CLEEN FOUNDATION
Justice Sector Reform

POLICY BRIEFS
on the

IMPLEMENTATION OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015.

MacArthur Foundation

Policy Briefs on the Implementation of the Administration of Criminal justice Act (ACJA) 2015.

Produce by
CLEEN Foundation
2021

First Published in 2021

CLEEN Foundation
Lagos Office:
21, Akinsanya Street,
Ojodu, Lagos, Nigeria
Tel: 234-1-493-3195, 234 - 7612479, 09035200933

Abuja Office:
26, Bamenda Street,
off Abidjan Street
Wuse Zone 3, Abuja
Tel: 234-09-7817025, 07067899368

Owerri Office:
Plot 10, Area M Road 3,
World Bank Housing Estate
Owerri, Imo State
Tel:08128002962, 08130278469, 08060023936

Edo Office:
39 Oyaide Street,
off Benoni Road,
G.R.A, Benin City, Edo State
Tel: 08073342922

Email: cleen@cleen.org
Website: www.cleen.org

Typesetting: Gabriel Akinremi

TABLE OF CONTENT

ACKNOWLEDGEMENT

The Administration of Criminal Justice Act, (ACJA) 2015 was passed with the objective of ensuring that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.

To this end, The courts, law enforcement agencies and other authorities or persons involved in the criminal justice administration are to ensure compliance with the provisions of the Act for the realization of its profound goals. However, the insufficient level of awareness on the provisions of the Act continue to impede it's full implementation by concerned actors. This policy brief Series is therefore imperative to promote awareness among critical Criminal justice actors on the provisions of the law and to unveil grey areas and emerging issues of concern affecting the full implementation of the law.

CLEEN Foundation wishes to first acknowledge and thank the John D. and Catherine T. MacArthur Foundation for their generous support in respect to the Project on Promoting Accountability and Transparency in the Administration of Criminal Justice in Nigeria.

In the course of the project implementation, four Policy briefs were developed around novel provisions of the ACJA, 2015 with a focus on four major thematic subjects of interest namely: Obligations of the Police , gender mainstreaming, Anti-corruption provisions and issues emerging from the implementation of the ACJA, 2015.

We acknowledge Mr. Tosin Osasona for his editorial efforts and contribution towards structuring the Policy Briefs. Special appreciations to Barr. Esther Mabadeje, the Assistant Program Officer of CLEEN and Barr. Fikih Obaro, the Assistant Legal/ Human Resource Officer of CLEEN for their technical contributions at developing the policy briefs.

We also value the commitments of CLEEN Foundation's project team members for the special roles played in producing the policy briefs: Particularly, Mrs. Ruth Olofin, the Program Manager, Mr. Ademola Adewuyi, Assistant Program Officer, and Gabriel Akinremi, the Senior IT officer of CLEEN foundation.

Finally, we applaud the contributions of the Administration of Criminal Justice Monitoring Committee (ACJMC), especially the Executive Secretary of the Committee, Barr. Sulayman Dawodu and the members of the several sub-committees for their inputs at validating and enhancing the policy briefs.

THE IMPLEMENTATION OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (2015)

Context

- Continuous overwhelmingly negative public perception about the Nigerian criminal justice system four years after the passage of the Administration of Criminal Justice Act, 2015

Key Messages

- Going by opinions of experts, share of conversation, research findings and media reports, the impact of the ACJA on the criminal justice system has remained largely superficial;
- Despite the innovativeness of the ACJA, the inability and/or lack of capacity by the national and subnational governments in Nigeria to create the requisite foundational policy frameworks, processes, and structures has impeded the expansive impact of the law; and
- Continuous capacity building for policing actors, judicial officers and other cadre of officers with responsibilities under the Act is sine qua non for the effective implementation.

Audience

Legal practitioners, policing actors and those responsible for justice administration, Judges, Prosecutors, Defendants, Civil society organizations working for justice reforms, Legal scholars and Researchers.

Executive Summary

The Administration of Criminal Justice Act (ACJA) is one of the most important laws assented to by former President Good-luck Jonathan in 2015. The ACJA introduced innovative provisions and processes that should significantly change the Nigerian criminal justice system landscape. Unfortunately, impact of the law has been largely superficial, with most of the previously documented defects in the system persisting. Extensive delays in trials, poor case management system, unnecessary bureaucratic bottlenecks, capacity gaps across agencies and institutions, lack of coordination and coherence between and among criminal justice agencies and institutions, abiding corruption, abuse by policing actors and progressive increasement in awaiting trial inmate population across Nigeria's correctional centres, continue to be the dominant feature of reports on the Nigerian criminal justice system[6], post-ACJA passage. According to a perception survey carried out by CLEEN Foundation, in some states around the federation, one of the major constraints affecting the administration of criminal justice in Nigeria, is the lack of diligent/proper investigation and prosecution of cases by the Police[7].

6 Amnesty International tagged the criminal justice system in Nigeria a "conveyor belt of injustice, from beginning to end". See Amnesty International UK; Press Releases, 2008. Available at: https://www.amnesty.org.uk/press-releases/nigeria-criminal-justice-system-conveyor-belt-injustice-says-amnesty.

7 A 'Round 1' Perception Survey by CLEEN Foundation, on the project "Monitoring the criminal justice administration reform process in Nigeria" conducted in March 2017.

The criminal justice system is one of the key pillars upon which the concept of the rule of law is built because it serves as a functional mechanism to redress grievances and it must be emphasized that if Nigeria succeeds with its criminal justice system, she would have eliminated a great chunk of its governance problems, because of the centrality of the criminal justice system to order and stability. Hence the development of this policy brief to support ongoing conversations between and among critical stakeholders on reforming the justice system in Nigeria.

IMPACT ASSESSMENT

Four years after the passage of the Administration of Criminal Justice Act, civil society groups and actors have primarily led the drive for the implementation and popularization of the innovative provisions and human rights-based approach of the Act, sadly, the impact of the law is yet to be substantially felt. While the ACJA 2015, created a platform and legal backing for relevant stakeholders to engage substantially in the reform process and redefined the aims of the criminal justice system in Nigeria by making innovations in the areas of supervision of security services, arrest procedure, daily adjournments, rights of victims of crime, plea bargaining and remand practices, it is only the first step in a long line of processes and decisions in the complex march for reform long due for reform.

The current practice of enacting revolutionary laws without an implementation plan or budget to ensure compliance is only an attempt to compound the existing problem instead of solving it. It is therefore imperative to take a pragmatic approach towards bridging implementation gaps noticed in the law, or developing implementation action plans which will have its ownership embedded within the institutions who are the major actors under the ACJA[8].

CONTEXT:

THE SUFFICIENCY OF ACJA INNOVATIONS IN MEETING THE NEEDS OF THE JUSTICE SECTOR

Incisively, the innovative provisions contained in the ACJA are not sufficient in themselves to create the desired change within the justice system. The law essentially is a procedural law and is to be applied in criminal proceedings at all levels. Without proper application and implementation of the innovative aspects of the law, the yearnings of citizens for speedy justice may never be attained. The principal actors tasked with the burden of implementing the Act must be held to held accountable. The effective functioning of the law will depend on how well policing actors, the court system, correction services the media, civil society groups, legal associations and civil society groups among others are willing continuously engage and work together to improve criminal justice outcomes in Nigeria.

EMERGING ISSUES

a. Irregularities in the taking of suspect's statements

One of the challenges currently encountered in criminal trials in Nigeria, is that confessional statements are usually denied or disowned in court by the suspects. The main ground for this is the alleged involuntariness of such statements, as the suspects who make them often allege that they were forced to make them. As soon as this issue arises, the trial Court is compelled to adjourn the case sine die. It will then go into a "trial within trial" to determine the voluntariness or otherwise of such statements. The trial within trial may take months to conclude before the main trial resumes. This has contributed in no small measure in prolonging criminal trials.

8 Notes on ACJA, Law Pavilion Website.

To stem this trend, Section 15 of the ACJA, protects the right of a suspect to have either his lawyer, an officer of the Legal Aid Council, a CSO representative or person of his choice in attendance during the taking of his statement. Section 15(4) particularly provides that "Where a suspect volunteers to make a confessional statement, the police officers 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." By the latter part of this section as underlined, the Act makes electronic recording of confessional statements optional instead of compulsory or mandatory.

The use of the word "may" has reduced the pungency of what would otherwise have been a wonderful innovation. This is because the law is clear that wherever the word "Shall" is used in legislation, it connotes compulsiveness in which case the affected person or authority would have no option or discretion in matter. On the other hand, using the word "may" gives a degree of latitude and discretion. The implication of optional preference of electronic recording of confessional statements has created an opportunity for errant investigating police officers to abuse the process[9] and perpetuate the ills of the past.

States adopting the law should be encourage to review this particular provision in a such a way that it keeps the balance between the need to protect the rights of persons accused of crime and the grave infrastructural deficits in our police stations that makes it possible to electronically and openly record the confessional statement of a suspect. The Kaduna state law on this is commendable- other states should take the cue.

b. Grave Infrastructural Gaps at Police Stations and Courts

The successful implementation of the ACJA is dependent on the existence of various support structures that ensures tasks are undertaken, such as the existence of functional witness and victim interview rooms in police stations across Nigeria. The need for massive investment in police and court infrastructure is one of the implied preconditions for the success of the law.

c. The Position of ACJA on Lay Prosecution

Another interesting innovative aspect of the Act is Section 106 of the Act which makes the prosecution of cases the exclusive preserve of lawyers. In effect police personnel who are not lawyers have lost the right to prosecute. This innovative provision of the Act is commendable as experience has shown that the bulk of criminal cases pending in our Courts are lost to poor prosecution. But it equally means that more lawyers will need to be employed within the Police Force as the abolition of lay prosecution will engender a dearth of qualified manpower among the police. This will also cast a heavy burden on the few state prosecuting counsel especially at the state Ministries of Justice. Failure to fill the gap as quickly as possible will definitely create problems that will ultimately defeat the aim of the Act.

One area which was previously seen as a source of major concern was the failure of the Act to specifically repeal Section 23 of the Police Act, (which is now defunct) just as it did to the CPC and CPA, possibly due to legislative oversight. With the new Police establishment Act 2020, the provision on criminal prosecution was reserved with necessary modifications in Section 66(1) and (2) of the new Police Act. The new Police Act did not completely restrict lay police men from prosecuting cases, it makes their ability to do so subject to the provisions of the prevailing criminal law (ACJA, in the F.C.T or ACJL at the state level) in the jurisdiction where the matter is being heard. There have been debates over the new Police Act and its implications for criminal prosecution. It is

9 Nov 30, 2015 - Critique of Administration of Criminal Justice Act (ACJA) 2015 (2) By Iheanyichukwu Maraizu.

from this new Act that the police derive their power to prosecute cases.

In the new Police Act, the right to prosecute has been redefined such that only police officers who are legal practitioners have the right to prosecute any form of offence in any court while those who are not legal practitioners an only prosecute offences which non-qualified legal practitioners are allowed to prosecute under the relevant criminal procedure laws in force at the Federal or State level. Section 66(2) of the Police (Establishment) Act, 2020 attempts to create a confusion when it says a policeman can prosecute any offense that a "non-qualified Legal Practitioner" is permitted to prosecute. The question will then be asked Who is a "non-qualified Legal Practitioner?" One is either a legal Practitioner (as defined in sections 2 and 24 of the Legal Practitioners Act) or one is not.

However, that term ("non-qualified Legal Practitioner") could be reasonably interpreted to mean "a person who is not qualified as a legal practitioner." If we accept that interpretation, then, the NPF (Establishment) Act, 2020, has obviously taken us back to square one in this aspect; it means not much progress has been made. The implication is that it is only under the ACJA, 2015, and in those states (if any) where the statutes have expressly or by implication barred the LAY (non-lawyer) policemen from prosecuting, that we can confidently say lay policemen are not qualified to prosecute. Notwithstanding, the provision in section 66(2), section 66(3) is a step in the right direction, and has attempted to rectify the drafting curves observed in the previous sub-section. It provides: "There shall be assigned to every police station at least one police officer: (a) Who is a legal practitioner in accordance with the legal practitioners Act; and (b) Whose responsibility is to promote human rights compliance by officers of the division." The National Assembly is commended for the innovative stride in the passage of the ACJA, 2015, but the job is not complete until all other relevant criminal statutes/legislations are modified to follow suit[10].

d. Impracticability of Daily Adjournments

Again, the Act makes elaborate provisions aimed at ensuring that criminal cases are expeditiously disposed of. To this end Section 396 of the Act provides that criminal cases shall be tried on a daily basis. Where day to day trial is impracticable, the Act provides that parties shall be entitled to only five adjournments each. The interval between each adjournment, according to the Act, shall not exceed two weeks each. Where the trial is still not concluded, the interval for adjournments will be reduced to seven days each. The impracticability of implementing this law given the current situation of our judiciary is not in doubt. Most judges are presently over laden with piles of cases to attend to. While it is important to abide by the law, provisions for exceptions should be made in cases where the matter cannot be concluded within the stipulated time frame. Some states in the process of adopting the law have expunged this section, while others have adapted it fully or partially while still struggling to implement.

However, the prevailing judicial practice especially in the F.C.T is that judges are giving a more favourable interpretation of "day to day trial" as enshrined in the section, where day to day trial is interpreted as the case progressing on the next adjourned date (for example, from 25th June, 2020 to 4th August, 2020) as opposed to daily trial (For example, Monday to Tuesday to Wednesday) which is quite impracticable within our peculiar justice system.

e. Inadequate provisions on women's rights

Furthermore, as it regards the rights of women, the ACJA expands the scope of persons

10 https://thenigerialawyer.com/the-npf-establishment-act-2020-has-not-completely-disengaged-lay-policemen-from-criminal-prosecution-it-is-a-serious-setback-for-criminal-justice-administration-in-nigeria.

who can stand as legitimate surety for an accused to include women. This innovative provision of the law is enshrined in Section 167 and is being practiced in many courts across the federation. However, it appears the law in this regard did not take into consideration the need to create an exception for pregnant women and Nursing mothers who may be women in every right but by reason of their special condition should not be subjected to arrest and imprisonment in a situation where the accused decides to jump bail. More so, no qualification/definition was given to the word "woman". This has led to some desperate litigants procuring young girls (teenagers) to stand as sureties[11]. The gender sensitive nature of the ACJA can also be seen in the provision according women the right to buy and own property in her name- Section 191.

f. Domestication of ACJA

Since the inception of the Act, 30 out of the 36 states of Nigeria have domesticated the Act which is laudable, however some state governors (particularly in the northern Nigeria) seem oblivious to the aims and import of the existence of such a law for their state criminal justice system. Hence the sluggish move towards its adoption. Sufficient political will is paramount to the domestication of the law. The chief Judges and major criminal justice stakeholders should also be carried along in passage of the law at the state level. Most importantly is for the key judicial and state actors to take a united approach in embracing the gains of the ACJA by proactively moving for its adoption in their state.

It is expected that the judiciary will take the lead in ensuring implementation and enforcement of the provisions of the Act, however this is not case. Reports abound of errant judicial officers who prefer the status quo and as such have resisted the innovation proffered by the advent of the ACJA. Some states that have adopted the ACJA, 2015, have also been found to have deviated to an extent from the spirit of the law by excluding some important innovatory aspects of the law.

g. Absence of Practice Directions/Guidelines

Some major stakeholders across the focal states of the CLEEN Project have decried the absence of Practice Direction/Guidelines as a challenge in the implementation of the Act/Law. As the ACJA, 2015 is not a perfect law in itself, it is absolutely pivotal that Chief Judges of the various states that have domesticated the ACJA take the lead in issuing Practice Directions and Guidelines to aid the smooth implementation of the law within their jurisdiction.

h. Non-Functional or Non-existent Monitoring Committees at the state level

Although the Monitoring Committee exist in some states of the Project, viz: F.C.T, Lagos, Kaduna, Ondo, Enugu and Oyo, some are not as effective or functional as is desired due to lack of funds/infrastructure or manpower. The Monitoring committee is yet to be set up in Ekiti and Anambra states of the Project. As a result of the paramount role played by the Monitoring

Committee in driving the implementation of the law, it is pertinent for the government of the state to factor in the funding of the Monitoring Committee in the budget provision made for the Ministry of Justice. Adequate funding will enable the Monitoring Committee to live up to its mandate as enshrined in the Act/Law.

11 Reported by Ondo Ministry of Justice state counsel at a working group meeting organized by CLEEN Foundation.

POLICY RECOMMENDATIONS

The enactment of a well-intended and nicely worded administration of criminal justice legislation by the governments in Nigeria without the requisite foundational policy frameworks, processes, procedures and structures will result in only cosmetic changes to the current failures in the criminal justice system and another missed opportunity to reverse the current descend into chaos and disorder.

It is important to consider the following policy options going forward in the implementation of ACJA:

- The heads of policing actors and criminal justice agencies mandated under the Act to submit periodic reports to the office of the Attorney-General must ensure judicious compliance with the dictates of the law and public officers with supervisory responsibilities over these agencies must be held accountable;
- The ACJMC should work towards ensuring the operationalization of the draft ACJMC stakeholders compliance tool shared by CLEEN;
- There is the need to create a framework for continuous review of the ACJA to accommodate noticed flaws and accommodate the passage of new legislation within the criminal justice space for proper coordination and alignment;
- Civil society groups and networks need to advocate for the funding of the Administration of Criminal Justice Monitoring Committee (ACJMC). To this end, it is recommended that the ACJMC should have a structured and well-defined budget that is separate from the Budget for the Judiciary;
- Chief Judges of states that have successfully adopted the law should create practice directions or rules of court to guide the smooth implementation of the Act in the state;
- It may be helpful to develop a domestication of ACJA policy to guide states adopting the law so as to ensure that states in an attempt to tweak the law to suit their justice needs do not depart substantially from the spirit of the law nor import provisions that significantly contradict the substantive Act in aiding speedy dispensation of justice;
- There should be clearly spelt out disciplinary measures and oversight of Judges, lawyers and the Police who repeatedly default in compliance to the provisions of ACJA;
- There is need for judges to be proactive in exploring alternatives to imprisonment as proposed under the ACJA, 2015 (such as parole, community service) as obtainable in other systems;
- It is important to continue to promote and strengthen legal awareness to citizens on the provisions of ACJA, 2015;
- A victim's Trust fund needs to be set up to adequately carter to the needs of victims for compensation under provisions relating to restorative justice for victims of crime;

- The management and control of prisons should be removed from the exclusive legislative list to the concurrent legislative list in order that state governors and the Chief Judges of the states will have input in the entire criminal justice process in their states;
- The Nigerian Correctional Service should be adequately funded to enable it to administer the services of the non-custodial forms of sentencing.
- In addition to this, there should be an external audit on the utilization of the funds released to the Correctional centre for the management of detainee's welfare;
- It is important to have avenues for periodic interface and engagement between the ACJMC and state monitoring committees which would help to encourage experience sharing, enhance understanding of their workings, challenges as well as provide mentorship and guidance for effective delivery of their mandate;
- CLEEN Uwazi Web application (available here) for tracking and documentation of corruption/financial crime cases shows the trends in the application of the ACJA/ACJL in the courts and can aid detailed legal analysis of case trends since the inception of the ACJA or the ACJLs of states; and
- Continuous capacity building for policing actors, judicial officers and other cadre of officers with responsibilities under the Act is sine qua non for the effective implementation.

The CLEEN Foundation (formerly known as Centre For Law Enforcement Education) is a Non-governmental Organization established in January 1998 with the mission of promoting public safety, security and accessible justice through the strategies of empirical research, legislative advocacy, demonstration programmes and publications, in partnership with government, civil society and the private sector. CLEEN in partnership with MacArthur Foundation is presently executing a project aimed at digitalizing courts proceedings in Nigeria with a view to promoting accountability and transparency in the fight against corruption. The project also monitors cases of corruption vis a`vis the implementation of the ACJA 2015 through a web-based platform. The project's goals seek to make information on corruption and accountability easily accessible (online and offline) to legal practitioners, law enforcement agencies, judges, prosecutors, defendants, government agencies responsible for the administration of criminal justice and civil society organizations working for justice sector reforms, legal scholars and researchers. This project is being implemented in eight focal states in Nigeria (FC.T, Lagos, Ondo, Ekiti, Oyo, Anambra, Enugu and Kaduna) with the working group committee drawn from the relevant criminal justice agencies as part of the group in the eight states. Quarterly meetings are held in the project states and critical issues or emerging trends and solutions arising from the application of ACJA/ACJL in the states are garnered & portrayed in this policy brief.

THE POTENTIAL OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (2015) TO BOLSTER THE FIGHT AGAINST CORRUPTION

Context

- The high expectations that heralded the passage of the Administration of Criminal Justice Act (2015) five years ago has remained largely unmet, as the expected improvements in the efficiency, effectiveness and transparency of the criminal justice system has not been actualized in the government declared fight against public corruption within and outside the Justice sector.

Key Messages

- Wide disparities in the differing 29 state versions of Administration of Criminal Justice Laws has created a position of dissonance as regards the implementation of the law;
- The innovative provisions in ACJA on expeditious completion of trials have largely not stopped some lawyers and litigants from finding ways to cause superfluous delays in the hearing of corruption cases;
- There is urgent need for Chief Judges of the 29 states that have successfully adopted the law to create adaptive practice directions, rules of court, sentencing guidelines and other frameworks to guide the smooth implementation of the Act in their respective states; and
- Absence of detailed frameworks guiding plea bargaining process in most states have led to ostensible abuse of the process in cases involving high worth persons and politically exposed defendants.

Audience

- Legal practitioners, policing actors and those responsible for justice administration, Judges, Prosecutors, Defendants, Civil society organizations working for justice reforms, Legal scholars and Researchers.

BACKGROUND

Five years after the passage of the Administration of Criminal Justice Act (ACJA) (2015), the fight against corruption in Nigeria has shown quantitative improvement in the number of cases successfully prosecuted and concluded. In principle, the ACJA significantly alters the criminal justice process by improving efficiency, transparency and effectiveness in justice delivery. Since the passage of the law, its impact has been largely cosmetic as reported cases of corruption continues to define not only the Justice sector but the entire governance space in Nigeria[6]. Essentially, the passage of the law has done little to ease the old ills the criminal justice system in Nigeria. Ranging from poor and untimely justice delivery, poor case management, unnecessary delays in the

6 Former Chief Justice of Nigeria, Honourable Justice J Walter Nkannu Samuel Onnoghen was suspended from office on January 25, 2019 on allegations of corruption.

adjudicatory process, inadequacy of skilled and qualified personnel, judicial corruption, human rights abuses, lack of modern information technology and weak coordination and cooperation amongst criminal justice institutions. According to the 2019 Transparency International Corruption Perceptions Index, Nigeria ranked 146 out of 180 polled nations on the prevalence of corruption[7], a position that showed Nigeria's worsening corruption perception. This Policy brief aims to examine relevant provisions in the ACJA that are central to the nationally declared fight against public corruption, issues arising from their implementation and proposed recommendations.

In order to monitor the implementation of the ACJA in relation to tackling issues of corruption, the CLEEN Foundation developed the Nigeria Court Digitization project. This project aims to digitize court proceedings in Nigeria, thus improving access to key court documents that can be used in the fight against corruption. Currently the digital web platform- Uwazi[8]-warehouses over 520 court documents, inclusive of cases and judgments on corruption matters in Nigeria. CLEEN Foundation expects this project to achieve the following objectives:

- Greater awareness of the implementation of the ACJA among Nigerians: Through this project, citizens will gain knowledge and awareness on the prosecution of corruption and financial crime cases and the application of the ACJA in the disposal of such cases. A study of each case affords the researcher the knowledge of the unique peculiarities that promote or discount the implementation of the ACJA.

- Improved implementation of ACJA through analysis of cases and trends: A credible platform that improves access to these documents will allow experts to assess legal analysis of cases and their trends in the application of the ACJA.
- Increase in successful prosecution of corruption cases: Improved access contributes to the wealth of legal jurisprudence, especially relating to prosecution of corruption cases.

RELEVANT ANTI-CORRUPTION PROVISIONS OF ADMINISTRATION OF CRIMINAL JUSTICE ACT

A. Speedy dispensation of cases

A. Daily adjournments

The Act makes elaborate provisions aimed at ensuring that criminal cases are expeditiously disposed of. To this end Section 396(3) of the Act provides that criminal cases shall be tried on a daily basis. Where day to day trial is impracticable, the Act provides that parties shall be entitled to only five adjournments each. The interval between each adjournment, according to the Act, shall not exceed two weeks (14 days) each. Where the trial is still not concluded, the interval for adjournments will be reduced to seven days each. The Court is also entitled to award cost against frivolous and unnecessary adjournments.

KEY ISSUES: Putting in perspectives the workload of judicial officers, apparent shortages in the number of available judges and the lack of support infrastructure, it is almost impossible to undertake the demands of this section.

7 https://www.transparency.org/files/content/pages/2019_CPI_Report.
8 https://cleen.uwazi.io/en

The reports coming from CLEEN court observers indicate that there is clearly no day-to-day adjournment of cases as required by the law. Most judges do not abide by the provisions of the law, as such the matter cannot be concluded within the stipulated time frame. There is a developing school of thought amongst Jurist and judges on the effective interpretation of this law using the mischief interpretation rule, where "day-to-day trial" as discussed above is interpreted as trial proceeding from one date of adjournment to the next date of adjournment (i.e., 2nd March-16th March) as against the popular believe of trial progressing from one day of the week to the next day of the week (i.e. Monday-Tuesday-Wednesday-Thursday). The former interpretation has been argued to favour the effective implementation of this innovative aspect of the law as daily trial of cases from day-to-day of the week is practically impossible except in certain exceptional, peculiar or non-complex cases.

Some states in the process of adopting the law have expunged this section, such as Ondo and Ekiti States, while others have adapted it fully or partially while still struggling to implement. Quite obviously, an attempt by some judges to stick with the provisions of the law has been met with a lot of resistance especially from defence lawyers. With the rising argument in favour of specialized courts for the trial of corruption cases in Nigeria, this objective of the ACJA targeted at speedy dispensation of cases can be achieved, although with cautionary measures put in place to allow for equity and ensure justice is manifest in the application and implementation of the law.

RECOMMENDED SOLUTION: The ACJA, 2015 can be reviewed and amended to reflect a proper definition of daily adjournments or day-to-day adjournments in its interpretation section, as the literal definition of daily adjournment is not always practicable under the given prevailing realities.

i. Detention time limits

The ACJA contains specific time frame for detention or remand orders. Under Section 296 of the ACJA, 2015, a remand order made by the court shall not exceed a period of fourteen days (14) in the first instance. The court may make an order for further remand not exceeding a period of fourteen days, on application in writing, showing good cause why the remand order should be extended. After the expiration of the extended 14-day remand period, the court is expected to make an order for the release of the suspect except good cause is shown why there should be further remand which shall not exceed 14 days. After the expiration of the further order, the court is now expected to issue a hearing notice to the IGP or the COP to give reason why the person so detained should not be unconditionally released.

KEY ISSUE: This innovative aspect of the law is commendable but lacks full implementation. Most Judges and Magistrates do not take recourse to the time limits set by the law in granting remand orders. This has contributed in no small measure to prison congestion & protracted delays in the hearing of corruption and financial crime cases.

RECOMMENDED SOLUTION: The Nigerian Bar Association and all lawyers should be more pragmatic in the handling of their cases to ensure this provision is implemented.

Chief Magistrates should ensure judicious visitation and inspection of detention centres as provided in section 34 of the ACJA, 2015 to ascertain the conditions of awaiting trial inmates in detention, particularly those who have overstayed the required time limit.

ii. Framework for Plea Bargain

Due to the nature of Plea bargain proceedings and the tendency for corrupt politicians under prosecution to exploit same, certain guidelines have been outlined in the law to ensure the proceedings are not abused or subjected to the whims and caprice of the Prosecutor or the defence counsel. Plea bargaining is one of the tools employed in the Criminal Justice System to manage caseloads and quick resolution of cases. Essentially, it reduces the workload of the Prosecutor and helps the State save its resources. Plea bargain is a situation in which the defendant pleads guilty to a charge or a lesser charge in exchange for a lighter sentence. By Section 270 of the Act, a prosecutor is empowered to consider and accept a plea bargain from a defendant charged with an offence, if he is of the view that the plea bargain is in the interest of justice, Public interest, Public policy and to avoid abuse of the legal process. In determining if it is in public interest, the prosecutor must take certain factors into consideration such as: the defendant's willingness to cooperate with prosecution, the defendant's criminal history, the defendant's remorse and willingness to accept responsibility, the prompt desirability to dispose with the case, the likelihood to ground conviction on evidence available, the expense of trial and willingness to carry out restitution, if possible. The prosecutor can only enter the proceedings after due consultation with the IPO, the Victim/representatives, and the defendant. The agreement must be clearly stated in writing and signed between the parties. The presiding judge is excluded from participating in the agreement but shall ensure the correctness and voluntariness of the process.

KEY ISSUE: Although the provisions for Plea Bargain in the Act are considerably generous and rewarding for the state, there are arguments that the process is susceptible to exploitation by some corrupt politicians and Nigerians with resources. As observed by CLEEN court observers besides the high-profile corruption cases, other financial crime cases get resolved through plea bargain proceedings, as in the case of - FRN Vs Taiya Saheed Adubu (Decided 17 November 2017) and FRN Vs Godswill Ilojeme (Decided 20 February 2019). The cases also observed reveal that absence of clear practice guidelines in most states to direct the application of plea bargain proceedings may have led to abuses and serious discrepancies in the process.

RECOMMENDED SOLUTION: Practice directions and Guidelines for plea bargain proceedings should be drafted alongside the ACJ laws of the states to guide the proper application of the provisions of the law.

iii. Prohibition of Stay of Proceedings

In furtherance of fast-tracking the course of justice, the Act has made a daring innovative provision to bar the stay of proceedings. Section 306 of the Act provides that an application for stay of proceedings in respect of a criminal matter before the Court shall not be entertained. This provision is targeted at prohibiting stay of proceedings pending the determination of an interlocutory appeal as the application of stay of proceedings was

previously frequently resorted to and thus abused and used as a delay tactic by defence counsels to by time on the case and as a result occasion an unnecessary delay in the hearing of the case.

KEY ISSUE: Despite this laudable provision, some appellate courts still grant application for stay of proceedings. In the case of the former Senate President, Dr. Bukola Saraki, a stay of proceeding was granted. However, in another Case: FRN Vs Dr. Orji Uzor Kalu. The Federal High Court in Lagos on 20 September 2018, dismissed applications seeking stay of proceedings in the trial of the former Governor of Abia State, Orji Uzor Kalu, for alleged N7.6bn fraud. Indeed, interlocutory appeals and stay of proceedings were instrumental to how the criminal trials of former governors of Abia, Taraba and Plateau states, Orji Kalu, Jolly Nyame and Joshua Dariye respectively were delayed for about 8 years before the cases resumed in 2016. Justice Ibrahim N. Buba of the Federal High Court, Port Harcourt, had in 2009, given a perpetual injunction restraining security agencies including the EFCC from investigating Odili (former River's state governor) and others over financial crimes. 13 years down the line, the appeal against the injunction is still pending before the Supreme court. Without an iota of doubt these issues frustrate the intention of the fore-going ACJA provision to make for speedy dispensation of cases.

RECOMMENDED SOLUTION: Judges that preside over corruption/financial crime cases should make a conscious and continuous practice of applying provisions of the law in the interest of delivering justice timeously and be undeterred by politically exposed personalities and high worth individuals in a bid to thwart the course of justice. Monitoring committees such as COTRIMCO and ACJMC should ensure close monitoring that reflects the level of implementation of this provision. These Committees should be set up also at the state level to monitor the implementation of the law in the states that have adopted the Act. The courts of superior records should dismiss frivolous appeals brought by way of stay of proceedings to resolve interlocutory issues.

iv. Abolishment of De novo cases

The law in Section 396(7) expressly permits a Judge elevated to the Court of Appeal to return to the high court to conclude the partly heard criminal cases in their dockets. The rationale behind this provision is to prevent re-assignment of cases, especially corruption cases to other judges, in which case trials will begin de novo(afresh) thus leading to an overarching stretch of time in the prosecution of such cases. The ills of beginning trials afresh are known in the judicial parlance, as most witnesses would either have lost freshness of memory on facts or may be unwilling to re-testify especially in very sensitive cases.

KEY ISSUES: There is no effective monitoring, to ascertain if the Judges elevated to appellate courts have returned to finish up the partly heard cases they handled prior to their elevation. Due to the enormity of the task involved, as the law requires such judges to assume their new duties in the higher courts as well as continue to sit over the unfinished cases at the lower court, most lawyers are divided on the practicability of this section of the law. However, in practice some Judges (such as Justice Mohammed Idris) who handled high profile cases and got elevated, took the bull by the horns, to return to

the lower courts to continue hearing the cases they handled prior to their elevation.
RECOMMENDED SOLUTION: Effective Monitoring is needed to underscore the level of implementation. The ACJA, 2015 should be reviewed and possibly amended to make adequate provisions for the modalities of continuation of cases by judges who have ascended to higher courts, particularly in view of their resumption of duty at the superior court. Court practice directions are proven to be helpful in this regard.

B. Witness protection

Section 232 of the Act allows witnesses to some offences to give their testimony in Camera. Offences such as: Sexual Offences, Terrorism offence, trafficking in persons offence, Economic and Financial Crime offences, any other offence which an Act of the National Assembly will permit the use of such protective measures. Under this provision, the name or identity of the victims or witnesses to such offences shall not be disclosed in the record or report of proceedings. The court may take any of the following measures to further protect the identity of the victim/witness where necessary: Accepting evidence through video link, accepting written deposition of expert evidence, permitting the masking of the witness. Any other measure considered appropriate. These protective measures are apt to secure the protection of witnesses to corruption/financial crime cases especially in high profile corruption cases.

KEY ISSUE: Most Judges and lawyers are not maximizing this provision of the law to ensure witness protection in High profile cases or sensitive financial crime cases.

RECOMMENDED SOLUTION: The State laws that are being drafted should clearly stipulate provision of funding for witness protection. Chief Judges in states that have passed the law should factor-in funding for witness protection in the annual budgetary provisions for their courts. Judges should be more proactive to exploring some of the innovative provisions on witness protection such as accepting evidence through a secured video link.

C. Humane treatment of an arrested person

The ACJA reiterates the constitutional provision of the right to dignity of person. Section 8(1) of the Act provides that: a suspect shall be accorded humane treatment, having regard to his right to the dignity of his person and not be subjected to any form of torture, cruel, inhuman or degrading treatment.

KEY ISSUE: In practice, there are allegations of inhumane treatment of arrested suspects by some law enforcement agencies, the EFCC, DSS and the Police. The cases of Olisa Metuh and Dino Melaye come to mind.

RECOMMENDED SOLUTION: Visitation of Detention centres by Chief Magistrates and Judges as provided in Section 34 of the ACJA, 2015. Continuous training of law enforcement officers on the provisions of the law. (The ACJA & the Anti-torture Act).

D. Mandatory inventory of property

Section 10 of the ACJA states that a police officer making an arrest or to whom a private

person hands over a suspect, shall take an inventory of all items or properties recovered from the suspect. The inventory must be duly signed by the police officer and the suspect, where any property has been taken from a suspect under section 10 of the Act and the suspect is not charged before a court but is released on the ground that there is no sufficient reason to believe that he has committed an offence, the property taken from the suspect shall be returned to him, provided the property is neither connected to nor a proceed of crime.

KEY ISSUE: The intention of this section has not upheld as there have been problems of transparency and accountability in the implementation of this Section by the arresting officers.

RECOMMENDED SOLUTION: Effective and sustained monitoring to ensure that returns on reports expected from law enforcement such as police are submitted at the stipulated time under the Act.

E. Attachment of Property of Suspect absconding

Where a public summons has been issued by the Court against a suspect absconding from the execution of a warrant of arrest as provided in Section 41 of the Act, and such suspect still fails to appear before the court, Section 80 empowers the Court to make an order authorizing a public officer to attach the movable or immovable property of such suspect. Where the suspect appears before the Court within one year of the attachment of his property, the property may be restored to him, if not the court is empowered to dispose of the property by way of sale and the proceeds of the sale forfeited to the federal or state government as the case may be.

KEY ISSUE: The key issue with this practice of attaching properties of suspects is that more often than not the properties so attached if they are not returned to the suspect, are not well accounted for. Again, there is insufficient transparency and accountability on how much is being forfeited to the federal or state government.

RECOMMENDED SOLUTION: Accountability and Transparency efforts of CSOs as well as effective monitoring by the Monitoring Committees should be extended to capture results in this regard.

F. Search of Premises

Section 12 of the ACJA empowers a police officer acting under a warrant of arrest or having authority to arrest to search with a warrant a place wherein a suspect sought to be arrested is suspected to be. Apart from this provision, a search warrant is required for search of premises like in the other legislations. The application for a search warrant is done by a police officer carrying out an investigation. The ACJA authorises a court or a Justice of the Peace to issue search warrants in circumstances provided for under the Act. Which include upon information on oath and in writing. The procedure for the execution of a search warrant as provided by the ACJA is similar to that in the other legislations save that the ACJA prescribes that a search warrant can be executed at any time on any day. More so, the ACJA makes similar provisions with the CPC as regards

execution of the search warrant in the presence of two respectable inhabitants, and as regards consideration of women in purdah when searching a place.

KEY ISSUE: There are certain general rules provided which must be complied with when conducting a search as failure to comply, may lead to a discharge of a criminal or punishment of an innocent suspect during trial. Where a search is to be conducted on any premises, the officer conducting the search must have a search warrant. Failure to obtain a warrant makes the search unlawful. In the course of investigating suspected corrupt public officers, reports have it that some premises were searched at very odd hours and without evidence of a search warrant. The general rules are not strictly followed by some law enforcement officers. An exception to this rule is where a person to be arrested is suspected to be within a particular premise such apartment or premises may be searched for purposes of having him arrested. The occupant of the place or any person on his behalf must be present at the search and must, receive a copy of the list of things seized there, signed or sealed by the witnesses, if any.

RECOMMENDED SOLUTION: More law enforcement officers need to be trained and retrained on the provisions of the law especially with regard to the due procedure for conducting searches on persons and premises. Citizens also need to be sensitised on the provision of the law and their rights in this respect.

Special Considerations for Advocacy and Policy Changes

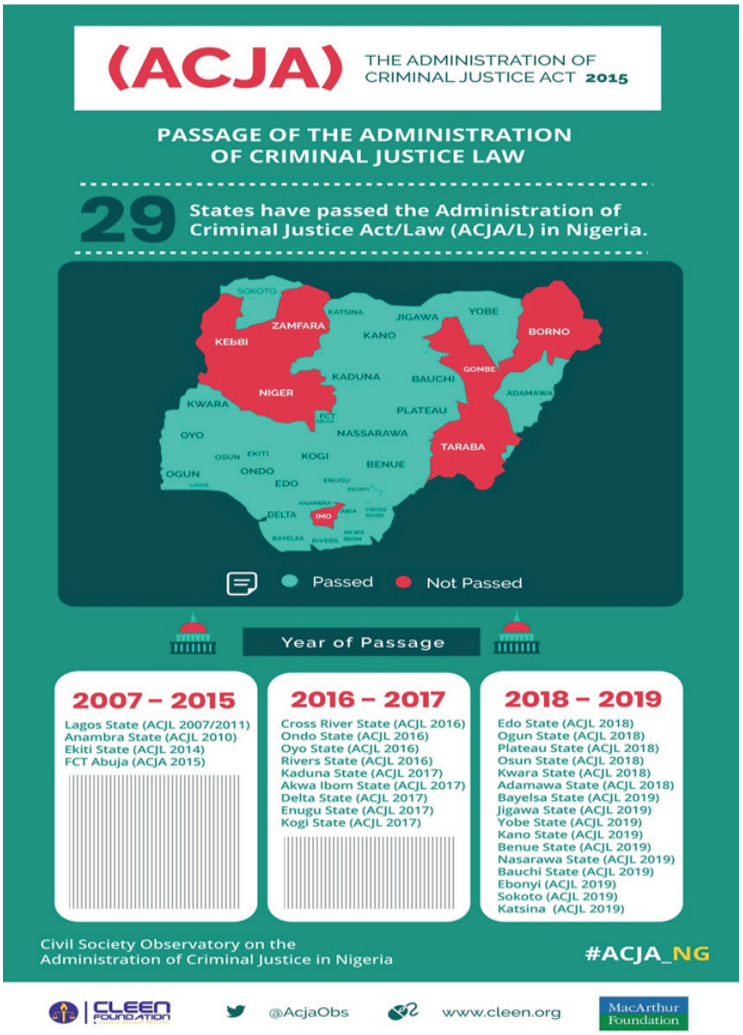
1. Setting up special Courts for corruption cases

Towards the speedy dispensation of corruption cases, the former Chief Justice of Nigeria, Walter Oonoghen gave a directive for the establishment of specialized courts to try corruption cases. The former state governor of Lagos state, Justice Opeyemi Oke took this up and set the pace to inaugurate four special courts to solely hear corruption cases. Most financial crime cases pending within the jurisdiction (500) were transferred to the special courts for expeditious hearing. This action by the Lagos judiciary has demonstrated that the fight against corruption cannot be won without the judiciary using the full instrumentality of the law and its powers to fast track the big win over corruption in Nigeria. In addition to this, the former Chief Justice, Walter Oonoghen, inaugurated the Corruption and Financial Crime Cases Trials Monitoring Committee, (COTRIMCO) to monitor causes of delay and report on the progress made in the speedy dispensation of corruption cases in Nigeria. The designated courts being monitored by COTRIMCO has delivered about 354 corruption judgments or more in the last two years. As initiated by former Chief Justice of Nigeria and exemplified by Lagos state, more state Chief Judges should consider setting aside some courts to be designated as special courts to try corruption cases.

2. Domestication of the ACJA, 2015

Since the inception of the Act in 2015, 29 out of the 36 states of Nigeria have domesticated the Act. While this is commendable, it is paramount for the states that are yet to domesticate the law to take a united approach in embracing the gains of the ACJA by proactively moving for its full adoption in their state, as a partial adoption may not guarantee judicial reform or the full rewards of the Act. It is expected that the judiciary

will take the lead in ensuring implementation and enforcement of the provisions of the Act, however this is not the case. Reports abound of errant judicial & public office holders who prefer to maintain the status quo and as such have resisted the innovations proffered by the advent of the ACJA.



Summary of Key Findings

- Lack of a uniform and speedy application of the law across the federation: Out of the 29 states that have adopted the law, only a few of the state laws share a near complete semblance to the Principal legislation. Some states have their laws enhanced and well detailed thus leaving no room for gaps as is obtainable with the Act, while others have their law drafted in such a manner that departs from the spirit of the ACJA, thus creating a gap. Examples of innovative ACJ laws which not only reflect the spirit of ACJA but made extra innovative and reformative provisions is the law of Kaduna state, wherein provision is made for Victim-Offender Mediation and early engagement/collaboration between investigators and prosecutors. Another instance is with the Lagos state law, which provides in Section 9(3) & S. 13(3) for the mandatory taking of confessional statement of an accused by way of video recording where the facility for such is available; Another is the Plateau state law, Section 405 of the Law provides that upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial. Section 121 of the Law also provides for

Reward for Supporting Law Enforcement Agencies in the discharge of their duties to protect lives and properties in the society. The lack of speedy application of the law is attributed to a number of factors, from lack of political will, unwillingness by key judicial actors to implement the law, poor funding of the judiciary, corruption among the implementing agencies to low level awareness of the law among the actors.

- Abuse of the Plea Bargain process: Some CLEEN court observers have reported that in some states, where there is no detailed outlined guideline for the Plea bargain process, abuse of the process became inevitable. It was also observed that plea bargains are being adopted in low profile corruption and financial crime cases.[9] Due to the nature of Plea bargain proceedings and the tendency for corrupt politicians under prosecution to exploit same, it is expedient for states that have adopted the law, to come up with plea bargain guidelines to guide the application of the law, and for judges to ensure compliance to the laid down guidelines. There is also an argument that the process seems to favour one economic class over another. [10]

- Absence of special courts to try corruption cases in almost all states of the country: The plethora of corruption cases pending before several high courts and federal high courts of the federation is such that delays in the hearing of such cases will be inevitable if they are to be heard alongside diverse civil and criminal matters. This warrants the setting up of specialized courts as directed by the former CJN to squarely focus on the trial of corruption cases.

- Lack of diligent prosecution of corruption cases by some law enforcement agents: Although the EFCC has been lauded for its passionate pursuit against corrupt officials and diligent prosecution of corruption cases, some EFCC, ICPC and Police prosecutors appear not to be diligent in the prosecution of corruption cases. As observed in the court monitoring at the state level, Judges have expressed desire to see proactive initiatives on the side of prosecutors.

9 *FRN Vs Taiya Saheed Adubu (Decided 17th Nov. 2017 and FRN Vs Godswill Ilojeme (Decided 20th February, 2019*

10 Cases involving Politically Exposed Persons (PEPs) that were determined through plea bargaining corroborates public unease with the application of plea bargaining. Cases usually cited in this regard includes FRN v Tafa Adebayo Balogun & 8 Ors. (where the former Inspector General of Police was convicted); COP v Salisu Buhari (the convict was the former Speaker of the House of Representatives); FRN v Bulama (former CEO of a leading bank in Nigeria) FRN v Lucky N. Igbinedieon (former Governor of Edo State, Nigeria).

POLICY RECOMMENDATIONS

The following recommendations are segmented into actions points for the various arms within our Justice system.

1. The Role of the Judiciary

a) As exemplified by other countries and to institutionalize speedy dispensation of corruption cases, it is pertinent to establish a legal framework for special courts devoted to corruption cases, to be set up across the six geo-political zones of the country.

b) There is need for judges to be proactive in the speedy determination of corruption matters and exploring alternatives to imprisonment as proposed under the ACJA, 2015 (such as parole, community service) as obtainable in other systems.

c) The Nigeria Correctional Service Act which seeks to reform and decongest the facilities hitherto known as the prisons, should be fully implemented by Judges, especially as it pertains to non-custodial sentencing. This will require effective monitoring of detention centres through statutory visitations.

d) The Chief Judges at the states where the ACJA has been domesticated should initiate the drafting of detailed Plea Bargain guidelines to guide the hearing of corruption cases in which plea bargains may be adopted.

e) Chief Judges of states that have successfully adopted the law should create practice directions, rules of court and sentencing guidelines to guide the smooth implementation of the Act in the state.

f) Technology as a tool for aiding advanced case management should be properly incorporated into the courts and the criminal justice system in general.

g) The Role of Civil Society Organisations.

h) Development of a domestication policy to guide states adopting the law(ACJA, 2015) so as to ensure that states in an attempt to tweak the law to suit their justice needs do not depart substantially from the spirit of the law nor deport provisions that significantly reflect the substantive Act in aiding speedy dispensation of justice. (ACJA, 2015)

i) Advocate for a review and possible amendment of some flawed sections of the Administration of Criminal Justice Act (ACJA) 2015.

j) Awareness creation on the ACJA e.g through materials and media.

k) Capacity building of stakeholders for effective implementation. (Media, police, & other practitioners etc)

2. The Role of Law Enforcement and Anti-graft agencies

a) The hierarchy of the several law enforcement agencies should invest seriously in the training and retraining of law enforcement agents (especially the rank and file) to properly and adequately leverage on the positive developments envisaged in the novel provisions of the above stated legal instruments.

b) Strict adherence to the protocol of arrest as enshrined in the ACJA, 2015.

c) Ensuring respect for human rights and humane treatment of suspects held in detention centres.

d) Proper Investigation of cases before launching of arrest.

e) Full compliance to the ACJA, 2015 with regards to search, detention, inventories and remitting of reports.

f) Collaboration with other relevant agencies.

3. The Role of Legislators

a) Due appropriation for witness expenses and other such relevant expenses under the ACJA, 2015 to be included in the budget for the Judiciary.

b) Passage of laws that are not at variance but in accordance with the ACJA, 2015.

c) Due amendment of laws to align with the objectives of the ACJA, 2015.

d) Amendment of the ACJA, 2015 to incorporate necessary adjustment.

The CLEEN Foundation (formerly known as Centre For Law Enforcement Education) is a Non-governmental Organization established in January 1998 with the mission of promoting public safety, security and accessible justice through the strategies of empirical research, legislative advocacy, demonstration programmes and publications, in partnership with government, civil society and the private sector. CLEEN in partnership with MacArthur Foundation is presently executing a project aimed at digitalizing courts proceedings in Nigeria with a view to promoting accountability and transparency in the fight against corruption. The project also monitors cases of corruption vis a`vis the implementation of the ACJA 2015 through a web-based platform. The project's goals seek to make information on corruption and accountability easily accessible (online and offline) to legal practitioners, law enforcement agencies, judges, prosecutors, defendants, government agencies responsible for the administration of criminal justice and civil society organizations working for justice sector reforms, legal scholars and researchers. This project is being implemented in eight focal states in Nigeria (FC.T, Lagos, Ondo, Ekiti, Oyo, Anambra, Enugu and Kaduna) with the working group committee drawn from the relevant criminal justice agencies as part of the group in the eight states. Quarterly meetings are held in the project states and critical issues or emerging trends and solutions arising from the application of ACJA/ACJL in the states are garnered & portrayed in this policy brief.

THE ROLES AND RESPONSIBILITIES OF THE NIGERIA POLICE FORCE UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (2015)

Context

- Five years of implementation of the ACJA's novel provisions have not led to any changes in the experiences of the general public, who have had engagements with men and officers of the Nigeria Police Force. While the Police Force is saddled with enormous responsibilities under the Act, meeting such depends on adequate resourcing and capacity building.

Key Messages

- Police are yet to meet the required professional and human rights standards established under the Act, as arrest, search, detention and evidence collection among others, remain an object of public grievance as evidenced by the last 'End SARS' protests;
- The need persists to develop police capacity around Record-keeping, for criminal administration;
- Police capacity and infrastructure for taking evidence, particularly witness or victim interview infrastructure, requires massive investments.

Audience

- Legal practitioners, Law enforcement agencies and those responsible for justice administration, Judges, Prosecutors, Defendants, Civil society organizations working for justice reforms, Legal scholars and Researchers

Executive Summary

Over the years, reform of criminal justice administration, has engaged attention of policing agencies and critical stakeholders in the justice sector. Ideas have been expressed on the definition/ingredients of crime, penal policy, victim compensation, relationship between the culture of a people and the law of crimes, sentencing, prison system, human rights and the issue of a uniform system of criminal justice. The passage of the Administration of Criminal Justice Act should be seen from these perspectives. The purpose of the ACJA is to ensure efficient management of criminal justice institutions, speedy dispensation of justice, protection from crime and protection of the rights and interests of the suspect, defendant and victim. Unlawful arrest and detention-major problems, resulting in overcrowded police stations and prison facilities-are addressed, by pruning grounds for arrest and subjecting the exercise of power of arrest, to judicial moderation. For example, section 7 of the Act prohibits arrest of family and friends of a suspect in lieu of a suspect. The poor state of the criminal justice system demands judges and lawyers-with a clear sense of law as an instrument of social engineering-take centre stage in reform. Hence, the development of this policy brief, to guide critical policy changes.

What is this Project About and Who is Involved?

CLEEN, in partnership with the MacArthur Foundation, is presently executing a project titled: Promoting Accountability and Transparency in the Administration of Criminal Justice in Nigeria. It is aimed at digitalizing court proceedings and selected cases, in Nigeria, with a view to promoting accountability and transparency in the fight against corruption. The project also monitors cases of corruption, vis-a-vis the implementation of the Administration of Criminal Justice Act, 2015 (ACJA, 2015), through a web-based platform.

The CLEEN Foundation (formerly the Centre for Law Enforcement Education), a non- governmental organization, established in January 1998, has the mission of promoting; public safety, security and accessible justice, through the strategies of empirical research, legislative advocacy, demonstration programmes and publications, in partnership with government, civil society and the private sector.

What Are the Project's Goals?

The project seeks to make information on corruption and accountability easily accessible (online and offline) to its intended audience (indicated above). The project is being implemented in eight focal states in Nigeria (F.C.T, Lagos, Ondo, Ekiti, Oyo, Anambra, Enugu and Kaduna), with the working group committee, drawn from the relevant criminal justice agencies, as part of the group in the eight states. Quarterly meetings are held in the project states and critical issues-or emerging trends and solutions arising from application of ACJA/ACJL-are portrayed, in this policy brief.

What is the Impact of the Administration of Criminal Justice Act/Law?

The Administration of Criminal Justice Act (2015) has created an environment for relevant stakeholders, to engage substantially in the reform process and redefined the aims of the criminal justice system in Nigeria. It has done this by making innovations in arrest, detention and prosecution procedures by police. The innovations have not had necessary impact, due to the fact that it is only the first step, in a line of processes and agencies, long due for reform. For instance, the shortage of trained police Lawyers as prosecutors, poses a great challenge in the implementation of the Act, as most police prosecutors are not trained lawyers and cannot prosecute, in view of the Act. Funding also poses a great challenge, in the implementation of the Act, as most police stations lack the requisite facilities-especially in the areas of recording devices for statements made by accused persons, which will stall implementation of the Act. It is therefore

imperative for both the Federal and State governments to take a pragmatic approach towards bridging implementation gaps by the Nigeria Police, in accordance with the Act. The Administration of Criminal Justice Act is very progressive, timely and in conformity with international best practices. It is therefore the sincere desire that the law will be well implemented to give a justice reform, deserved by all Nigerians.

What are some of the innovations under the ACJA, 2015 vis a vis the roles/responsibilities of the Police?

The ACJA has several improvements to criminal justice, in the realms of procedure and judicial process. The novelties cover arrest to remand and are as follows:

Arrest of Persons in Lieu of Suspects

Innovatively, the Act by virtue of Sections 7 and 8, prevents the arrest of persons in lieu of suspects by the Nigeria Police. In the event of an actual arrest, a suspect is entitled to notification of cause of Arrest and shall be accorded humane treatment, having regard to dignity of his person. This is one of the provisions of the Act that every Nigerian should be grateful for. This is because previously, the police could arrest without a warrant, any person who has no ostensible means of sustenance and who could not give a satisfactory account of himself. This was greatly abused by the police, who used it as a ground to arrest people indiscriminately.

Arrest for Civil Wrong

Before the enactment of the Act, the Police were observed to dabble into civil matters and simple contracts and use their power of arrest, as a weapon to intimidate and oppress innocent Nigerians. However, by virtue of Section 8 of the Act, a suspect shall not be subjected to inhumane treatment, or any form of torture, cruel or degrading treatment or be arrested merely on a civil wrong or breach of contract. This, makes it illegal for the police to arrest persons over civil wrongs and contracts.

Prosecution of Cases by Police Lawyers

The Act, in a bid to encourage professionalism and efficient dispensation of cases, by the Nigeria Police, makes the prosecution of cases the exclusive preserve of Lawyers, by virtue of Section 106 of the Law. This in effect, ensures that Police Personnel who are not Lawyers have lost the right to prosecute. This provision has been said to impliedly suspend Section 23 of the Police Act, which empowers police officers to prosecute matters in court. This section also by extension, overrules the Supreme Court decision, in **FRN v. Osahon (2006) 5 NWLR (Pt. 973).**

Remand Time Limits

Another innovative provision of the Act, is setting in place, a remand limit for suspects in their custody. However, by the provision of ACJA, a suspect shall not be remanded for more than 14 days, at first instance and renewable for a time not exceeding fourteen days where "good cause" is shown. At the expiration of the remand order, if Legal Advice is still not issued, the court shall issue a Hearing Notice to the Inspector General of Police and Attorney General of the Federation (or the Commissioner of Police), or any other authority in whose custody the suspect is remanded. This is to inquire into the position of things and adjourn for another period, not exceeding fourteen days, for the above-mentioned officials to come and explain, why the suspect should not be released unconditionally.

Power to Collect Evidence

Another innovative provision of the Act enables the Nigeria Police to obtain and record evidence. This is evidenced by Section 15(1) of the ACJA (2015) which provides that: with or without a warrant, a police officer or the officer from another agency effecting arrest, upon such arrest and having taken a suspect to the police station, shall record (for the purpose of identification) the suspect's height, photograph, full fingerprint impressions, or such other means of his identification.

Record of Arrest

Sections 15 and 16 of the Act, clearly provides that a police officer making arrest, shall cause to be taken, the full particulars of the arrested person. The full particulars shall contain, the alleged offence, the date and circumstances of his arrest, full name, occupation and residential address, his height, his photograph, his full fingerprints or such other means of identification. The recording of the information shall be concluded within a reasonable time but not exceeding 48 hours.

Establishment of Central Criminal Record Registry

By virtue of Section 16 of the Act, The Nigeria Police Force shall establish a central criminal record registry. The State or Federal Capital Territory Police Commands, shall ensure that the decisions of the courts in all criminal trials, are transmitted to the Central Criminal Records Registry within thirty days of such judgment.

Statement of Arrested Persons

Section 17(2) of the Act provides that if a suspect arrested by the Police, volunteers to make a confessional statement, it shall be in writing and may be recorded electronically on a retrievable video compact disc or such other visual means. Arrested persons should be recorded in the presence of a Legal practitioner of his choice, officer of Legal Aid Council, official of a Civil Society Organization, a Justice of the Peace or any other person of his choice, provided that the person will not interfere. Section 15 of the Act further stated that: where a suspect does not understand or speak or write English language, an interpreter shall record and read over the statement to the suspect to his understanding and the suspect shall endorse it, while the interpreter attests to the recording.

Quarterly Report of Arrest to the Attorney-General

Section 29 of the Act provides that the Inspector-General of Police 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. The Commissioner of Police in a state, shall remit 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. The report shall contain the full particulars i.e., the alleged offence, the date and circumstances of the arrest, the full name, occupation and residential address, height, photograph, full fingerprints, or such other means of identification.

Monthly Report of Arrest to Supervising Magistrates

Another innovative feature of the Act, can be found in Section 33, which provides clearly that the Officers in charge of a Police Station (or an official in charge of an agency authorized to make arrest), on the last working day of every month, shall report to the nearest Magistrate, the cases of suspects arrested without warrant, within the limit of his jurisdiction whether or not the suspects have been admitted to bail. The Officer in charge of a Police Station, is to provide the full record of arrest and record of bail, applications and decision on bail made within the period to the visiting Magistrate and any other facility the Magistrate requires in exercising his powers. The report shall contain full particulars i.e., the alleged offence, date and circumstances of arrest, full name, occupation and residential address, height, photograph, full fingerprints or such other means of identification. Furthermore, at least every month Chief Magistrate's (or where there is no Chief Magistrate within the Police Division), are expected to conduct an inspection of Police stations or other places of detention, within the territorial jurisdiction other than the prison. During the visit, the Magistrate may call for and inspect the records of arrest, direct the arraignment of a suspect, where bail has been refused, grant bail to any suspect where appropriate-if the offence for which the suspect is held is within the jurisdiction of the Magistrate.

Search of Arrested Persons

Section 9 of the Act provides that where a suspect is arrested by a police officer or a private person, the officer making the arrest (or to whom the private person hands over the suspect): (a) May search the suspect, using such force as may be reasonably necessary for the purpose; and, (b) shall place in safe custody, all articles (other than necessary wearing apparel) found on the suspect. Where it is necessary to search a suspect, the search shall be made decently and by a person of the same sex, unless the urgency of the situation-or the interest of due administration of justice-makes it impracticable for the search to be carried out, by a person of the same sex.

Search Warrants

The Act provides the following innovations, in search exercises performed by the Nigeria Police, in the below named sections. With respect to Section 13 of the Act, a police officer or any other person authorized to make an arrest, may break out of a house in order to liberate himself or any person who, having lawfully entered for the purpose of making an arrest, is detained in the house or place. However, in Section 147, a search warrant may be directed to one or more persons and, where directed to more than one, it may be executed by all or by one or more of them. Section 148 clearly provides for the duration a search warrant can be issued and executed "[A]ny time on any day, including a Sunday or public holiday". While Section 150 ensures that the occupant of a place searched by the Police, or some person on his behalf, shall be permitted to be present at the search and shall, if he so requires, receive a copy of the list of things seized there, signed or sealed by the witnesses, if any.

Policy Recommendations

- The Inspector General of Police and respective state Commissioners of Police should ensure stricter measures are adopted to facilitate submission of quarterly reports of their work under the Act, to the office of the Attorney-General.
- There should be effective synergy amongst all criminal justice actors (Police, Judiciary, Correction Service, ACJMC) etc., for speedy dispensation of justice.
- Domestication of ACJA in all the states of the federation, to enable the Police uniformly implement the act across the country.
- Immediate recruitment of Lawyers into the police force to boost the number of prosecutors, which will aid effective and diligent prosecution of cases.
- Capacity building of all Police Personnel on the provisions on extant human rights legislation as ACJA, Anti-torture Act and the Police Act (2020).
- Implementation of the Police Trust Fund Act to enable the Police stations and detention centres be more conducive, for more suspects.
- Increased/improved funding for police equipment's which will aid the speedy.
- Revamping of already existing curriculum in the police training colleges, in light of new human rights legislations.
- Urgent completion of the Central Criminal Records system.
- An improvement and enhancement of documentation practices by the Police (Defendant statements, Confessional statements, Reports by IPO's, etc.).

THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (2015): PERSPECTIVES ON GENDER AND VULNERABLE GROUPS

Context

- The rights of women, children and vulnerable persons, generally, have hitherto, not received adequate protection, nor regard from colonially inherited substantive and procedural, criminal law. The ACJA (2015), attempts-though not perfectly-to remedy the foregoing, through modern provisions that provide more equality and protection, for these groups.

Key Messages

- The ACJA improves the amount of protection of vulnerable persons (though Sentencing of Children appears retributive, instead of being restorative);
- Autonomy, privacy and dignity of women is better recognized;
- Victim compensation, for sexual offences, is articulated more clearly;
- Protection of Children (in matters of giving evidence and detention), is improved;
- Implementation and Ignorance of the provisions of the Act (by the Police), are recurring issues;

Audience

- Legal practitioners, Law enforcement agencies and those responsible for justice administration, Judges, Prosecutors, Defendants, Civil society organizations working for justice reforms, Legal scholars and Researchers

Executive Summary

The purpose of this Policy brief is to examine and review the novel provisions of the Administration of Criminal Justice Act (2015) with a special focus on provisions relating to women and children. While it commends the provisions of the Act, that recognizes women as competent witnesses, ability of women to act as sureties and prohibition of arrest of women in lieu of their relatives, amongst other provisions, it also highlights some of the drawbacks of the Act, in this respect and proposes the way forward. For children, the Act is commended for its clear definition of a child, protection of child offenders/ witnesses, among others. This Policy brief underpins a theory of change, regarding effective mainstreaming of gender, in the administration of criminal justice via implementation of the Act. It posits that if the Act is effectively and fully enforced, the rights of women and children will be better protected. It however highlights certain gaps and proposes a review of the Act to fill them. It additionally recommends that, the objectives of the Act will be considerably realized, with the introduction of subsidiary rules to standardize practice and protocols in criminal proceedings and the State should be willing/ready to fund implementation of the Act, as implementation is cost effective.

What is this Project About and Who is Involved?

CLEEN, in partnership with the MacArthur Foundation, is presently executing a project titled: Promoting Accountability and Transparency in the Administration of Criminal Justice in Nigeria. It is aimed at digitalizing court proceedings and selected cases, in Nigeria, with a view to promoting accountability and transparency in the fight against corruption. The project also monitors cases of corruption, vis-a-vis the implementation of the Administration of Criminal Justice Act, 2015 (ACJA, 2015), through a web-based platform.

> The CLEEN Foundation (formerly the Centre for Law Enforcement Education), a non- governmental organization, established in January 1998, has the mission of promoting; public safety, security and accessible justice, through the strategies of empirical research, legislative advocacy, demonstration programmes and publications, in partnership with government, civil society and the private sector.

What Are the Project's Goals?

The project seeks to make information on corruption and accountability easily accessible (online and offline) to its intended audience (indicated above). The project is being implemented in eight focal states in Nigeria (F.C.T, Lagos, Ondo, Ekiti, Oyo, Anambra, Enugu and Kaduna), with the working group committee, drawn from the relevant criminal justice agencies, as part of the group in the eight states. Quarterly meetings are held in the project states and critical issues-or emerging trends and solutions arising from application of ACJA/ACJL-are portrayed, in this policy brief.

What is the Impact of the Administration of Criminal Justice Act/Law?

The Administration of Criminal Justice Act, 2015 (also known as the ACJA) is mentioned as a progressive piece of criminal legislation, owing to its novel and revolutionary nature. Since its inception in May, 2015, several scholars, legal minds and commentators have underscored and amplified its innovative provisions and potential, to transform administration of criminal justice in Nigeria, in line with its major aim; quick dispensation of justice. Several ills and gaps, contained in previous legislative enactments on the administration of criminal justice, were addressed by the Act. Thus, aligning Nigeria's criminal legislation with international Criminal law and international protocol/treaties, on human rights. The purpose of the Act, among other things, 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 society from crime and protection of the rights of the suspect, the defendant, and the victim.[6]

6 See Part 1, Section 1 of the Act.

What are some of the Provisions of the ACJA (2015) vis-à-vis Gender Perspectives?
Recognizing the need to legally provide for better remedies to victims of crime, including rape and other sexual offences and also protect victims and their witnesses in course of trial, the ACJA (2015) has made the following provisions which were hitherto, unavailable in our criminal justice system. The Policy brief thus examines below, major gender related provisions in the ACJA (2015) and key issues to be addressed, to ensure effective actualization of the intent of the law and objectives of the Act..

Provisions Relating to Women

Section 7 of the ACJA (2015) succinctly provides that a person shall not be arrested in place of a suspect; this is a prohibition of arrest in lieu (meaning that a person cannot be arrested in place of another). Accordingly, this provision of the ACJA is intended to halt the usual practice of Police officers arresting wives, girlfriends, children and mothers in lieu of their husbands, boyfriends, fathers and sons, when they cannot be found, even when they are not linked in any way to the alleged crime.

Key Issues: The trend of arresting women or children, in lieu of their family members or relatives is still being practiced by police, particularly in states that are yet to domesticate the ACJA (2015). Again, due to low-level of knowledge of the law, amongst law enforcement personnel, especially Police, some officers are still unaware of provisions of the law in this regard, albeit that the state in which they operate, has domesticated the Act.

Search of Persons

The ACJA empowers Police to search arrested suspects, using such reasonable force necessary for the purpose, as codified in Section 9 of the ACJA. Section 9(3) of the Act provides that "the search of a suspect shall be made decently and by a person of the same sex". With reference to women, this is a positive development, as it ensures that a woman is searched only by another woman, decently. However, the Act made the following exception, in sub-section (3): "unless the urgency of the situation or the interest of due administration of justice makes it impracticable for the search to be carried out by a person of the same sex". Furthermore, Section 12 of the Act, provides that where a suspect enters a house, or place where a woman occupies and where such woman, by custom or religious practice does not appear in public, the person making arrest shall, before entering the house, give notice to the woman that she is at liberty to withdraw and afford her opportunity and facility for withdrawing, but notice shall not be necessary where the person making arrest is a woman. This is also another area where the Act exhibits respect for women and a desire to protect female decency and privacy. Of further relevance is Section 466 of the Act which provides that the supervising officer in respect of a female convict shall be a female. These provisions are all geared towards protecting the privacy of women and ensuring their dignity.

Key Issues: This provision has been abused, as arresting male officers tend to rely on the exception in sub-section (3) of section 9, even when the exceptions do not apply, in order to effect an arrest on female suspects. Some of these officers also do not maintain decency when effecting this arrest. Lack of awareness of this right (both on the part of Police and female suspects) is also an issue.

Sureties

Section 167 of the ACJA (2015) provides that a defendant released on bail may be required to produce surety/sureties. The ACJA (2015) under Section 167(3) expressly provides that "a person shall not be denied, prevented or restricted from entering into a recognizance or standing surety for any defendant on the ground that the person was a woman". Section 167(3) of ACJA (2015) is carefully worded and leaves no one in doubt as to what the intent of the law is. The Act took cognizance of the travails most women go through, when attempting to secure bail of their loved ones and has removed discrimination against women on grounds of sex. This discrimination which is a violation of Section 41 of the Constitution had gone on unchecked, for years. It is therefore commendable that the ACJA (2015), boldly settled the issue, by inserting gender sensitive provisions. This is one of the most esteemed provisions of the Act, as it concerns its gender awareness, in the administration of justice.

Key Issues: While this innovative provision of the law is a welcome development, concerns have been expressed by some legal scholars, that this right could be abused. There have, therefore been calls for an amendment, to provide an exception for spouses not to stand as sureties for each other; especially where potential interests could easily be established.

A Woman's Right to Buy and Own Property in Her Name

Section 191 of the Act, 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 proceeding, for the protection and security of her person (or her own separate property), as if such property belonged to her as an unmarried woman. It is admirable, to note that the provision refers to 'a woman who has contracted a valid marriage' and not just a statutory marriage. This provision thus applies to all valid marriages, statutory and customary, unlike the case under Section 148, of the Criminal Procedure Act which limits the marriage to that contracted under English law or the Marriage Act i.e., monogamous marriage. The ACJA has removed that limitation and recognizes marriage under English and customary laws.

Key Issues: Inadequate sensitization on the provision, as most people especially women, are not aware of the existence of this peculiar provision of the Act.

Women as Competent Witnesses

The law provides that a husband and a wife, shall be a competent and compellable witness in any proceedings taken under Section 191 of the ACJA and in accordance with provisions of the Evidence Act (2011). Thus, in any criminal proceedings for protection and security of her person or her own separate property, a wife is a competent and compellable witness. This is very commendable as the dignity of a woman as a competent witness, especially as it concerns her person and property, is guaranteed.

Key Issues: Inadequate sensitization on the provision, as most people especially women, are not aware of the existence of this peculiar provision of the Act.

Witness Protection

Witness Protection was decisively addressed in Section 232 of the ACJA, wherein a wide range of circumstances in which the witness should be protected, was clearly outlined. Section 232 of the ACJA permits witnesses to some offences, to give evidence in camera. These include "sexual related offences, … trafficking in Persons and related offences …". Under this provision, "the name and identity of the victims of such offences or witnesses, shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witnesses with a combination of alphabets". It further provides that "where … the court determines it is necessary to protect the identity of the victim or a witness, the court may receive evidence by video link, permit the witness to be screened or masked, receive written deposition of expert evidence or any other measure that the court considers appropriate …".

In Section 232(4), offences to which the section applies, include but are not limited to: rape, defilement, incest, and unnatural or indecent offences against persons. The section also applies to trial of offences under the Trafficking in Persons Law, which includes sexual exploitation and other related offences. This provision protects victims of sexual crimes, who are mostly women and children and who-because of the nature of the crime-are often reluctant to come out publicly to testify, for fear of ridicule and shame. Strict application of the above provisions of the ACJA, Violence Against Persons Act, Child Rights Act and other similar provisions, will create a sense of security for victimized persons and provide the enabling environment for the entire society, especially victims of sexual violence and witnesses, against the crime and seek justice.

Key Issues: The Act in Section 251 provides that when a person attends court as a state witness, he shall be entitled to payment of reasonable expenses, as may be prescribed but fails to state who will pay these expenses. The Act which is silent on who pays the prosecution witness, made special reference to payment for the defence witness to be paid by the Registrar, upon order of the Court. In practice however, Courts are always reluctant to even order the Registrar to pay any expenses, as they as they argue that there is lack of funds.

Enhanced Remedies for the Victims of Rape and Other Sexual Offences

According to Section 314(1) of the ACJA, "Notwithstanding the limit of its … jurisdiction, a court has power, in delivering its judgment, to award to a victim commensurate compensation by the defendant or any other person or the State". The legal implication of the opening phrase "Notwithstanding the limit of its … jurisdiction," in relation to the other parts of the subsection, is to the effect that a court giving or delivering judgment in a criminal matter, is empowered to award any sum of money, as it may deem fit, as compensation in favour of the victim of the crime, whether or not such amount of compensation is above the limit the court can award, as a matter of its normal jurisdiction. Similarly, by Section 319(1), "A court may, within the proceedings or while passing judgment, order the defendant or convict to pay a sum of money: (a) as compensation to any person injured by the offence, irrespective of any other fine or other punishment … imposed on the defendant or convict, where substantial compensation is, in the opinion of the court, recoverable by civil suit; (b) … (c) in defraying expenses incurred on medical treatment of a victim injured by the convict, in connection with the offence. (3) Order for cost or compensation may be made … irrespective of the fact that no fine has been imposed on the defendant in the judgment". Thus, once the court is of the opinion, that a substantial compensation can be recovered by the victim of the crime through a civil suit, the Court may award any amount against the convict, irrespective of any other fine or other punishment, that may be imposed. That is to say, whether or not any other fine or punishment is imposed on the convict (and notwithstanding what the fine or any other punishment may have been imposed): the victim can be compensated under the ACJA (2015). Also, Section 325 provides: "Any compensation ordered to be paid under this Act or any other Act, relating to any criminal proceedings, may be enforced as if it were a fine". Section 326(1) further provides that: "Where a convict is ordered to pay fine, or a defendant is ordered to pay compensation … or a person is subject to recovery of penalty, for forfeiture of a bond under this Act, the Court … may (notwithstanding that in default of the payment of the fine or compensation or penalty, the convict or defendant may be imprisoned), issue a warrant for the levy of the amount, by any means permitted by law, including: (a) the seizure and sale of any moveable property belonging to the defendant or convict; (b) the attachment of any debt due to the defendant or convict; and (c) subject to the provisions of the Land Use Act, the attachment and sale of any immovable property of the convict situated within the jurisdiction of the Court". Prior to the enactment of the ACJA, courts had limited powers to order for compensations and

restitution, in favour of victims of crimes, as a part of criminal proceedings. Fines imposed on convicts, went into state coffers, since every criminal offence-including offences against individual persons-was dealt with as crime against the State. The victims who directly suffered the actions of the convicts, were expected to feel pacified or assuaged, with the punishment of imprisonment and/or fines, imposed on convicts. Any victim who desired compensation, was expected to institute civil actions in court for a civil remedy. Victims who did not have wherewithal to take civil action, or who could not obtain legal aid services, submitted to fate without any remedy directly accruable to them, as a result of the crime. The provisions for compensation and restitution, in the ACJA are a welcome innovation (and are in agreement with Section 1(3) of the VAP Act (2015) mandating the court to award appropriate compensation to the victim of rape, as the court may deem fit). Besides imposing prison terms and/or fines on convicts, practical application of provisions of the ACJA, on compensation and restitution-in dealing with cases of sexual violence-is sure to attract some degree of succor, to victims of sexual violence. Especially those who suffer physical and psychological injuries and pains and/or have their wears torn in course of forceful sexual intercourse and incur medical expenses and other costs. The provisions will also be of benefit to families of victims who may, unfortunately die in the course of the sexual violence. [7]

Sentencing in the Cases of Pregnancy: Women and the Death Sentence

The ACJA differs from other kindred legislation on sentencing, in the cases of pregnant women and child offenders. In the case of pregnancy, Section 404 of the ACJA provides: "Where a woman found guilty of a capital offence is pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned".

It is noteworthy, that in Section 368(2) of the Criminal Procedure Act, Sections 270 and 271(3) of the Criminal Procedure Code and Section 302(2) of the Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State (2011), when a woman found guilty of a capital offence is ascertained pregnant, the sentence of death shall not be passed on her but shall be substituted with sentence to imprisonment for life. Section 415(1-4) of ACJA outlines the procedure to be followed, where a woman convicted of a capital offence is alleged to be pregnant or who becomes pregnant; the court shall, before the sentence is passed, determine the question of whether or not she is pregnant, on such evidence as may be presented to the court by the woman or on her behalf or by the prosecutor.

7, Badamasi Babangida University, Lapai-Niger State, Nigeria. Journal of Law, Policy and Globalization, ISSN 2224-3259 (Online) DOI: 10.7176/JLPG, Vol. 87. Available at: www.iiste.org.

Key Issues: The ACJA has, by sentencing a pregnant woman to death and staying execution till delivery and weaning of the baby, proved more retributive than all other legislation, when it should have been restorative. By providing for execution of an erstwhile pregnant woman after the baby is weaned, the Act does not consider the welfare of the child. A child needs motherly attention and should not be so deprived of his birth mother's attention, except it is shown that the child will come to harm. Furthermore, the trend internationally is a departure from the death penalty. Many jurisdictions have taken the position to abolish the death penalty and thus the provision of sentencing a pregnant woman to death is more a digression from the international trend and should be amended. While one may argue that a woman who takes the life of another, has no right to life just because she is nursing a child, that position is clearly more retributive than restorative; said provision is also thus against the restorative spirit of the Act. If one argues also that, even if the ACJA should adopt the position of the other legislation in sentencing the woman to life imprisonment, a life imprisonment would deprive the child of motherly attention. That argument also ignores the Act's provision of restorative, non-custodial alternatives, that may avail the convicted mother if she is successfully rehabilitated and reformed.[8]

Provisions Relating to Children

Murder of a Child and Infanticide

Key Issues: The Act failed to define infanticide, so as to clearly distinguish it from the murder of a child, neither is 'concealment of birth' defined. An amendment in this regard is advocated.

Sections 234 and 235 of ACJA provide for the crime of murdering a child/infanticide. Section 234 on the one hand, provides that where either is charged and none is proved but from the evidence, concealment of birth is proved, the defendant may be convicted of concealment of birth. Section 235(1) provides that where murder is charged but infanticide is proved, the defendant may be convicted of infanticide. This has expanded the scope of persons that can be charged for killing of a child. It is an improvement over Section 178 of the CPA which provides for what to do where murder is charged and infanticide proved, as regards only the mother of the child.

Recognizance by a Parent or Guardian of a Child

Key Issues: The section examined above provides that "The parents or guardian of the child shall execute a bond for such an amount as will in the opinion of the officer secure the attendance of the child for the hearing of the charge". Leaving the amount of the bond to the opinion of the Officer is a catalyst for fuelling corruption among Police officers. It is imperative for practice directions to be drafted, to aid implementation of the Act, so as not to give room for continued corruption and exploitation of citizens, by Police officers.

8. See Ugbe, B., Agi, A., and Ugbe, R. (2019). Nigeria's Administration of Criminal Justice Act, (ACJA) 2015: Innovations Relating to Women and Children. Obafemi Awolowo University Law Journal, Vol. 3, No. 2019. ISSN: 0795-8714.

Section 160(1) and (2) of ACJA, provides that, "Where a child is arrested with or without a warrant and cannot be brought forthwith before a court, the police officer in immediate charge for the time being of the police station, to which the child is brought shall, inquire into the case and except where the charge is one of homicide or the offence charged is punishable with imprisonment, for a term exceeding three years, or it is necessary in the interest of the child to remove him from association with any reputed criminal or prostitute, shall release the child on a recognizance entered into by his parent or guardian, with or without sureties. The parents or guardian of the child shall execute a bond for such an amount as will in the opinion of the officer secure the attendance of the child for the hearing of the charge".

This is an excellent and welcome provision, as it protects the child who has committed a non-capital offence, from being indoctrinated by hardened criminals if detained with them, when arrested. This is a clear deviation from the past, where there was no express provision regarding where a child offender could be detained, after an arrest and children were lumped with adult criminals. This provision is also contemplative of all scenarios, as it recognizes the fact that, the child would not be released to the parent or guardian, if he would be associated with a reputed criminal or prostitute.

Exclusion of all Unrelated Parties when a Child is Giving Evidence in Court

The provisions of Section 260 of ACJA (2015), is to the effect that, where a person-who in the opinion of the court-has not attained the age of eighteen years, is called as a witness in any proceedings, in relation to an offence against or any conduct contrary to decency or morality, the court may direct that all or any persons (not being members or officers of the court or parties to the case, their legal representatives or persons otherwise directly concerned in the case), be excluded from the court, during the taking of the evidence of such person.

Trials involving Children

By virtue of Sections 371 and 452(1) of ACJA, where a child is proceeded against, before a court for an offence, the court shall have regard to the provisions of the Child Rights Act. However, by Section 452(2) of the Act, the provisions of ACJA relating to bail, shall apply to bail proceedings of a child offender. This is beyond the initial limited provisions, contained in the CPA, on trial of children and shows a clear desire to protect children. It is noteworthy, that the ACJA takes cognizance of the provisions of the Child Rights Act. Furthermore, by the provisions of Section 262 of the Act, an infant other than an infant in the arms of a parent or guardian or child, shall not be permitted to be present in court, during trial of a defendant charged with an offence, or during any proceeding preliminary to the trial, except he is the defendant charged with the offence or he is a witness or his presence is required for purposes of justice, in which he may remain, to the extent that his presence is necessary.

Sentencing of Child Offenders

Section 405 of ACJA provides that no sentence of death shall be pronounced or recorded, on a child offender, who had not attained the age of 18 years, at the time the offence was committed. But in lieu of it, the court can sentence such a child to life

Key Issues: While Section 405 of ACJA is valued (as it provides that the age at commission of offence, is the determining age for purposes of sentencing a child and preserves the life of a person who commits a capital offence when he was a child), there is need to amend the provisions of Section 405 of the Act. Its provisions for life imprisonment for a convict, who (at the time he committed the offence), had not attained maturity is harsh and retributive. It is recommended that the Section ought to have borrowed a leaf from the CPA, CPC and Administration of Criminal Justice Act of Lagos State (2011) whose provisions on the issue, are more restorative minded.

imprisonment, or to a term as the court may consider appropriate, in consideration of the principles in section 402 of the Act. The CPA in Section 368(3), the CPC in Section 272(1) and Section 302(3) of the Administration of Criminal Justice (Repeal and Re-enactment) of Lagos State, as compared to Section 405 of ACJA (2015) took a softer position, namely, detaining the convict until the pleasure of the Governor is known. This is a much more humane position, as there is a possibility that the Governor may consider a lesser sentence, bearing in mind age of the child and circumstances that led to the child committing the offence. However, all hope is not lost for Section 405, as it goes on to provide, that apart from life imprisonment, the court may sentence the child offender to such other term as the court may deem appropriate, in consideration of the principles in Section 401 of the Act. The Section, in sub-section (2), prescribes objectives the court may have, when determining a sentence and one of such is "rehabilitation, that is, the objective of providing the convict with treatment or training that will make him into a reformed citizen". One can only hope, that in applying the provisions of Section 405 of the Act, to children found guilty of capital offences, courts will bear in mind Section 401(2)(c), when it comes to child offenders. Also, measures should be taken to ascertain the psychological disposition of that child, at the time he committed the offence and possible correctional measures to reform the child, other than imprisonment.

By virtue of Section 467 of the Act, courts may sentence and order a convict of an offence triable summarily, to serve the sentence at a Rehabilitation and Correctional Centre, established by the Federal Government, in lieu of imprisonment. The court, in making an order of confinement at a Rehabilitation and Correctional Centre, shall have regard to age of the convict, the fact that the convict is a first offender and any other relevant circumstances, necessitating an order of confinement, at a Rehabilitation and Correctional Centre. The section further provides that the court may make an order directing that a child standing for criminal trial, be remanded at a Rehabilitation and Correctional Centre. This provision is commendable as it protects the child from further indoctrination, from hardened criminals the child would have been exposed to, if sentenced to serve in a regular prison. However, the current state of these Rehabilitation and Correctional institutions-where they exist-is unsatisfactory.

It is necessary to also point out that this section, provides that a court may make an order directing that a child offender standing criminal trial, be remanded at a Rehabilitation and Correctional Centre during trial, but says nothing about where such a child will be imprisoned, if he is convicted and sentenced. Thus, the

reasonable assumption would be that the child will be imprisoned there, per the provisions of Section 467(1) of the ACJA the Centre is only for defendants convicted of an offence triable summarily, and a child offender standing trial for a capital offence is not tried summarily. However, this assumption does not apply to a child offender, standing trial for a capital offence as this offence is not tried summarily. It is therefore not clear from the ACJA, where such child, after conviction will be imprisoned.

Policy Recommendations

- These gender issues need to be addressed first, by raising awareness and equipping lawyers, especially those that specialize in gender rights and defending women and children. This would be by drawing their attention to these highlighted provisions and their implications, so they can look out for such circumstances anytime they are confronted with a gender-related case.
- It is obvious that the Act requires finance, time, effort, political will and a total reorientation of stakeholders and the entire citizenry, for all to enjoy its intended benefits.
- The culture of decent searches by same sexes should be thoroughly instilled, in arresting officers by oversight bodies.
- The Act, in Section 234 and 235, failed to define infanticide, so as to clearly distinguish it from the murder of a child. Neither is 'concealment of birth' defined. An amendment in this regard is advocated.
- The provision of Section 404 of the ACJA, which provides for the execution of a pregnant woman found guilty of a capital offence (to be suspended until the baby is delivered and weaned), is too retributive. There is need to amend the section to substitute same with a sentence of imprisonment for life. This is more in tune with international practices, where the death sentence is abolished and more restorative as she may be reformed.
- The provisions of Section 405 of the Act-which states that a child who has committed a capital offence, can be sentenced to life imprisonment-needs to be amended to provide a more restorative sentence. Its provisions for life imprisonment for a convict, (who at the time he committed the offence, had not attained maturity), is harsh and retributive. It is recommended that detaining the child at the pleasure of the Governor or President, as provided in the CPA, CPC and Administration of Criminal Justice Act of Lagos State (2011), is a much more humane position, as there is hope that the Governor or President, may consider a lesser sentence, bearing in mind the age of the child and the circumstances that led to the child committing the offence. In the alternative, the Chief Justice of the Federation, may consider issuing a Practice Direction, that all courts shall, as a matter of priority, always bear in mind Section 401(c) of ACJA, when it comes to child offenders. Further that measures should be taken to ascertain the psychological disposition of that child, at the time he committed the offence and sentence the child offender to other possible correctional measures, to reform the child, other than imprisonment.
- It is imperative that the Act be amended, to clearly provide that the place of incarceration of a child offender, who is not summarily tried and who is found

guilty of a capital offence, shall be the Rehabilitation and Correctional Centre, until the pleasure of the President is known. This, will pacify victims of the child's offence, as well as possibly rehabilitate, reintegrate and restore the child to society as a responsible individual.

- It is recommended that, as the current state of the nation's Rehabilitation and Correctional institutions are unsatisfactory, significant institutional investments should be made, for reviving and revamping these institutions, if the objectives of the ACJA are to be realized.

- As progressive as the provisions of ACJA may be-in relation to several international instruments-it is lacking some very vital provisions on women and children, which will make the administration of criminal justice in Nigeria more wholesome and successful. Such provisions could include:

    Provisions providing for children to have access to legal aid, under the same conditions as (or more lenient conditions than) adults. Also, equity in access to legal aid and for special measures that should be taken, to ensure meaningful access to legal aid, for women and groups with special needs. For example: the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases and drug users. Such measures should address the special needs of those groups, including gender sensitive and age-appropriate measures. There should also be provisions enabling children who are detained, arrested, suspected or accused of, or charged with a criminal offence, to contact their parents or guardians at once.

- Furthermore, clear provision of funds for payment of expenses of witnesses, should be introduced. There are no clear provisions on who pays witness expenses and the source of the funds. It is thus imperative that concise provisions be made, as to who will offset the expenses incurred by the prosecution witnesses, as has been done for the defence witness and a special fund be provided for the judiciary, from which disbursements will be made for offsetting witness expenses.

- The National Assembly should consider a review of the Act, with a view to incorporating some of the suggestions. This is however not oblivious of the fact that the Act recently came into existence and in terms of workability, has not been fully tested.

ABUJA OFFICE
26, Bamenda Street, Off Abidjan Street
Wuse Zone 3Abuja, Nigeria.
Tel: 234-09-7817025, 07067899368

LAGOS OFFICE
21, Akinsanya Street, Ojodu, Lagos, Nigeria

Mailing Address:
P. O. Box 15456, Ikeja,Lagos Nigeria.
Tel: 234-1-493-3195, 234 - 7612479, 09035200933
Fax: 234-1-493-5339,
E-mail: cleen@cleen.org

OWERRI OFFICE
Plot 10, Area M Road 3,
World Bank Housing Estate
Owerri, Imo State
Tel: 083- 823104, 08128002962,
08130278469, 08060023936

EDO OFFICE:
39 Oyaide Street,
off Benoni Road,
G.R.A, Benin City, Edo State
Tel: 08073342922