



**INTERNATIONAL FEDERATION OF WOMEN LAWYERS
(FIDA) NIGERIA**

TRAINING MANUAL ON THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA), 2015

With Support From

**MacArthur
Foundation**



**INTERNATIONAL FEDERATION OF WOMEN LAWYERS
(FIDA) NIGERIA**

TRAINING MANUAL ON THE ADMINISTRATION OF CRIMINAL JUSTICE (ACT) 2015

With Support From

THE JOHN D. AND CATHERINE T.
MacArthur Foundation

About FIDA Nigeria

In 1964, Ms (Lady) Aduke Alakija introduced the Federacion Internacional de Abogadas (FIDA) in Nigeria. FIDA Nigeria has been in existence for over fifty years and has branches in thirty-two states of the Federation including the Federal Capital Territory, Abuja. FIDA Nigeria is a non-governmental, non-profit organisation made up of women lawyers called to the practice of law in Nigeria. FIDA Nigeria's mission is to promote, protect and preserve the rights, interests and well-being of women and children through the use of legal framework to ensure that they live free from all forms of discrimination, violence and abuse in the society.

Our mandate is to enhance, promote, protect and preserve the rights and welfare of women and children; to proffer advice to the government and all other interested parties; to establish friendly international relations on the basis of equality and mutual respect for all peoples; to promote the principles and aims of the United Nations in their legal and social aspects and to promote the study of comparative law.

Continuing Legal Education (CLE) programme is a mandatory professional requirement for legal practitioners in Nigeria. Therefore, in line with this requirement, FIDA Nigeria will use this manual to engage her members in trainings, workshops, lectures, seminars and discussions on the ACJA and other complementary laws.

Acknowledgements

This training manual was developed in furtherance of the FIDA Nigeria project funded by the MacArthur Foundation, on enabling capacity for the adoption and implementation of the Administration of Criminal Justice Act (ACJA), 2015, in all states of the Nigerian federation.

We highly appreciate the MacArthur Foundation for the privilege they have afforded us to work with them and develop this comprehensive manual.

We will not also fail to acknowledge our co-grantees on the MacArthur On-Nigeria Project; Nigerian Institute of Advanced Legal Studies (NIALS) and Centre for Socio-Legal Studies (CSLS); who contributed to the review of the manual.

Table of Contents

1.	INTRODUCTION	1
1.1	Purpose of Manual:	1
1.2	Introduction to the Administration of Criminal Justice Act 2015	1
1.3	Main Features of the Administration of Criminal Justice Act 2015	1
1.4	Purpose of the Administration of Criminal Justice Act 2015	2
1.5	Objectives of the Administration of Criminal Justice Act 2015	
2.	INNOVATIONS IN ACJA	3
2.1	Arrest	3
2.1.1	Typologies of Arrest under the ACJA	3
2.1.2	Rights of Arrested Persons and Safeguards put in place	3
	Adoption of the name Defendant	3
	Abolition of Unnecessary Restraint	3
	Notification of Cause of Arrest	4
	Notification of the Rights of the Suspect	4
	Arrests in Lieu of Persons	4
	Humane Treatment of Arrested Suspects	4
	Arrest for Civil Wrongs	4
	Mandatory Inventory of Personal Belongings/Property of Arrested Persons	5
	Pre-Trial Detention Regulations	5
	Monthly Inspection of Detention Places	5
	Confessional Statement Regulations	5
2.2	Data Collection and Reports	6
2.2.1	Provision of Central Criminal Records Registry (CCRR)	6
2.2.2	Case Management Unit of the Office of the AG to report to the AG monthly	7
2.2.3	Monthly report by Police to Supervising Magistrate	7
2.2.4	Reports by Magistrate Courts to the Chief Judge	7
2.2.5	Quarterly Report of Arrests to the Attorney General of the Federation	7
2.2.6	Quarterly Report of Cases to the Chief Judge	8
2.2.7	Returns of Cases by Comptroller General of Prisons	8
2.3	Bail	8
2.3.1	Release on Bail of a Suspect Arrested Without a Warrant	9
2.3.2	Release on Bail before Charge is Accepted	9
2.3.3	Release on Bail for Non-Capital Offences	9
2.3.4	Bail Bonds and Sureties	9
2.4	Institution of Criminal Proceedings	9
2.4.1	Persons Authorised to Institute Criminal Proceedings	10
2.4.2	Abolition of Lay Prosecution	11
2.4.3	Trial of Corporations	11
2.4.4	Electronic recording of court proceedings	11
2.4.5	Assignment of information and issuance of notice of trial	12
2.4.6	Binding Over	12
2.4.7	No Case Submission	12
2.4.8	Power to dispense with the Personal Appearance of Suspect/Defendant	12
2.4.9	Service of Processes	12

2.5	Trial Time Regulations	12
2.5.1	Day-To-Day Trials	13
2.5.2	Trials to be conducted and concluded within 180 days	13
2.5.3	Adjournment Regulations	13
2.5.4	Elimination of Trial De-Novo	13
2.5.5	Prohibition of Stay of Proceedings	14
2.5.6	Remand Proceedings /Holding Charge under the ACJA: Time and Protocols	14
2.6	Introduction of Plea Bargain	15
2.7	Sentencing and Consequential Orders	16
2.7.1	Probation	16
2.7.2	Non-Custodial Sentences	16
	Community Service Centre	17
	Suspended Sentence	17
	Parole	18
2.7.3	Power of Court to Order Payment of Expenses, Compensation, Damages and Restitution	18
2.8	Establishment of the Administration of Criminal Justice Monitoring Committee	18
2.9	Provisions Relating to Women	19
2.9.1	Respecting the Privacy of a Woman	19
2.9.2	Women as Sureties and Witnesses	19
2.9.3	Remedies of a married woman in respect of her person or property	20
2.9.4	Women and the Death Sentence	20
2.10	Provisions Relating to Children	20
2.10.1	Definitions relevant to Children	20
2.10.2	Offences relating to Children	21
2.10.3	Arrest of a Child	21
2.10.4	Children as Witnesses	21
2.10.5	Trials involving Children	21
2.10.6	Protection of the Child against Death Sentence	22
2.11	Provisions relating to the persons of unsound mind	22
3.	CHALLENGES IN IMPLEMENTATION	23
3.1	Limitations at State Level	23
3.2	Specific Limitations Within the Act	23
3.3	The case study of Federal Republic of Nigeria v. Dr Olubukola Abubakar Saraki	23
4.	RECOMMENDATIONS	25
4.1	Facilitating Implementation	25
4.2	Institutional structures to be established	25
4.3	Human resources required	26
4.4	Material resources required	26
4.5	The Future of Adjudicating Corruption Offices: Whistle blowing policy	26
5.	CONCLUSIONS	28
6.	SIMULATION TASKS	29
6.1	Advocacy	29
6.2	Litigation	29
6.3	Role Play	29
7.	REFERENCES	30

INTRODUCTION

1.1 Purpose of Manual:

- The training manual is intended to be a practical reference guide in order to aid a smooth transition from the current criminal procedure laws applicable in the various states, to the Administration of Criminal Justice Act (ACJA).
- The manual is aimed at building the capacity of the Bar, Bench, law enforcement agencies and the citizenry on the provisions of the ACJA, towards ensuring the effective implementation of the Act, in the dispensation of justice.
- The manual specifically highlights innovations in the ACJA and how the application will improve the Criminal Justice System.
- Key concepts, techniques, benefits and challenges of ACJA are also explored, with case examples from states in which ACJA has been implemented.
- Specific provisions of ACJA relating to women and children have also been highlighted in line with the objectives of FIDA.

1.2 Introduction to the Administration of Criminal Justice Act 2015

- The Administration of Criminal Justice Act (ACJA) came into force in May 2015, after it was assented to by the former President, Dr. Goodluck Ebele Jonathan.
- The criminal justice administration regime before the existence of ACJA, had each State in Nigeria adopt either the Criminal Procedure Act (CPA) in the Southern States or the Criminal Procedure Code (CPC) in the Northern states.
- Over the many years of the existence and operation of these legislations, the Criminal Justice System in Nigeria was in a state of continuous decline, the legislations had pitfalls, voids and inconsistencies.
- Major concerns range from poor and undue delay in justice delivery, poor case management, delays in the adjudicatory process, insufficient police and judicial personnel, corruption, human rights abuses, lack of modern information technology and poor coordination and cooperation amongst criminal justice institutions.
- The ACJA appreciably altered the criminal justice process with a view to raising efficiency and effectiveness in the quality of justice delivery in Nigeria.
- The ACJA applies to the Economic and Financial Crimes Commission, Independent Corrupt Practices and other Related Offences Commission, Nigerian Security and Civil Defence Corps and all other agencies that have powers to make an arrest.

1.3 Main Features of the Administration of Criminal Justice Act 2015

- The Act is divided into forty nine (49) Parts and has a total of four hundred and ninety five (495) Sections.
- The ACJA builds upon the existing framework of criminal justice administration in the country. It merges the main provisions of the Criminal Procedure Act (CPA), Criminal Procedure Northern State

Act 2004 and Criminal Procedure Code (CPC) into one principal Federal Enactment.

- The ACJA applies to all Federal Courts across the Federation as well as all courts of the Federal Capital Territory (FCT), but it does not apply to a Court Martial. **Section 2(2)** ACJA.

1.4 Purpose of the Administration of Criminal Justice Act 2015

- **Section 1** has explained that: *“the purpose of this act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspects, the defendant and the victim.”*

1.5 Objectives of the Administration of Criminal Justice Act 2015

- The ACJA introduces a unique and unified criminal procedure for the north and south of the country.
- It overhauls the obsolete criminal procedure systems which were first introduced during the colonial era.
- It promotes the efficient management of criminal justice institutions and addresses the challenges observed in the existing laws over the decades.
- Finally, it emphasizes a paradigm shift from punishment as the main goal of the criminal justice system to restorative justice which pays attention to the needs of the society, the victim, vulnerable persons and human dignity generally.

INNOVATIONS IN ACJA

2.1 Arrest

- Unlawful arrest is one of the major problems of criminal process in Nigeria. It is one of the reasons why police stations and prisons are overcrowded. Most of the arrests made are largely based on allegations that are civil in nature or on frivolous grounds that usually have no means of sustenance.
- The issues which arise from criminal arrests in Nigeria have been substantially addressed by the ACJA and in line with international standards of human rights, emphasis has been placed on safeguarding the rights of arrested persons.
- The Act deleted Section 10(1) of CPA, and Section 27 of CPC. Formerly, by those provisions, the police could arrest without warrant any person who has no ostensible means of subsistence and who cannot give a satisfactory account of themselves. These provisions were gravely abused as they gave the police the license to arrest people indiscriminately.

2.1.1 Typologies of Arrest under the ACJA

- Arrest with warrant can be made upon a complaint on oath or in writing by the complainant himself, (**Section 37**).
- Arrest without a warrant by police officers, private persons, judicial officers and justice of the peace where the offence is committed in their presence, (**Section 18, 20, 21, 22, 24, 25 & 26**).
- The Act departs from limiting the powers of a private person to indictable offences as far as the offence is committed in his presence or for which the police is entitled to arrest without warrant, (**Section 20**).

2.1.2 Rights of Arrested Persons and Safeguards put in place

Adoption of the name Defendant:

- Throughout the ACJA, the words 'accused person' have been expunged and replaced with the word "Defendant". Hence, no suspect can be referred to as an accused person; rather, he/she is a defendant in the case.
- This upholds the constitutional provision of the presumption of innocence of a suspect until the contrary is proven and serves as a further demonstration of the efforts made in the ACJA to ensure that the human dignity of the person is respected.

Abolition of Unnecessary Restraint:

- **Section 5** outlines that suspects should not be unnecessarily restrained in the course of their arrest, except where there is reasonable apprehension of violence or attempts to escape, where the restraint is necessary for the safety of the suspect or where the court has made an order.
- The effect of this provision is to ensure that suspects are not unnecessarily restrained in the course of their arrest. Thus ensuring less potential for allegations of torture and inhumane or degrading treatment.

Notification of Cause of Arrest:

- **Section 6(1)** outlines that suspects must be notified of the cause of their arrest
- The effect of this provision is that the police cannot just arrest people without letting them know the offence they are being arrested for except, the suspect is arrested in the course of committing the offence.
- This section is in line with the provisions of Section 5 of the CPA and Section 38 of the CPC with regards to notification of cause of arrest. However the ACJA further expanded its scope by the provision in Section 6(2) mandating Police Officers or any other person to inform the suspect of his rights.

Notification of the Rights of the Suspect:

- **Section 6(2)** outlines that suspects must be notified of their rights to
 - (a) remain silent or avoid answering questions until after consultation with their legal practitioner or any other person of their choice
 - (b) consult a legal practitioner of their choice
 - (c) engage free legal representation by the Legal Aid Council of Nigeria.
- Furthermore, the ACJA is innovative here in the proviso to the above section 6 which provides that the authority having custody of the suspect have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost of the suspect.
- The most striking thing about Section 6 of the ACJA is the balance it has created with other laws like the National Human Rights Act (2010) and the 1999 Constitution of the Federal Republic of Nigeria (section 35(2)).
- This is a clear demonstration of the efforts which have been made in the ACJA to ensure that the quality of justice delivery in Nigeria meets the international human rights standards contained in the Universal Declaration of Human Rights and the African Charter on Human and Peoples Rights.

Arrests in Lieu of Persons:

- **Section 7** prohibits arrest **in lieu**. Hence no one shall be arrested in place of a suspect.
- Formerly, a relative, wife, husband or business associate could be arrested to force the appearance of the suspect who is on the run. This is seen in the ACJA as not only wrong but antithetical to natural justice.

Humane Treatment of Arrested Suspects:

- **Section 8(1)** expressly outlines that suspects shall be accorded humane treatment, having regard to their right to dignity and shall not be subjected to any form of torture, cruel or degrading treatment.

Arrest for Civil Wrongs:

- **Section 8(2)** provides that a suspect shall not be arrested merely on a civil wrong or breach of contract.
- This stipulation is designed to curb malicious instigation of arrests, detention or prosecution of another as a result of a civil case or an infraction which does not constitute a criminal wrong.

Mandatory Inventory of Personal Belongings/Property of Arrested Persons:

- **Section 10** of the Act mandates the police upon arrest of a suspect to take inventory of all items or property recovered from the suspects; the police officer and the suspect must duly sign the inventory. However, where the suspect refuses to sign, it shall not invalidate the inventory.
- This provision further directs that a copy of the inventory shall be given to the suspect, his legal practitioner or such other person as the arrested suspect may direct.
- It permits the police to release such property on bond upon request by either the owner of the property or parties having interest in the property, the police officer shall make a report to the court of the fact of the property taken from the arrested suspect and the particulars of the property.
- The responsibility is given to the court to decide whether to release the property or any portion of it in the interest of justice to the safe custody of the owner or person having interest in the property.
- This provision is aimed at ensuring accountability and transparency.

Pre-Trial Detention Regulations:

- **Section 15 (1) & (2)** of the Act provides that records of arrests should be taken in a prescribed form.
- It also outlines that the process of recording personal data of suspect shall be concluded within a reasonable time of the arrest of the suspect, but not exceeding 48 hours.
- This is to prevent unreasonable and abusive pre-trial detention by the police and other law enforcement agencies, further emphasising the aim of ensuring the humane treatment of suspects which runs throughout the ACJA.

Monthly Inspection of Detention Places:

- **Section 34** provides that the Chief Magistrate, or where there is no Chief Magistrate within the police division, any Magistrate designated by the Chief Judge for that purpose shall, at least every month, conduct an inspection of police stations or other places of detention within his territorial jurisdiction other than the prison.
- This provision is also aimed at ensuring accountability and transparency.

Confessional Statement Regulations:

- Based on the uncertainty that goes on in the police stations, when arrestees are kept in custody; most often in criminal trials, defendants make a volte-face to state that the confessional statement earlier made was done under duress or torture thereby paving way for the court to conduct trial within trial. This greatly contributes to the delay in the administration of criminal justice, which the ACJA has addressed.
- **Section 15(4)** outlines that “A confessional statement of a suspect or defendant is to be recorded electronically on a retrievable audio-visual means.” This is to prove the 'voluntariness' of suspect statement in court and curb the allegation of violence and torture.
- Section 15 is innovative because it will reduce the issue of trial within trial which usually prolongs criminal trial in courts. See the case of *Ibeme vs the State (2013)10 NWLR(Pt 1362)333 at 371 paras*

C-D.

- By the provisions of **Section 17 (1)**, where a suspect is arrested on allegation of having committed an offence, his statement shall be taken.
- **(2)** Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a justice of the Peace or any other person of his choice. Provided that the legal practitioner or any other person mentioned in this section shall not interfere while the suspect is making his statement.
- **(3)** Where a suspect does not understand or speak or write in English language, an interpreter shall record and read over the statement to the suspect in his understanding and the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement.
- **(4)** The interpreter shall endorse his name, address, occupation, designation or other particulars on the statement.
- **(5)** The suspect referred to in Sub Section (1) of this section shall also endorse the statement with his full particulars.
- These provisions further reinforce the aim of ensuring accountability and transparency in the administration of criminal justice.

2.2 Data Collection and Reports

- The ACJA makes provisions for data collection and reports by different stakeholders in the criminal justice system.
- This is in line with the furtherance of transparency and accountability in the system.

2.2.1 Provision of Central Criminal Records Registry (CCRR)

- **Section 16 (1)** of the Act provides for the establishment of a Central Criminal Records Registry to keep records for future investigation, prosecution and adjudication.
- It provides that the Registry is to be established at every state Police Command which shall keep and transmit criminal records to the Central Records Registry.
- The Act also makes it mandatory to transmit decisions of courts in all criminal trials to the Central Criminal Records Registry within 30 days after delivery of judgment.
- Note the application under the Administration of Criminal Justice Law in Kaduna - The registry shall keep and transmit such records to the *State* Criminal Records Registry, Kaduna¹ and the *Central* Criminal Records Registry, Abuja. The *State* Criminal Records Registry shall maintain in both electronic and manual forms, a record of all persons arrested, discharged, acquitted or convicted in the state².

¹The State Criminal Records Registry is established by Section 38(1) ACJL Kaduna

² S. 38(2) ACJL

- This is a welcome innovation for Data Collection and keeping records of all suspects and criminal trials in the country for future investigation, prosecution and adjudication.

2.2.2 Case Management Unit of the Office of the AG to report to the AG monthly

- Copies of the AG's Legal Advice made are to be transmitted to: Police of Head of the Legal Unit of the Police through whom the case file was sent to the AG; The Court of cognizance before whom the Suspect was remanded in prison or granted bail; Suspect in respect of whom legal advice is preferred through the Prison authority, where the Suspect is remanded in prison custody, or through the Suspect's Legal Practitioner if any.
- Every month, records of the Legal Advice proffered by the AG's Chambers are to be reported by the Case Management Unit of the Office of the AG, to the AG.

2.2.3 Monthly report by Police to Supervising Magistrate

- **Section 33** of the ACJA provides that an officer in charge of a police station or an official in charge of an agency authorized to make an arrest shall on the last working day of every month report to the nearest Magistrate the cases of all suspects arrested with or without warrant within the limit of their respective stations or agency whether the suspect has been admitted to bail or not.
- Upon receipt, the Magistrate is to forward the report to the Administration of Criminal Justice Monitoring Committee. The Committee shall analyze the report and advise the Attorney-General of the Federation as to the trends of arrests, bail and related matters.
- The Magistrates' Report shall also be made available to: Attorney General (AG); Chief Judge (CJ); National Human Rights Commission (NHRC); Legal Aid Council (LAC) and; Non-Governmental Organizations (NGOs) see **section 33(4)**.
- This provision is quite commendable as it will ensure a collective check on the activities of law enforcement agencies.

2.2.4 Reports by Magistrate Courts to the Chief Judge

- By virtue of **Section 110(4)** of the ACJA, Magistrate Courts are to forward to the CJ, particulars of charge and reasons for failure to commence or complete trial within 180 days timeline.

2.2.5 Quarterly Report of Arrests to the Attorney General of the Federation

- **Section 29** of the ACJA provides that the Inspector General Police, State Commissioners of Police and heads of every agency authorized by law to make arrest shall remit quarterly to the Attorney-General of the Federation a record of all arrests made in relation to federal offences or arrests within Nigeria.
- Such records are to contain the full particulars of the person arrested as prescribed in **Section 15** of the Act.
- Section 29(5) also empowers the Attorney-General of the Federation to establish an electronic and manual database of all records of arrested persons at the Federal and State level.
- Note the application under the Administration of Criminal Justice Law in Kaduna in which the law went

further than the Act by requiring monthly reports to the AG of arrests made within the state [See Section 47(1) ACJL Kaduna].

2.2.6 Quarterly Report of Cases to the Chief Judge

- By virtue of **Section 110(5)** of the ACJA, there are provisions made to ensure that courts seised of criminal proceedings, make quarterly returns of the particulars of all cases, including charges, remand and other proceedings to the Chief Judge.
- The Act expressly outlines in **Section 110(6)** that in reviewing the returns, the Chief Judge shall have regard to the need to ensure criminal matters are speedily dealt with; congestion of cases is drastically reduced; congestion of prisons is reduced to the barest minimum and persons awaiting trial are as far as possible not detained in prison custody for a length of time beyond that prescribed in the Act.
- This provision is a clear innovation in the administration of criminal justice as it seeks to ensure that justice delivery is streamlined and maintains international best practice standards.

2.2.7 Returns of Cases by Comptroller General of Prisons

- By virtue of **Section 111**, The Act makes laudable provision in data keeping of the persons in prison by mandating the Comptroller-General of Prisons to make return of cases every 90 days to the Chief Judge of the FHC, Chief Judge of the State in which the prison is situated and to the AGF of all persons awaiting trial held in Nigerian prisons for a period beyond 180 days from the date of arraignment.
- The returns shall be in a prescribed form and shall contain such information such as: (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.
- Upon the receipt of such returns, the recipient shall take such steps as are necessary to address the issues raised in the return in furtherance of the objectives of the ACJA.
- This is a welcome provision in the Act as it will help to ensure that inmates awaiting trial no longer continue to relinquish in prison without trial for donkey years.

2.3 Bail

- It is a procedure by which a person arrested or detained in connection with a crime may be released upon security being taken for his appearance at police station, agency responsible for his arrest or at the court on a later date.
- There are essentially two types of bail:
 - *Police bail* pending further investigation as provided in **Section 158** ACJA and S. 27(a) of Police Act.
 - *Court bail*, which is of two types; bail pending trial and bail pending appeal where there is conviction with a term of imprisonment, see **Section 159(1)** ACJA and the case of **Ikoton v. FRN & Anor (2015) LPELR-24684 (CA)** in which the court held; bail pending trial generally is of right to a person accused of committing a crime other than an offence punishable with death.

2.3.1 Release on Bail of a Suspect Arrested Without a Warrant

- **Section 30** ACJA provides that a suspect which has been arrested without a warrant for an offence other than capital offence, shall be release on bail subject to his entering into recognizance with or without sureties; and is impracticable to bring the suspect before a court having jurisdiction within 24 hours of his arrest.
- This is in line with the fundamental rights guaranteed to protect the right to liberty of an individual under Section 35(3) of 1999 Constitution.

2.3.2 Release on Bail before Charge is Accepted

- **Section 31** ACJA provides that where it appears to the officer that inquiry into the case cannot be completed forthwith, he may discharge the suspect upon entering into a recognisance with or without sureties to appear at the police station in a later date.

2.3.3 Release on Bail for Non-Capital Offences

- **Section 32** ACJA provides that a suspect detained in custody for non-capital offence and not release on bail after 48 hours would be released by the court upon application on behalf of the suspect.
- Part 19 of the ACJA also outlines further provisions which regulate release on bail for non-capital offences, such as conditions of bail and provisions of continuous bail [See **Section 173** ACJA].
- **Section 165(1)** outlines that conditions of bail shall be at the discretion of the court and shall not be excessive.
- This is a commendable provision considering how some agencies while granting an administrative or court bail, attach stringent and unrealistic conditions even in simple offences. *See the case Madu vs the State (2011) LPELR 3973.*

2.3.4 Bail Bonds and Sureties

- Closely related to the issue of bail is the requirement for bail bonds and sureties.
- In order to address the infamous practice of releasing Suspects and Defendants on bail terms that turn out to have been observed in breach (by providing the court with fictitious sureties, etc), the Law now requires that the CJ may make regulations for the registration & licensing of corporate bodies or persons to a court as bonds persons within the Court's jurisdiction in which they are registered. See **Section 187** ACJA

2.4 Institution of Criminal Proceedings

- The different modes of instituting criminal proceedings are outlined in **Section 109** of the ACJA.
- Criminal proceedings may be commenced by way of a Complaint whether on oath or not, or by way of First Information Report at Magistrates, Shari'a and Customary Courts.
- In the High Court however, proceedings may be commenced by filing a charge or an information.
- Under the ACJL Kaduna, there have been some more forward thinking innovations provided with regard to filing a charge.

- Interestingly, the regime borrows the frontloading concept of civil litigation. In this regard, a charge filed by the Prosecution in the High Court shall include the proof of evidence consisting of³: the lists of witnesses and exhibits to be tendered⁴; summary of witness' statement; any other document, report or material that the Prosecution intends to use at the trial; particulars of bail or any recognizance, bond or cash deposit, if the Defendant is on bail; particulars of the place of custody if the Defendant is in custody; particulars of any plea bargain arranged with the Defendant if any; particulars of any previous interlocutory proceedings, including remand proceedings in respect of the charge; and any other relevant document as the court may direct.

- By Section 209(2) ACJL, a Charge may be filed with the print photograph of the Defendant. Where the photograph is unavailable however, its absence shall not invalidate the charge. This provision is commendable as it ensures that no person is tried for an offence in the commission of which he did not participate.

2.4.1 Persons Authorised to Institute Criminal Proceedings

- Another innovative provision in this regard is **Section 106 of the Act** which limits the power to AGF, law officer of his department, a legal practitioner authorized by AGF or a legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.
- However, subject to the provision of **Section 104** of this Act; a private legal practitioner can institute criminal proceedings by fiat of the AGF, by complaint or information if the conditions provided in **Section 383** of the ACJA are complied with; the conditions are as follows:
 - The information to be endorsed by the AGF or a law officer acting on his behalf;
 - The private legal practitioner to enter a recognizance in such sum as may be ordered by the court with a surety. Section 383(1,11,&111);
 - Where a private prosecutor withdraws from prosecution for unjustifiable reasons the court in its discretions award cost against the prosecutor (**Section 108(4)** ACJA see also Section 174 & 211 of the Constitution.
- Note further innovations highlighted in the ACJL Kaduna
 - Private Legal Practitioners other than those engaged by the AG's Chambers, may apply to the AG for consent to prosecute offences on behalf of the AG. Where the AG declines to grant such consent, he shall within 15 days from the date of his receiving such application, give reasons in writing for his refusal to grant consent⁵.
 - However, where the AG grants consent to the application, the AG or a Law Officer in the AG's Chambers shall endorse the charge preferred by such private Legal Practitioner subject to the latter's

³ Section 210(1) ACJL.

⁴ Provided that at any time before judgment, the Prosecution may file and serve additional evidence. See S. 210(2) ACJL. Also, Charges may be amended subject to the provision of Section 229-235ACJL.

⁵ Here the drafters of the ACJL accommodate the requirement of S.211(3) CFRN, 1999(as amended) which stipulates that the

compliance with the provision of Section 390(b) (i), (ii) and (iii) ACJL. The Private Legal Practitioner may then sign the charge and proceed with prosecution.

- It is worthy of note that where a Private Legal Practitioner or even a Public Officer prosecuting in his official capacity, prosecute in any criminal proceeding, the Private Legal Practitioner or Public Officer shall prosecute subject to the directions of the AG⁶.
- With the passing into Law of the ACJL, Kaduna State has witnessed a synergy between the Public and Private Bar in the administration of Criminal Justice: hence the employment of external Solicitors who with the fiat of the AG now prosecute criminal matters⁷.

2.4.2 Abolition of Lay Prosecution

- **Section 106** of the Act has laid to rest the issue of lay prosecutors as was endorsed by the Supreme Court in **FRN vs. Osahon** (2006) 5 NWLR (PT 973) 361 at 406 where the Supreme Court reaffirmed the powers of the Police whether qualified as a legal practitioner or not to prosecute in any court. The Act has thus impliedly abolished section 23 of the Police Act.
- As mentioned above, it provides that 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) Legal practitioner authorised by the Attorney General of the Federation c) A legal practitioner authorised to prosecute by law.

2.4.3 Trial of Corporations

- Another welcome innovation is hinged on the fact that companies can now be tried for crimes.
- In the past, mens rea and actus reus was an incapacitating factor. These elements had always shielded corporate entities in sheets of the steel.
- By virtue of the ACJA, a corporation can now be tried for criminal matters through its representative (**Section 477**).
- A company is now treated as an adult defendant, “for any offence” without exception (**Section 484**).
- An information may be preferred and plea of guilty is taken through its representative (**Section 478 & 479**).
- It can enter a plea of guilty or not guilty, (**Section 478**).
- Can be charged and tried jointly with an individual for any offence (**Section 484(2)**).

2.4.4 Electronic recording of court proceedings:

- Court proceedings may be recorded electronically or verbatim and thereafter authenticated by the judge

AG of a State shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process in the exercise of the powers conferred on him by S.211 CFRN, 1999(as amended)

⁶Section 280 ACJL

⁷Section 122(e) ACJL recognizes the power of Private Prosecutors to file charges on behalf of the AG.

or magistrate who concluded the proceedings (**Section 364**).

2.4.5 Assignment of information and issuance of notice of trial:

- Formerly, there was no time limit within which the Chief Judge must assign information filed before him.
- The Act provides that information filed are to be assigned to courts by the Chief Judge within 15 days and the judge in turn is to issue notice of trial within 10 working days of the assignment of the information to his court (**Section 382**).
- Also, a production warrant properly endorsed by the Judge shall be issued in respect of the defendant charge, where he is in custody, for the purpose of ensuring his appearance on the date of arraignment, and the Chief Registrar shall ensure the prompt service of the notice and information not more than 3 days from the date they were issued.

2.4.6 Binding Over:

- ACJA simplified the provisions of **Section 369** as it relates to courts' powers to bind over parties (both complainant and defendant) to be of good behaviour. This is beyond the provisions of the CPA on the same subject matter.

2.4.7 No Case Submission:

- The ACJA by virtue of **Section 302**, empowers the court after hearing the case of the prosecution against the defendant, finds that the evidence adduced against the defendant are not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of the defendant.
- **Section 303** allows the defence after the case of the prosecution to make a no case submission in respect of the charge against the defendant.

2.4.8 Power to dispense with the Personal Appearance of Suspect/Defendant:

- This has been made available in certain cases where the defendant pleads guilty in writing or through his legal representative (**Section 135**).

2.4.9 Service of Processes:

- Just like the CPA and the CPC, the ACJA provides that a summons can be issued and served on any day including Sunday or a Public holiday (**Section 166**).
- The provisions on the mode of service and the life span of a summons contained in **Sections 122-126** are similar to those of the CPA and CPC.
- However, among the innovations introduced by ACJA is its provision for service through Courier Company duly registered with the Chief Judge as a process service agent with the court, (**Section 122**).

2.5 Trial Time Regulations:

- Before the coming into force of the ACJA, criminal matters were prolonged as a result of incessant

adjournments, frivolous interlocutory applications, and uncertainties in the remand process. These had consequently led to the congestion of prisons as cases take a long time before judgments are given.

- Trial expediency is guaranteed through a number of provisions in the Act.
- Firstly, by the requirement that the CJ shall within 15 working days, assign a charge filed. Furthermore, the court to which the charge is assigned shall within ten working days of such assignment, issue Hearing Notices to the Defendant⁸ and witnesses.
- **Section 376(2)** outlines that the DPP's legal advice is to be issued within 14 days. The advice is to be sent directly to the police or legal unit from where the case file was sent to AGF.
- Other regulations such as provisions on day to day trials, adjournment regulations, stay of proceedings and so on will be addressed in more detail in the following subsections.

2.5.1 Day-To-Day Trials

- Among many of the laudable novel provisions which if strictly adhered to by judges and magistrates there will be requisite speed in criminal trials is effective implementation of the provision of day-day trial (**Section 396 (3)**) “Upon arraignment the trial of the defendant shall proceed day- to- day until the conclusion of the trial.

2.5.2 Trials to be conducted and concluded within 180 days

- In Magistrate Courts, trial is to commence not later than 30 days from the date of filing the charge. Where a trial does not commence within the stipulated time, or so begins but does not get completed within 180 days of arraignment, court shall forward to the CJ, particulars of the charge and reasons for failure to commence or complete the trial.
- This is to ensure expeditious disposal of criminal cases in court, as justice delayed is justice denied.

2.5.3 Adjournment Regulations

- Adjournment is limited to five on each side from the date of arraignment to final judgment and the interval shall not exceed 14 working days (**Section 396(4)**).
- Where parties have exhausted the five adjournments each, the interval between one adjournment to another shall not exceed seven days inclusive of weekends (**Section 396(5)**).
- Court to award cost to discourage frivolous applications (**Section 396(6)**).

2.5.4 Elimination of Trial De-Novo

- Elimination of trial de-novo when a judge is elevated to superior court is provided under **Section 396(7)** of the ACJA.
- It is indeed a novel provision in the ACJA; to curb delay and waste of efforts suffered by counsel and litigants when a judge hearing their matter is promoted.

⁸The Registrar of Court shall ensure the service on the Defendant, of the Hearing Notice and Charge within 3days from the date of their issuance. See S. 389(2) ACJL Kaduna

2.5.5 Prohibition of Stay of Proceedings

- The new position of the law is that an application for stay of proceedings in respect of criminal matter before a court shall not be entertained, **Section 306**.
- This unprecedented provision puts a bar on delays occasioned to the trial process by unnecessary interlocutory applications pending appeal, on preliminary matters before substantive issues are determined on merits.
- In a landmark decision in the case of **Olisa Metuh vs Federal Republic of Nigeria SC/457/2016**, the Supreme Court rules against granting stay in criminal trials. The Supreme Court upheld the provision of Section 306 of the ACJA and Section 40 of the Economic and Financial Crime Commission (Establishment) Act that no court in the country including the Supreme Court has the power to stay proceedings in criminal trials.
- It is now the Law that a Prosecutor who seeks to rely on a Confessional Statement allegedly made by a Suspect shall, while presenting the Prosecution's case, adduce evidence to show the voluntariness of the statement. If despite Prosecution's effort in this regard, Defence Counsel maintains the contention that the statement was involuntarily made, the Court shall record such objection, proceed with the substantive matter and rule upon the said objection while delivering judgment in the substantive matter.
- In the same vein, where in the course of a trial, a Constitutional question arises and is referred to the Court of Appeal for its determination the trial Court may adjourn the trial until the question is considered and decided; conclude the trial and postpone the verdict until when the question is considered and determined. In each of these circumstances, the Court may either order the remand of the Defendant or convict in Prison or admit him to bail.
- There are other circumstances where an appeal may be filed against say, the Lower Court's refusal to allow an application for no case submission made by the defendant or its refusal to grant a bail application. In these and all other situations leading to an appeal, the Court below shall not entertain an application for stay of proceedings in Criminal Matter.

2.5.6 Remand Proceedings /Holding Charge under the ACJA: Time and Protocols

- The Act has clearly spelt out the procedure where an arrested person is taken before a Magistrate Court that has no jurisdiction to try the alleged offence against him for remand order/proceedings; the provision is apt as it is one of the issues for concern that has since been bedeviling the administration of criminal justice in Nigeria.
- **Section 294** of ACJA provides that a suspect who is yet to be charged with an offence can be ordered by a court to be kept in prison custody, pending his bail, trial or release.
- It sets out conditions wherein the court will take in establishing probable cause for a remand. These conditions are: (a) The nature and seriousness of the alleged offence. (b) Reasonable grounds to suspect that the suspect has been involved in the commission of the alleged offence. (c) Reasonable grounds for believing that the suspect may abscond or commit further offence where he is not committed to custody; and (d) any other circumstances of the case that justifies the request for remand.
- The Act provides that remand order shall be on a maximum of 14 days at first instance.

- Renewable for a time not exceeding 14 days where good cause is shown.
- At the expiration of the remand if legal advice is still not issued, the court shall issue hearing notice to the IGP, AGF or COP or any other authority in whose custody the suspect is remanded to inquire into the position of things and adjourn for another period not exceeding 14 days for the officials mentioned to come and explain why the suspect should not be released unconditionally (**Section 293-296**).
- Where good cause is shown, the court shall remand for a period not exceeding 14 days for arraignment of the suspect.
- Where good cause is not shown, the court shall have the power to discharge and release the suspect. **Section 296(6)**.

2.6 Introduction of Plea Bargain

- Plea bargain is a process in criminal proceedings whereby the defendant and the prosecution work out mutually acceptable modalities for the disposition of the case; including the plea of the defendant to a lesser offence than the one charged in the complaint or information or some other condition which may be imposed by the prosecution.
- The Act provides checks and balances to prevent abuse of plea bargaining (**Sections 270-274**).
- The defence can write to the Attorney General for plea bargain and the latter to receive and consider Section 270(1)a).
- The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representatives during or after presentation of the evidence but before the evidence of the defence upon fulfilment of the following conditions; Section 270(2).
 - The evidence is insufficient to prove the offence charged beyond reasonable doubt.
 - The defendant has agreed to return the proceeds of crime or make restitution to the victim.
 - The defendant in a case of criminal conspiracy has cooperated with investigation and prosecution of the crime for successful prosecution of other offenders.
 - The prosecutor is of the view that the offer is in the interest of justice, public interest and policy and will prevent the abuse of legal process.
- The prosecutor and the defendant or his legal representative may, before the plea enter into agreement as to the term of sentence, plea of guilty, lesser offence and or appropriate sentence (Section 270(2,3,&4)).
- The judge shall not participate in the negotiation and discussion on plea bargain (Section 270(8)) but has supervisory role (Section 270(9)).
- The judge/magistrate to confirm the terms of agreement whether made voluntarily (Section 270(10)).
- The judge/magistrate may accept or reject the terms of plea bargain subject to certain considerations (Section 270(10) a, b & c).
- By the provisions of Section 270, the ACJA recognises plea bargain as an approach for the speedy dispensation of cases. This provision of the law helps in quick dispensation of justice and saves the time and resources that would have been wasted in trial.

2.7 Sentencing and Consequential Orders

- As noted, the ACJA has displayed a shift from punishment as the main goal of the criminal justice to restorative justice. As such, it has introduced a range of alternative sentences and consequential orders other than imprisonment (See **Sections 453-468**).
- This is quite commendable provision to reduce congestion in prisons and rehabilitate the prisoners by making them to undertake a productive work in the community and limit the interaction between hardened criminals and those that committed minor or less serious offences (**Section 460**).

2.7.1 Probation

- Probation is innovatively provided for in **Section 454** of the ACJA which outlines that “where a defendant is charged before a court with an offence punishable by law and the court thinks that the charge is proved but is of opinion that having regard to certain factors it is inexpedient to inflict a punishment or any order than a nominal punishment or that it is expedient to release the defendant on probation, the court may, without proceeding to conviction, make an order of such.
- Section 454(2) further provides the types of orders which the court may make: an order dismissing the charge; or discharging the defendant conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding three years as may be specified in the order.
- The court may, in addition order: the defendant to pay such damages for injury or compensation for any loss suffered by a person by reason of the conduct or omission of the defendant, and to pay such costs of the proceedings as the court thinks reasonable; and the parent or guardian of the defendant to pay the damages and costs specified in paragraph (a) of this sub-section where the defendant has not attained the age of eighteen years and it appears to the court that the parent or guardian has conduced to the commission of the offence (Section 454(3)).
- The Act provided further in **Section 455** the probation orders and conditions of recognisance.
- **Section 456-457** outlines the probation officers and their duties.
- **Section 458** outlines the mode of variation of terms and conditions of probation.

2.7.2 Non-Custodial Sentences

- In simple terms, non-custodial punishment is a type of punishment given by a court of law that does not involve a prison term, such as a fine or a restriction order.
- The underlying basis for non-custodial sentencing is encapsulated in **Section 460 (4a – c)**: “(a.) reduce congestion in prisons; (b.) rehabilitate prisoners by making them to undertake productive work; and (c.) prevent convicts who commit simple offences from mixing with hardened criminals.”
- Courts while making the order for non-custodial sentence, must ensure equality of treatment and also take into account the economic, political, social and cultural conditions of the country (Section 460).
- The court while making an order for probation and non-custodial punishment is of the opinion having regard to; the character, antecedents, age, health or mental condition of the defendant charged and the trivial nature of the offence may make an order dismissing the charge or discharging the defendant

conditionally or unconditionally (**Section 454**).

- The country has over the years relied upon sentencing of the convict to a term of imprisonment as a disposal method. So much reliance was placed on sentencing which is punitive and deterrent in nature. No attempt was made to reform the convict or restore the victim of crime which gave rise to over congestion of prisons.
- The provisions of Sections 467 and 468 have provided alternatives to just sentencing convicts to imprisonment.

Community Service Centre

- **Section 467(1)** states that a defendant convicted of an offence which can be tried summarily may be sentenced to a Rehabilitation and Correctional Centre established by the Federal Government in lieu of imprisonment.
- The convict may be sentenced to specified service in his community or place as the court may direct; provided that offence for which the convict was tried does not involve the use of arms or offensive weapon, or an offence which the punishment exceeds imprisonment for a term of three years.

Suspended Sentence

- By **Section 460** of the ACJA, 2015, a court, notwithstanding the provision creating the offence and where the court sees reason, may order that the sentence it imposed be suspended.
- Section 460 (1) provides thus: *“Notwithstanding the provision of any other law creating an offence, where the court sees reason, the court may order that the sentence it imposed on the convict be, with or without conditions, suspended, in which case, the convict shall not be required to serve the sentence in accordance with the conditions of the suspension”*.
- In considering the need to decongest prisons, rehabilitate prisoners and prevent convicts who are not hardened criminals from mixing with hardened criminals, the court may with or without any conditions, suspend the sentence passed on the defendant, though tried and found guilty.
- The courts are enjoined however not to suspend sentence in any offence relating to the use of arms or offensive weapons or where the term of imprisonment provided by the Act exceeds a three years - Section 460 (3) of the ACJA, 2015.
- Other factors the court may consider in passing a suspended sentence are: (a) the character, antecedents, age, health, or mental health of the defendant, (b) the nature of the offence and antecedents of the offender, or (c) 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.
- 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.

Parole

- This is provided for in **Section 468 of the ACJA, 2015**.
- It deals with a situation when a person is already in prison but has served at least one-third of his prison term. If such a person is found to be of good behaviour and is reformed, the Comptroller-General of prisons may make a report to the court recommending that the remaining part of the sentence of such a prisoner be suspended with or without conditions.
- Such a prisoner, if granted parole, will usually undergo a rehabilitation programme to re-integrate him into the society. He may also be monitored by probation officers or parole officers for a period of time to determine if he is truly reformed.

2.7.3 Power of Court to Order Payment of Expenses, Compensation, Damages and Restitution

- Payment of witness expenses by the judiciary is provided for under **Sections 251-254** of the ACJA. The era of Prosecution Counsel incurring personal expenses for paying witness expenses has been laid to rest by the provisions highlighted.
- By the provision of **Section 319 (1a & c)**, a court may within the proceedings or while passing judgment order the defendant or convict to pay a sum of money: as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed on the defendant or convict or in defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.
- Often times, victims of crimes were neglected without any form of compensation, even when the offenders have been found guilty.
- For women and girls who were victims of rape and sexual assault, there was no form of compensation given to them under the old law, before the emergence of the ACJA.
- Also, the medical expenses of these victims were most times borne by family members or victims themselves. These were part of the reasons for the underreporting of rape cases as victims do not see any benefit rather; they were being stigmatized by the society.
- These provisions on the power of the court to order payment of expenses, compensation, damages and restitution are therefore welcome developments in the Administration of Criminal Justice System.

2.8 Establishment of the Administration of Criminal Justice Monitoring Committee

- **Section 469(1)** of the ACJA establishes the Administration of Criminal Justice Monitoring Committee (ACJMC).
- This body is charged with the responsibility of ensuring effective application of the Act.
- It comprises of nine members with representatives drawn from the Judiciary, Federal Ministry of Justice, Police, Prisons, Legal Aid, Nigeria Bar Association, Civil Society Organization and National Human Rights Commission with the Chief Judge of the Federal Capital Territory as chairman and a secretary appointed by the Attorney General of the Federation.
- The ACJMC is also charged with the role of ensuring effective and efficient application of the act by the relevant agencies.

- In doing this, the committee shall among other things ensure that criminal matters are speedily dealt with; over load of criminal cases in court are reduced to the barest minimum, and that persons in lieu of trial are not held up in prison arbitrarily.
- The monitoring committee is a welcome development in the law as it will serve as a further check on the stakeholders involved in the Criminal Justice System so as to ensure that justice delivery is efficient and effective across the country.

2.9 Provisions Relating to Women

- Several provisions of the ACJA are applauded for their reinforcement of the rights of women which are contained in the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

2.9.1 Respecting the Privacy of a Woman

- **Section 12** provides that where a suspect enters a house or place in the actual occupancy of a woman who by custom or religious practice does not appear in public, the person making the arrest shall:
 - Before entering the house shall give notice to the woman that she is at liberty to withdraw.
 - Afford the opportunity and facility for withdrawing, but the notice shall not be necessary where the person making the arrest is a woman.
- Furthermore, **Section 9(3)** provides that the search of a woman shall be made decently and by another woman unless when it is practically impossible for the search to be carried out by a person of the same sex.
- The above provision contemplates a situation where a search by a person of same sex is impossible. This exception is lacking in the CPC and CPA.
- The Act further makes provision that the supervising officer in respect of female convict shall be a female (**Section 466**).

2.9.2 Women as Sureties and Witnesses

- Formerly, women were not allowed to stand as surety for a defendant standing trial. Women were seen as inferior human beings and as such denied their Constitutional rights as provided for in Section 41 of the 1999 Constitution which stipulates that no one should be discriminated against on the basis of sex.
- By the provision of **Section 167 (3)** of the ACJA however, it has been expressly stated that a person shall not be denied, prevented or restricted from entering into a recognisance or standing as surety for any surety for any defendant or application on the ground only that the person is a woman.
- The effect of this provision therefore is that women are no longer facing sexual discrimination in this regard and they can now enter into recognisance or stand as surety for any defendant.
- Following on from this, **Section 192** ACJA has also reinforced that a woman is also a competent witness in any proceedings taken under Section 191.

2.9.3 Remedies of a married woman in respect of her person or property

- **Section 191** ACJA describes a married woman as any woman who has contracted a valid marriage.
- It provides that a woman who has contracted a valid marriage shall have in her own name against all persons including the husband of the marriage, the same remedies and redress by way of criminal proceedings for the protection and security of her person or her own separate property as if such property belong to her as an unmarried woman.
- This is a welcome development in the law as though Section 148 CPA provided for remedies of a married woman against her husband and others in respect of property. It only recognised valid monogamy marriages under The English Law or marriages under The Marriage Act thereby limiting the rights of some women who to all intents and purposes are married but not under English Law or Marriage.

2.9.4 Women and the Death Sentence

- **Section 404** provides that the sentence to death in case of pregnant woman is to be suspended until the baby is delivered and weaned. This is also in accordance with Islamic Criminal Procedure Code.
- **Section 415(1-4)** outlines the protocols to be followed where a woman convicted of a capital offence is alleged to be pregnant or who becomes pregnant.
 - The court shall before sentence is passed, determine the question of whether or not she is pregnant.

2.10 Provisions Relating to Children

- The ACJA has settled a number of controversies surrounding the Administration of criminal justice on children.

2.10.1 Definitions relevant to Children

- Firstly, it has settled the question as to who a child is in Nigeria by providing that this is a person who has not attained the age of 18 years (**Section 494**).
- The provision will impliedly resolve the lacuna in Section 29(4)(b) of the 1999 Constitution (as amended) and can be used in a court of law to determine the marriageable age of a child in Nigeria (See Section 18 & 21 of the Child Rights Act (2003)).
- “Guardian” in relation to a child or young person means the parent or other person having lawful custody of such child or young person; and includes any person for the time being who has the custody of such child or young person.
- “Legal guardian” a person appointed by a will, deed or court as guardian to an infant, child, young persons, or juvenile offender.
- “Place of Safety” the law provides for suitable place, the occupier of which is willing temporarily to receive an infant, child, or young person.
- These definitions go to show how the Act seeks to protect and preserve the rights of children.

2.10.2 Offences relating to Children

- Sec 178 CPA, provides for what to do where murder is charged and infanticide proved as regards (only) the mother of the child. Whereas, **Section 234** ACJA differentiates outrightly between murder of a child and infanticide.
- This has further widened the scope of who can be charged for the killing of a child.
- **Section 235** goes even further by providing protocols relating to the offences of murder and infanticide.

2.10.3 Arrest of a Child

- Where a child is arrested with or without warrant and cannot be brought to court immediately, the Police Officer in charge shall inquire into the case and shall release the child on a recognizance entered into by his parent or guardian with or without sureties except:
 - The charge is one of homicide;
 - The offence charged is punishable with imprisonment for a term exceeding 3 years or;
 - It is necessary in the interest of the child to remove him from association with a reputed criminal or prostitute - See **Section 160**.

2.10.4 Children as Witnesses

- Where a person has not attained the age of 18 years called as a witness in a proceeding the court may direct that all or a person not being a member or officer of the court or party to the case, their legal representative be excluded from the court during the taking of the evidence of the person – **Section 260**.
- The Act contemplates and provides for the protection of the identity of a victim or witness in relation to the offences of rape, defilement, sexual abuse and other related offences [**Section 231, 232(1),(2) & (3)**].

2.10.5 Trials involving Children

- The ACJA under **Section 371** made express provisions for the court to comply with the provisions of the Child Rights Act with regards to the summary trial of a child by a Magistrate.
- However on issues relating to bail the provision of ACJA shall prevail on child offence (**Section 452**).
- This is beyond the initial limited provisions contained in the CPA on trial of children and shows a clear recognition of the need to protect the child.
- Prohibition on children being present in court during the trial of other persons, except he is an infant or defendant charged with the alleged offence or as a witness or otherwise for the purpose of justice. (**Section 262**).
- Court may determine the age of a person in criminal trials where age is an issue through physical appearance of the person concerned or in accordance with the Evidence Act, the Child Rights Act or any other law in force (**Section 264 (b)**).
- Court to consider the age of the child at the date of the commission of the alleged offence(**Section 264**).

2.10.6 Protection of the Child against Death Sentence

- No sentence of death shall be pronounced or recorded on a child offender who had not attained the age of 18 at the time the offence was committed but the court can give life imprisonment or lesser term as appropriate (**Section 405**).
- A court in making an order of confinement at a Rehabilitation and Correctional Centre shall have regard to; the age of the child offender, or make an order to be remanded at Rehabilitation and Correctional Centre (**Section 467**).

2.11 Provisions relating to the persons of unsound mind

- Under **Section 278**, the Act makes elaborate provisions on the procedure and trial of persons alleged to be mentally retarded in part 29 of the Act;
 - the court shall order for examination of the state of mind; order for a period not exceeding one month in a suitable place; Call medical officer to give opinion, receive medical report, discharge or release the defendant to his relative (**Sections 278, 279, 281, 290 & 291**).
- ACJA now provides for the report to be made to the Attorney General of the Federation; see **Section 281**. The AG after due consideration of the report of a judge who has refused bail to a person of unsound mind will facilitate the dispensation of justice to such an individual.
- The replacement of Governor with Attorney General is in the spirit of bringing justice closer to the people.
- The Act further provides for the release or discharge of the defendant after 2months if the AGF has not made the order.
- Under, **Section 285** ACJA as against Sec 229 discharged not acquitted is preferred against a defendant who is found to be of unsound mind but committed the act and is being kept in custody. Thus a defendant is not left off just for pleading unsound mind. This is more effective description of the offender.

CHALLENGES IN IMPLEMENTATION

The Act is no doubt a much needed intervention in the criminal justice sector in Nigeria. It will redeem the spirit of the justice system; assist the police and anti-graft agencies as well as judiciary in the prosecution of corruption cases and criminal trials. However it is not without some challenges

3.1 Limitations at State Level

- The Act is set to change a system that has been for decades. In any society change cannot be instant but the new Act is a head-on and a platform.
- The Act is highly ambitious as it assumes that the agencies are well equipped and adequately funded.
- Another challenge is the political will for the execution of the law.
- Non availability of funds for training and provision of human and material resources to aid domestication of the act
- Need for human resources for the appointment of probation officers to monitor people whose sentence has been reduced to probation or suspended. Registrars to supervise Community Service Centres.
- Lack of infrastructure such as Community Service Center and ICT facilities for electronic recording of court proceedings and record keeping of prisoners.

3.2 Specific Limitations Within the Act

- Though the Act is gender sensitive, it still retains the use of male pronouns such as he, his, himself in description of the person
- Recognizance in respect of a child under Section 166: Where the child refuses to do that which is required under the courts order. What happens to the parent or the legal guardian who executed the recognizance.
- Section 191. In the event where a woman uses her husband's money to acquire the properties in her name without the knowledge of the husband, what happens?
- Section 10(2). The act fails to address the implication of validating the inventory not signed by the arrested suspect, who may have refused to sign the inventory for reasons relating to failure to record all the properties recovered from the suspect.
- Section 15(4) leaves the making of electronic recording of confessional statements as optional instead of mandatory
- Section 294(1) of the ACJA presupposes a reinvention of the outdated holding charge procedure. This is so because it empowers magistrate courts to remand suspect without express recourse to section 36 of the 1999 constitution of Nigeria.

3.3 The case study of Federal Republic of Nigeria v. Dr Olubukola Abubakar Saraki⁹

- Prior to the ACJA, cases without substantial evidence can keep going on in circles and not making head

⁹ Suit no cct/abj/01/15

ways.

- The import of the ACJA will no longer tolerate such litigations that thrive on delay tactics and endless prosecution.
- What makes the new ACJA a proficient one is that it is no longer the case for the prosecution to do trial on a frolic of its own while expecting a respite from the bench to fill in its gap.
- On Saraki's case however, there are questions that come to the mind:
 - How far can the ACJA go in the face of conviction where there is no reasonable speculation, but no evidence enough to grapple with.
 - In the face of the new demands of the ACJA, is the judiciary ready to engage the extra responsibilities behooving on the judiciary?
 - Have the Judges used case law to overrule the provision of statute?
 - Have they shown that they are well informed as to the purpose of the ACJA?
 - What does a lapse in the law and veracity in the prosecution or defence lawyers lack, is it lack of prowess which the judges leverage on to reign in on corruption?

RECOMMENDATIONS

4.1 Facilitating Implementation

In order to achieve successful implementation of the Act there is need for:

- Advocacy and Public Awareness about the new law and support of the citizenry.
- Proper coordination, cooperation and synergy between the different stakeholders (law enforcement agencies, the Judiciary, the police, prisons and legal practitioners)
- The commitment of the AGF and other stakeholders in the Justice Sector Reforms to sacrifice and compromise positively for the implementation of the Act.
- Adequate Funding must be in place to provide for the infrastructure and equipment.
- Regular meetings of the Implementation Monitoring Committee to discuss lapses and proffer solution.
- The Nigerian Police Force alongside other Law Enforcement Agencies should build a uniform criminal case management system (software) for Area and State Commands containing fields for recording information of arrested Suspects. The database (preferably, cloud-based) should integrate a platform for receiving decisions of Courts on bail and trials of Defendants and for transmitting same to the State and Central Criminal Records Registry;
- Operational Guidelines for the operation and security of the software should be developed; and
- The AG should develop a Uniform Template/Precedent for Legal advice and Charges to be adopted by all Law Officers in the AG's Office and other Prosecutors.
- The AG should develop a comprehensive Guideline for the Engagement of Private Legal Practitioners in Public Prosecution.
- The State office of the Legal Aid Council as well as Civil Organisations in the State should provide Police Stations with contacts of their officers
- The NBA should issue and revise (yearly), a Lawyers' Directory.
- The CJ's designation of Inspecting Magistrates in the event of absence of the Chief Magistrate.
- Standard checklist developed by the CJ on salient information to be obtained during inspection visit
- Need for provision of subsidiary legislation such as Practice Direction in line with the provisions of the Act. This can be seen in the Practice Direction issued by the Chief Judge of FCT High Court in 2016.
- The CJ should issue guidelines for the Operation of Process Servers in the State.
- The CJ should decentralize the filing and assignment of criminal cases. Preferably, the Central ICT Unit of the High Court should develop a viable software for the electronic assignment of criminal cases.
- The CJ should issue Practice Directions on Witness Protection.
- The Practice Direction to be issued by the CJ should accommodate the operation of Community Service Centres

4.2 Institutional structures to be established:

- There should be established in the office of the Commissioner of Police and the Attorney-General's Chambers, Liaison offices manned by persons who possess excellent administrative and communication skills for the purpose of creating an interface between the two offices for effective

implementation of their investigative duties.

- There should be established in the State, a Strategic training scheme for Police and Law Officers in the Ministry of Justice, in order to equip them with the requisite critical knowledge and skills for the detection, investigation and control of crimes, particularly blue collar crimes.
- Criminal Records Registry at Area Commands and State Command of the Nigeria Police Force and other Law Enforcement Agencies;
- Central Criminal Records Registry at the Force Headquarters, Federal Capital Territory, Abuja.
- Community Law Centres should be established in each of the 23 Local Government Secretariats to provide Free Legal Services for indigent Defendants.
- The CJ should designate some Courts as Criminal Division of the High Court of the State. In this regard, it is recommended that a Specialized Court be designated Economic and Financial Crimes Court.

4.3 Human resources required:

- Administrative/Executive Officers
- Information and Communication Technology Experts
- Project Managers to initiate, advise, manage and control the software development project
- Software Engineers to build secured software adaptable to the Stakeholder needs;
- ICT Security experts to ensure software integrity;
- Trained personnel of the Police and other Law Enforcement Agencies to operate the Software at all identified levels.
- Support staff.

4.4 Material resources required:

- Budgetary allocation should be made from the offices of the Attorney-General of the State and the State Commissioner of Police for the funding and management of their respective Liaison offices
- Well equipped office space
- Audio and video recording-enabled interview rooms in Police Stations and other detention centres in the State.
- Computers and accessories such as printers, scanners and copiers
- Internet connectivity
- Functional electronic case management system
- Telephones
- Power sources such as Generators, Solar Panels, Inverters and UPS
- Stationary
- Other facility that may be required for effective service delivery.

4.5 The Future of Adjudicating Corruption Offices: Whistle blowing policy

- The Federal Government of Nigeria in a bid to effectuate its war against the despicable and ignoble trend called corruption and sanitize the polity to enhance development and promote international best

practices and good governance, initiated the whistle blowing policy. It is a machinery for detecting and exposing corruption.

- The policy has within a short frame of time become a veritable tool to fight the cancerous crime off our national social fabric.
- Apart from being an effective machinery to strengthen the anti-corruption war, two main features stand the whistle blowing policy out. Namely;
 - a. It gives government the opportunity to raise cash by recovering loot it had no knowledge existed and
 - b. It allows the whistle blower access to substantial financial reward for exposing the crime.
- There are many views canvassing for the passing of the policy into law so that its sustainability as a national tool for development will not depend on the whims and caprices of whoever is at the helms of affairs. It will also give it the legal flavour to become binding on everybody including the government.
- Hopefully when the policy evolved into law preferably under the ACJA, it will enhance the justiciability of the law to consider;
 - a. adequate and deliberate steps which must be taken to provide for and protect the whistle blower
 - b. step by step guidelines on management and usage of recovered funds.

CONCLUSIONS

- Despite the few limitations within the Act previously highlighted, the new law is very progressive, timely, and in conformity with international best practices. It is not in doubt, the ACJA 2015 makes several bold and innovative provisions which are aimed at addressing the incessant problems of delays, congestion in prison and lack of proper coordination in the system of administration of justice by the institutions concerned.
- In general, many benefits of implementation of the Act at state level have been highlighted:
 - Speedy dispensation of justice
 - Efficient jail delivery
 - Establishment of Multi Door Courthouse
 - Community Service for convicts
 - Training for Judicial Staff, Police Officers and Other Stakeholders
- If it is well implemented it will give life to the desired justice system the legislators have in mind for Nigeria.
- This training manual is a first step towards ensuring proper implementation of the Act as it has been designed to assist the stakeholders to be well-informed about the innovative provisions contained within the Act, in order to ensure that it is discharged effectively.

SIMULATION TASKS

6.1 Advocacy

- A. Your state has not adopted the ACJA. Prepare an advocacy plan for presentation to the legislature, judiciary, law enforcement or state agencies and other stake holders. Your plan should indicate specific innovations in the ACJA that should be targeted at the groups listed above.
- B. Your state has just adopted the ACJA. Prepare a plan for post legislative advocacy detailing innovations which require actions by state agencies and the judiciary in particular. Prepare an advocacy plan to the Commissioner of Police and the Chief Judge of your state.
- C. Your state has adopted the ACJA and it is operational. However, you have noticed issues which require some clarifications or amendment. Prepare –
 - i. Notes for practice direction by the Chief Judge
 - ii. Proposal for amendment

6.2 Litigation

- a. Ms. Angela Aribeton is your client. She comes to your centre and says that her older brother, John Aribeton went clubbing the previous Saturday evening and is yet to return. Meanwhile, the police came to the house looking for John on the premise that he is a suspect in an armed robbery incident. When she informed them that he had not returned, their mother, Mrs. Nkeiruka Aribeton was manhandled and asked to produce her son and subsequently taken away. Angela says she followed closely behind to the station and was told that her mother would not be released until she produces her son and she pays the sum of N500,000.00.
Draft a legal opinion preparatory to litigation.
- b. John has now returned. It was late to get back home so he decided to stay with friends and his phone died in the process which is why no one was able to reach him. He reported to the police station immediately where he was arrested and refused bail on the grounds that your client, Angela is a woman – an unmarried one at that, and cannot be allowed to bail her brother or mother.
Draft a second legal opinion preparatory to litigation.

6.3 Role Play

Participants should break into groups of 5 and act out the following scenarios –

1. An improper stop and search, then discuss extensively the innovations the ACJA has introduced in relation to stop and search. Focus on gender specific searching and dignity of the person.
2. An improper arrest or illegal arrest. What are the implications having regard to the innovations in the ACJA with respect to the process of arrest?
3. The DPO organizes an interactive session focusing on criminal procedure from search to prosecution of a case. Ensure that it is interactive.

REFERENCES

Legislation

- Administration of Criminal Justice Act 2015
- Child Rights Act 2003
- Constitution of the Federal Republic of Nigeria 1999 (as amended)
- Criminal Procedure Act (CPA),
- Criminal Procedure Code (CPC)
- Criminal Procedure Northern State Act 2004 and
- Evidence Act 2011
- National Human Rights Act 2010
- Police Act

International Human Rights Instruments

- African Charter on Human and Peoples Rights 1981
- Universal Declaration of Human Rights 1948
- United Nations Convention on the Elimination of All Forms of Discrimination against Women 1979
- United Nations Convention on the Rights of the Child 1989

Cases

- FRN v. Dr Olubukola Abubakar Saraki Suit no cct/abj/01/15
- FRN v. Osahon (2006) 5 NWLR (PT 973) 361 at 406
- Ibeme v. the State (2013) 10 NWLR (Pt 1362) 333 at 371 paras C-D
- Ikoton v. FRN & Anor (2015) LPELR-24684 (CA)
- Madu v. the State (2011) LPELR 3973.
- Olisa Metuh v. Federal Republic of Nigeria SC/457/2016

