

Sentencing: Practice and Procedure under Administration of Criminal Justice Act and Laws.

INTRODUCTION

The right to life, personal liberty and freedom of movement are amongst the fundamental human rights of every citizen guaranteed by the Constitution of the Federal Republic of Nigeria, (1999 As Amended). Arising from the sanctity of these rights, the deprivation or imprisonment of a citizen, be it for a day, must be in strict compliance with the due process of the law. The right to freedom can only be denied after a pronouncement of guilt by a law court or after an offender elects to plead guilty upon arraignment.

The administration of our criminal justice system is an embodiment of diverse institutions respectively engaged in the detection, prosecution and adjudication over offenders culminating to conviction and sentencing. Critical to the effective and efficient operation of the criminal process is a practice and procedural framework that would enhance the administration of justice system. The Criminal Procedure Act¹ was the principal enactment governing the criminal procedure in the Southern States of Nigeria whilst the Criminal Procedure Code² was applicable to the Northern Region of

¹ CAP C41, LFN 2004

² CAP C42, LFN 2004

Nigeria and later when states were created, it became operational in all the Northern states.

With the promulgation of the Administration of Criminal Justice Act, 2015, hereinafter referred to as ACJA, 2015, the CPA, CPC and the Administration of the Criminal Justice ACT³ were repealed.

This paper aims to explore the diverse options of sentencing in the ACJA, 2015 particularly the innovative features in the sentencing process together with the practice and procedures for sentencing which were hitherto the enactment nonexistent in the repealed legislations as well as the old reintroduced concepts. It is also hoped that this paper will sensitize judicial officers in the application of the non custodial sentencing options which are hardly utilized in our criminal jurisprudence.

THE OBJECTIVES OF THE ACJA, 2015

The Criminal Procedure Act which is applicable in the Federal Capital Territory remains an extant legislation in so far as it was not included amongst the legislations repealed by ACJA, 2015. ACJA, substantially preserved the provisions of CPA and CPC hence, the practice and procedure of criminal administration in the Federal High Courts, Industrial Courts and High Court of the FCT is predicated on ACJA, 2015 though it is

³ CAP A3, LFN 2004

gradually being domesticated at the State levels. The Act also seeks to fill in the lacunas noted over the years in our criminal procedure and practice by the introduction of radical and far reaching proactive mechanisms and regulations aimed at eliminating protracted delays and some of archaic provisions which defence lawyers have taken advantage of particularly in the defence of high profile defendants have been avoided by the Act.

The lofty and commendable objectives of ACJA, 2015 are expressed in Section 1 which provides thus:

“The purpose of the 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 the protection of the rights and interest of the suspect, the Defendant and the victim”

It can be discerned from the forgoing provision that the Act is a departure from the practice where emphasis was laid on punishment to serve as a deterrent. In line with modern trends in advanced criminal jurisdictions, the Act proactively focuses on restorative justice and emphasizes the attendant needs of the society, the victim and the right and interest of the defendant. It also provides an extensive array of non custodial sentence options as an

alternative to prison sentence which has substantially dominated our punitive approach to sentencing.

The short title of the Act states thus:

“An Act to make provisions for the Administration of Criminal Justice and for related matters in the court of the Federal Capital Territory and other federal courts of Nigeria”

It is noteworthy, that by virtue of Section 2(2) of the ACJA, the Act is applicable to criminal trials for offences established by an Act of the National Assembly and any other offences punishable in the Federal Capital Territory, Abuja however it is inapplicable a Court Martial.

Besides, Section 1(2) of the Act prescribes that the courts, law enforcement agencies and other authorities or persons involved in the criminal justice administration shall ensure compliance with the provisions of the Act for the realization of its purposes.

By reason of the foregoing principles and objectives, all bodies and institutions charged with defined roles in the Act are required, as stakeholders to work in collaboration and assiduously towards the effective operation and implementation of Act in order that its laudable and far

reaching innovations will impact positively and effectively on the criminal justice process.

Meaning of Sentence

The term 'sentence' or 'Judgment' may denote the action of a court of criminal jurisdiction formally declaring an accused the legal consequences of guilt to which he has confessed or of which he has been convicted. Generally therefore, a sentence is the punishment inflicted upon a convict at the end of trial⁴.

A sentence is the pronouncement by the Court, upon the accused after his conviction in criminal prosecution, imposing the punishment to be inflicted⁵.

It is regarded as the judgment that a Court finally pronounces after finding the defendant guilty or the punishment imposed on a criminal wrongdoer.⁶

Whereas, sentencing is a post conviction process of ascertaining and imposing penalties on offenders it is the final stage of the trial process when the Court has found the defendant guilty or the defendant has pleaded guilty, the judge then decides on a sentence appropriate for the

⁴ Administration of Criminal Justice, Sentencing Policy at the All Judges conference, 1988 by Douglas J.

⁵ Fundamentals of Criminal Procedure Law in Nigeria by Bob Osamor

⁶ Black's Law Dictionary 7th Edition /St. Paul

offence established, thus the sentence is at the post conviction stage when the defendant is brought before the Court for the imposition of a penalty.⁷

The criminal justice process is an embodiment of diverse institutions, from those charged with the duty of detection and investigation of crime and apprehension, prosecution and adjudication ending with the conviction of offenders in accordance with the due process, regulations and the law. The enabling powers of the institutions define their operational framework as well as their functions towards the effective administration of criminal justice. These institutions act as watchdogs for the society with the teeth to bite whenever the laws are violated. Much as offenders are punished to serve as deterrents for members of the society, the presumption of innocence lies in favour of a suspect unless and until he is proven guilty by a Court of law⁸.

In effect, sentence can only be imposed in the manner prescribed by the law after the establishment of proof of committing an offence beyond reasonable doubt. A judge must not exceed the term prescribed in the statute creating an offence nor must he exceed the quantum prescribed in punishing the offender. In passing a sentence, a judge should be dispassionate in his decision and in the exercise of his judicial discretion.

⁷ <https://legal.dictionary>. The freedictionary.com/sentencing accessed on 19/02/2019

⁸ LC. Okpar Esq. International Journal of Asian Social Science, 2014 4(7): 886-897.

The ultimate goal of criminal administration is to accomplish fairness in the effective and expeditious determination of guilt or innocence.

Selected Provisions of ACJA, 2015 that are of Particular Relevance to Practice and Procedure in Sentencing

SENTENCING PROCEEDINGS

The provisions relating to sentences in the ACJA, 2015 are a combination of Sections 310, 311, 313, 316, 317 and 401.

Where the finding is guilty, the convict shall be asked, whether he has not previously called any witness to character and if he wishes to call any witness(es) he will be allowed to do so, Section 310.

Upon hearing such witnesses, the Court shall ask the convict if he also intends to make any statement or produce any evidence in mitigation of punishment in accordance with Section 311(3). Upon compliance with Section 310(1), the prosecution shall present the court with evidence of any previous conviction of the defendant where such evidence has not already been given (Section 311(2)). Thereafter, the Court, shall take all the necessary aggravating and mitigating evidence or information in respect of each convict that may guide the Court in deciding the nature and extent of

the sentence to impose on each of the respective convict even though the convicts were charged and tried together.

It is to be noted that the Act provides that, in pronouncing sentence on the convict(s), the factors in Section 311(2)(a)-(d) that must also be considered by the Court in addition to Section 239 and 240.

The factors in Section 311(2) a-d of the Act are:

- (a) The objectives of sentencing, including the principles of reformation and deterrence,*
- (b) The interest of the victim, the convict and the community;
and*
- (c) The appropriateness of non custodial sentence or treatment in lieu of imprisonment, and*
- (d) Previous conviction of the convict.*

In the course of the sentencing proceeding, the court may take into consideration any other offence that is also pending against the convict at the time of passing sentence, however such pending charge will only be considered where the convict admits the pending charge and expresses a desire that such charge be taken into consideration, in such a situation, the prosecutor must also consent that the pending charge(s) can be taken together by the Court, Section 313(1)(2). This provision is akin to consolidation in civil suits, it is a time saving procedure which will ultimately reduce the criminal cases docket. Where the Judge considers a pending

charge together with a charge before him and he proceeds to sentence on both charges, the convict, subject to Sections 236 and 237 of the Act shall not be charged or tried again Section 313(3).

Upon compliance with the provisions of Sections 310, 311 and 313(1) the Court may pass sentence on the convict or adjourn to consider the sentence which must be announced in open Court, Section 311(1).

The deduction that can be garnered from the foregoing sentencing process is that, unlike in the repealed provisions, where the conventional punishment that is generally imposed is imprisonment, and or fine, ACJA 2015, expressly provides for the imposition of any of the non custodial sentence provisions as alternatives to imprisonment. In effect, subject to any restriction of the law, the Court can order non custodial sentence in lieu of prison sentence. The sentencing parameters and factors for consideration are more elaborate than in the allocutus.

Besides, the framework for the selection of non custodial features in Section 311(2)(c), is quite commendable and it is indeed a proactive approach as it brings to fore the interest of the victim who was formally isolated in the previous enactments from obtaining justice through the criminal process. Considerable judicial discretion can now be exercised by the judge during the sentencing process. It is quite commendable that the

High Court of the FCT has introduced sentencing guidelines to assist judges at ensuring uniformity in sentencing.

Other Provisions Relating to Sentence

Aside from the foregoing provisions which must be factored into the sentencing process, Part 38 of ACJA further provides other features and procedures which must be applied by the Courts before a sentence is pronounced.

PROVISIONS RELATING TO PUNISHMENT

Section 401(1) provides:

“Subject to the provisions of a law relating to a specific offence or class of offence and to the jurisdiction conferred on any Court or on a person presiding over the court, the provisions in this part shall apply to sentences of death, imprisonment, fine and non custodial sentences”

It follows that the factors prescribed in Sections, 310, 311, 313, 316, 317 hitherto noted in this presentation are not exhaustive of the sentencing process, it must be borne in mind that the objectives stipulated in Section 401(2)(a)-(g) of ACJA must also be considered by the judge prior to the imposition of the sentence. This is because Section 401(2) provides that

the Court SHALL take cognizance of the underlisted principles in the determination of sentence.

Section 401 (2) provides for:

- (a) **Prevention**, that is, the objective of persuading the convict to give up committing the offence in the future, because the consequence of the crime is unpleasant”

In this situation, some inconvenience is imposed on the offender to preclude him from committing the act or omission in future. The prevention is to discourage crime by punishing the convict in the expectation that it would serve as a threat or lesson to preclude prospective offenders.

- (b) **Restraint**, that is, the objective of keeping the convict from committing more offence by isolating him from society;

Restraint aims at deterring an offender from repeating a criminal act by incapacitating him by various means such as long time imprisonment⁹

The target of this theory is not on the motive of the offence, but on his physical power which it seeks to disable or otherwise cripple him in order to prevent repetition of the crime since revenge for its own sake cannot be justified, it will follow that the natural justice of punishment, as of every

⁹ Donn J. Law Conflict Resolute www.donnisJournals.org.

other act of man to man, must depend solely on its utility, and that its only lawful end is some good more than equivalent to the evil which it necessarily produces. Prison works. It ensures that we are protected from murders, muggers and rapists and it makes many, who are tempted to commit crime think twice.¹⁰

(c) **Rehabilitation**, that is, the objective of keeping the convict in a reformed institution and training him with skills so that upon release he will be a reformed citizen.

This principle is by far one of the most important aspects of sentencing as it helps to reform the convict with the aim that he would gainfully reintegrate into the society with the training or skills acquired during his confinement. It also assists the offender psychologically orientates his moral values when kept in a reformation institution. The issue of poor rehabilitation activities in prison, lack of adequate reintegration resettlement activities, poor living conditions in prison; existence of torture, inhumane and degrading treatment in places of detention e.t.c. questions the validity of the position that the prison provides treatment and rehabilitation of offenders in the Nigerian Prisons Service.¹¹

¹⁰ Alex McBride's defending the guilty page 194.

¹¹ Exploring non custodial sentencing in Magistrates Courts: July by Uzonna Ezekwen

- (d) **Deterrent**, that is, the objective of warning others not to commit offence by making an example of the convict. The consequences of deterrent are similar to Section 401(2) (a-b).
- (e) **Education of the Public**, that is, the object of making a clear distinction between good and bad conduct by punishing bad conduct.

This consideration resonates societal values and the expectations required from a member of the society to refrain from that which is bad and be of good behavior.

- (f) **Retribution**: The aim of this principle is for the convict to be punished in the manner that is proportionate to the crime he has committed.

A person who knowingly murders another person ought to be sentenced to death. The objective behind retribution is to inflict punishment proportionate to the offence occasioned by him, it may be with hard labour. The rampant incidence of looting of public funds should also have the reprisal of ordering the convict to refund ill gotten wealth to the state or to the victims who has been fraudulently exploited in addition to prison sentence.

(g) Restitution, that is, the object of compensating the victim or family of the victim of the offence.

The convict is ordered to return or reimburse the victim or pay for medical and inconveniences. Unlike fines which are ordered to be paid to the state, the restitution or compensation is paid to the victim. As will be discussed in this presentation APJA, 2015 has made ample provisions for the effective application of the foregoing principles.

Power of Court to Order Restitution

After the conviction of the Defendant, the Court may adjourn proceedings in order to consider and determine the sentence that is appropriate for him or her. The court by Section 321 of the Act can:

- a) *In addition to or in lieu of any other penalty authorized by law, order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted, or to the victim's estate; or*
- b) *Order for the restitution or compensation for the loss or destruction of the victim's property and in so doing the Court may direct the convict;*
- c) *To return the property to the owner or to a person designated by the owner;*

- d) *Where the return of the property is impossible or impracticable, to pay an amount equal to the value of the property; or*
- e) *Where the property to be returned is inadequate or insufficient, to pay an amount equal to the property calculated on the basis of what is fair and just.*

JUDICIAL DISCRETION: SENTENCING

It appears that the intention of ACJA, 2015 is to liberalize sentencing with the exception of the mandatory sentences imposed by the Act. Section 416(1) and (2) (a) – (k) of the Act encapsulates the considerations that must be factored by the Judge in the exercise of his judicial discretion in passing sentence (in addition to Section 401). On conviction, a Court MAY sentence the convict to a term of imprisonment prescribed by the law (Emphasis is mine)

The Act provides that each case should be treated on its own merits. One reasons that the aim of Section 416(2)(a) – (k) are to water down imprisonment by empowering the Court to exercise judicial discretion. The deduction from Section 416 is that the Court may sentence to a term prescribed by law hence some measure of flexibility is given to the Court in terms of prison sentence whilst a very wide latitude of judicial discretion is

prescribed in Section 416(2)(a) – (k). They give the impression that prison sentence is the last resort. The Act exhorts the Courts to consider the objectives of sentencing including the principles of reformation. It also provides that the Court shall not pass the maximum sentence on a first offender whilst the period spent in prison custody or awaiting or undergoing trial shall be discounted from the sentence. The trial Court is further enjoined by the Act to conduct an inquiry into the convicts antecedents before he is sentenced, where there is doubt as to whether a convict has attained the age of eighteen years, the Court is to resolve the doubt in favour of the convict.

Where the sentence imposed by the trial Court appears to be excessive or based on wrong principles, an Appeal Court may reduce the sentence imposed however where the appellate Court finds the sentence inadequate the sentence can be increased.

Still in the same spirit of whittling down prison sentence, it is provided that a term of imprisonment shall apply **ONLY** to those offenders who should be isolated from the society and whom other forms of punishment have failed or is likely to fail, Section 416(2) (k). Another novelty that resonates the liberal attitude towards alternative sentence instead of imprisonment is Section 417(1) it thus:

“Where the Court has powers to pass a sentence of imprisonment, it may, in lieu of passing sentence of imprisonment, order the convict to be detained within the precincts of the Court or at a police station till such a hour not later than eight in the evening on the day on which he is convicted, as the Court may direct”

In passing the sentencing order in Section 417(1) the Court shall take into consideration the distance between the place of detention and the convicts abode in order that he may have reasonable opportunity to return back to his abode on the same day the detention order is made, Section 417(2)

Consecutive Sentence of imprisonment

In the event that a prison sentence is passed, on a convict, the Court may order the sentence to commence at the expiration of the term of imprisonment to which the convict has been previously sentenced by a Court of competent jurisdiction, however where two or more sentences are passed by a Magistrate Court and ordered to run consecutively, the aggregate term of imprisonment shall not exceed four years of the limit of jurisdiction of the adjudicating Magistrate.

It is expected that the elaborate considerations that must be factored in the sentencing process will adequately guide the judge in the dispensation of criminal justice. One reckons that the various parameters will ultimately reduce the disparity in the sentence ordered by Courts in respect of the same offence. Some of these factors have guided our judicial officers as demonstrated by our case laws.

It is expected that the extensive provisions prescribed for the sentencing proceeding will adequately guide the judge in the determination of the sentence passed by the Courts in respect of the same offence. ACJA 2015 is still in its early stage of evolution hence case law on the application of these innovative provisions and the diverse parameters that must be factored into decision making in criminal cases are developing. The sentence may take some time for the buildup of judicial precedents, moreso as the complimentary structures for the non custodial sentence are not yet in place, for example probation registrars, appointment of Parole officers e.t.c.

A few cases reflecting the attitude of the Courts in the dispensation of criminal justice shall be under consideration in this paper. The objective is to demonstrate the exercise of judicial discretion and the principles adopted by the Courts in the dispensation of criminal justice.

In the case of **AMINU v. THE STATE**¹² the Court of Appeal affirmed the Judgment of the High Court Minna, Niger State, which convicted and sentenced the Appellant and two others to death for the offence of conspiracy under the Robbery and firearms (Special Provision) Act Cap. 398 L.F.N, (1990). The trial Court, High Court of Niger State, Minna convicted the three accused persons (the Appellant, inclusive) for armed robbery and sentenced them to death by hanging. On appeal, the Court of Appeal affirmed the decision of the trial Court. Dissatisfied, the Appellant went to the Supreme Court. In affirming the Appellate Court's decision, per Aderemi, JSC (as he then was) held inter alia:

“Where the sentence prescribed upon conviction in a criminal charge is a term of years of imprisonment, then some extenuating factors such as the age of the convict, whether he is a first offender e.t.c. can be taken into consideration by the trial Judge in passing sentence on the convict. Indeed, the trial Judge in my humble view, has the discretion to employ these factors to reduce the years of sentence ...a judge must always possess “judicial discretion” which he is to exercise only when the interest of justice so demands. The punishment of “DEATH” prescribed in Section 1(2) of the Robbery Act supra does not confer any judicial discretion on the

¹² (2009) L.P.E.L.R. 3136 SC (2004) 4 N.W.L.R. (PART 1131) 430 SC

trial Judge or even the appellate Court to reduce it and neither is there any power that can be exercised by a judex to reduce that sentence. It has been decided that where statute provides for a particular method of performing a duty regulated by the statute, that method and no other must be adopted”

In effect, the Supreme Court held that where the law prescribes the death sentence by law, it cannot be subjected to judicial discretion.¹³

The decision of the Court of Appeal in **DANSO v. FEDERAL REPUBLIC OF NIGERIA**¹⁴ is a typical example of the exercise of the judicial discretion of the Court in sentencing. The Appellant was tried and convicted on a one Court charge of dealing in drugs under Section 11(c) of the National Drug Law Enforcement Agency Act Cap. 30, L.F.N. Contrary to the prescribed punishment of imprisonment for life, the Appellant was sentenced to two and a half years imprisonment by the trial Court.

On appeal, Section 11(c) of the NDLEA Act was subjected to the Appellate Court’s interpretation, the section provides that:

“Any person who, without lawful authority”

(c) *Deals, buys, exposes or offers for sale or otherwise deals in or with the drugs popularly known as*

¹³ Aminu v. The State (supra)

¹⁴ (2013) L.P.E.L.R. (2016 (CA)

cocaine, LSD, heroine, or any other similar drugs shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life”

It was held that the phrase “shall be guilty and liable” on conviction to be sentenced to “imprisonment for life” clearly connotes that it is the conviction for the offence of dealing with Indian hemp that is mandatory whilst the life sentence prescribed in the Act is not mandatory.

The Appellate Court then resorted to the definition ascribed to the word “liable” it was held that “Liable” is defined in the Oxford Advanced Learners Dictionary, New Edition “*as likely to be affected by something*” In the context in which it is used in the Act, it is likely that a person convicted of the offence of dealing in drugs will be sentenced up to life imprisonment. It is therefore not the intention of the law to make the punishment under Section 11(c) of the Act mandatory.

The Court of Appeal upheld that the trial Court’s sentence of two and a half years.

In the case of **LUCKY v. THE STATE**¹⁵ the Appellant was charged for rape punishable under Section 35 of the Criminal Code, (Cap C21, Laws of Delta State, (2006) which provides that “*...any person who*

¹⁵ (2016) L.P.E.L.R. 40541 SC

commits the offence of rape is liable to imprisonment for life” the Appellant was sentenced to term of imprisonment of 5 years with hard labour or with an option of fine of ₦300,000.00 (Three Hundred Thousand Naira). Dissatisfied with the Judgment, Appellant, appealed, the Court of Appeal dismissed the Appeal. Further dissatisfied he appealed to the Supreme Court, which also dismissed the appeal. Much as the Apex Court condemned in severe terms the sentence passed by the trial Court, the Judgment of the trial Court was however affirmed. The reasoning of the Supreme Court is very instructive on the inviolability of a sentence that is not appealed against.

*“I was tempted to revisit the sentence in this case but that would have violated the principle that the appellate Court cannot disturb a sentence imposed unless there is an appeal against the sentence. A violation of that principle would be as much as wrong as the punishment imposed on the appellant and there is a truism that two wrongs do not make one right. A portion of the Judgment of this Court in the case of **NAFIU RABIU v. THE STATE (1990) 11 SC 130 at 177** per quotation, Idigbe, JSC in his concurrence with the unanimous Judgment of a seven*

man panel of this Court said: “There being no appeal or cross-appeal against the sentence this Court ought not to interfere with the sentence passed by the Court of Appeal. My Lords I would therefore make it clear that it is with considerable regret that I am unable to disturb the sentence of 4 years imprisonment for this offence...which appears to call for a much more severe punishment Though the Appellant in the above case strangled his own wife, he got away with a four year term of imprisonment. In the case at hand Appellant killed something in the psyche in the life of P.W.1, leaving the poor girl devastated and with a permanent scar for life. The principle of inviolability of a sentence not appealed against which I am duty bound to apply herein most regrettably and painfully appears to give credence to the saying that the law is an ass. May be the asinine attribute is not inherent in the law but in the application of its provision as amply demonstrated in this case”

The Judgment of the trial Court and the Court of Appeal was affirmed by the Supreme Court.

The case of **AMEH ASP v. FEDERAL REPUBLIC OF NIG.**¹⁶ is another example of the Court's attitude towards sentencing. The Court of Appeal reaffirmed the decision of the trial Court when it ordered a prison sentence of 2 years against the Appellant pursuant to the violation of Section 8(1)(a) and 8(1)(b) and Section 10(a)(i) and (ii) of the Corrupt Practices and other Related Offences Act of 2000 which imposes a 7 years term imprisonment. The Act prescribed imprisonment and was silent on the of option of fine per **Mary U. Peter-Odili** JCA(as he then was) in reiterating the decision in **APAMADIRI v. THE STATE**¹⁷ held that: *"The position of the law is where the statute or section of the law creating and defining the offence expressly prescribes that there is no option of fine, the Court cannot impose fine, however, where the statute is silent, even if it only mentions imprisonment and is silent on fine, the Courts have the discretion to impose a fine in lieu of imprisonment"*

The Court of Appeal dismissed the appeal by holding that the trial Court exercised its discretion by sentencing the Appellant to 2 years imprisonment without option of fine. The Appellate Court declined to disturb the exercise of the trial Court's discretion.

¹⁶ (2009) L.P.E.L.R. 8153 (CA)

¹⁷ (1997) 3 N.W.L.R. (PART 493)

In **USHIE v. THE STATE**.¹⁸ The trial Court in the Ushie case recounted the factors that influenced the sentence passed by holding that “*Courts must be serious in punishing corruption if we are to make any headway in fighting that cancer in the society*” The trial Court then proceeded to sentence the appellant to 5 years imprisonment.

The Court of Appeal set aside the sentence holding that the trial Judge can only exercise its discretion within the ambit of his jurisdiction. The Appeal Court reduced the term of the sentence from 5 years to two years in accordance with the two year of imprisonment imposed in Section 518 Criminal Code of Cross Rivers State.

In the case of **LAWRENCE v. F.R.N.**¹⁹ he was arraigned for dealing in Marijuana without lawful authority under Section 11(c) of the NDLEA Act. He pleaded guilty on arraignment, during allocutus, he disclosed that he wanted to join the Army or the Police and both institutions rejected him. He said he engages in body building and boxing at the National Stadium. The trial Court having considered the charge against him held that he was guilty. The trial Court held that the convict has not shown any possible means of livelihood that he can possibly be employed if he gains early

¹⁸ (2012) L.P.E.L.R. 9705 (CA)

¹⁹ Lawrence v. F.R.N. (2018) L.P.E.L.R. 44510.

freedom. Consequently, he was sentenced to life imprisonment with hard labour.

Lawrence appealed to the Court of Appeal contending that the life imprisonment sentence with hard labour is manifestly excessive, punitive in nature and the reason given by the trial Court for the sentence is not justifiable. The Court of Appeal subjected Section 11(c) of the NDLEA Act to interpretation as in the **Danso case**. The Act provides that anyone dealing with Indian hemp shall be liable on conviction to be sentenced to imprisonment for life. It was held that the word ‘liable’ in the Black’s Law Dictionary means “*responsible or answerable in law, legally obliged, subject to or likely to incur (fine or penalty)*” The Appellate Court then went on to consider whether in the light of the meaning of the word ‘liable’ used in Section 11(c) of NDLEA Act is mandatory or whether it gives room for the discretion of the Court. The Appeal Court held that the penalty provision of the law determines the guiding principle. The Appellate Court upheld the trial Court’s decision. It held that Section 11(c) of the NDLEA is a mandatory provision. It was held thus:

“I affirm the sentence imposed by the trial Court. I am of the opinion that the sentence may seem rather harsh given the

circumstance of the case but the law is the law and it must be given expression”

In sum, Lawrence was sentenced to life imprisonment with hard labour for being in possession of 225 grams of marijuana whilst Danso bagged a two and half year sentence for being in possession of 2.7 kilogrammes of the same substance.

In **ISANG v. STATE**²⁰ (1996) 9 N.W.L.R. 473 at 458 at 471 the Court held that:

“It is a combined principle of criminology and penology that where a sentencing language is specific and mandatory, a Court of law has no discretionary power to exercise. It must give the specific and mandatory sentence provided for in the statute. However, where a sentencing language is general without fixing a mandatory ceiling by way of sentence, a Court can exercise its discretionary power to pass a sentence which it thinks is commensurate to the factual situations of the case”

Flowing from the foregoing judicial precedents one is not left in doubt that upon conviction, the judge is under a duty to examine the law creating

²⁰ (1996) 9 N.W.L.R. 473 at 458 at 471

the offence to determine whether the punishment is mandatory, allowing no room for a lesser penalty, both the Court and litigants must defer to the law, a statutory provision prescribing sentence gives no room for opinion. It is not in all situations where the Court can exercise its discretion in sentencing. The penalty aspect of the law creating the offence guides the principle to be applied by the Court. Where the sentence is mandatory in clear terms the discretion by the Court is not permissible. However, where discretion is allowed it must be exercised judiciously and judicially in the imposition of punishment.

It is reasoned that it is expedient for the Court to express the reasons that has informed the invocation of its discretion. Where a mandatory sentence of life imprisonment is prescribed as punishment for an offence a lesser term cannot be imposed.²¹ A mandatory sentence gives no room for discretion, it is a duty imposed by the law the Court cannot impose, permit or allow a lesser sentence.

Sentencing Guidelines

It is noteworthy that the Federal Capital Territory Judiciary took a leap forward in codifying sentencing guidelines and principles in order to assist

²¹ *Amanchukwu v. State* (2007) 6 N.W.L.R. 10290 AT 23.

judges and Magistrates in the sentencing proceedings after conviction. The lofty initiative is known as the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016, The guidelines was enacted by Hon. Justice Ishaq Bello, the Chief Judge of the High Court of the FCT on the 19th October, 2016.

Part 1 of the sentencing guidelines resonates the objectives, guiding principles and scope of the Guidelines, Section 1 provides thus:

“The objective of this practice direction is to set out the procedure for sentencing of corruption related cases, offences against the person or property, homicide related offences, offences against the state, offences against public order and offences against morality, for the purpose of ensuring uniformity in sentencing to the provision of Sections 416 and 311 of the Administration of Criminal Justice Act, 2015”

The rationales behind the application of the procedural steps prescribed in the guidelines are of immense assistance to judges to operate as parameters or templates that should be taken into consideration during sentencing proceedings. They substantially replicate the considerations prescribed in ACJA for sentencing in respect of the underlisted:

- a) Corruption and related offences**
- b) Offences against person**
- c) Offences against person**
- d) Homicide related offences**
- e) Offences against public order**
- f) Offences against morality and**
- g) Offences against the state.**

The sentencing guidelines are divided into parts, each contains the factors and principles that applicable at the post conviction stage of proceedings. Every part is tailored to the respective offence noted above. The sentencing guidelines encompasses to the rules of practice and procedure in relation to sentencing after an offender has been convicted for any of the offences; to wit, to corruption, homicide, offences against the person, property, homicide related offences, public order, offence against the state and morality.

The sentencing guideline, is a comprehensive template that will guide the Court in arriving at the sentence to be imposed. Considerations such as the aggravating factors which ought to be considered in sentencing, previous convictions, multiplicity of offences committed, steps taken to prevent victims or witnesses from supporting the investigation or testifying,

concealment, disposal or destruction of evidence, frustrating or delaying prosecution e.t.c. whilst the mitigating factors, such as the absence of any previous conviction, remorse of the offender, evidence of restitution, evidence of good character, certified debilitating medical condition or assistance given by the offender during prosecution are all factored as parameters towards assisting the judge in the imposition of sentence.

Other consideration in the sentencing process prescribed by the guideline is the stage at which a plea of guilty was made by the convict. It is also worthy of note that the sentencing guideline incorporates the “totality principle” amongst the factors applied in sentencing. This principle envisages a situation where the convict is being sentenced for more than one offence or where he is serving a sentence, the Court shall consider whether the total sentence is just and appropriate to the offending behavior, the principle is also applicable to cases where the offender is convicted for multiple offences, the judge, can, in sentencing order that the conviction should run concurrently or consecutively, Section 17 of the Interpretation Act shall also be considered by the Judge in determining whether the term of imprisonment imposed shall be with or without hard labour. The elaborate sentencing guidelines are recommended for every judge in the determination of the pronouncement he is to make by way of confiscation,

forfeiture, compensation, restitution or other ancillary orders in accordance with the provisions of the applicable laws under which the offender is to be convicted.

The sentencing guideline is a veritable tool for assisting the Court in the sentencing process, it is hoped that all the States Judiciaries in the Federation will avail themselves of sentencing guideline. Hopefully it should curtail disparity in sentencing.

NON CUSTODIAL SENTENCING

This is another aspect of post conviction sentencing; it relates to sentences imposed on an offender without confinement to prison, it is also referred to as an 'alternative to imprisonment'. The convict serves his sentence outside the convectional state prison or facility controlled by the state. The convictions are usually associated with minor offences, traffic offences, assault, e.t.c. In a recent case the Court ordered that the time spent in hospital confinement by a convict is to be computed as part of her sentence.²² Sentence imposed by way of compensation, retribution, confiscation and disposition can also be ordered as an ancillary penalty to the prison sentence or in lieu of imprisonment. Although non custodial sentencing has been largely underutilized in our case law it is envisaged

²² F.R.N. v. DR. (Mrs.) Cicilia Ibru charge No. FHC/L/297C/2009

that its application will increase in the dispensation of criminal cases now that it is comprehensively encapsulated in ACJA. Notwithstanding, the lingering debate over the effectiveness of the imposition of prison sentence in developed climes non imprisonment sentences has been successfully applied in the overall interest of the victim, the convict and society.

The United Nations Standard Minimum Rules for Non Custodial Measures otherwise known as the Tokyo Rules was borne out of the imminent need to fashion out effective non custodial sentencing options in lieu of imprisonment such non custodial measures are replete in the ACJA, 2015, examples are the provisions on suspended sentencing, community service, probation, Parole fines, one day detention, recognizance and binding over e.t.c.

It is no gainsaying that the sentencing in the administration of criminal justice is now substantially shifting its focus from prison sentencing to non custodial sentencing.

In adopting the non custodial measures the Courts are enjoined to embrace the best practice criteria prescribed by the Tokyo Rules²³ below;

1. The nature of the offence
2. The personality and background of the offender

²³ Rule 1.4 and 23 of the Tokyo Rules

3. The purpose of the offender

4. The right of the victim

In the application of the criteria, the Judge is required to exercise considerable discretion at all stages of the proceedings by ensuring full accountability in accordance with the rule of the law. Non custodial measures can be applied at the pre trial stage, the trial stage and the sentencing stage. Complimentary infrastructures and skilled personnel required for the effective supervision and operation of the non custodial options such as the establishment of a rehabilitation facility, safe custody homes, community service centres, correctional officers, probation officers e.t.c. envisaged under the ACJA, 2015 should be put in place for the successful implementation of the non custodial sentencing options.

The United Nations has played a pivotal role in ensuring that the non custodial sentence culture is imbibed by all administration of criminal systems. In the adoption of these measures, the fundamental human rights standards are also encouraged by the Courts. One of the objectives of the non custodial sentence is to decongest the prisons. The United Nations in its drive to promote non custodial sentence introduced principles such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Basic Principles on the use of Restorative Justice

Programmes in Criminal Matters.²⁴ However, it is not obligatory for member nations to adopt the standards.

NON CUSTODIAL OPTIONS IN ACJA, 2015

RESTITUTION AND COMPENSATION

Section 321 of the ACJA 2015 prescribes restitution and compensation as a form of sentence.

Section 321(a) provides thus:

“A Court after conviction may adjourn proceedings to consider and determine sentence appropriate for each convict.

In addition to or in lieu of any other penalty authorized by law, order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted or the victim estate”

Our case law is replete with fines imposed as an alternative or in addition to prison sentence, whereas such fines are payable to the State, compensation under this provision targets the payment ordered for the victim or the victim’s estate in case of death or to his family in order to assuage them for the harm or injury occasioned on the victim by the convict

²⁴ Rule 3.3 of the Tokyo Rules

in the course of committing the offence. Offenders may be ordered to return stolen goods or money, a bona fide purchaser of land for value may be repaid the purchase price of property in a case of obtaining money by fraudulent misrepresentation aside from the prison conviction that will be imposed on the convict. Compensation may be solely imposed as punishment or it may be ordered in addition or as an alternative to imprisonment or both.

POWER OF THE COURT TO ORDER PAYMENT OF EXPENSES OR COMPENSATION

The Court by Section 319(1) of ACJA is empowered to, within the proceeding or while passing Judgment, order the Defendant or convict to pay a sum of money as follows:

- a) *As 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 or convict, where substantial compensation is in the opinion of the Court recoverable by civil suit.*
- b) *In compensating a bona fide purchaser for value without notice of the defect of the title in any property in respect of which the offence was committed and has been compelled to give it up.*

- c) *Defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.*

Section 319(2) of ACJA provides that where a fine is imposed in a case which is subject to appeal, no payment additional to the fine shall be made before the period allowed for presenting the appeal has elapsed or, where an appeal is presented, before the decision on the appeal.

The Court, by Section 319(3) of ACJA, is empowered to order for cost or compensation irrespective of the fact that no fine has been imposed on the Defendant in the Judgment.

Note that by Section 324 of ACJA, an injured person may refuse to accept compensation. However, payment of compensation or imprisonment for non-payment serves as a bar to any further action for the same injury. A warrant of execution can be issued in accordance with the Sheriff and Civil Process Act to levy execution.

PAYMENT TO BE TAKEN INTO CONSIDERATION IN SUBSEQUENT CIVIL SUIT

The Court, at the time of awarding compensation in any subsequent civil suit relating to the same matter, is required to take into consideration any sum paid or recovered as compensation under Section 320(1) of ACJA.

In one's view, the idea of taking the recovered sum into consideration is to enable the Court arrive at a compensation that will be proportionate to the injury suffered by the complainant.

PROBATION

Probation is a pre conviction order whereby a Defendant or probationer is discharged or released from confinement on conditions and under Court supervision. Where the probationer violates a condition of the term of the probation order, the Court may revoke the probation and proceed to convict and sentence the probationer by imprisonment. Usually, the conditions for the probation order are at the discretion of the Court, the conditions may include the following depending on the type of offence.²⁵

- i) Report regularly to the probation officer
- ii) Obey all laws
- iii) Abide by any court's order, such as an order to pay a fine or restitution
- iv) Report any change of employment or address to the probation officer
- v) Abstain from excessive use of alcohol or the use of drugs (where the offence is related to the use of abuse of alcohol or drugs)
- vi) Submit to regular alcohol or drug testing

²⁵ Ibid, Ogonna Ezekwen

- vii) Refrain from travel outside of the jurisdiction without prior permission of the probation officer in more developed countries, a censor is used to track movement.
- viii) Avoid-certain people and places (not to engage in fighting or appearing in certain locations)

Probation is recommended in our society mindful of the social stigma attached to an ex-convict. It is ideal for a first offender whose conviction may be a one off offence in his life time. Besides, the State will be saved of funds for the upkeep of the offender in prison. It is also a way of obviating prison congestion. The basic operational requirements for probation such as the engagement of social workers and the administrative structures for the efficient functioning of this non custodial option must be put in place. For now probation is only an enactment, the Court's cannot order probation until all the paraphernalia for its operation are put in place.

Sections 453 – 459 of the ACJA provides for probation and the complimentary rules for its operation.

Probation Order

Section 453 provides that the Court may make a “probation order” where the Defendant has been charged to Court and the Court thinks that

the charge is proved but considers it expedient to release the offender on probation having taken into consideration his antecedents, age, health or mental condition, the trivial nature of the offence, as well as the extenuating circumstance under which the offence was committed. The Court may, without proceeding to conviction, order or dismiss the charge or discharge the Defendant conditionally with or without sureties. The Defendant will be expected to be of good behavior and appear at any time during the period he is on probation. Such period of probation shall not exceed three years or as may be specified in the order. In addition, the Defendant may be ordered to pay damages for injury or compensation for any loss suffered by reason of his conduct or omission. Where the Defendant has not attained the age of eighteen years, the parent or guardian of the Defendant may be ordered to pay damages and costs particularly where such parent or guardian has condoned the commission of the offence. The probation order made by the Court pursuant to Section 454(3)(c) shall have the effect of a conviction.

Duration of Probation

Section 455(1) prescribes the conditions for ordering probation, it provides that the Defendant shall be under the supervision of a probation officer who shall be of the same sex, he shall abstain from taking

intoxicating substance and where necessary, restrictions will be placed to preclude the offender from repeating the offence.

Duties of the Probation Officer

Section 457(2) authorizes the Chief Judge, High Court of the FCT, the President, National Industrial Court to appoint a Probation Officer by making regulations including the designation of person of good character to act as probation officers. The probation officer ensures that the Defendant observes the conditions of the recognizance and the probation order, he is expected to advice, assist and endeavour to get the probationer employed. The probation officer must also report to Court, the behavior of the offender.

Variation of Terms of the Probation Order

The order of probation must not exceed three years from the date of the original order, the conditions of the order may be altered, added or the Court may make other orders as it deems fit. The recognizance aspect of the probation order may be discharged, where upon the advice of the probation officer the conduct of the Defendant calls for the discharge of the recognizance.²⁶

²⁶ Section 458 (a-b) ACJA, 2015

Pursuant to Section 459 of ACJA, 2015 where the Court is satisfied that the Defendant has flouted a condition of his recognizance, the Court may proceed to convict and sentence the probationer for the original offence without further proof of his guilt.

FINE

The ACJA 2015 in Sections 327, 422, 427, 424, 434 and 437 confers the Court with the discretion to impose fine in lieu of punishment. The Court may vary or enforce the fine and imprison the Defendant in the event of default of payment of the fine imposed.

Imposition of fine in lieu of sentencing has its advantages and its downsides. It is beneficial to the society where the fine involves huge amount. Fines are economical to manage compared with the cost of keeping a convict in prison.

The downsides of fines as a punishment are in relation to high profile criminal cases where colossal amount of state funds are stolen only for a small fraction of it to be ordered to be paid. Atimes, fines do not provide the expected deterrent it is meant to serve as a lesson to the convict. It is also suspected that some of the funds ordered as fine do not go back to the appropriate beneficiary, that is, the state, hence the imposition of a fine may lack the retributive effect it should serve. Besides, the Defendant who

engages in amassing looted funds may consider fine as a convenient deterrent in so far he knows that he will have his way by paying fines.

PAROLE

Section 468 of ACJA 2015 provides for parole. Parole is a temporary release of a convict who agrees to certain conditions before the completion of the duration of his sentence. A parole officer is usually attached to the convict, any violation of the conditions of the parole order would result to his return to prison. Under APJA, 2015 parole can be ordered by the Court at the instance of the Comptroller General of Prisons who presents a report, recommending that the convict be released on parole on account of his good behavior and having served at least one third of his prison term of at least 15 years or life imprisonment. The release may be ordered by the Court with or without conditions. Such conditions may be that he is released be on a suspended sentence as the Court may deem fit.

A convict on parole shall attend a rehabilitation programme in a government facility or any other appropriate facility to enable him to learn skills that would enable him to tend for himself when he reintegrates into the society.

The provision mandating the Comptroller General of Prisons to make adequate facilities including budgetary provision for the establishment of a

Rehabilitation and Correctional Centre is commendable Section 468(3). It is hoped that this provision will be leveraged upon in the earliest time possible.

The centre is also meant to house a child offender standing trial Section 467(3).

SUSPENDED SENTENCE AND COMMUNITY SERVICE

The suspended sentence and community service provisions are in Sections 460, 461, 463 and 464(a) and (b).

Sections 460(1) provides thus:

“Notwithstanding the provision of any other law creating an offence, where the Court sees reason, the Court may order that the sentence it imposed on the convict be, with or without conditions, suspended in which case, the convict shall not be required to serve the sentence in accordance with the conditions of the suspension.

(2) The Court may, with or without conditions, sentence the convict to perform specified service in his community or such community or place as the Court may direct”

The Act however disqualifies persons who are charged with an offence which is in excess of three years' imprisonment from Community Service.²⁷

Factors that a Court is to consider in ordering suspended sentence or community work as noted in Section 460(4) of the ACJA are to:

- a) Reduce Court congestion
- b) Rehabilitation of the prisoners by making them undertake productive work and
- c) Prevention of convicts who committed simple offences from mixing with hardened criminals.

Kinds of Community Service

Sections 460 – 466 of APJA provides for community service. The nature of community service that can be ordered by the Court are prescribed in Section 461(4)

- (a) Environmental sanitation, including cutting grasses, washing drainages, cleaning the environment and washing public places.
- (b) Assisting in the production of agricultural produce, construction or mining; and

²⁷ Section 460 Administration of Criminal Justice Act 2015

- (c) Any other type of service which in the opinion of the Court would have a beneficial and reformatory effect on the character of the convict.

The community service sentence shall be as close as possible to where the convict resides so that his movement can be monitored.

The Chief Judge is authorized by Section 461 to establish a Community Service Center in every judicial division which shall be headed by a Registrar complimented by skilled personnel. The centre shall keep records of convicts sentenced to serve i.e. his residential address photograph, fingerprint impression name of convict e.t.c.

The Community Service officer shall also monitor the operational functions of the Centre, Counsel the offender with a view to bring about his reformation, recommend a review of the sentence of offenders who have shown remorse, present proposals to the Chief Judge of measures for the effective operation of community service orders e.t.c ²⁸

Upon pronouncement of a community service order, the convict shall be required to produce a guarantor who shall undertake to produce the convict in the event he absconds from community service.

²⁸ Section 461(1) Administration of Criminal Justice Act 2015.

The community service order shall not be ordered beyond a period of not more than six hours and the convict shall not work for more than five hours a day. ACJA provides effective mechanisms in the event of default by the convict in complying with the community service order, a warrant of arrest may be issued where the convict fails, refuses or neglects to appear in obedience of the summons, his guarantor shall be liable to a fine not exceeding ₦100,000.00 in the event of default or the order may be cancelled, in such event, the convict may be sentenced to imprisonment.²⁹

The convict may be under the supervision of supervising officers or Non Governmental Organization as may be designated by the Community Service Centre. The convict suspension order may be varied or he may be punished by imprisonment for the same sentence he would have served if he defaults in complying with the suspended sentence ordered by the Court. Where the convict is a male he will be attached to a male supervising officer whilst a female will be attached to a female supervisor.

REHABILITATION AND CORRECTIONAL CENTRES

ACJA provides for the confinement of a convict who has been tried summarily to be confined to a Rehabilitation and Correctional Centre

²⁹ Section 461(9) ACJA 2015

established by the Federal Government pursuant to Section 467. In ordering such confinement the Act prescribes that the age of the convict, the fact that he is a first offender and other relevant circumstances shall be taken into consideration.

A child standing trial may also be ordered to be remanded at the Rehabilitation and Correctional Centre instead of in a prison confinement.

DEPORTATION (FOREIGN OFFENDERS)

Section 439 ACJA defines deportation as a legal expulsion or removal from Nigeria of a non Nigerian convict. It can be ordered in lieu of imprisonment. The Court under Section 440 is empowered to sentence a convicted foreigner by imprisonment without option of fine, in addition to or in lieu of any punishment recommend to the Minister of Interior that the convict be deported if it is in the interest of peace, order and good governance.

DEATH PENALTY

Notwithstanding the lingering debate on the moral propriety or otherwise of imposing death penalty, various offences are still punishable by death in Nigeria. Besides, murder, armed robbery, arson and treasonable offences still attract death sentence.

The offence of kidnapping in Akwa Ibom, Abia and Imo State is a capital offence. In some states of Northern Nigerian where the Sharia Law is applicable adultery, sodomy and rape prescribes death for offenders.³⁰ Offences punishable by death do not give room for judicial discretion by the judge consequently it is mandatory. Death sentence is however exempted where a pregnant women is sentenced to death, execution of the death penalty is suspended until her baby is delivered and weaned.

Children under the age of 18 years found guilty of committing a capital offence shall not be pronounced or recorded as such, instead the child shall be sentenced to life imprisonment or such other term as the Court considers appropriate

WARRANT AS AN AUTHORITY FOR CARRYING OUT SENTENCE OTHER THAN OF DEATH

The law anticipates that there could be a defect in an order or warrant of commitment. Thus, the court, by Section 318(a) and (b) of ACJA is empowered to amend at anytime, any defect in order of warrant of commitment so that omission or errors as to time and places; or defect in form in any order warrant of commitment given under ACJA would not be held to render void or unlawful an act done or intended to be done by virtue

³⁰ Kano State Sharia Panel Code, 2000

of the order or warrant fit is mentioned, or may be inferred, that it is founded on a conviction or judgment sufficient to sustain it.

It is clear from Section 318 of ACJA that once the act done or intended to be done by virtue of the order or warrant is mentioned or inferred that it is founded on a conviction or judgment that is sufficient to sustain the act, no omission or error or defect in any order or warrant of commitment given under ACJA shall be held to render the act void or unlawful.

The word “shall” as used in Section 318(b) of ACJA connotes mandate or command which is normally given compulsory meaning as it is intended to denote obligation.

Haddi Lashing/Canning

It is a form of punishment applicable in some parts of the Northern States of Nigerian by the Alkali/Area Courts in Northern Nigeria.³¹ This kind of punishment is imposed on convicts, however, women are exempted from haddi lashing. It is ordered where the offender is guilty of adultery, drinking alcohol and engaged in injurious falsehood. When the offender is being lashed the person who administers the lashing must be moderate. He is expected to hold the whip with the 3rd, 4th and 5th fingers without the

³¹ Sections 387 - 404 of the Penal Code

use of the thumb and cannot raise his hand above his shoulder whilst flogging.³²

Plea Bargaining

Section 494(1) of APJA defines plea bargain as the process in criminal proceedings whereby the Defendant and the prosecution work out a mutually acceptable disposition of the case, including the plea of the Defendant to a lesser offence than that charged in the complaint or information and in conformity with other conditions imposed by the prosecution in return for a lighter sentence than for higher charge subject to the Court's approval.

Prior to its incorporation into ACJA there was widespread condemnation by the public particularly with its advent into the Nigerian judicial landscape, high profile prosecutions by the Economic and Financial Crimes Commission (EFCC) It was generally perceived as the law for the elites. Colossal sums of looted funds were retained by offenders whilst they parted with a minor fraction of the loot in return for a few months imprisonment, all in the name of plea bargaining. This concept is gradually gaining acceptance in the Nigerian Criminal system. The provision for plea bargaining are quite extensive and well articulated in Section 270 of

³² See the Schedule in the Criminal Procedure (Haddi Lashing) order

ACJA with 18 well articulated and unequivocal subsections, Section 270(3) expressly provides that the plea bargain is applicable where the prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process.

Section 270(12) prescribes the extent of participation by the Court in the plea bargain agreement and the residual powers exercisable by the Court. Section 270 expressly sets out factors that must be taken into consideration in determining whether to go through a plea bargain. The plea bargain agreement must be acceptable to the judge before he proceeds to endorse it, after ascertaining that the Defendant has admitted the allegation in the charge to which he has pleaded guilty and he had voluntarily entered into the agreement without undue influence. In determining whether the plea bargain is in the public interest the prosecutor shall consider the factors in Section 270(5) (ii – iv).

Cost Against Private Prosecutor

The private prosecutor referred to in Section 322(1) of ACJA does not include a person prosecuting on behalf of the state, a public officer prosecuting in his official capacity and a police officer. The court can order costs against him.

It is submitted that criminal justice administration will be more efficient and result oriented if public prosecutors are also made to pay cost.

Warrant for Levy of Fine

Finally, under Section 326(1) of ACJA, the Court can issue a warrant for the levy of fine or compensation by any means permitted by law where a convict is ordered to pay a fine or a Defendant is ordered to pay compensation to another person under Section 319 of the Act and so on.

Fine or compensation can be levied by any means permitted by law. The following means inclusive:

- a) *By the seizure and sale of any moveable property belonging to the Defendant or convict;*
- b) *By the attachment of any debts due to the Defendant or convict; and*
- c) *Subject to the provisions of the Land Use Act (Cap. L5 Laws of the Federation of Nigeria, 2004), by the attachment and sale of any immovable property of the convict situated within the jurisdiction of the Court”*

Judicial Discretion on Sentencing

It appears that the intention of ACJA, 2015 is to liberalize sentencing aside from the mandatory provisions imposed by the Act. This view seems to have been given approval by ACJA in Section 416(1) and (2) of the Act as provisions accord the Court with the powers to exercise judicial discretion in passing sentence. Section 416(1) provides that on conviction, a Court may sentence the convict to a term imprisonment as prescribed by the law (Emphasis are mine)

In exercising its discretion of sentencing or review of sentence, the Court shall take into consideration certain factors, in addition to Section 401 of ACJA.

The Act provides that each case should be treated on its own merit. It is wondered whether Section 416(1)(a) is meant to de-emphasize strict adherence to judicial precedents. The Act exhorts the Courts to consider the objectives of sentencing inclusive of the principles of reformation, the trial Court is to be mindful that it shall not pass the maximum sentence on a first offender whilst the period spent by a person in custody or awaiting and undergoing trial shall be discounted from his sentence. The trial Court is enjoined by the Act to conduct an inquiry into the convict's antecedents before he is sentenced, where there is doubt as to whether a convict has

attained the age of eighteen years, the Court is to resolve the doubt in favour of the convict.

Where the sentence imposed by the trial Court appears to be excessive or based on wrong principles, the Appeal Court may reduce the sentence imposed however where the appellate finds the sentence inadequate the sentence can be increased the sentence.

Still in the same spirit of whittling down imprisonment, ACJA seeks to restrict terms of imprisonment to offenders who should be isolated from the society and whom other forms of punishment have failed or is likely to fail. Sections 416(2)(a-k). Another provision resonating this liberal approach by alternative sentence to imprisonment is Section 417(1) it provides thus:

“Where the Court has powers to pass a sentence of imprisonment, it may, in lieu of passing sentence of imprisonment, order the convict to be detained within the precincts of the Court or at a police station till such a hour not later than eight in the evening on the day on which he is convicted, as the Court may direct.”

In making the order in Section 417(1) the Court shall take into consideration the distance between the place of detention and the convicts

abode in order that he may have reasonable opportunity to return back to his abode on the same day the detention order is made, Section 417(2).

Again, this mode of punishment is cost saving to the state, unlike other non imprisonment options which requires regulatory rules and structure before it can be applied now, the Registrar or any court staff can be directed to superintend the process is being complied with.

Comments and Recommendations

The ACJA 2015 is undoubtedly a proactive legislation aimed at enhancing the criminal justice process particularly with the innovative provisions which are comparable with advanced criminal jurisdictions.

The principles and practice embodied in the legislation is a paradigm shift from a justice dispensation that underscores imprisonment and fines in convictions to a criminal system that defers to non custodial sentences as preferred means of punishment of offenders.

Laudable as these initiatives and features may be, the provisions are paper tigers until the complimentary frameworks and the paraphernalia for the operation of the non custodial sentencing facilities are physically put in place. It is recounted that penalizing concepts such as Probation, Parole, Community Service, rehabilitation e.t.c. contemplates that convicts serving

non custodial sentences and the under aged will be kept in reform institutions or rehabilitation centres and not in the prisons. As at today, the Courts are hamstrung from ordering probation or parole e.t.c. in the absence of attendant skilled manpower such as Parole officers, correctional officials, supervisors etc as well as the attendant practice guidelines, administrative structures and facilities. There is thus an imminent need for the engagement of social workers, correctional officers, counselors, psychologists Parole officers, psychiatric e.t.c. to provide correctional services associated with the non custodial sentencing options. Comprehensive training programs are indispensable to acquaint the work force with the specialized roles and expectations prescribed by the Act. Besides, the Rehabilitation and correctional institutions envisaged by the Act should provide proficiency programmes and trainings for the acquisition of skills for the convicts in order to provide the capacity to sustain their livelihood to prepare them psychologically and economically for the larger society, accordingly specialized services and structures are a sine qua non for an effective and efficient operation of our criminal system.

The establishment of a Community Service Centres manned by a Registrar complimented by qualified personnel to superintend and manage the Centre is statutorily prescribed for every judicial divisions. Equally pertinent

to the actualization of non custodial options provided by ACJA are the enactment of guidelines and regulations for their operation.

It is also hoped that the attendant ancillary guidelines for the operation of the innovative concepts will be considered by the ACJA Monitoring Committee. The sentencing guidelines enacted by the Chief Judge of the FCT is quite applaudible, one envisages that other Federal and State Judiciaries will replicate same, thankfully Lagos State has taken the lead in enacting rules for Non Custodial Sentencing, it is hoped that other state judiciaries will replicate similar enactment and take the plunge in enacting further procedural rules in other aspects of the Act to compliment the procedures for the implementation of the substantive provisions in ACJA.

The presentation of this paper has also brought to the fore the imminent need for the establishment of a Central Crime Registry where all records of convictions will be registered and updated. The fact that ACJA is 4 years on paper, without an operational crime registry is unsettling. Nevertheless, the provisions by the Act for the registration of convictions, where necessary, at the Bureau of Public Complaints and the Companies Registry are steps in the right direction. The establishment of a Crimes Registry is an inextricable part of the justice dispensation process going by the way the Act is crafted, ACJA assumes that there is existence a registry of

records of convicts in Nigeria. The diverse sentencing parameters factored into ACJA and the sentencing provisions are predicated on whether the convict is a first offender or a serial convict. The absence of a data base for scouring this information may lead to undesirable consequences in the sentencing process which are against the spirit and aspirations of the Act.

Considering that judges are now mandated to submit quarterly records of Judgments and Rulings delivered to the Performance and Evaluation Committee of the National Judicial Council, NJC, it is reckoned that records of all convictions are subsumed in the judges report forwarded to the Evaluation Committee (a breakdown of the report contains the subject matter of the cases handled which includes criminal cases). This means that the vital conviction data can be harnessed through the Evaluation Committee's records as a source of its data base towards the creation of the much needed Criminal Records Registry. Tapping through this source, will also be useful for record updates, of such convicts, in instances where the conviction is set aside or reviewed upwards or downwards by the Appellate Courts. It suffices to state here that by NJC's mandatory directives on all Judgments and rulings is a veritable source of information that will set the place for the much required Registry. Hopefully, by a click

of a button, the court and other stakeholders in the justice delivery process can access information from the Central Crime Registry.

The introduction of the novelty features, especially the non custodial sentences calls for orientation by the entire justice delivery process. The laws, for now, are not crafted with the non custodial options in mind as they predate the new order in ACJA. The penalty aspects predating ACJA hovers around imprisonment and fines. Difficulties may arise where the law is specific on the terms of imprisonment. With the new order in ACJA, imprisonment has been relegated to the back seat whilst the non custodial principles have now been accorded the front seats. Orientation trainings for judicial officers especially at the trial Court level will enhance the justice delivery capacity towards the utilization of the all encompassing provisions of the Act to its optimal use.

The establishment of the ACJA Monitoring Committee is a salutary step towards the implementation of the operatives of ACJA. The Committee's responsibilities are defined in Section 470(1). In addition to the defined roles of the Committee, it is hoped that the Committee will assume the responsibility of putting into place, initiatives prescribed in the Act particularly where ACJA is silent on the body or person to constitute the prescribed Committees, an example is the Committee on the Prerogative of

Mercy, though ACJA has stipulated the role it is to play in the criminal process no mention is made of how the members are to be constituted.

In view of the enormous innovations and attendant requirements prescribed in the Act, it is opined that the Monitoring Committee which is Ad Hoc in nature be upgraded to an Agency or Commission status having regard to the magnitude of the administrative requirements, responsibilities and the diverse specialized infrastructures stipulated in the Act. The persons listed as the members of the ACJA Monitoring Committee can also serve as members of the Governing Board of the recommended Agency or Commission, whilst a permanent work force, structures, training institutes, rehabilitation and correctional centres, central crime Registry, safety homes e.t.c will constitute the departments administered under the proposed Commission. More importantly, the Commission will be entitled to apply for the much need budgetary funding like any other Government Agency or Parastals for the effective implementation of the Administrative aspect of ACJA, 2015.

One wonders why the Ministry of Youths, Sports, Social Welfare and Development is omitted in the constitution of the Monitoring Committee. It is surmised that a number of the infrastructures for the operation of some of non custodial sentences may be extant in the social Welfare Department of

this Ministry, thus serving as a starting point. It is hoped that this Ministry and indeed the Department of Social Welfare of the Federal Capital Development Authority, FCDA, which are crucial stakeholders in the administration of criminal justice should be enlisted as a member of the ACJA Monitoring Committee.

This paper focuses on sentencing alone there are several other attendant aspects of ACJA calling for the infrastructural establishment on a permanent basis not, to talk of the enormous specialist workforce required to in order to accomplish a fully functional, efficient, effective and impactful criminal justice delivery system that fulfils the wills and aspirations of ACJA. When all these salient and attendant ancillary structures are put in place, unarguably, the ACJA, 2015 will stand the test of times, symbolic of an exemplary administration of a criminal justice system that is comparable with the advanced and globally acclaimed criminal jurisdictions.

I thank you all for listening!

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