Chief James Onanefe Ibori, the then Governor of Delta State. At the time of commencement of this action at the High Court of the Federal Capital Territory, Abuja he was a candidate for the 2003 General Elections. In an action before the said High Court two persons suing as Plaintiffs began a joint action to challenge Ibori's qualification to stand as a gubernatorial candidate for the 2003 election having been an ex-convict. The action did not succeed before the High Court. However on appeal to the Court of Appeal, the Court in a unanimous judgment allowed the appeal of the Plaintiffs, set aside the judgment of the High Court and ordered that the case be heard afresh by another Judge of the High Court.

⁷ (2004) All FWLR (PT. 202) 1799

The proceedings commenced at the High Court of the Federal Capital Territory and one of the main issues was whether the record of proceedings of Bwari Upper Area Court in case N0. CK 81-95 (Exhibit A) wherein one James Onanfe Ibori was convicted was sufficient to act against the 5th Defendant/Appellant (James Onanfe Ibori) as an ex-convict. During the trial the Upper Area Court Judge came to court and testified that James Onanfe Ibori was an ex-convict. James Onanfe Ibori on the other hand, contented that Exhibit A did not conform to section 157 (1) of the Criminal Procedure Code. The court gave judgment in favour of James Onanfe Ibori and the matter was dismissed.

With the new provision in the ACJ Act, cases like this would no longer pose a major problem as there would be sufficient information on all convicted persons which should make it easy to identify them in subsequent proceedings.

8.0. Quarterly Report of arrests to the Attorney-General of the Federation

This Act mandates the Inspector-General Police and heads of every agency authorised by law to make arrest to remit quarterly to the Attorney-General of the Federation a record of all arrests made in relation to federal offences or arrests within Nigeria⁸. The Commissioner of Police of a State is also mandated to remit to the office of the Attorney-General of that State a similar record of all arrests in relation to state offences or arrests within the state. Such record is to contain the full particulars of the person arrested which must include the following: the alleged offence, date of arrest, full name, occupation, address and others means of identification which should include the height, photograph and finger print of the suspect. Section 29(5) empowers the Attorney-General of the Federation to establish an electronic and manual database of all records of arrested persons at the Federal and State level.

⁸ Section 15 of the Administration of Criminal Justice Act, 2015

9.0. Monthly report by Police to supervising magistrate

Section 33 of the Act directs the police to remit report on the last working day of every month to the nearest magistrate the cases of all suspect arrested with or without warrant within the limit of their respective stations or agency whether the suspect has been admitted to bail or not. Upon receipt, the magistrate is to forward the report to the Administration of Criminal Justice Monitoring Committee. The Committee shall analyse the report and advice the Attorney-General of the Federation as to the trends of arrests, bail and related matters. The Attorney-General of the Federation upon request shall also make the report available to the National Human Rights Commission, Legal Aid Council of Nigeria or NGOs.

Section 34 of the Act provides that the Chief Magistrate or any magistrate designated by the Chief Judge for that purpose to conduct an inspection of police stations and other places of detention every month. During the visit, the magistrate may:

- (a) call for and inspect the record of arrests;
- (b) direct the arraignment of a suspect, or
- (c) where bail has been refused, grant bail to any suspect where appropriate.

Where there is a default by an officer in charge of a police station or official in charge of an agency it shall be treated as misconduct and dealt with in accordance with the relevant regulation or law.

10.0. Returns by Comptroller-General of Prisons

By section 111 of the Act the Comptroller-General of Prisons is to make returns every ninety days to the Attorney-General of the Federation, Chief Judge of the Federal Capital Territory and the President of the National Industrial Court as well as the Chief Judge of the State in which the prison is located of all persons awaiting trial held in custody for a period beyond one hundred and eighty days from the date of arraignment.

Upon the receipt of such return, the recipient shall take the necessary steps to address the issues raised in the return in furtherance of the objectives of the Act.

11.0. Prosecution

Section 106 of the Act specifically limits the power to prosecute criminal cases to the following persons.

These include:

- (a) the Attorney-General of the Federation or a Law Officer in his Ministry or Department;
- (b) a legal practitioner authorised by the Attorney-General of the Federation or;
- (c) a legal practitioner authorised to prosecute by this Act or any other Act of the National Assembly.

This provision overrides the provision of Section 23 of the Police Act, which empowered the police to prosecute cases in any court in Nigeria. By implication the decision of the Supreme Court in the case of *Osahon v Federal Republic of Nigeria*⁹ with respect is no longer a good law.

12.0. Mode of instituting criminal proceedings

Essentially the provision of the Act in respect of modes of instituting criminal proceedings is a hybrid of what was obtainable under the CPA and CPC. Section 109 of the Act unified the existing procedures. The specific mode to be adopted depends on the court where the defendant is arraigned and the prosecuting agency involved, thus:

- (a) In a magistrate court, criminal proceeding could be commenced by a charge, complaint or First Information Report¹⁰. **Section 110** of the Act provides that the charge sheets used to institute criminal proceedings in a Magistrates Court shall be signed by any of the persons mentioned above. However, there is no similar provision that a First Information Report is to be signed by a legal practitioner¹¹.
- (b) In the High Court it could be by:
 - (i) information in respect of the Attorney-General of the Federation, or
 - (ii) information or charge filed in court by any prosecuting agency or a private prosecutor subject to the provision of the Act.

It is worthy to note that the Act in section 110(1) (a) stipulates that the signing of the charge sheet should be done by any of the persons mentioned in section 106 of the Act. Another interesting innovation of the Act is the introduction in section 196 (2) that a charge sheet shall be filed with the photograph of the defendant

⁹ . [2006] 2 SC (Pt. II) 1

¹⁰ See section 112 of the Act

¹¹ See section 110(1) (b) of the Ac

and his finger impression, however where the photograph and finger impression are not available this requirement shall not invalidate the charge.

Furthermore, section 379 of the Act provides that where an information is to be used in commencing a criminal proceeding, the prosecutor shall also file the following documents, which include:

- (a) the proof of evidence, consisting of:
 - (i) the list of witnesses,
 - (ii) the list of exhibits to be tendered,
 - (iii) summary of statements of the witnesses,
 - (iv) copies of statement of the defendant,
 - (v) any other document, report, or material that the prosecution intends to use in support of its case at the trial,
 - (vi) particulars of bail or any recognizance, bond or cash deposit, if defendant is on bail,
 - (vii) particulars of place of custody, where the defendant is in custody,
 - (viii) particulars of any plea bargain arranged with the defendant;
 - (ix) particulars of any previous interlocutory proceedings, including remand proceedings, in respect of the charge, and
 - (x) any other relevant document as may be directed by the court;
- and

The information and all accompanying processes shall be served on the defendant or his legal representative and the prosecution may, at any time before judgment, file and serve notice of additional evidence. This provision is quit commendable as it encourages frontloading in our criminal justice system.

Another unique provision of the Act is the requirement that the charge sheet shall be served on the defendant within seven days from the date of

filing. The trial shall commence not later than thirty days from the date of filing. See section 110(2) and (3). Where trial does not commence not later than thirty days of bringing the charge or trial has commenced but has not been completed after 180 days of arraignment on that charge, the court shall forward to the Chief Judge the particulars of the charge and the reasons for failure to commence the trial or to complete same.

The issue of obtaining consent from a judge before a charge is filed at the High Court is no longer relevant in this Act. Invariably the requirement for consent has been abolished.

13.0. Quarterly returns of cases and other criminal proceedings to the Chief Judge

The Act in section 110(3) specifically states that where a suspect is arrested without a warrant is brought before a magistrate court on a charge sheet or upon receiving a First Information Report and the trial does not commence within 30 days or completed after 180 days after arraignment, the court shall forward the particulars of the charge and reasons for failure to commence or complete the trial. This provision seeks to curb unnecessary delay in criminal trial and it is quite commendable.

Moreso, section 110(4) to (7) stipulates that every court seized with criminal jurisdiction shall forward the charges, remand and other proceedings dealt with in each court to the Chief Judge every quarter. In reviewing the returns, the Chief Judge shall ensure that:

- (a) criminal matters are speedily dealt with;
- (b) congestion of cases in courts is drastically reduced;
- (c) congestion of prisons is reduced to the barest minimum; and
- (d) persons awaiting trial are, as far as possible, not detained in prison custody for a length of time beyond that prescribed in section 293 of the Act.

Copy of the above returns shall also be made available to the Administration of Criminal Justice Monitoring Committee.

14.0. Powers of the Attorney-General of the Federation under the Act

Section 104(1) of the Act provides that the Attorney-General of the Federation may prefer information in any court in respect of an offence created by an Act of the National Assembly. The Attorney-General of the Federation also has power to issue legal advice or directives to the police.¹² The powers to discontinue criminal cases by entering a *nolle prosequi* and to withdraw from prosecution in trials and inquiries and the legal effects of any of such powers when exercised are also provided for in the Act¹³. Where the Attorney-General of the Federation enters a *nolle prosequi* the suspect shall be discharged and released if he is in custody, where the suspect is on bail the recognizance shall be discharged. Section 107(4) specifically state that the effect of the discontinuance is a mere discharge and shall not operate as a bar to any subsequent criminal proceeding against the suspect on the account of the same facts. However it is worthy to state that the stage at which discontinuance is made is very significant because it goes to the root of the case. To buttress point the Act in section 108 explicitly provides that where the withdrawal is made before the defendant is called upon to make his defence, he shall be discharged of the offence, but the court in its discretion may acquit the defendant, if it is satisfied based on the merits of the case that the order is a proper one to make in such circumstances. The court shall endorse its reasons on the record¹⁴.

Where the defendant has made his defence, he shall be acquitted of the offence.

15.0. Powers of a Private Legal Practitioner to Institute and Undertake Criminal Proceedings under the Act

A private person can institute criminal proceedings under the Act by fiat of the Attorney-General of the Federation,¹⁵ by complaint,¹⁶ or by information if the conditions provided in **Section 383** of the Act are complied with. The conditions states that:

- (a) The information must have been endorsed by the Attorney-General of the Federation or a law officer acting on his behalf that he has

¹² **Section 105, Administration of Criminal Justice Act, 2015**

¹³ **Sections 107 and 108, Administration of Criminal Justice Act, 2015**

¹⁴ Section 108(3) of the Administration of Criminal Justice, Act

¹⁵ **Section 381(c), Administration of Criminal Justice Act, 2015**

¹⁶ **Section 89(3), Administration of Criminal Justice Act, 2015**

seen the information and has declined to prosecute the offence set out therein;

- (b) The private legal practitioner must enter a recognisance in such sum as may be fixed by the court with a surety, to prosecute the information to conclusion from the time the defendant shall be required to appear; pay such costs as may be ordered by the court; or deposit in the registry of the court, such sum of money as the court may fix.

Where a private prosecutor withdraws from prosecution for an offence under the provisions of Section 108 of the Act, the court may in its discretion award costs against the prosecutor.¹⁷

16.0. Form and Contents of a Charge Sheet¹⁸

Section 193 of the Act provides that a charge may be as in the forms set out in the Second Schedule of the Act with necessary modifications. **Section 377** of the Act provides that an information shall be in the form set out in Form No. 11 in the First Schedule to the Act. However, information precedents are contained in the Third Schedule to the Act. The Act outlines the contents of a charge thus¹⁹:

1. The offence with which the defendant is charged;
2. The law, the section of the law, and the punishment section of the law against which the offence is said to be committed;
3. Particulars of the time and place of the alleged offence;
4. The defendant;
5. The victim, if any, or thing against whom or in respect of which the offence was committed; and
6. Such other particulars as are reasonably sufficient to give the defendant notice of the offence with which he is charged.

- 16.1. The Act resolves a fundamental issue that has been lingering over the years especially with respect to the cases prosecuted by the Economic and Financial Commission as to whether stay of proceedings can be granted. Section 306 of the Act explicitly states that:

¹⁷ **Section 108(4), Administration of Criminal Justice Act, 2015**

¹⁸ See **Sections 208-215, Administration of Criminal Justice Act, 2015**, for exceptions to the rules against misjoinder of offenders and misjoinder of offences in drafting charges under the ACJA.

¹⁹ **Sections 194 and 196, Administration of Criminal Justice Act, 2015**

An application for stay of proceedings in respect of a criminal matter before the court shall not be entertained.

17.0. Bail

Section 158 of the ACJ Act provides that a defendant or a suspect shall be generally entitled to bail subject to the provisions of the Act. To this end, the Act makes provisions for considerations for granting bail where a suspect is charged with a capital offence, where a suspect is charged with a felony, where a defendant is charged with a misdemeanour or simple offence, and bail in respect of matters in other offences.

17.1. Bail in Capital Offences

Section 161 of the Act provides that a suspect arrested, detained, or charged with a capital offence shall only be admitted to bail by a Judge of the High Court only under exceptional circumstances. In defining “exceptional circumstance”, Section 161(2) of the Act provides that the term includes:

- (a) Ill health of the applicant confirmed and certified by a medical practitioner employed in a Government hospital, with proof that the detaining authority has no medical facilities to take care of his illness;
- (b) Extraordinary delay in the investigation, arraignment, and prosecution for a period exceeding one year; or
- (c) Any other circumstance that the Judge may, in the particular facts of the case, consider exceptional.

This provision applies to suspects who have not yet been charged to court as it applies to arrest and detention. Thus, even when a suspect is detained for a capital offence, only the High Court Judge has jurisdiction to grant the suspect bail, and not the police or any other detaining authority²⁰.

17.2. Bail in Felonies

Section 162 of the Act provides that a defendant charged with an offence exceeding three years imprisonment shall on application to the court be released on bail. The use of ‘court’ in this section extends its meaning beyond the High Court to include the Magistrates Courts, provided, however, that such courts have jurisdiction over the offence for which bail is sought. Further, this section applies only when the defendant has been charged to court.

²⁰ A.R. Emma, Appraisal of the Administration of Criminal Justice Act 2015.

However, the court shall not grant bail:

- (a) Where there is reasonable ground to believe that the defendant will, if released on bail will commit another offence;
- (b) Attempt to evade his trial;
- (c) Attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case;
- (d) Attempt to conceal or destroy evidence;
- (e) Where granting bail will prejudice the proper investigation of the offence;
- (f) Where granting bail will undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system.

17.3. Bail in Misdemeanours and other Offences

Section 163 of the Act provides that in offences other than those provided for in Sections 161 and 162 of the Act, the defendant shall be entitled to bail unless the court sees reasons to the contrary. Such bail will be granted as provided for in Section 164 of the Act, upon the defendant's entering into recognisance in the manner provided for in the Act.

Another outstanding innovation in the Act is contained in section 187 which makes provisions for the registration, regulation and license of corporate bodies and individuals as Bondspersons by the Chief Judge. The Chief Judge may withdraw the registration of a bondsperson who contravenes the terms of his license.

A non-licensed person who engages in bail bond services or who contravenes the term of his licence is liable to a fine of five hundred thousand naira or imprisonment not exceeding 12 months²¹.

Section 188 permits a bondsperson to arrest an absconding defendant and hands him over immediately to the nearest police station or taken to an appropriate court within 12 hours.

17.4. Procedure for Bail Application

The Act is silent on the procedure for bail application. Hence, while the passage of time will reveal whether the rules to be made by the authorities

²¹ See 187(3) and (4).

in **Section 490** of the Act will cover such, the provisions of **Section 492(3)** will suffice for the meantime. The latter Section provides that the court may apply any procedure that will meet the justice of the case where there are no express provisions in the Act. To this end, summons or a motion may be used at the High Court.

18.0. Women Sureties

The current practice in Nigeria where women are routinely denied the right to stand as sureties for the purpose of entering into recognizance for bail received the attention of the Act. Section 167 (3) provides that **“no person shall be denied, prevented or restricted from entering into any recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman”**.

This provision is commendable as it is in line with the 1999 Constitution and the Convention on the Elimination of Discrimination against Women (CEDAW) which has been ratified by Nigeria.

19.0. Remand proceedings

In appropriate circumstances the Act permits remand proceeding via an *ex-parte* application as contained in sections 293 and 294. Remand is situation whereby a suspect who is yet to be charged with an offence is ordered by a court, to be kept in prison custody, pending his bail, trial or release. The arrest and remand must be only for ‘probable cause’²². In considering whether “probable cause” has been established for the remand of a suspect, the court may take into consideration the following:

- (a) the nature and seriousness of the alleged offence;
 - (b) reasonable grounds to suspect that the suspect has been involved in the commission of the alleged offence;
 - (c) reasonable grounds for believing that the suspect may abscond or commit further offence where he is not committed to custody; and any other circumstances of the case that justifies the request for remand.
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However, section 295 the Act permits the court in considering an application for remand, to grant bail to the suspect, taking into consideration the provisions of the Act relating to bail.

20.0. Time protocol for remand orders

Section 296 of the Act stipulates that an order of remand shall not exceed a period of fourteen (14) days in the first instance which may be extended for a period not exceeding fourteen days. Upon the expiration of the 14 days extension, the court may on application of the suspect grant bail in accordance with section 158 to 188 of the Act.

Also, at the expiration of the further order and where the suspect is still on remand, the court can *suo moto* issue a hearing notice to the Inspector-General of Police, Commissioner of Police and/ or Attorney-General of the Federation, or any other authority in whose custody the suspect is remanded to show cause why the suspect should not be unconditionally released. The suspect is further remanded for another period not exceeding 14 days.

Where a good cause is shown the court may extend the remand for a final period not exceeding 14 days for the suspect to be arraigned at the appropriate court. However where a good cause is not shown for the continued remand the court shall with or without an application discharge the suspect and he shall be released immediately from custody. No further remand application shall be entertained by any court after the above proceedings have been followed.

21.0. Presence of the Defendant

Section 266 of the Act provides that a defendant shall be present in court during the whole of his trial. There are however some permissible circumstances where the defendant may be absent. These are:

- (a) When the defendant misconducts himself in such a manner as to render his continuing presence impracticable or undesirable; or
- (b) At the hearing of an interlocutory application.

The above provision, however, is made subject to **Section 135** of the Act which empowers a Magistrate to dispense with personal attendance of a defendant where a summons is issued and the offence has a penalty of fine

not exceeding N10, 000 or imprisonment for a term not exceeding 6 months where:

- (a) The offence is punishable by fine or imprisonment or both; and
- (b) The offence is punishable by fine only, if the defendant pleads guilty in writing or appears and so pleads by his legal practitioner.

Where the presence is required in defendant and he fails to appear and no sufficient cause is given for his absence, then if the court is not satisfied that the defendant was duly served with the summons or that a warrant issued in the first instance was not executed, the court may adjourn the hearing to another day until the service is effected or warrant executed. On the other hand, if the court is satisfied that the summons was duly served or that the defendant had notice of hearing, the court may issue a bench warrant for his apprehension. Upon arrest, the defendant shall be committed to prison or custody to be produced for trial.²³

22.0. Presence of the Complainant

Where a case is called and the defendant appears but the complainant fails to appear having due notice of the date, time, and place without notice of the absence, the court may dismiss the complaint and discharge the defendant. However, where the court receives a reasonable excuse for the non-appearance of the complainant or his representative or for other sufficient reason, the court may adjourn hearing of the complaint to some future date.

23.0. Presence of Counsel to the Defendant

By virtue of **Section 349** of the Act, where a defendant charged before the court is not represented by a legal practitioner, the court shall inform him of his rights to a legal practitioner, and enquire from him whether he wishes to engage his own legal practitioner, or a legal practitioner engaged for him by way of legal aid. However, **Section 267(4)** of the Act provides that the Court shall ensure that the defendant is represented by Counsel in capital offences provided, though, that a defendant who refuses to be represented by Counsel shall, after being informed under **Section 349(6)** of the Act of the risks of defending himself in person, be deemed to have elected to defend himself in person and absence of counsel shall not vitiate the trial.

²³ **Section 352(1) (a), (b), Administration of Criminal Justice Act, 2015**

Where a legal practitioner who had appeared on behalf of the defendant ceases to appear in court in two consecutive sessions of the court, the court shall enquire from the defendant if he wishes to engage another legal practitioner or a legal practitioner may be engaged for him by way of legal aid. If the defendant elects to retain on the own the services of counsel, the court shall allow him reasonable time not exceeding 30 days. However, if he fails, or is unable to secure a legal practitioner after a reasonable time, the court may direct that a legal aid counsel represent the defendant.

Where a legal practitioner intends to disengage from a matter, he shall notify the Court not less than three days before the date fixed for the hearing and such notice shall be served on the Court and all the parties²⁴.

24.0. Plea Bargain Guidelines

By virtue of Section 270 of the Act, the Prosecutor may with the consent of the victim or his representatives consider, offer or accept a plea bargain from a defendant. The prosecutor must ensure that the acceptance of such plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process. In determining whether it is in the public interest to enter into a plea bargain, the prosecution must weigh all relevant factors, including:

- i. the defendant's willingness to cooperate in the investigation or prosecution of others;
- ii. the defendant's history with respect to criminal activity;
- iii. the defendant's remorse or contrition and his willingness to assume responsibility for his conduct;
- iv. the desirability of prompt and certain disposition of the case;
- v. the likelihood of obtaining a conviction at trial, the probable effect on witnesses;
- vi. the probable sentence or other consequences if the defendant is convicted;
- vii. the need to avoid delay in the disposition of other pending cases; and
- viii. the expense of trial and appeal.

²⁴ Section 349 (8), *Administration of Criminal Justice Act, 2015*

- ix. The defendant's willingness to make restitution or pay compensation to the victim where appropriate.

Where it is reasonably feasible to afford the victim or his representative the opportunity to make representations regarding the contents of the agreement and the inclusion in the agreement of compensation or restitution order, such agreements between the parties must be in writing and signed. The presiding Judge or Magistrate is not permitted to be part of the discussions.

Where there is an agreement between the parties, the prosecutor shall inform the court of the agreement reached by the parties, it is the duty of the presiding Judge or Magistrate to inquire from the defendant to confirm the correctness and the voluntariness of the agreement. After considering the agreed sentence, the presiding Judge or Magistrate may impose the sentence agreed upon, or impose a lesser sentence. Where a presiding judge or magistrate is of the view that the offence requires a heavier sentence, than the one agreed, he is to inform the defendant of his view. The defendant may decide to abide by his plea of guilty and accept the sentence by the Judge or Magistrate, or he may decide to withdraw from his plea agreement. If he does so, the trial precedes *de novo* before another presiding Judge or Magistrate.

The provision which allows the Judge or Magistrate to decline to be bound by the sentence agreed by the parties is a safeguard for situations where public sensibility may be offended by the sentence agreed.

25.0. Speedy trial

The Act in section 396 makes provision for day-to-day trial of criminal cases. Where day-to-day trial is impracticable after arraignment, parties shall only be entitled to five adjournments from arraignment to final. The interval between each adjournment must not exceed fourteen days. Where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days. The court may award costs in order to discourage frivolous adjournments.

The provision further states that a Judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit

as a High Court Judge for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude same within a reasonable time. This provision is intended to address the problem of trial *de novo*.

The ACJ Act in sections 306 and 396 abolished stay of proceeding and interlocutory appeals by merging all preliminary objections with the substantive case in respect of criminal cases instituted in federal courts. This revolutionary intervention of the Act is occasioned by unending trial of politically exposed persons in corruption cases.

Section 109(4) of the Act provides that where a charge is preferred at the magistrate court and the trial does not commence within thirty days, or trial has commenced but has not been completed after one hundred and eighty days of arraignment on that charge, the Court shall forward to the Chief Judge the particulars of the charge and reasons for failure to commence the trial or to complete the trial.

Section 109(5) mandates Courts to make quarterly returns of the particulars of all criminal cases, including charges, remand and other proceedings dealt with in a Court to the Chief Judge. In reviewing the returns, the Chief Judge shall have regard to the need to ensure that:

- (a) criminal matters are speedily dealt with;
- (b) congestion of cases in courts is drastically reduced;
- (c) congestion of prisons is reduced to the barest minimum; and
- (d) persons awaiting trial are, as far as possible, not detained in prison custody for a length of time beyond the prescribed period.

Section 349(7) of the Act states that a legal practitioner engaged in a matter shall be bound to conduct the case until final judgment, unless allowed for any special reason to cease from acting by the Court.

Furthermore, section 382 provides that where an information is filed in the court, the Chief Judge shall within fifteen working day of its filing assign it for trial. Upon the assignment, the court shall within ten working days issue notice of trial to the witnesses and defendants and a reproduction warrant properly endorsed by the Judge where the defendant is in

custody. The Chief Registrar is to ensure prompt service of the notice and information not more than three days from the date they are issued.

26.0. Time limit for issuance of legal advice

Section 376 makes provision for time limit for the issuance of DPP's legal advice. The Attorney-General of the Federation shall, within fourteen days of receipt of police case file, issue and serve a legal advice indicating whether or not there is a *prima facie* case against a defendant. Where no *prima facie* case exists, the Attorney-General of the Federation shall serve a copy of the legal advice on the police, court and the suspect and the suspect shall be released if he is custody.

27.0. Witness Protection

Section 232 of the Act permits the trial of some offences 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.

By virtue of 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. The Court in order to protect the identity of the victim or a witness 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.

Subsection (5) makes the contravention of the provisions of section 232 an offence punishable to a minimum term of one year imprisonment.

28.0. Electronic Record of proceedings

Section 364 of the Act states that court proceedings shall be recorded electronically. Similarly, section 362 of the Act provides that where a person who is seriously ill or hurt may not recover, but is able and willing to give material evidence relating to an offence and it is not practicable to take the evidence the during trial, the Judge or Magistrate shall take in writing the statement on oath or affirmation of the person.

21.0. Judgment

A valid judgment under the Act must be in writing. However, the Act makes an exception to this requirement in the case of Magistrates' Courts. Section 308 (2) of the Act provides that the Magistrate, instead of writing the judgment, may record briefly in the book his decision or finding and his reason for the decision or finding, and then deliver an oral judgment. Hence, when the Magistrate fulfills the necessary conditions, the Magistrate can deliver an oral judgment.

More so, where a Judge or Magistrate having tried a case is unavoidably absent on the day which he is to deliver his judgment or sentence, then if the judgment has been reduced into writing and signed by the Judge or Magistrate, it may be delivered and pronounced in open court by any another Judge or Magistrate in the presence of the defendant²⁵. By section 308(1) of the Act every judgment shall contain the point or points for determination, dated and signed by the Judge or Magistrate at the time of pronouncement.

29.0. Compensation to victims of crime

Often times, victims of crimes are neglected without any form of compensation even when the offender has been found guilty. The Act has addressed this ugly trend by broadening the powers of the court to award costs, compensation and damages in deserving cases, especially to victims of crime.

By the provisions of section 319 of the Act, court may order a convict to pay compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant.

30.0. Non Custodial sentences

The ACJ Act in sections 453, 460 and 468 attempted to address 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:

²⁵ Section 315, *Administration of Criminal Justice Act, 2015*

- (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 of the Act, a court may sentence a defendant to serve the sentence at a Rehabilitation and Correctional Centre established by the Federal Government in lieu of imprisonment.

31.0. Trial of Corporation

This is another remarkable feature of the Act. Section 477 makes provisions for the trial of a corporation with its representative appearing on its behalf. "Corporation" in the Act means a corporate body, incorporated in Nigeria or elsewhere. Section 478 of the Act provides that a corporation can take its plea to a criminal charge or information either orally or in writing through its representative. However, when the corporation appears or fails to enter any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed accordingly. More so, any requirement of the Act that says anything must be done in the presence of the defendant, or shall be read or said or explained to the defendant, shall be construed as a requirement that the thing was done in the presence of the representative or read or said or explained to the representative.

Section 484 of the Act expressly provides for application of the provisions of the Act to a corporation as they apply to an adult. The same section also expressly provides that a corporation may be charged jointly and tried with an individual for any offence.

32.0. Conclusion

One of the major improvements brought about generally by the reforms is that conscious effort was made to strengthen the rights of the defendant and reduce delays in the criminal process. Though most of these rights had existed before now, the ACJ Act 2015 has added emphasis to them. It has also ironed out a lot of grey areas that had been long overdue. Most importantly, the Act places huge responsibilities on the shoulders of

judges and magistrates for the effective implementation of the Administration of Criminal Justice Act.