AN EXAMINATION OF SOME PROVISIONS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015.

By

Dalhat A. Idris Esq and Abubakar Is'haq Esq***

ABSTRACT

The Administration of Criminal Justice Act 2015 (hereinafter referred to as the ACJ ACT) became operational on the 14th of May, 2015 when it was assented to by the then President of the Federal Republic of Nigeria, Goodluck Ebele Jonathan. The ACJ Act seeks to, *inter alia,* address the problem of delay in the criminal justice administration in Nigeria. The Act has repealed the Criminal Procedure Code (CPC), the Criminal Procedure Act (CPA) and the Administration of Justice Commission Act respectively. The aim of the ACJ Act is to abolish the dichotomy that presently exists between the Criminal Procedure Code (applicable to the States in the North) and the Criminal Procedure Act (applicable to the States in the South) by repealing both Acts. It is against this background that this Paper examines some of the provisions of the Nigeria's ACJ Act 2015 with a view to reveal some of the innovations of the Act as well as some inconsistencies therein. The sources of information relied upon in this Paper include relevant Texts, Statutes, Journals Case Law and Internet Materials. The Paper concludes by recommending that the inconsistencies in the Act should be resolved by requisite amendment and that Slates in the Federation should domesticate the ACJ Act 2015 taking into account their peculiar circumstances

1.1 Introduction

Before the enactment of the Administration of Criminal Justice Act, 2015,[1] Nigeria operates a tripartite system of criminal justice administration. These include the Penal Code/Criminal Procedure Code[2] System applicable to the States in the Northern part of Nigeria, the Criminal Code/Criminal Procedure Act[3] applicable to the States in the Southern part of Nigeria, and the *Shari'a* Penal Code/*Shari'a* Criminal Procedure Code applicable to the States that have re-introduced the Islamic Criminal Justice System in Nigeria. With the coming into force of the ACJ Act on the 14th of May, 2015 when it was

* Lecturer Department of Islamic Law, Faculty of Law ABU, Zaria

** Lecturer Department of Public Law, Faculty of Law ABU, Zaria

[1] Hereinafter referred to as the ACJ Act 2015

[2] Cap C42, LFN 2004.

[3] Cap C41, LFN 2004

assented to by the then President of the Federal Republic of Nigeria, Goodluck Ebele Jonathan, the administration of criminal justice system in Nigeria became plural.

The ACJ Act has come to strengthen criminal justice administration in Nigeria by addressing most of the challenges bedeviling the justice system especially in investigation and prosecution of criminal cases, and the long period of remand in Prison custody without trial. The Act has modernized the *modus operandi* on investigations, arraignment and prosecution of criminal cases.[4]The ACJ Act has repealed the Criminal Procedure Act,[5] the Criminal Procedure Code and the Administration of Justice Commission Act[6] respectively. The aim of the Act is to abolish the dichotomy that presently exists between the Criminal Procedure Code (applicable in the North) and the Criminal Procedure Act (applicable in the South) by repealing both Acts.

The problem, however, is that some of the provisions of the ACJ Act are inconsistent with the provisions of the 1999 Constitution of the Federal Republic of Nigeria and some other laws such as the Police Act[7] and the Federal High Court Act.[8]

This paper, therefore, examines some provisions of the ACJ Act with a view to expose certain contradictions and inconsistencies inherent in the law. The paper also proffers some recommendations that will reduce, to the barest minimum, the inconsistencies inherent in the Act.

1.2 Application of the ACJ Act

Section 2 (1) of the ACJ Act provides that its provisions shall apply only to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. The Act, therefore, does not apply to offences created by the laws of the States in the Federation. The Act also does not apply to Court Martial.[9] It is, therefore, surprising that despite the innovations intended by the ACJ Act, it still excludes its application to Court martial as if the persons subject to military laws are not part and parcel of the Federation. The rationale for the exclusion may not be unconnected with the provision of Section 174 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which prevents the Attorney- General of the Federation from initiating and undertaking proceedings in a Court Martial. One cannot fathom the basis for limiting the powers of the Chief Law Officer of the Federation and the application of a federal law in a constitutional democracy.

The ACJ Act was enacted to make provisions for the administration of criminal justice and other related matters in the Courts of the Federal Capital Territory and other Federal Courts in Nigeria. The interpretation of the provisions of Section 2 of the ACJ Act has in recent times led to pronouncements by the Court of Appeal and the Supreme Court. Thus,

[4]See for instance parts 2 and 30, *Administration of Criminal Justice Act, 2015*
[5]Cap. C41 LFN 2004
[6]Cap. A3 LFN 2004
[7] Cap. P19, LFN 2004.
[8]Cap. F12, LFN 2004
[9] Section 2(2) of the Administration of Criminal Justice Act, 2015.

in the case of ***Dr. Bukola Saraki v. FRN,***[10]the Court of Appeal was called upon to determine the applicability or otherwise of the ACJ Act to Code of Conduct Tribunal. The pertinent question that was raised at the Court of Appeal for determination was whether the Code of Conduct Tribunal forms part of the Federal Courts listed in the Constitution so as to determine whether the ACJ Act was applicable to the Code of Conduct Tribunal. The Court of Appeal held that ACJ Act is applicable to the Code of Conduct Tribunal. Dissatisfied, the Appellant appealed to the Supreme Court of Nigeria which dismissed the appeal on 5th January, 2016 and directed that the Appellant, DrSaraki should face his trial at the Code of Conduct Tribunal thereby affirming the decision of the Court of Appeal to the effect that the ACJ Act governs all Federal Courts including the Code of Conduct Tribunal.

1.3 Examination of Some Provisions of the *ACJ Act, 2015*

The ACJ Act was enacted to cure the problems that were experienced under the CPC and the CPA regimes. 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 protection of the right and interest of the suspect, the defendant and the victim.[11] Some of the provisions of the ACJ Act are examined below.

1.3.1 Arrest, Notification of Cause of Arrest and Rights of the Suspect

A suspect or defendant alleged to have committed an offence under the Act shall be arrested, investigated, inquired into and dealt with according to the provisions of the Act.[12] In making such an arrest, no unnecessary restraint shall be carried out unless there is reasonable apprehension of violence or an attempt to escape has been made or by an order of the Court.[13] At the point of arrest, the suspect must be informed of his rights to remain silent, the right to a Legal Practitioner or free representation by the Legal Aid Council of Nigeria where the suspect cannot afford legal representation.[14]

The immediate construction of these provisions is that they are mandatory duties imposed on any person, even the private illiterate or non-legally trained person, who makes a valid arrest or the Police Officer who himself is distressed in making an arrest or receiving an arrested person in the Station, that they should be so civilised otherwise they will be held to have made an unlawful arrest. Meanwhile, the constitutional requirements in such circumstance is that "any person who is arrested or detained shall be informed in writing within 24 hours (and in a language that he understands) of the facts and grounds for his arrest or detention."[15]

[10]Appeal No. CA/ABJ/551C/2015;See also SC.852/2015
[11] Section 1 of the ACJA, 2015
[12]*Ibid.*, Section 3
[13]*Ibid.*, Section 5
[14]*Ibid.*, Section 6
[15] Section 35(3) of the 1999 CFRN (as amended).

To put it figuratively, how can the congregational member (the ACJ Act) be more Catholic than the Pope (the Constitution)? It is respectfully submitted that the legal cure for such rebellion is the provision of Section 1(3) of the 1999 Constitution which provides that if any law is inconsistent with its provision, the Constitution shall prevail and the other law shall, to the extent of its inconsistency, be void.

Although it is believed that ignorance of law is not an excuse, but in this situation, the arrested person stands to benefit from the ignorance of the law on the part of those who arrested him for failing to inform him of his ACJ Act (yet not Constitutional) rights to avail the services of the Legal Aid Council of Nigeria. How is it possible that, for the purpose of an effective arrest, all these must happen?

The Act restates the suspect's constitutional rights to be accorded humane treatment, not to be subjected to torture or degrading treatment.[16] The Act makes it compulsory that the Police Officer making the arrest or to whom a private person hands over the suspect to record information about the arrested suspect and an inventory of all items or property recovered from the suspect within 48 hours.[17] This inventory shall be duly signed by the Police Officer and the arrested suspect. The Act provides that where the arrested suspect does not sign the inventory, it does not invalidate the inventory.

1.3.2 Abolition of Arrest in Lieu

The ACJ Act expressly prohibits the arrest of a person in place of a suspect.[18] Thus, a Police Officer has no power to arrest a person who has not committed an offence in lieu of another.

It is common phenomenon among Police Officers in Nigeria to arrest relatives of a suspect in lieu of the suspect where it becomes difficult to arrest the suspect.[19] At times, the Police Officer making an arrest will apprehend every person seen with the suspect or in the house of the suspect, particularly where the suspect is at large.

This provision of the ACJ Act prohibiting the arrest of a person in lieu of a suspect may, at the surface level, appear plausibly humane and a respect for the dignity of all citizens before the law. Yet in practical reality, it presents a very difficult roadblock for the Police to the effective investigation of criminal activities in Nigeria, given the tendency by many families to protect and screen members who are offenders in their folds.

By this provision, the house wife who knowingly ate of the husband's loot cannot be arrested during investigation by the Police and search for her absconding husband. The wisdom for the effective investigating Police Officer is to invite such a wife to the station who must not neglect to aid in arresting her suspected husband.[20]

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[16] *Ibid.*, Section 8.
[17] *Ibid.*, Section 10.
[18] *Ibid.*, Section 7.
[19] Adebayo, A.M. (2012) *Administration of Criminal Justice System in Nigeria*, Princeton Publishing Co. Lagos, p.21
[20] See Section 201 of the Criminal Code.

1.3.3 Video Recording of Confessional Statement of an Arrested Suspect

Under the ACJ Act, the police has been mandated to record every confessional statement given by a suspect on video or the statement should be endorsed by a legal practitioner.[21] as opposed to the use of torture to compel suspects to confess to crimes which perhaps they did not commit. For gallantry, Section 15(4) of the Act provides:

> Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the Police Officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means.

It is clear from the above that the ACJ Actis intended to address the issue of torture in Police custody and has reviewed the mode of obtaining the confessional statement of a suspect. Thus, every confessional statement must be recorded on video or in the presence of a legal practitioner who must also endorse same. No suspect, therefore, can now be forced to make a confessional statement by the use of torture.

It is respectfully submitted that the above provision, as sound as it may be, is still problematic. Firstly, beside the economic cost and practicability problems associated with this onerous responsibility foisted on the Police, the provision is unclear as to whether or not the arrested person must first of all be brought to the Police Station before he confesses.

Secondly, the provision is also not clear as to whether the Legal Practitioner must be the one representing the arrested suspect or any Legal Practitioner. It is equally inconclusive what the law intends to do with the presence of a Legal Practitioner at the writing of the confessional statement, since his mere presence would not alter the validity or otherwise of its voluntariness. Does the presence of a legal practitioner at the scene of an event translate to its genuineness or truthfulness any more than the presence of another person at the event? Is the Legal Practitioner to be believed any more than the Police in a trial within trial for the challenge of such confessional statement?

It is humbly submitted that the answers to the above questions may be in the negative, especially with the current decline of integrity of legal practitioners in the Country. A case in point is that of Ricky Tarfa (SAN) who was accused of bribing Justice Yunusa of the Federal High Court Lagos to the tune of Two Hundred and Twenty Five Thousand Naira Only.[22]

In a separate case of ***FRN v. Ricky Tarfa,***[23] the Accused, a Senior Advocate of Nigeria was arraigned before a Lagos High Court sitting in Igbosere by the Economic and Financial Crimes Commission (EFCC) on the allegation of obstruction of justice and

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[21] Section 15(4) of the ACJ Act

[22] "Shocking: Rickey Tarfa Bribed Justice Yunusa with N225,000; habitually manipulates Judges – EFCC." Retrieved from www.premiumtimesng.com February 18, 2016

[23] Unreported Charge No. LD/2417C/2016

attempt to pervert the course of justice. The charge alleged that on February 5th 2016 the Accused hid two suspects, Nazaire Sorou Gnanhoure and Modesti Finagnon, both citizens of Benin Republic in his Mercedes Benz Sport Utility Car thereby shielding them from being arrested and unlawfully perverting the course of justice. The case is ongoing.

It is respectfully submitted that a legal practitioner who unlawfully perverted the course of justice may be capable of undermining a confessional statement obtained during investigation where it does not favour his client.

Thirdly, the provision impliedly jettisoned the Common Law "Judges Rule" with its attendant tests for measuring the civility on the part of the Police and the voluntariness on the part of the suspect in the taking and making of confessional statements respectively. This practice apparently adopted by the Evidence Act,[24] was commended by the Court of Appeal in the case of ***Okeke v. The State***[25] when it held, *inter alia,* that:

> ...the requirement that caution must be administered to one suspected of committing a crime before his statement is made to or recorded by one who is accredited to do is a procedural device in aid of administration of justice as part of administrative directions to the Police and Kindred Organisations that are vested with the powers to investigate crime.

1.3.4 Establishment of Central Criminal Registry

As a solution to the unavailability of up-to-date and accurate records, the Act seeks to establish a Central Criminal Records Registry at the Police Headquarters.[26] The Central Criminal Records Registry System will obviously serve as a veritable database of all offenders in the country. Admittedly, the Central Criminal Records Registry System will provide a hint to the Courts and prosecutors as regards whether an accused person is already on the data base of the Registry, thus aiding in the administration of criminal justice.

1.3.5 Quarterly Report of Arrest to the Attorney-General

In a clear demonstration of show of control by the office of the Attorney-General over the Police, the ACJ Act directs that:

> The Inspector-General of Police and the head of every agency authorised by law to make arrests shall remit quarterly to the Attorney-General of the Federation a record of all arrests made with or without warrant in relation to Federal offences within Nigeria.[27]

[24] See Sections 28 and 31 of the *Evidence Act* Cap. E4, LFN 2004 (as amended in 2011).

[25] (2000) FWLR (pt. 29) 2453.

[26] Section 16 of the ACJ Act.

[27] *Ibid.,* Section 29(1).

The above was followed by yet another legislative directive that:

> The Commissioner of Police in a State and the head of every agency authorised by law to make arrests within a State shall remit quarterly to the Attorney-General of that State a record of all arrests made with or without warrant in relation to State offences or arrest within the State.[28]

Despite subjugating the State Commissioner of Police to a supposed superior wisdom of the Attorney-General of a State on issues of criminal justice administration, it appears that the above provisions rob away the powers, functions and command structure of the Police Force as prescribed under the Constitution[29] and the Police Act.[30]

While not doubting the Constitutional powers of the Attorney-General of the State as contained in Section 211 of the 1999 Constitution, it is respectfully submitted that such powers do not extend to pre-trial administrative and command directives or decisions of the Nigeria Police Force in respect of suspects held in their custody within the Constitutional limits.

1.3.6 Duty of the Police to Report All Cases of Arrest and Remit Files to the Nearest Magistrate

In a bold breath, which places a Magistrate (no matter the grade) in superior position to the Divisional Police Officer (no matter the rank), the *ACJ Act* requires that:

> An Officer in charge of a Police Station or an official in charge of any agency authorised to make arrest shall report to the nearest Magistrate the cases of all suspects arrested without warrant within the limits of their respective Stations or agency whether the suspects have been admitted to bail or not.[31]

Without holding brief for who should rank higher in the Civil Service scheme between the Magistrate and the Officer in charge of a Police Station, the above statutory provision apparently portends many administrative problems in the command structure of criminal justice dispensation in the States. By law and by administrative structure, the Police, though physically carrying out civil duties in the States, do not come under the command and administration of the State's governments.

Be that as it may, the *ACJ Act* directs that the Magistrate should forward the reports of all suspects arrested to the Criminal Justice Monitoring Committee (CJMC) which has the responsibility to analyse the reports and advise the Attorney-General of the Federation as to the trends of arrests.[32] Likewise, the Act mandates the Chief Magistrate or any Magistrate designated by the Chief Judge for that purpose, to conduct an inspection of

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[28] *Ibid.*, Section 29(3).
[29] See the combine effect of Sections 214(2) and 318 of the 1999 CFRN (as amended).
[30] Sections 24 and 25 of the *Police Act*, Cap. P19 LFN 2004.
[31] Section 33(1) of the *ACJ Act*, 2015.
[32] *Ibid.*, Section 33(3).

Police Stations or other places of detention within his territorial jurisdiction other than the Prison.[33]

During the visit, the Magistrate may call for, and inspect the records of arrests, and may direct the arraignment of the suspects. Where bail is refused by the Police, the Magistrate may grant bail to any suspect where appropriate if the offence for which the suspect is held is within the jurisdiction of the Magistrate.[34] Similarly, an Officer in charge of Police Station shall make available to the visiting Magistrate or designated Magistrate the full records of arrest and bail. He shall also make available the applications and decisions on bail made within the period.[35] All these are required for the purpose of decongesting Police Cells.

1.3.7 Detention Time Limit

The ACJ Act limits the time spent for the remand of suspects in custody without arraignment to a maximum of 14 days before a review of case by a Magistrate. This provision also limits the number of times that the detention order of 14 days can be obtained. Where on the third occasion, the detaining authority cannot show why the suspect should be detained without cause, then the suspect may be released with or without application from the suspect or his Counsel.[36]

The above initiative will address a common situation where the Police gets a remand order from the Magistrate's Court against a suspect it does not have any or sufficient evidence to prosecute. Thus, when a Magistrate grants a remand order, it is time bound.[37] Consequently, a situation where suspects stay in detention for months without trial is now over.

It is humbly submitted that this is a welcome development. This is because if a suspect is taken to a Magistrate's Court, the Magistrate can, even though he has no jurisdiction, consider the bail application and admit the suspect to bail. Therefore, if the ACJ Act is properly applied, a Court before which a suspect is brought cannot make an order of remand indefinitely, but for two weeks, and the suspect must be brought before the Court for a review. If after further review, there is no seriousness on the part of the Prosecution, the Magistrate will have the power to discharge the suspect.

1.3.8 Criminal Trials and Inquiries

The ACJ Act again reinforces the right of a person to make a complaint against any person alleged to have committed or to be committing an offence. A Police Officer may go ahead to make a complaint even when the party aggrieved declines to make a complaint.[38] This form of complaint need not be in writing unless it is required to be so by the law and where it is not in writing the Court or Registrar shall reduce it into

[33] *Ibid.*, Section [illegible]

[34] *Ibid.*, Section 34(2)

[35] *Ibid.*, Section 34(3).

[36] *Ibid.*, Section 293-299

[37] Ibid.

[38] *Ibid.*, Section 88

writing.[39] The limitation period where no time is specifically stated for making any complaint and if made when not in an official capacity, shall be made within six years from the time when the complaint arose. 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 Act empowers Chief Judge of a High Court to transfer any case from one Court to another where it appears to him that such would promote the end of justice, or public peace. However, this power shall not be exercised where the Prosecution has called witnesses. Where the Chief Judge is to exercise this power in response to petition, the petition shall be investigated by an independent body of not more than three (3) reputable legal practitioners within one week of such petition and a report shall be made within two (2) weeks except otherwise specified. Again, this demonstrates the need to immediate dispensation of justice by the Act.

1.3.9 Institution of Proceedings/Provisions on Process

The ACJ Act provides that a charge sheet filed by the prosecution must be served on the defendant within seven (7) days of its being filed or such time as the Court may allow.[40] The Act makes it compulsory for trial to commence not later than thirty (30) days from the date of filing the charge and trial must be completed within reasonable time. The failure of this to happen allows the Court to forward to the Chief Judge the particulars of the charge and reasons for failure to commence or complete trial within a reasonable time.[41]

The Act provides that where a Defendant is before a Court, voluntarily or on summons, the trial of the Defendant may be held notwithstanding any irregularity, defect or error in the summons or warrant or for want of complaint on oath or any irregularity in the arrest or custody of the Defendant.[42] Irregularities that can vitiate proceedings include situations where the Court or Justice of Peace are not empowered by law to attach and sell property under Section 80 of the Act, demands security to keep the peace, demand security for good behaviour, discharges a person lawfully bound to be of good behaviour, cancels a bond to keep the peace, decides an appeal.[43]

1.3.10 Introduction of Plea Bargain and Sentence Agreements

In yet another controversial provision,[44] which may possibly have been dictated by considerations in the guise of human rights, the ACJ Act overtook all laws on the highways it constructed for both the Prosecutor and the Offender to, figuratively speaking, negotiate their cuts from the loot. A peep into one of such high way reveals that the prosecution may enter into plea bargain with the Defendant, with the consent of the

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[39] *Ibid.*, Section 89
[40] *Ibid.*, Section 110(2)
[41] *Ibid.*, Section 110(3)
[42] *Ibid.*, Section 136
[43] *Ibid.*, Section 137
[44] *Ibid.*, section 270(1).

victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence.[45]

A Plea bargain may be allowed if the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;[46] and where the Defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or where the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.[47]

The above provision which allows a plea bargain to be resorted to where the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt is still problematic. Is plea bargain a moral option for the arrested suspect to release himself of guilty conscience even though he knows that the prosecution does not have sufficient evidence prove the offence beyond reasonable doubt to which he is entitled to be discharged and acquitted? It is respectfully submitted that the drafters of the Act failed to avail themselves with the fact that the arrested person must be discharged and acquitted where the prosecution fails to prove the case against him beyond reasonable doubt.

There is yet another complimentary approach by the *ACJ Act* to enable the Prosecutor negotiate a plea and arrange a sentence agreement with the defendant. This was made possible by the following procedure:

> The Prosecutor and the defendant or his Legal Practitioner may before the plea to the charge, enter into an agreement in respect of:
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> (a) The term of the plea bargain which may include the Sentence recommended within the appropriate range of punishment stipulated for the offence or a plea of guilty by the defendant to the offence(s) charged or a lesser offence of which he may be convicted on the charge; and
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> (b) An appropriate sentence to be imposed by the Court where the defendant is convicted of the offence to which he intends to plead guilty.[48]

In this instance, the Prosecutor shall, if he finds it reasonably feasible, afford the Complainant or his representative the opportunity to make representations to the Prosecutor regarding the contents of the agreement or the inclusion of a compensation or restitution order in the agreement.[49] The judicial procedure to be followed, after the

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[45] *Ibid.*, Section 270(2)
[46] *Ibid.*
[47] *Ibid.*
[48] *Ibid.*, Section 270(4)
[49] *Ibid.*, Section 270 (6)

agreement has been made, are sequentially laid out by the law,[50] and do not deserve any further comment.

The advantages and the disadvantages of the introduction of plea bargain and sentencing agreements in the administration of the Criminal Justice System in Nigeria have well been treated in other academic works,[51] and are outside the scope of this research work.

1.3.11 Presentation of Case by Prosecution and Defence

After a plea of not guilty has been taken or no plea has been made, the Prosecutor is required to open the case against the defendant stating briefly by what evidence he intends to prove the guilt of the defendant.[52] The Prosecutor is also required to examine his witnesses who may equally be cross-examined by the defendant or his Legal Practitioner and thereafter re-examined by the Prosecutor where necessary.[53] After the case of the Prosecution is concluded, the defendant or his Legal Practitioner, if any, is entitled to address the Court to present his case and to adduce evidence where so required.[54]

Where the defendant or his Legal Practitioner makes a no case submission in accordance with the provisions of the Act, the Court is required by law to call on the Prosecutor to reply.[55] The defendant or his Legal Practitioner has the right to reply to any new point of law raised by the Prosecutor, after which, the Court shall give its ruling[56].

1.3.12 Reference to the Court of Appeal

Where a question arises as to the interpretation of the Constitution of the Federal Republic of Nigeria in the course of a trial and is referred to the Court of Appeal, the Court before which the question arose may adjourn the trial until the question is considered and decided, conclude the trial and postpone the verdict until such time the question has been considered and decided, or conclude the trial and pass sentence but suspend the execution until the question is considered and decided. After the question has been decided, the Court will continue with its proceedings where it stopped.[57] The Act also makes it clear that an application of stay of proceedings in respect of criminal matters before the Court shall not be entertained.[58]

1.3.13 Returns by Comptroller General of Prisons

The ACJ Acthas a great potential to substantially reduce the number of persons in custody while awaiting trial. One of the many innovative provisions of the Act requires

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[50] *Ibid.,* Sub-Sections (7)-(18).
[51] See Agaba, J. A. (2010) *"Plea Bargaining in the Administration of Criminal Justice"* Zaria Bar Journal (ZABAJO) Vol. 1, No. 2, Zaria, Nigeria. See also A. Is'haq, (2008) "The Impropriety of Combating Graft by Way of Plea Bargaining in Nigeria." *A.B.U. Journal of Public and International Law (A.B.U.J.P.I.L),* Vol. 1, No. 2.
[52] Section 300 (1) of the *ACJ Act,* 2015
[53] *Ibid.,*Section 300 (2).
[54] *Ibid.,* Section 301.
[55] *Ibid.,* Section 303 (1).
[56] *Ibid.,* Section 303 (2).
[57] *Ibid.,* Section 305.
[58] *Ibid.,* Section 306

the Comptroller-General of Prisons to provide quarterly reports to the Chief Justice and the Attorney-General of the Federation on all persons awaiting trial that have been held in custody for more than 180 days.[59] In addition to reducing the incessant cases of jailbreaks in the country, the ACJ Act has abolished torture of suspects and put an end to the concept of holding charge which has been abused by the Police.[60] A suspect arrested for a criminal offence must now be charged before a Court of competent jurisdiction.

1.3.14 Trials

Trials shall be held in the High Court on information filed by the Attorney-General of the Federation or by the Attorney-General of the State or a Law officer in the ministry of justice; a Public Officer acting in his official capacity; by a Private Legal Officer of any prosecuting agency; by a Private Prosecutor; or summarily.[61] Trials shall be held in the Magistrate Court or any other Court or tribunal exercising criminal jurisdiction in accordance with the provisions of the Act relating to summary trials.

Where a Defendant charged before the Court is not represented by a Legal Practitioner, the Court shall inform him/her of their rights to a Legal Practitioner of his/her choice; and or a Legal Practitioner engaged for him by way of legal aid. To ensure speedy trial, objections shall not be taken or entertained during proceedings or trial on the ground of an imperfect or erroneous charge. After the plea has been taken, any objection against the charge raised by the Defendant shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment.

Upon arraignment, the trial of the Defendant shall proceed from day-to-day until the conclusion of the trial. Where day-to-day trial is impracticable after arraignment, no party shall be entitled to more than five adjournments from arraignment to final judgment provided that the interval between each adjournment shall not exceed 14 working days. Where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days inclusive of weekends. In all circumstances, the Court may award reasonable costs in order to discourage frivolous adjournments. No party is allowed to amend processes for more than five times during trial. The elevation of a High Court Judge to the Court of Appeal will no longer delay criminal trial as the Judge shall have dispensation to continue to sit in the lower court only for the purpose of concluding any part-heard criminal matter pending before him/her at the time of the elevation and shall conclude the same within a reasonable time.

1.3.15 Professional Surety and Absentee Witness

Another innovation the ACJ Act introduces is the provision relating to professional surety.[62] By this innovation, the ACJ Act seeks to ease access to justice by persons who

[59] *Ibid.*, Section 111
[60] *Ibid.*, Section 15
[61] *Ibid.*, Section 381
[62] *Ibid.*, Section 187.

may be lawfully restrained and incapacitated by insufficient surety/bond facilities. Thus. the restrained person could enter into contractual arrangement with the corporate bond's person for his release and subsequent payment in cash or kind as may be agreed.

The ACJ Act also makes an absentee witness without reasonable excuse liable to imprisonment for a term not exceeding two months or to a fine not exceeding Ten Thousand Naira.[63] Thus, the era of witnesses deliberately absenting themselves in order to frustrate the case of the Prosecution or the defence is now over.

1.3.16 Suspended Sentence

Where a Defendant is charged before a Court and the charge is proved, the Court may decide not to convict the Defendant having regard to the character, antecedents, age, health, or mental condition of the Defendant; the trivial nature of the offence, or the extenuating circumstances under which the offence was committed. In the circumstance, the court may dismiss the charge or discharge the Defendant conditionally on his entering into a recognizance to be of good behaviour and to appear at any time within three years as may be specified in the order.[64] The Court may, in addition, make order for the Defendant to pay damages for injury or compensation to the victim of the crime and such costs of the proceedings as the court thinks reasonable.

1.3.17 Community Service/Parole

Notwithstanding the provision of any 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. The Court may, with or without conditions, sentence the convict to perform specified service in his/her community or such community or place as the Court may direct. A convict shall not be sentenced to community service or suspended sentence for an offence involving the use of arms, offensive weapons, sexual offences or for an offence which the punishment exceeds imprisonment for a term of three years.[65]

Where the Comptroller-General of Prisons recommends to the Court that a Prisoner convicted and serving sentence in Prison is of good behaviour, and has served at least one-third of the Prison term of at least 15 years or life imprisonment, the Court may, after hearing the prosecution and the prisoner or legal representative, order that the remaining term of the imprisonment be suspended, with or without conditions, as the Court considers fit, and the Prisoner shall be released from Prison on the order.[66] A Prisoner who is so released shall undergo a rehabilitation programme in a government facility or any other appropriate facility to enable him to be properly reintegrated to the society. This is the body of the Act that encourages restorative justice.

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[63] *Ibid.*, Section 246(1).
[64] *Ibid.*, Section 460.
[65] *Ibid.*
[66] *Ibid.*, Section 468

II

1.3.18 Administration of Criminal Justice Monitoring Committee

The Act established the Administration of Criminal Justice Monitoring Committee which is charged with the supreme responsibility of ensuring effective and efficient application of this Act by the relevant agencies.[67] This Committee shall ensure that criminal matters are speedily dealt with; congestion of criminal cases in Courts is drastically reduced; congestion in prisons is reduced to the barest minimum; persons awaiting trial are, as far as possible, not detained in prison custody; the relationship between the organs charged with the responsibility for all aspects of the administration of justice cordial and there exists maximum co-operation amongst the organs in the administration of justice in Nigeria; submit quarterly report to the Chief Justice of Nigeria to keep abreast of developments towards improved criminal justice delivery and for necessary actions to be taken; and carry out such other activities as are necessary for the effective and efficient administration of criminal justice.[68]

1.4 Challenges of the ACJ Act, 2015

The problems bedeviling the administration of criminal justice system in Nigeria are far from over notwithstanding the coming into force of the ACJA, 2015. First, the Act does not apply to State offences. It obviously applies only to federal offences and offences committed in the Federal Capital Territory (FCT) Abuja. In a bold breathe, the Act provides that its provisions shall apply to criminal trials for offences created by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja.[69] The bulk of offences are created by state laws, and it is clear that the Act is not applicable to offences created by the State House of Assemblies.

Secondly, the provisions of the Criminal Procedure Code and Criminal Procedure Act are still applicable in the State Courts even though the ACJ Actpurports to repeal them. This is because crime and punishment are under the residuary list of the 1999 Constitution of the Federal Republic of Nigeria, in respect of which States are competent to make laws. This still perpetuates legal pluralism in the administration of the criminal justice system in Nigeria. Unless the States within the Federation adopt the ACJ Actby passing it into law in their respective domain, the problem will still linger on.

Thirdly, some of the provisions of the ACJ Act are inconsistent with the provisions of the Constitution and some other laws. For instance, the ACJ Act makes it mandatory for Police Officers affecting an arrest to inform the suspect of his right to silence, his right to a Legal Practitioner, and his right to free legal representation by the Legal Aid Council of Nigeria. Meanwhile, the Constitutional[70] requirement in such Circumstance is that the person arrested shall be informed in writing within 24 hours (in the language he understands) of the facts and grounds of his arrest or detention. Again, the Act seeks to oust the powers of lay Police Officers from prosecuting cases even in the Magistrate

[67] *Ibid.*, Section 469
[68] *Ibid.*
[69] *Ibid.*, Section 2(1)
[70] See Section 35 (3) of the 1999 CFRN (as amended).

Courts.[71] Interestingly, no measure has been put in place to post lawyers to Police Stations or to de-centralise the Ministry of Justice so that these lawyers will take over the job being done by the lay Police Officers.

Fourthly, it is not clear whether the ACJ Act applies to the Federal High Court, because there is no amendment of the Federal High Court Act which states that the provisions of the Criminal Procedure Act shall apply to the Court.[72] Does this mean an implicit amendment of the Federal High Court Act? It is respectfully submitted that it would have been neater for the ACJ Act to have specifically stated this so that it will be known which law is applicable.

It is thought provoking to further note that the ACJ Act, as it is today, is a wholesale copying of the Administration of Criminal Justice Law of Lagos State.[73] with little modification. With the emergence of the Administration of Criminal Justice Law, Lagos State has broken the jinx by modernizing its criminal justice system to meet international standards. It is hoped that other States in the Federation will follow suit by adopting the ACJ Act, 2015 in their respective domain with modifications to suit their peculiar circumstances.

1.5 Conclusion

The ACJ Act has come to strengthen criminal justice administration in Nigeria by addressing most of the challenges bedeviling the justice system especially in investigation and prosecution of criminal cases, and the long period of remand in prison custody without trial. The Act has modernized the modus operandi on investigations, arraignment and prosecution of criminal cases.[74] There's no doubt that if the provisions of Administration of Criminal Justice Act 2015 are fully implemented the reforms intended to bring into the criminal justice system would be fully achieved and sanity would be restored fully in the system. The Act could not have come at a better time and the Act is a timely intervention that is really and truly needed to curb the excesses in the criminal justice system. One of the standard improvements brought about generally by the ACJ Act is that serious effort was made to strengthen the rights of the defendant and reduce delays in the criminal process. Though most of these rights had existed before now, the ACJ Act2015 has added emphasis to them and has also ironed out some areas that had been long overdue for change. With the passage of this Act, the Criminal Procedure Act (CPA), Criminal Procedure Code*(CPC)* and the Administration of Justice Commission Act stand repealed. Therefore, this paper finds as follows:

1. That because the ACJ Act does not apply to offences created by the States but only applies to offences created by the National Assembly or offences committed in the Federal Capital Territory, Abuja, Law Enforcement Agencies such as the

[71] Section 106(a), (b) and (c) of the *ACJ Act*, 2015
[72] Section 33 of the *Federal High Court Act*, Cap. F12, LFN 2004.
[73] See Administration of Criminal Justice (Repeal and Re-Engagement) Law, 2011
[74] See for instance parts 2 and 30, *Administration of Criminal Justice Act, 2015*

Nigeria Police and the Nigeria Prison are not bound by the provisions of the ACJ Act with respect to State laws.

2. That there exist a number of contradictory provisions in the ACJ Act with respect to the Police powers of arrest and investigation when compared and read along with the Constitutional provisions. For instance, the ACJ Act makes it mandatory for the police officer affecting an arrest to inform the suspect of his right to remain silent, right to a legal practitioner or right to free legal representation by the Legal Aid Council of Nigeria. Meanwhile, the Constitutional requirement in such a situation is that the person arrested shall be informed in writing within Twenty Four Hours (in the language that he understands) of the facts and grounds of his arrest or detention; and

3. That the provisions requiring the Police to record on video the confessional statement of a suspect has impliedly jettisoned and common law "Judges Rule" with its attendant tests for measuring the civility on the part of the Police and the voluntariness on the part of the suspect in the taking and making of confessional statements respectively.

Based on the above findings, the following recommendations are,. therefore offered:

1. That States in the Federation should adopt the ACJ Act, 2015 in their respective domain with modifications to suit their peculiar circumstances so as to make the Law Enforcement Agencies bound by its provisions in respect of all offences.
2. That the contradictory provisions of the ACJ Act, 2015, such as Section 6(a), (b) and (c) thereof, should be amended to be in line with Section 35(3) of the 1999 Constitution of the Federal Republic of Nigeria. This is in order to avoid it being declared inconsistent with the provisions of the Constitution.
3. That Section 15(4) of the ACJ Act, 2015, requiring the recording on video the confessional statement of a suspect, should be amended to be in line with the "Judges Rule". This is because of the economic cost and practicability problems associated with this onerous responsibly foisted on the Police.