A CRITICAL APPRAISAL OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

By

Mr. A. F. Afolayan* and Dr. E.O. Onoja**

ABSTRACT

The Administration of Criminal Justice Act 2015 ("the ACJA 2015") was signed into law on 14th May 2015. The Act has received both praises[1] and condemnation[2] from different sections of the society.[3] The Act was made to ensure efficiency, protection of the society from crime, and guarantees the rights of suspects, defendants, and victims of crimes.[4] This article examines the purpose and scope of the Act and to determine its prospects. The paper briefly highlights the salient provisions of the Act, critiques some of its shortcomings and projects an agenda for reform of the laudable provisions of the Act.

1.1 Introduction

The purpose of the Administration of Criminal Justice Act, 2015 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 interest of the suspects, the defendant, and the victim.[5] Courts, Law enforcement agencies and other authorities or persons involved in criminal justice administration are enjoined to comply with the provision of the Act to facilitate the realization of the purposes of the Act. This paper examines the main provisions of the Act and critiques the strength and weaknesses of the Act. The paper also make suggestions for reforms

* Nigerian Law School, Bwari-Abuja, Email: afolayanfemi@yahoo.com, 08033498454

** Nigerian Law School, Bwari-Abuja, Email: onojaesa@yahoo.com 08060970417

[1] Onoja, E. "The Administration of Criminal Justice Act, 2015: A Prosecutor's Perspective" A paper presented at the Annual Bar Seminar/Dinner of the Nigerian Bar Association, Otukpo Branch, held at Eyum Memorial Centre, Otukpo, Benue State, Saturday 12th December, 2015(which is an earlier version of the present article); see also Ali Ahmad "New Administration of Criminal Justice Act will Ensure All Law Enforcement Agencies Work Together" Thisday Newspaper, Monday 09 November, 2015; Femi Falana, "The Administration of Criminal Justice Act, 2015 (1)" TheGuardian Newspaper Monday 9 November, 2015; Idowu Olofinmoyin "The Silent Revolution: the Administration of Criminal Justice Act 2015" Thisday 09.06.2015, p.14

[2] Adelanwa Bamgboye & Mohammed Shosanya "ACJA 2015: Furore over police prosecutorial powers" Daily Trust Newspaper, Tuesday September 8, 2015 99 39 &41

[3] Olarewaju Adesola Onadeko "Comments/Contributions of the Nigerian Law School to the Amendments of the Criminal Procedure Act, Criminal Procedure Code and Administration of Criminal Justice Commission Act, Bill, 2014" presented before the Committee on Judiciary of Senate of the National Assembly held on Monday 30th June, 2014.

[4] Section 1 of the Administration of Criminal Justice Act

[5] Section 1(1), Ibid.

1.2 Review of some Provisions of the ACJA, 2015

The ACJA consists of 495 sections divided into 48 parts. Consequent upon the volume of the Act, only some of the provisions of the Act would be reviewed here.

> The long title of the Act states that it is: *An Act To Make Provisions For The Administration Of Criminal Justice And For Related Matters In The Courts Of The Federal Capital Territory And Other Federal Courts, 2015.*

The long title indicates that the Act is only applicable in federal courts. However, section 2(1) of the Act provides, *inter alia*, that the Act "shall apply to criminal trials for offences established by an Act of the National Assembly..." The provisions of the Act do not apply to a Court Martial. If the literal interpretation is applied to section 2(1) of the Act, and correlated with, for instance, section 14 of the Advance Fee Fraud and other Related offences Act 2006,[6] the slip by the draftsman in not properly reflecting the purpose of the long title in section 2(1) of the Act becomes clearer. Section 14 of the Advance Fee Fraud and Other Fraud Related Offence Act 2006 provides thus: "The Federal High Court or the High Court of the Federal Capital Territory and the High Court of the State shall have jurisdiction to try offences and impose penalties under this Act"

The draftsman could not have meant that the ACJA would apply in all trials under section 14 of the Advance Fee Fraud Act because section 494(1) of the Act defines "Court" to include "Federal Courts, the Magistrates' Court and Federal Capital Territory Area Courts provided by legal practitioners." The phrase "provided by legal practitioners" was probably intended to read "presided by legal practitioners." Even then, the word "includes" should have been avoided for clarity. Federal courts are few, such that if the draftsman intended to exclude State courts, it would have been wiser to mention the federal courts by name in section 2(1) and section 494 of the Act.

It is submitted that the draftsman intended to restrict the application of the Act to federal courts, but there is ambiguity in the execution of the intention in the language of section 2(1) and section 494 of the Act. ACJA has not, and cannot take away the jurisdiction of State High Courts to hear and determine certain federal offences which is expressly conferred by section 286 Constitution of the Federal Republic of Nigeria 1999 (as amended) (hereinafter referred to as 'the constitution'). When section 2(1) ACJA is read with section 286 of the Constitution, it becomes glaring and clear that the draftsman ought to have approached the drafting of section 2(1) ACJA with greater caution. While State High Courts would continue to entertain federal criminal causes and matters, where statutorily permitted, the procedure would be in accordance with the State criminal procedure laws and not ACJA.[7]

---

[6] Robbery and Firearms (Special Provisions) Act Cap R1, LFN 2004

[7] A.J. Sule "*Jurisdiction/Application of the Administration of Criminal Justice Act*, 2015 to State High Courts" A Paper presented to the ICPC at the ICPC Auditorium, Headquarters, Abuja, 26th October, 2015

Another problem with the Act is in the scope and application of section 493 of the Act which repealed the Criminal Procedure Act CAP C41 LFN, 2005, the Criminal Procedure (Northern States) Act Cap C42 LFN, 2004, and the Administration of Justice Commission Act Cap A3 LFN, 2004. However, the Act did not repeal the Criminal Procedure Code Act, Cap 491, LFN, 1990 (hereinafter called the 'CPC Act'. The CPC Act was omitted from the LFN 2004 but was not repealed. Omission is not the same as repeal.[8] The long title of the CPC Act states that it is: "An Act to establish a code of criminal procedure for the Federal Capital Territory, Abuja." Section 2 of the CPC Act provides that the provisions of the Schedule to the Act shall be the law of the FCT, Abuja with respect to the matters provides for in the Schedule. The Schedule to the Act is the Criminal Procedure Code. The effect is that the extant procedure for criminal procedure in the FCT, Abuja has not been repealed or abolished by the ACJA, 2015. The implication of this is that there are now two procedural Acts for the courts in the Federal Capital Territory and that is the Administration of Criminal Justice Act, 2015 and the Criminal Procedure Code Act, Cap 491, LFN 1990. Consequently, the courts can pick and choose which of the procedural Acts it would apply. This certainly is not healthy for our administration of criminal justice system as it will create confusion in our courts. We believe this is not the intention of the legislature. Therefore, there is a need for an urgent attention to remedy this situation.

1.2.1 Arrest, Bail and Preventive Justice

Part 2 of the Act has codified the *ratio* of many cases on arrest in Nigeria[9] and has given flesh to the rights of arrestees guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended).[10] Unless the suspect is caught in *flagrant delicto*, the person making the arrest shall inform him of the cause of the arrest and also inform him of the right to silence and to consult a legal practitioner or some other persons of his choice before he makes a statement.[11] The *proviso* to section 6 (2) (c) of the Act states as follows: "Provided the authority having custody of the suspect shall have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect."

This *proviso* is novel and it is hoped that the letter and spirit of the *proviso* would be implemented by the law enforcement agencies in Nigeria to prevent cases where suspects will be arrested and detained for some time without the knowledge of their relations or next of kin.

1.2.2 Prohibition of Arrest in Lieu

Section 7 of the Act prohibits the practice of arrest in lieu whereby relatives of suspects are arrested where the suspect cannot be found. This provision reaffirms the rights of

[8] ***Ibidapo v Lufthansa Airlines*** (1997) 4 NWLR (Pt. 498) 124
[9] Sections 3-6 of the Administration of Criminal Justice Act
[10] Section 8, Ibid
[11] Section 6 (1) and 2 (a) and (b) Ibid

innocent persons not to be arrested in place of others who are suspected of having committed an offence.

1.2.3 Humane Treatment of Arrestees

Section 8(1) ACJA attempts to curb coercive police tactics by making provisions for humane treatment of persons arrested upon suspicion of commission of a crime. The subsection provides that:

> (1) A suspect shall-
>
> (a) be accorded humane treatment, having regard to his right to the dignity of his person;
>
> (b) not be subjected to any form of torture, cruel, inhuman or degrading treatment.

The provision of this section is in line with section 34(1) of the Constitution which guarantees the right to dignity of the human person. In furtherance of the guarantee of humane treatment of suspects, section 8(2) of the Act provides that: "A suspect shall not be arrested merely on a civil wrong or breach of contract." This provision reiterates the *ratio* in cases where courts have condemned police adventure of using their powers to enforce contracts.[12] Further to the above, a suspect shall be brought before the court as prescribed by this Act or any other law or otherwise released conditionally or unconditionally.[13] The inventory of the property of the arrested suspect shall also be made.[14]

1.2.4 Recording of Arrests

An arrestee shall be taken immediately to a police station, or other place for the reception of suspect, and shall be promptly informed of the allegation against him in the language he understands.[15] The question is whether the suspect should first be taken to a police station before he is informed of the allegation, or whether he should be informed immediately upon arrest? The correct interpretation should not have been left for conjecture. In addition to these rights, the suspect shall have access to communication to consult a counsel for obtaining legal advice or furnish bail. However, any communication shall be done in the presence of an officer who has custody of the suspect.[16] Section 14 (2) and (3) ACJA should however be read subject to the provisions of the Terrorism (Prevention) Act, 2011 (as amended).[17] The Terrorism Act justifiably curbs the custodial rights of suspects in the sense that it is necessary in the interest of justice, public order and public security. Derogation of the rights enshrined in sections 34, 35, and 36 of the Constitution are not among the species permitted by section 45(1) of the Constitution.

---

[12] ***Maclaren v Jenning***

[13] Section 8 (3) Administration of Criminal Justice Act 2015

[14] Section 10, Ibid

[15] Section 14(1) Ibid

[16] section 14 (2) and (3) Ibid

[17] Amended by the Terrorism (Prevention) (Amendment) Act 2013

However, section 45(2) authorizes the National Assembly to enact provisions that may curb the scope of section 33 to 35 of the Constitution in periods of emergency. It is submitted that periods of emergency includes periods where the nation or a section of it is attacked by insurgents or terrorists. In such situations, every law abiding citizen expects all governmental institutions to take reasonable and lawful measures to ensure that all citizens enjoy the rights guaranteed by the Constitution, after-all, the primary essence of government is to guarantee security of lives and property and the well-being of the citizen.

Section 15 of the ACJA provides for the procedure subsequent to arrest. Under section 15, the following records shall be taken immediately, in the prescribed form, by the officer in charge, namely:

(a) the alleged offence(s);

(b) the date and circumstances of his arrest;

(c) his full name, occupation and residential address; and

(d) for the purpose of identification:

(i) his height;

(ii) his photograph;

(iii) his full fingerprint impressions; or

(iv) such other means of his identification.

The process of recording the above data shall be concluded within a reasonable time of arrest, but not exceeding 48 hours.

1.3 Establishment of the Criminal Records Registry

Section 16 of the Act enjoins the Nigerian Police Force to establish a Central Criminal Records Registry, while each state police command shall establish a Criminal Records Registry. The State or Federal Capital Territory commands shall ensure that the decisions of the court in "all criminal trials are transmitted to the Central Criminal Records Registry within 30 days of the judgment." Wahab Shittu has enthused that:

> The rationale behind the establishment of Central Criminal Records Registry is to avoid a repeat of what happened in the case of Agbi v. Ibori (2004) 6 NWLR (Pt. 868) 78 where the true identity of James Onanefe Ibori, who was convicted by the Upper Area Court, Bwari in case no: CK/81/95 was in doubt whether the convicted James Onanefe Ibori was the Governor of Delta State or not. This provision will forestall such embarrassment.[18]

[18] Wahab, S. "*What's wrong with Administration of Criminal Justice Act?*" The Nation August 25, 2015

Another commentator has stated that another benefit of the Criminal Records Registry and the provisions on investigation in the ACJA are that it would minimize delays in criminal matters.[19]

1.3.1 Electronic Recording of Statements

Section 17 of the Act provides that upon arrest, the statement of the suspect shall be taken, if he so wishes. It is curious that it is in section 15(4) of the Act, and not in section 17 that provision is made for recording of the confessional statement of a suspect. Section 15 (4) provides that

> the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on retrievable video compact disc or such other audio visual means.

Section 15 (5) of the Act qualifies section 15(4) by rendering oral confessions admissible. Femi Falana, SAN[20] has said the provisions for the making of statements in the presence of a legal practitioner and the electronic recording of statements "will eliminate the incidence of trial-within-trial which is always ordered when a defendant objects to the tendering of confessional statement." The provision, when implemented, would probably minimize objections to the admissibility of confessional statements, but the trial-within-trial has not been eliminated in jurisdictions[21] that have experience of electronic recording of statements.

Participants at a recent workshop on effective implementation of the ACJA and the Violence against Persons Prohibition Act 2015 recommended that: "Officers should endeavour to use their mobile devise in the interim to record confessional statements pending when recording devices are procured by the police."[22]

However, the taking of statements may be done in the presence of a legal practitioner of choice, provided that the legal practitioner or any other person of choice shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner. Participants at the recent workshop on effective implementation of the ACJA and the Violence against Persons Prohibition Act 2015 also recommended that the "policemen involved in interrogation should have their promotions tied to their compliance with the ACJA."[23] The recommendation is timely. In the case of

---

[19] Ali A. "*New Administration of Criminal Justice Act Will Ensure All Law Enforcement Agencies Work Together*" This day, Monday 09, November, 2015

[20] Falana, F. "*The Administration of Criminal Justice Act*, 2015 (1)" The Guardian, Monday 9 November 2015 available at http://www.ngrguardiannews.com/2015/08/the-administration-of-criminal-justice-act-2015-1/ Last visited 20/11/2015 15:31 PM

[21] Such as the various states of the United States of America

[22] Recommendation 3 EU-UNODC/NIALS WORKSHOP ON-Effective Implementation of the Administration of Criminal Justice Act, 2015 and Violence against Persons Prohibition Act (Vappa), 2015 for the Nigerian Police Force available at http://nials-nigeria.org/PDFs/ACJA%202015%20Police pdf Last accessed 20/11/2015 13:50 PM

[23] Ibid, recommendation 7.

Ahamba v. The State[24]. The following are excepts form the judgment of the Court of Appeal:

> [1]"To complete the inquisition the typical trait of which is brutality, the appellant after being shot on the head by the Police. bleeding and obviously in pain. was admitted in Queen Elizabeth Hospital, maimed. The next day, the 10th of July, 1979, the Police insisted on interviewing him in bed. They claimed that appellant made a voluntary statement in that condition. Besides the physical torture of the appellant, the police applied subtle psychological pressure by arresting his parents and throwing all of them manacled into a Police lorry."
>
> [2]"He volunteered a statement. according to the police. on caution. That appellant could have recalled all that happened as stated by Ephraim Ochamba while suffering from a bullet wound on the head seems to me utterly unbelievable. The police are definitely enthusiastic in the investigation of this case and were fault-fording at the extreme."
>
> [3]"The physical and psychological torture appellant suffered in the hands of the police was calculated to extort admission of an offence appellant could not have. from the evidence committed".
>
> [4]"A confessional statement recorded in the circumstances stated could not be "free" or willingly offered. It is a farce... I should add that it must not be taken from an unconscious patient. Appellant could not from the circumstances stated, have made Exhibits B and B2 freely and voluntarily. These were extorted from him while in pain as a result of the gun shot wound, inflicted by police. The police themselves were completely confused as to the time Exhibits B and B2 were recorded.
>
> [5]"Another statement was extracted from appellant on the 8th of August 1979. This was also certified by Mr. Obi Ajao as a confessional statement and eventually made part of the record of the court of trial as Exhibit "Y'."

The above excepts have been set down at length to buttress the recommendation that policemen who participate in torture should not be promoted in order to deter the institutionalized practice of torture and extra-judicial killings. It is curious to note that the Divisional Police Officer in charge of the Police Station where the case was investigated rose to the rank of Deputy Inspector General of Police before attaining age of retirement..

[24] (1992) 5 NWLR (Pt. 242) 450

1.3.2 Quarterly Report of Arrest to the Attorney-General and Supervising Magistrates

The Inspector General of Police and the head of every agency authorized by law to make arrests shall remit quarterly reports to the Attorney-General of the Federation while the Commissioner of Police of each State shall remit quarterly reports of arrest to the Attorney-General of the respective States of the Federation.[25] An officer in charge of a police station is also obliged to report every arrest on the last working day of each month to the nearest Magistrate.[26] These are laudable provisions to curtail the abuse of the custodial rights of suspects and prevent incommunicado detention.

1.4 Procedure for Search of Suspects and Things

The ACJA 2015 has retained the procedure for the search of arrestees and things in the CPA and CPC, Criminal Procedure (Northern States) Act, and the Administration of Justice Commission Act, 2004. The procedure for search are contained in section 9 and Part 18 of the Act. In searching an arrestee, such reasonable force as may be reasonably necessary for the purpose may be used.[27] Where it is necessary to search a suspect, the search shall be made decently, and by a person of the same sex unless the urgency of the situation, or the interest of due administration of justice makes it impracticable for the search to be carried out by a person of same sex.[28]

Where any building, thing, or place to be searched is physically occupied by a woman who, according to custom or religion does not appear in public, the person making the search shall, before entering the building, give notice to the woman that she may withdraw. The question may be asked what happens when the incriminating item being searched for is in custody of the woman whom the law has permitted to withdraw?

Where a suspect is arrested or searched, an inventory of every item or properties recovered from him shall be made. The inventory shall be signed by the police officer and arrestee, provided that the failure of the arrestee to sign the inventory shall not invalidate same. The arrestee, or his legal practitioner or other person of his choice shall be given a copy of the inventory.[29] It must be pointed out that ACJA did not contain any provision as to when searches may be conducted. Therefore, searches may be conducted at any hour of the day.

1.5 General Provisions on Criminal Trials and Inquiries

Part 8 of ACJA deals with the general provisions on criminal trials and inquiries, including authority to bring a suspect before a court, right to make a complaint, and form of complaint. Section 89 (4) of the Act provides that a complaint shall be for one offence only. What happens when several offences are committed in the course of the same

[25] Section 29 Administration of Criminal Justice Act
[26] See section 33 Ibid
[27] S. 9 (1) (a) ibid
[28] Section 9 (3) and 149 (3)Ibid
[29] Section 10, Ibid

transaction? Are we going to file as many complaints as the number of offences committed? This section urgently calls for amendment.

Section 89 (5) of the Act provides that all complaints made directly to court under the section may first be referred to the police for investigation before any action is taken to the court, while section 112 (4) of the Act provides that where a police officer is satisfied that no public interest would be served by prosecuting, he/ may refuse to accept the complaint and notify the complainant of his right to complain to the court under section 109 (a) of the Act. There is a clear conflict between section 89(5) and 112 (4) of the Act which will require urgent amendment. Assuming section 89(5) and 112 (4) of the Act are to minimize frivolous complaints, both provisions are unnecessary because sections 322 and 323 of the Act have adequately catered for such situations.

A complaint, summons, warrant or any other document laid, issued, or made for the purpose of any proceeding before a court for an offence shall be sufficient if it contains a statement of the specific offence and necessary particulars as may be necessary to give reasonable notice of the charge to the defendant.[30]

1.6 Limitation Period for Private Complaint

Section 92 of the Act provides thus:

> In every case where no time is specially limited for making a complaint for a summary conviction offence in the law relating to such offence, such complaint if made other than by a person in his official capacity shall be made within six years from the time when the matter of such complaint arose, and not after.

This limitation period does not apply when the complaint or prosecution is at the instance of the State. It is worthy of note that this period has not referred to situations where the statute creating the offence expressly prescribes a limitation period.

1.7 Venue for Trial

Section 385 ACJA provides that the venue for trial shall be determined by the provisions of the Act. Having regard to what we said earlier about the legality of the CPC Act (applicable to the FCT, Abuja), section 385 is limited to trials conducted under ACJA. Section 93(1) ACJA provides thus:

> An offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction:
>
> (a) The offence was wholly or in part committed, or some act forming part of the offence was done;
>
> (b) The consequence of the offence has ensued;
>
> (c) An offence was committed by reference to which the offence is denied; or

[30] Section 90, Ibid

(d) A person against whom, or property in respect of which, the offence was committed is found, having been transported there by the suspect or by a person knowing of the offence.

Section 93(2) of the Act also provides that a criminal charge shall be filed and tried in the division where the alleged offence was committed unless it can be shown that it is convenient to do otherwise for security reasons. The implication of this is that the ratio in ***Ibori v FRN***[31] ought now to be confined in scope to section 45 (a) of the Federal High Court Act.

It should further be noted that under section 94 ACJA, an offence committed at sea or outside the territory of Nigeria, may be tried or inquired into in any place in Nigeria to which the suspect was first brought or taken thereafter. Also, offences committed in a journey may be tried by a court in the State or division or district in whose jurisdiction the suspect or the victim or object of offence committed resides, is, or, passed in the course of the journey or voyage.[32] However, by virtue of section 102(1) and 103 ACJA, notwithstanding sections 93 and 98 ACJA, a Judge or Magistrate of a division or district may assume jurisdiction in respect of an offence committed in another division or district; the suspect is in custody on the charge; has appeared in answer to summons lawfully issued charging the offence, if the trial can proceed in the interest of justice having regards to accessibility and convenience of witnesses.

Offence charged in wrong division may be tried unless the accused objects and may be transferred where the court considers the objection reasonable.[33] No appeal shall lie from any order of transfer under this section.[34] Processes issued before order of transfer not affected by change of venue.[35]

1.8 Powers of the Attorney-General of the Federation

The Attorney-General of the Federation (AGF) may prefer information in any court in respect of any federal offence.[36] Section 104(2) has expressly permitted the AGF to delegate any or all powers of prosecution. It is submitted that the power to prefer information includes power to terminate such prosecution.[37] There must, however, be an incumbent Attorney-General before he can donate his powers to terminate criminal cases.[38] The AGF may also issue legal advice or directive to the Police or any other law enforcement agencies in respect of a federal offence.[39] The AGF may also request from

---

[31] (2009) 3 NWLR (Pt.1127) 94
[32] Section 95, Administration of Criminal Justice Act
[33] S. 386(a) ACJA. See also sections 96-101 Ibid
[34] S. 386(c) Ibid
[35] S. 387, Ibid
[36] Section 104 (1), Ibid
[37] Sections 107 and 108, Ibid
[38] ***A.G, Kaduna State v Hassan*** (1985) 2 NWLR (Pt.8) 483
[39] Section 105(1), Administration of Criminal Justice Act

such agencies the case file in respect of a federal offence and the agency concerned shall immediately transmit the file when requested.[40]

1.9 Has ACJA abolished Police power to prosecute criminal cases?

Section 106 of the Act provides for the power to initiate criminal prosecution as follows:

> Subject to the provisions of the Constitution, relating to the powers of prosecution by the Attorney-General of the Federation, prosecution of all offences in any court shall be undertaken by:
>
> (a) the Attorney-General of the Federation or a Law Officer in his Ministry or Department;
>
> (b) a legal practitioner authorized by the Attorney-General of the Federation; or
>
> (c) a legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.

Section 106 of the Act has generated some debate as to whether the provision has abolished lay prosecution.[41] Prof. Yemi Akinseye George, SAN, who was prominent during the drafting of the Bill that ushered in the ACJA, and Sebastine Hon, SAN, have both opined that section 106 of the Act has done away with lay prosecution.[42] Adeniyi Familoni, the DPP of Ekiti State has similarly enthused that section 106 of ACJA debar policemen who are not legal practitioners from prosecuting cases in any court in Nigeria, including Magistrate Courts.[43] However, section 106 ACJA did not repeal section 23 of the Police Act that states that "any police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name." The Supreme Court of Nigeria clarified the scope of section 23 of the Police Act and section 45(a) of the Federal High Court Act in *FRN v Osahon & Ors*[44]. The fact is that section 109 (a) ACJA preserves the institution of criminal proceedings in a Magistrate Court, by a charge…or upon receiving a First Information Report;…" That the Act is not intended to take away the Police powers of prosecution is further reinforced by section 110 (1) (a) and (b) which preserves the filing of a charge sheet or First Information Report. Section 112 of the Act is entirely devoted to the First Information Report. Section 112(6) (f) read with section 112 (7), (8), (9), (10), and (11) of the Act clarifies beyond any doubt that the police can prosecute under the First Information Report procedure in Magistrate Courts. It is apposite to draw attention to the dictum of Belgore JSC (as he then was) in *Osahon's case* where His Lordship said thus:

---

[40] Section 105(3), Ibid

[41] Bamgboye. A. and M Shosanya "Administration of Criminal Justice Act 2015: *"Furore over Police Prosecutorial Powers"* Daily Trust, September 8, 2015 p. 39

[42] ibid

[43] Familoni, A. "Understanding the New Administration of Criminal Justice Act 2015" A Paper presented at the 2015 Nigerian Bar Association National Conference 21st-28th August, 2015, ICC, Abuja

[44] (2006) 4 MJSC 1

> From colonial period up to date, police officers of various ranks have taken up prosecution of criminal cases in Magistrates and other Courts of inferior jurisdiction. They derive their powers under S.23 Police Act. But when it comes to superior Courts of record, it is desirable, though not compulsory that the prosecuting Police Officer, ought to be legally qualified. This is not deleting from provisions of S.174(1) of the Constitution, rather it maintains age-long practice of superior Courts having counsel rather than by persons in most cases prosecuting matters. The confusion that this matter has caused is rather unfortunate for trial of criminal cases; it has caused a disturbingly long delay.

The confusion engendered by section 106 of the ACJA 2015 is quite unnecessary and could have been avoided by the draftsman of the Act if the comments of stakeholders had been considered. Any argument that ACJA has abolished police prosecutorial powers must give way to the full force of section 268.(2) of the Act which reads:

> Where proceedings in respect of an offence is instituted by a police officer, it shall be in the name of the Inspector-General of Police or Commissioner of Police as the case may be.

It is our view that ACJA has not abolished police power to prosecute both in the Magistrate court and superior courts. As a matter of fact, ACJA has preserved police power to prosecute.

1.9 Modes of Institution of Criminal Proceedings under ACJA

The methods of initiating criminal proceedings under ACJA are contained in PART 12 of the Act. Section 109 of the Act in particular provides that, subject to the provisions of any other law, criminal proceedings may be instituted:

(a) in a Magistrate court, by a charge or a complaint, or upon receiving a First Information Report;

(b) in the High Court, by information of the AGF, subject to section 104 of the Act;

(c) by information or charge filed in the court after the defendant has been summarily committed for perjury by a court under the provisions of the Act;

(d) by information or charge filed in the court by any other prosecuting authority; or

(e) by information or charge filed by a private prosecutor subject to the provisions of the Act.

The above has essentially fused all the modes of commencing criminal proceedings that existed in Nigeria before the ACJA.

Section 109(b) ACJA permits the AGF to file information in the High Court. The section is silent as to whether the AGF can also approach the court by way of a charge. Section 109 generally authorized all other prosecuting authorities and persons to file actions in the High Court by way of information or charge. One is at a loss as to why ACJA restricted the Chief Law Officer of Nigeria to file criminal processes by information only.

This omission is further compounded when we consider the procedure for filing actions in the Federal High Court. Section 33(2) of the Federal High Court Act provides that the Federal High Court shall be a court of summary jurisdiction. A case commenced by summary trial does not require formalities and technicalities and such cases are usually commenced by way of a charge. It is recommended that section 109(b) ACJA be amended to give the AGF power to commence criminal actions in the Federal High Court by way of information or charge.

1.10 Periodic Returns of Cases and Prison Inmates to the Appropriate Authority

Section 110 and 111 ACJA provides for periodic returns to appropriate authorities. Where the trial is before a Magistrate Court, such trial shall commence within 30 days of bringing the charge and where the trial commences but is not completed within 180 days after commencement, and if not completed, 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 the trial.[45] All courts exercising criminal jurisdiction shall make quarterly returns to the Chief Judge.[46] The Comptroller-General of Prisons shall also make returns every 90 days to the Chief Judge of the Federal High Court, the Chief Judge of the FCT, the President of the National Industrial Court, the Chief Judge of the State in which a prison is located. The Comptroller-General shall also make returns to the AGF of all persons awaiting trial held in custody in Nigerian prisons for a period beyond 180 days from the date of arraignment.[47]

Section 111 (2) ACJA provides that:

> The returns referred to in subsection (1) of this section shall be in a prescribed form and shall include:
>
> (a) the name of the suspect held in custody or Awaiting Trial Persons,
>
> (b) passport photograph of the suspect;
>
> (c) the date(s) of his arraignment or remand;
>
> (d) the date(s) of his admission to custody;
>
> (e) the particulars of the offence with which he was charged;
>
> (f) the courts before which he was arraigned
>
> (g) name of the prosecuting agency; and
>
> (h) any other relevant information.

[45] Section 110 (4), Administration of Criminal Justice Act
[46] Section 110(5), Ibid
[47] Section 111 (1), Ibid

The purpose of the periodic returns specified in section 110 and 111 of the Act is to reduce delay in criminal trials and prison congestion.

1.11 Bail under the ACJA

The provisions of section 161 of the Act in relation to bail in capital offences are a welcome development. It is gratifying to note that the phrase "provided that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him" is a welcome innovation to the administration of our criminal justice system in Nigeria.

A word must be said about frequent recourse to ill-health by politically exposed persons as a basis for bail applications. The case of Sambo Dasuki, the former National Security Adviser, who was granted bail on ground of ill-health is a typical example. The relevant agencies were also ordered to release his passport and allow him travel out of the country for medical treatment. It is a national shame that those who were in a position to improve the nation's health facilities, but did not, receive judicial approval to travel abroad when they are facing serious charges in various courts in Nigeria. The judiciary ought to take the high moral ground of insisting that medical treatment must be received within the shores of Nigeria to minimize the prospect of suspects jumping bail, tampering with investigation, and hiding illicit wealth abroad. It is submitted with utmost respect that no section of the legal profession in Nigeria should play the ostrich and feign ignorance of the real motives for most "medical trips abroad." Section 162 (f) of the Act has, however, availed prosecutors a tool with which to persuade courts to refuse bail in cases involving politically exposed persons. It is expected that where the prosecution provide sufficient materials, courts would act pursuant to the section 162, particularly 162(f) so that the administration of criminal justice is not sullied for cuddling privileged members of the society.

Further to the above critique on the provisions for bail, the Act does not contain any provisions on the procedure for applying for bail; whether it should be by summons or motion. However, this seems to be covered by section 492 (3) of the Act[48] which empower the court to apply any procedure that would enhance substantial justice.

1.11.1 Registration of Bonds Persons

Section 187 of the Act has followed the footsteps of section 138 of the Administration of Criminal Justice (Repeal and Reenactment) Law, 2011 of Lagos State. Section 187 ACJA empowers the Chief Judge of the Federal High Court or of the Federal Capital Territory, to make regulation for the registration and licensing of corporate or individual bondspersons within the jurisdiction of the court. This salutary provision may ensure that a defendant who has no relative or friend can contract a bondsperson to stand as surety.

---

[48] Section 262 Criminal Procedure Act and section 363 CPL

1.11.2 Witness or Victim Protection

Section 232 of the Act gives the court discretion to conduct proceedings in camera. The cases in which a court may exercise such discretion are:

i. rape, defilement, incest, unnatural or indecent offences;
ii. offences under the Terrorism (Prevent) (Amendment) Act;
iii. offences relating to economic and financial crimes;
iv. trafficking in persons and related offences; and
v. any other which the National Assembly permits the use of such protective measures or as the Judge may consider appropriate in the circumstances.[49]

The protective measures that a court may adopt includes the protection of the identity of the victim(s) or witness(s) of such offence(s) by hiding their names, addresses, telephone numbers; receiving evidence by video link; screening or masking of the witness(s); receiving written deposition of expert evidence; and any other measures that the court considers appropriate in the circumstances.

1.2 Plea Bargaining

Section 270 of the Act has followed the footsteps of the Administration of the Criminal Justice (Repeal and Re-enactment) Law of the Lagos State 2011 by codifying the practice of plea bargaining. The section makes detailed provisions on the procedure for plea bargaining. The defendant or the prosecutor may initiate a plea bargain "during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence..." provided certain conditions are met. The factors that would guide the prosecution in determining whether it is in the public interest to enter a plea bargain are specified by the proviso to section 270 (5) of the Act. A judge or Magistrate shall equally be guided by the provisions of the Act in fixing the sentence pursuant to a plea bargain. The extent to which this reform would affect the differential sentencing of politically exposed persons in Nigeria is a matter of conjecture.

1.13 Stay of Proceedings and time for raising certain objections

Section 306 of the Act provides that an application for stay of proceedings in respect of a criminal matter before the Court shall not be entertained. This provision has the potential to minimize prolonged delay in criminal trials caused partly by stay of proceedings. However, with the grant of stay of proceedings by the Supreme Court of Nigeria (what the court called "tarry awhile") in *Saraki v. FRN,*[50] the case of the Senate President, Bukola Saraki who is facing trial at the Court of Conduct Tribunal, the fate of section 306 of the Act was called to question.

Section 396 of the Act provides that after plea has been taken, the defendant may raise an objection to the validity of the charge or information at any time before judgment, but

[49] Section 232 (4), Administration of Criminal Justice Act
[50] (2016) 3 NWLR (Pt. 1500) 531

such objection shall only be considered along with the decision in the substantive case.[51] Thus, no objection shall be taken unless the defendant appears and takes a plea. The propriety or otherwise of the ground of objection shall be determined at the conclusion of trial. The intention of the provision is to prevent delay of trials by resort to preliminary objections and interlocutory appeals. In ***Saraki v FRN***[52] the Supreme Court of Nigeria rose to the occasion and affirmed the efficacy and force of ACJA. Even though it was only section 136 (a) of the Act that the Court commented upon, there is little doubt that ACJA is the operative law in federal courts and tribunals in criminal cases in Nigeria.

Other sub-sections of section 396 of the Act make provisions for day-to-day trials and limitation of the number of adjournments allowed each side. Where day-to-day proceeding is impracticable, no party shall be allowed more than 5 adjournments from arraignment to final judgment, provided that the interval between each adjournment shall not exceed 14 working days.[53] For the first time in the annals of criminal trials in Nigeria, a court may award costs to discourage frivolous adjournments.[54] This is a welcome development and will discourage legal practitioners from asking for frivolous adjournments on behalf of their clients.

It should however be noted that there is a glaring contradictions between sections 221 and 396 (2) of ACJA. Whilst section 221 ACJA provides that objections shall not be taken or entertained on ground of an imperfect or erroneous charge, section 396 (2) ACJA provides that after plea has been taken, the defendant may raise any objection to the validity of the charge or the information at any time before judgment but that the objections shall only be considered, and a ruling thereon made at the delivery of the judgment. There is therefore the need to align these provisions by an amendment of the Act.

1.14 Trial in Absentia

Where a court has granted bail to a defendant and he jumps bail or fails to attend court without reasonable explanation, the court shall continue with his trial in absentia and convict him unless the court sees reasons otherwise. However, the court shall not impose a sentence until the defendant is arrested or surrenders to the custody of the court. Section 36(4) (a) does not permit a court to exclude "the parties thereto or their legal practitioner" and section 36(6) of the Constitution guarantees the right to a defendant to defend himself in person or by legal practitioner of his choice. Trial in absentia is in our view patently unconstitutional[55] and ACJA seems to be attempting to smuggle it into Nigerian criminal jurisprudence.[56]

---

[51] Section 393 (2), Administration of Criminal Justice Act

[52] *Supra*

[53] Section 396 (4) Administration of Criminal Justice Act. Compare with section 396 (5), Administration of Criminal Justice Act

[54] Section 396(6), Ibid

[55] ***Adeoye v. The State*** (1999) 6 NWLR (Pt. 605) 74 at 91.

[56] ***Alintah v. FRN*** (2010) 6 NWLR (Pt. 1191) 508; Daniel Adeoye v The State (1999) 4 S.C. (pt. II) 67; Ugwuaba v. FRN (2009) 15 NWLR (Pt.1163) 91

1.15 Sentencing

A woman who is pregnant but convicted of a capital offence may be sentenced to death subject to section 404 of the Act.[57] This new provision is intended to discourage women awaiting trial or execution from getting pregnant. The purpose of the old law was to protect the unborn baby (who is innocent). The new provision in ACJA did not consider this. If a pregnant woman is sentenced to death, the pronouncement may affect the unborn baby. The convict may deliver prematurely or die with the baby before she is finally delivered. This section should be amended to remove unintended negative consequences which the innocent unborn baby may be forced to bear.

Section 416 (2) of the Act has waded into the murky waters of sentencing guidelines. It provides that in exercising its discretion of sentencing or review of sentence, the court shall, subject to section 401 of the Act, approach sentencing in the following manner:

> (a) each case should be treated on its own merit;
>
> (b) the objectives of sentencing, including the principles of reformation, should be borne in mind in sentencing a convict;
>
> (c) ...;
>
> (d) a trial court shall not pass the maximum sentence on a first offender;
>
> (e)...;
>
> (f) trial court shall conduct an inquiry into the convict's antecedents before sentencing;
>
> (g) it may be desirable to adjourn for sentencing in order to have time to consider any evidence adduced at the sentencing hearing in accordance with section 311 of this Act;
>
> (h) where there is doubt as to whether the defendant or convict has attained the age of seventeen, the court should resolve the doubt in his favour;
>
> (i) a defendant may not be given consecutive sentences for two or more offences committed in the same transaction;
>
> (j)...; and
>
> (k) sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed or is likely to fail.

The application of the above guidelines is, according to section 401 of the Act subject to the statute creating an offence and the objectives of prevention, restraint, rehabilitation, deterrence, education, retribution, and restitution. Theoretically, this should mean that

---

[57] Section 415(4), Administration of Criminal Justice Act

courts would enforce a mandatory minimum sentence where, like the Advance Fee Fraud and Other Related Offences Act, the statute stipulates a mandatory minimum sentence of imprisonment. However, in practice, statistics show that courts in different jurisdictions in Nigeria often ignore the statutory minimum. Consequently, section 416 (2) (k) may very well work to the advantage of politically exposed persons who in other climes earn lengthy sentences of imprisonment.

Part 44 of the Act provides for probation, suspended sentences, community service, etc while Part 45 makes provisions for parole. Parts 44 and 45 are good innovations, which if properly used, would work for rehabilitation. However, the bane of Nigeria is usually not the absence of legal and institutional framework but the will, capacity, and capability to make the framework work for the good and betterment of the citizenry.

1.16 Elevation of a High Court Judge to the Court of Appeal

Section 396 (7) of ACJA provides:

> Notwithstanding the provision of any other law to the contrary, 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 only for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time.
>
> Provided that this subsection shall not prevent him from assuming duty as a Justice of the Court of Appeal

Section 238 (2) and (3) of Constitution of the Federal Republic of Nigeria 1999 (as amended) prescribed for the appointment of a person to the office of a Justice of Court of Appeal. Such appointment shall be made by the President of the Federal Republic of Nigeria on the recommendation of the National Judicial Council. Also, section 271 (2) and (3) of the Constitution prescribed for the appointment of a person to the office of a Judge of a High Court of a State which shall be made by the Governor of the State on the recommendation of the National Judicial Council.[58] Both offices of Justice of the Court of Appeal and Judge of the High Court are separately created by the Constitution. It is submitted that section 396 (7) ACJA clearly infringes the express provisions of sections 238, 271, 250 and 256 of the Constitution. A judge of a High Court once elevated into the Court of Appeal can no longer constitutionally perform the functions of a judge of the High Court. The question is, after appointment as a Justice of the Court of Appeal, in what capacity will the judge sit over a case pending before the High Court? Will the judge sit as a Justice of the Court of Appeal or as a Judge of the High Court? Our view is that a person cannot occupy or sit in the two offices at the time. It is either that you vacate

[58] Section 250 (2) Constitution for the appointment of a person to the office of a Judge of the Federal High Court and Section 256 (2) and (3) Constitution for the appointment of a person to the office of a Judge of the High Court of the Federal Capital Territory.

one and occupy the other. It is therefore recommended that section 396 (7) of ACJA be amended to make it in conformity with the express provisions of the constitution.

1.17 Is ACJA a Water-shed for Prosecutors or an Albatross of Effective Prosecution?

The ACJA is to a very large extent a step in the right direction. Discounting the inelegance of the drafting of some of the provisions of the Act, it is a water-shed in many ways. The Act has not totally abrogated lay prosecution, but it has brought the debate over the propriety of lay prosecution in Nigeria to a critical breaking point. The Act has also advanced the constitutional rights of arrestee to the extent that the average policeman can no longer feign ignorance of these basic rights. The Act demands more thorough investigation of crimes and emphasizes greater attention to logging every incident connected with criminal science. This, potentially, would make the job of prosecutors easier due to the likelihood of better gathering of evidence. The other side of the coin is that failure of investigators to comply with provisions of ACJA may provide ammunition for the defence to profit during trial.

The combined effects of sections 221 and 396(2) of the Act is that objections as to a defect in a charge or information may not defeat the charge, and even at that, ruling on such objections shall be taken with the judgment at the conclusion of trial. When combined with section 306 of the Act it is our view that only few accused persons would be able to delay trials through preliminary objections and interlocutory appeals.[59]

The Act has also made the issue of venue of trials under the Act a lot clearer. The Act has regulated the conduct of plea bargaining to the extent that it would make it harder for politically exposed persons to take undue advantage of the plea bargaining process as was hitherto the case in Nigeria.

In addition, the reduction in the number of times parties can seek adjournments and the possibility of award of costs for frivolous adjournments, would probably reduce delays in criminal trials conducted under the Act. Also, the introduction of a victim and witness protection framework, even though inadequate, would encourage greater assistance to investigators and prosecutors by victims and witnesses.

However, there are also palpable flaws in the Act, many of which were high-lighted in previous pages of this paper. A major weakness appears from the combined reading of section 2(1) and 493 of the Act. The Act did not repeal the CPC Act applicable to the FCT, Abuja. There is confusion as to whether the Act has abrogated lay prosecution. Section 401 and 416 have accorded courts more discretion than they need, having regard to the disparity of sentences and lack of uniformity even in offences where the statute creating the offence has fixed a mandatory minimum sentence.[60]

---

[59] *Saraki v. FRN, supra.*

[60] A review of the sentencing pattern of the Federal High Court Judge in Nigeria pertaining to offences under the National Drug Law Enforcement Agency Act, for instance, would demonstrate this reality.

1.18 Conclusion

In conclusion, it is submitted that the ACJA needs to be amended to clearly abrogate lay police prosecution if that was the original purpose and intendment of the Act. In addition, the purpose and scope of the Act needs to be properly captured by an amendment of sections 2 (1) and 493 of the Act to take it beyond doubt that the CPC Act should no longer operate in the FCT. Surely, it is not the intention of the lawmakers to prescribe two procedural laws for the FCT. The Act balances the interests of suspects, the state and victims. However, it is curious that in a country where extra-judicial killings and torture is rampant, oral confessions are still admissible without sufficient safeguards to ensure that they are not extorted. Also, the issue of trial in absentia and judges elevated to the Court of Appeal to continue to sit on part-heard cases in the High Court which appears to infringe the provisions of the Constitution of Federal Republic of Nigeria should be adequately addressed in an amendment of the Act. On the whole, the Act has addressed substantially the burning issues in the Administration of the Criminal Justice system in Nigeria.