

**THE POWER OF ARREST UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015:
EMERGING ISSUES AND CHALLENGES***

Abstract

The question of the lawfulness, legality and otherwise of arrests has been a growing concern in the Nigerian criminal justice system notwithstanding the recent legislative revolution by the enactment of the Administration of Criminal Justice Act (ACJA) which provides comprehensive and innovative procedural checks on the power of arrest of the Police and other law enforcement agents in Nigeria. In spite of the laudable provisions of the new legislation, law enforcement agents have flagrantly continued to conduct arrests in breaches of the extant laws creating palpable human rights concerns, a situation which simply defines the police stations and other security formations in Nigeria as ADR centres where criminal complaints are settled civilly. This is so as majority of the arrests are not intended to result in criminal trials in the first place. This paper examines the powers of the police and other law enforcement agents as regards the conduct of arrest, the limits set by the law on such powers and innovations introduced by the ACJA as well as the Constitution of the Federal Republic of Nigeria 1999 (as amended), factors responsible for ineffectiveness of the law and measures for combating non compliance with extant laws defining the power of arrest in Nigeria. Reliance is placed on the Administration of Criminal Justice Law of Delta State 2017 at some point in discussing the similarity and peculiarity of the ACJA and ACJ statutes¹.

Keywords: Arrest, Criminal Justice, Power, Civil Wrong, Warrant

1. Introduction

Arrest is one of the most potent weapons of crime prevention in the hand of the Police and a very critical pre-trial procedure in criminal litigation. Traditionally, not every arrest made by the police culminates in trial. This is because the Police have a measure of discretion as to when to prosecute. What the law does not support is arbitrary and indiscriminate arrest. In Nigeria, almost every allegation (civil or criminal) made to the police results in arrest. Apart from situations in which there is need to foil the commission of an offence, the order of reaction towards the allegation of crime by the Police ought to be investigation first, then invitation² and or arrest of alleged suspect. Thus, once as suspect is arrested, the ultimate destination of the suspect is the court.³ The contrary is the case most of the time in Nigeria. Arrest precedes investigation in Nigeria. Nigeria Police make arrest before determining whether there is reasonable suspicion instead of arrest being made upon the existence of reasonable suspicion.⁴ This has undermined the Nigerian criminal justice system resulting in the floodgate of fundamental rights actions in Nigerian courts. These and some other *lacunae* tacitly encouraged by the loose provisions of the Criminal Procedure Act,⁵ Criminal Procedure Code⁶ and the Police Act⁷ are what the ACJA was introduced to address. This paper therefore focuses principally on the power of arrest of the Police and the loose-ends in the old law which made the Police exercise more powers than were provided as well as innovations which the ACJA initiates in attempt to curb the arbitrariness of the power of arrest in Nigeria.

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² Invitation of a suspect though not a requirement of the law in Nigeria is an acceptable practice as it is merely a note requesting the suspect to report to a police officer at a name station and a specified date and time. It is a benign approach in furtherance of investigation. The suspect may be arrested if in the course of inquiry, there arises the issue of reasonable suspicion. As noted by Mrabure and Idehen, invitation is not indictment or summons and as such cannot be regarded as illegal practice. See K O Mrabure and S Idehen, 'Examining the Powers of the Police in Making Arrest under Nigerian Law' (2021) 9/1 *Journal of Law and Criminal Justice*, 86

³ See *Nweke v. State (1965) LPELR-25215(SC)* p.6.

⁴ Section 52 of the Administration of Criminal Justice Act 2015 (hereafter ACJA) empowers the Police officer to arrest without warrant or orders from a Magistrate if he reasonably suspects a design to commit an offence where the commission cannot be otherwise prevented. See *Oteri v Okorodudu (1970) LPELR -2824(SC)* and *Ubochi v Ekpo & ors (2014) LPELR -23523(CA)* on the test of what is reasonable suspicion.

⁵ Cap C4 Laws of the Federation of Nigeria (LFN) 2004 now repealed by section 493 of ACJA

⁶ Also known as Criminal Procedure (Northern States) Act Cap C42 LFN 2004 now repealed by section 493 of ACJA

⁷ Cap P19 Laws of the Federation of Nigeria 2004 now repealed by section of the Police Act 2020

2. The Concept of Arrest

Arrests are not necessarily apprehensions and the taking of suspects to the Police station as opined by some.⁸ Arrest takes place when a legally authorised person such as the Police, private security, or citizen, puts a restraint on the liberty of an individual, especially because of suspicion that he or she is involved in the commission of a crime.⁹ Arrest, which is often accompanied by detention, is a coercive parameter of the law enforcement agencies in securing the attendance of a suspect either at the police station or at the court. It is defined as a means 'to deprive a person of his liberty by legal authority, taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand.'¹⁰ It is therefore contrary to law, as it is commonly practised in Nigeria, to first arrest or charge and thereafter fish for evidence. In the words of Uwaifo JSC, '... in a proper investigation procedure, it is unlawful to arrest until there is sufficient evidence upon which to charge and caution a suspect. It is completely wrong to arrest, let alone, caution a suspect before the police look for evidence implicating him.'¹¹ These and some other lacunae in the law tacitly encouraged by the loose provisions of the Criminal Procedure Act,¹² Criminal Procedure Code¹³ and the Police Act¹⁴ are what the ACJA is intended to address. This paper therefore focuses principally on the power of the Police in Nigeria to arrest, the gaps in the old law which promoted arbitrary power of arrest, the innovations which the ACJA introduces in attempt to curb the arbitrariness of power of arrest and the effect of the new law.

The power of arrest grants the arresting officer the authority to incur into a person's constitutional right to private liberty in the overriding interest of the society.¹⁵ However, the law has often set limits beyond which an arresting authority should not go. These limits are in the form of constitutional safeguards protective of the right of the defendant. Unfortunately, they have been honoured mostly in their breaches than in their observance in Nigeria. Some of these safeguards have been replicated in the ACJA basically to add weight to the provisions of the Constitution in a manner that will render them more easily enforceable at state level. Some of the innovations in the area of arrest shall now be discussed.

3. The Right to Remain Silent, Consult a Legal Practitioner, Get Free Legal Aid or make a Phone call, or to Notify Relatives

This is provided for in section 6(2) of the Act as follows:

- (2) The police officer or the person making the arrest or the police officer in charge of a police station shall inform the suspect of his rights (and shall have the responsibility of affording him an opportunity to exercise his rights) to:
- (a) remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice;
 - (b) consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest;
 - (c) free legal representation by the Legal Aid Council of Nigeria where applicable.

Provided that the authority having custody of the suspect shall afford him an opportunity to make a phone call to anybody of his choice or have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect within 24 hours of arrest.

⁸ See S. I. Oji, 'Resistance of Arrest and Escape' (2019) *Criminal Justice Journal*, 104. Furthermore, mere words cannot amount to arrest, there must be restraint. See *Sadiq v The State* (1982) (2) NCR 142. See also B. Osamor, *Criminal Procedure Law & Litigation Practice* 2nd ed. (Manchester: Dee-sage, 2012) 87.

⁹ H Akbas, 'Power of Arrest: Definition, Legal Justification and Authority available at https://www.researchgate.net/publication/342872213_Power_of_Arrest_Definition_Legal_Justification_and_Authority visited 20th of July, 2022. Y D U, Hambali, *Practice and Procedure of Criminal Litigation* (Lagos: Feat Print & Publish, 2013) 169 describes arrest as a seizure or forcible restraints.

¹⁰ Black's law Dictionary

¹¹ See *Fawehinmi v IGP* (2002) 7 NWLR (pt. 767) 606 at 681, per Uwaifo JSC. See also the case of *Onagoruwa v State* (1993) 7 NWLR (Pt303) 49 where the Court of Appeal observed that 'in a good number of cases, the police in this country rush to court on what they generally refer to as holding charge, even before they conduct investigations, although there is nothing known in law as 'holding charge' ...'

¹² Cap C4 Laws of the Federation of Nigeria (LFN) 2004 now repealed by section 493 of ACJA

¹³ Also known as Criminal Procedure (Northern States) Act Cap C42 LFN 2004 now repealed by section 493 of ACJA

¹⁴ Cap P19 Laws of the Federation of Nigeria 2004 now repealed by section of the Police Act 2020

¹⁵ On police power of arrest and detention, see generally Achara, R. A. C. E. 'Crime Control and Detention: An Appraisal of the Police Power of Arrest, Interrogation and Detention under the Law' (2005) 5/1 *UNIZIK Law Journal* pp. 65-91

The right to remain silent and consult a legal practitioner of one's choice is also recognised under the CPA¹⁶ and the Constitution¹⁷ but these rights, except as provided by section 35 (2) of the Constitution,¹⁸ relate to trial and not arrest.¹⁹ Under the ACJA these rights inure in favour of the suspect the moment he is placed under arrest. Subsection 2 of section 6 of ACJA is therefore intended to arrest the practice by law enforcement agents in Nigeria where legal practitioners and relatives of suspects are prevented by arresting authorities from going near or being in the same room with suspects while they are giving their statements. This practice has greatly encouraged the culture of obtaining confession from the suspects under duress. To guide against this the ACJA provides in section 15 (4) that:

(4) Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means:
Provided that in the absence of video facility such statement shall be made in writing in the presence of any person of his choice.

In Nigeria, it is a common practice by law enforcement agents to ask lawyers to go to court to await the arraignment of suspects even though all that the lawyer wants is to seek audience with his client/suspect. While it is admitted that some legal practitioners do not play within their professional ethics in seeking to protect the liberty of their clients in the police custody, the police have often shown lawyers the way out of their stations or proved to be very difficult at the very sight the lawyers. The right to remain silence is of great relevance to criminal justice since whatever the suspects says may be used against him during the trial. In *Onobu v IGP*²⁰ it was held that the Police have no authority to obtain statement from a suspect after informing him that he has a right to remain silent. The police are to record his statement after cautioning him if he intends to make any.²¹ It is in this respect that the law frowns at involuntary statement.²²

4. The Right to Make Phone Call

The law puts also a duty on law enforcement agents to allow a suspect make at least a phone call to his relatives or any person of his choice within 24 hours at no expenses of the suspects. The law in this area is intended to prevent the incidences or cases of suspects wallowing in police cell indefinitely without the family or close persons to the suspect having idea of his whereabouts. There have been cases of reports of missing persons who were later found to be in police detention. Some others died in the process of arrest and the police denied ever having anything to do with the suspect. In practice, the phones of suspect are taken away from him before he is put into detention. This accords with reasons on ground of security. The Police under the ACJA are expected to balance both interest of security and the right of the suspect to have his relatives know his whereabouts. The phone call of the suspect is of several advantages to him. First, is the security of the defendant. Some suspects have been shot to death after arrest. No law permits this. Where the police are aware that the suspect is in touch with his relatives or friends there may be reluctance to do anything that may jeopardize the life of the suspect. Second, is to protect the defendant from circumstances which may prejudice the justice of his case. A suspect who is being tortured or has been tortured will obviously reveal this fact to his people during the call who may testify for him during trial

¹⁶ Section 287 (1) CPA provided that 'at the close of the evidence in support of the charge, if it appears to the court that a *prima facie* case is made out against the defendant sufficiently to require him to make a defence, the court shall call upon him for his defence and-

(a) if the defendant is not represented by a legal practitioner, the court shall inform him that he three alternatives open to him, namely:

(i) he may make a statement without being sworn, from the place where he then is, in which case he will not be liable to cross- examination; or

(ii) he may give evidence in the witness box, after being sworn in as a witness; in which case he will be liable to cross-examination, or

(iii) he need say nothing at all, if he so wishes...'

¹⁷ See section 36 (6) (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) hereafter referred to as the Constitution.

¹⁸ Under section 35(2) of the Constitution any person arrested or detained has the right to remain silent or avoid answering question until after consultation with his legal practitioner or any person of his choice.

¹⁹ As rightly observed, the citizen's right to remain silent even when arraigned for criminal offence is an inviolable one. See *Igbele v State* (2006) LPELR-1441(SC) p39. See also *Adekunle v State* (2006) LPELR-107 (SC) p26. This right during trial however has a grave consequence as the defendant may have to rise or fall with the case of the prosecution. See *Ezeama v State* (2014) LPELR – 22504(CA) p.44 and the Judge is at liberty to draw conclusion from defendant's silence. See *Igbele v State*, supra, p 39.

²⁰ (1957) NNLR 25. See also *State v Salawu* (2011) LPELR -8252(SC) 25-26

²¹ *Ibid.*

²² Section 28 Evidence Act 2011 and section 15 (4) ACJA

within trial. This is so as proof of involuntariness of confession in trial within trial is usually an uphill task for the defendant especially where there are no physical injuries or scars in his body to corroborate the bare allegation. Third, is that it would afford the family or friends the opportunity of knowing the whereabouts of the suspect as against wandering from one police station to another in search of the suspect.

5. Arrest in Lieu of Another

Arrest in lieu of another is a common practice in Nigeria even though it is contrary to law. Before the advent of the ACJ statutes, no legislation has categorically attempted to curtail the arbitrary power of the Nigerian Police to arrest one in place of another. The ACJA by section 7 unequivocally provides that ‘a person shall not be arrested in place of a suspect.’ This provision seeks to put an end to the incessant practice of arresting relatives of suspects as a means of securing the appearance of the offender. This amounts to gross violation of the constitutional right of such persons and of the law which restricts the power of the police to arrest based on reasonable suspicion or where the offence is committed in his presence. Thus, where a citizen has not committed an offence in the eyes of the law, his arrest is arbitrary. There is no vicarious liability in criminal law, except for corporate offences whose punishments are usually in terms of fines. It has been observed long before now that ‘except under strict liability offences, it is a general principle of criminal law that one is not criminally liable for how someone else acts, unless he directs or encourages or aids the other so to act. Thus, unlike the case with torts, an employer is not generally liable for the criminal acts of his employee even though the employee does them in furtherance of the employees business.’²³

It is a truism that the Nigerian Police is grossly ill equipped to effectively fight crime and do proper investigation.²⁴ Notwithstanding, there is still no law which justifies arrest of a person in lieu of another. In *ACB v Okonkwo*²⁵ the Court of Appeal per Niki Tobi JCA (as he then was) said:

I know of no law, which authorizes the police to arrest a mother for an offence committed or purportedly committed by the son. Criminal responsibility is personal and cannot be transferred... A police officer who arrests ‘A’ for the offence committed by ‘B’ should realize that he is acting against the law. Such a police officer should in addition to liability in civil action, be punished by the police authority.

In a dissenting judgment, Ita George Mbaba, (JCA) in *Madaki & Anor v. GTB & Anor*²⁶ recently reinstated the position as follows:

I think that was a cross abuse of the powers of the 2nd Respondent, to arrest and detain the 2nd Appellant for alleged offence of the wife! We have depreciated this situation several times, that it is wrong to arrest a wife or husband in lieu of the other, or a father/mother to force the child (suspect) to come to the Police or law enforcement agency!’ Per ITA GEORGE MBABA, JCA (Pp 24 - 26 Paras B - A)

The ACJA, therefore, is intended to curtail this ugly practice which is a brazen violation of citizens’ right to personal liberty anywhere in the world. The law of crime is not designed to punish the law abiding but the wrongdoer.

To show that this practice is a gross violation of human right from beginning even the Holy Bible forbids holding children accountable for the sins of their parents.²⁷ What is more? Article 6 of the African Charter on Human and Peoples’ Rights which has been domesticated and now municipal law stipulates that ‘[e]very individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.’ Arrest of one in lieu of another is highly arbitrary and a gross travesty of criminal justice.

6. Arrest over Civil Wrongs

Another practice close to arrest of a person in lieu of another is the practice of arrest by the police over civil wrongs. The law enforcement agencies are often engaged by members of the society to recover debts and settle civil wrongs like contract disputes, purely land disputes, tenancy issues, matrimonial causes, family

²³See *Love v State* (191) Miss 622. So 2d 796 (194) cited by Wayne R. Lafave & Augustin W. Scott Jr. Criminal Law (St. Paul MINN USA West Pub. Co. 2nd ed. 1956) .252.

²⁴ See Uso-essien, E. U., ‘The Nigeria Police and the Constraints of Policing in Nigeria, in Udok, Uwem & Essien Isaac, *New Frontiers in Nigerian Law: Essays in Honour of Prof. Enefiok Essien* (Uyo: Umeks Printing Press, 2016) pp. 252-275

²⁵ (1997) 1 N W L R (Pt 480) 195

²⁶ (2022) LPELR-57419(CA) (Pp 24 - 26 Paras B - A)

²⁷ See Ezekiel 18:20

disagreements, etc. It is almost a common fact that some police officers collect a percentage for every fund recovered by them acting as agents of the creditors. Section 8 (2) of ACJA provides that ‘a suspect shall not be arrested merely on a civil wrong or breach of contract.’ The practice of using the Police to settle civil claim is as old as the Nigeria Police Force itself and same is speedily on the rise in Nigeria. Whether the enactment of the ACJ statutes has brought any improvement is very doubtful. The practice is not only antithetical to criminal justice; it has elevated the Police stations to the level of ADR centres. Arrest and detention on the basis of civil complaint (and in some cases, the attempt to season civil allegation with criminal aroma) is not in accord with any known law in Nigeria. It is arbitrary and must be discontinued forthwith especially in the face of the clear wordings of section 8 (2) of the ACJA. The judiciary in Nigeria has demonstrated strong courage in consistently condemning the obnoxious practices of arrest for civil wrong and of arrest in *lieu* of another. The courts have in different occasions frowned against this practice for which members of the society are as guilty as the police. In *Oceanic Securities Int’l Ltd v. Balogun*²⁸ the Court of Appeal made the following remark:

It has been stated many times that the Police has no business in the enforcement of debt settlement or recovery of civil debts for banks or anybody. Only, recently in the unreported decision of this court in the case of *Ibiyeye & Anor. v. Gold and Ors.* In appeal No. CA/IL/M/95/2010, delivered on 7 December, 2011, I had cause to scream thus, in my contributory judgment. I have to add that the resort to the police by parties for recovery of debts outstanding under contractual relationship has been repeatedly deprecated by the court. The police have also been condemned and rebuked, several times, for abandoning its primary duties of crime detection, prevention and control to dabbling into enforcement or settlement of debts and between quarreling parties and for using its coercive powers to breach the citizen’s right and/or promote illegality and oppression. Unfortunately, despite all the decided cases on this issue, the problem persists and the unholy alliance between aggrieved contractors/creditors with the police remains at the root of many fundamental rights breaches in our court.²⁹

There have always been arguments from the Police that such complaints though civil, had criminal angle. Members of the society are sometimes advised by the Police to enhance their complaints by adding criminal flavour to their petition to give the police powers of arrest. In Justice Mbaba’s opinion a civil wrong is a civil wrong even if it has a criminal coloration. He said:³⁰

I dare say that, even if 1st Appellant was being tried for alleged fraud or forgery or connivance on how she got the loan facility, that does not discount from the loan (debt due to the Bank), and so there was no cause to resort to Petition to the 2nd Respondent (EFCC) to haunt down the 1st Appellant, for the purpose of the loan transaction and, to use the 2nd Respondent to arrest and detain the 2nd Appellant, the husband of the debtor, simply because of being associated with the debtor, by marriage! ...

Even though the practice of arrest for civil claim and arrest in *lieu* is predominant in Nigeria, the prohibition by statutes has not only brought relief, it has started to put the police on the watch list locally and internationally. The Nigeria Police are not unawares of the ugly label of human rights violations on them and are mindful of changing the narratives.

7. Treatment of Suspect during Arrest

The relationship between the Police and the ordinary citizen of Nigeria is very hostile even though the popular slogan is that the Police is your friend. Cases of police brutality came to a zenith culminating in a national widespread protest popularly known as *ENDSARS* protest in 2020. There have always been laws as to how the Police should treat persons arrested by them or who is in their custody but merely observed in breaches. Following the footsteps of CPA, section 8 (1) of the ACJA provides that: ‘A suspect shall – (a) be accorded humane treatment, having regard to his right to the dignity of his person; (b) not be subjected to any form of torture, cruelty, inhuman or degrading treatment’. Thus, the requirement that suspect be treated humanely is not new in Nigerian criminal procedure laws, nonetheless, it has been the most commonly violated right of suspects. It is in this light that same is re-echoed in the various ACJ statutes in order to tighten up the process for curtailing this widespread attitude of police brutality and torture of suspects during arrest and pre-trial detention. As a follow up, the National Assembly passed the Anti-Torture Act³¹ in 2017 to fill in existing gaps by copiously making the right to freedom from torture, inhuman, cruel and degrading treatment a non-derogable rights in line with

²⁸(2012) All FWLR (Pt.643) 1906-1907

²⁹ See also *Okafor & Anor. v. AIG Police Zone II (2019) LPELR-46505 (CA)*. In *EFCC v. Diamond Bank PLC (2018) 8 NWLR (Pt.1620) SC 61*, the Supreme Court observed that the power conferred on the Economic and Financial Crimes Commission does not include power to resolve simple contract or dispute arising from civil transaction.

³⁰ Supra (n28) p. 26

³¹ Hereafter referred to ATA

international requirements. No exceptional situation justifies a departure from the rule against torture and such must be constantly affirmed by the commanding leadership of the law enforcement agency.³²

It is important to add that the prescription on how suspects should be treated by law enforcement agents in the ACJA is the minimum acceptable standards even at international law. International law do not apply automatically as though they are local laws in Nigeria but international law has had great influence on Nigeria human rights law. For instance, the Declaration on the Protection of All Persons from being subjected to Torture and other Cruel Inhuman and Degrading Treatment and Punishment³³ was put together to encourage nations to adhere to acceptable standards in the treatment of suspects. This Declaration defines torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, intimidating him or other persons. ..³⁴

Though declarations are soft laws and generally non-binding, this Declaration has been widely accepted as prescribing very important legal standards and civilize procedure for the treatment of persons by law enforcement agents in a progressive society. This is the reason why the Declaration after extensive deliberation culminated in a Convention³⁵ in 1988 which is a binding document and which was not only adopted but ratified by Nigeria in 2001. These international instruments greatly influenced the enactment of the Anti-Torture Act in Nigeria in 2017.³⁶ It has been observed that ‘torture and other forms of cruel, inhuman or degrading treatment are prohibited at all times. Such treatment has long-lasting adverse consequences for the victim, the perpetrator, the law enforcement agency as a whole, the justice system and society in general. The diverse consequences on the individual can be physical and psychological.’³⁷

Section (8)(1) of the ATA provides that torture is deemed committed if an act which causes

...pain or suffering whether physical or mental, is intentionally inflicted on a person to - (a) obtain information or a confession from him or a third person; (b) punish him for an act he or a third person has committed or is suspected of having committed; or (c) intimidate or coerce him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity provided that it does not include pain or suffering in compliance with lawful sanctions.³⁸

Treating a suspect cruelly or inhumanely is an abuse of his fundamental right to personal liberty and to the presumption of innocence. The law of criminal procedure in Nigeria generally forbids degrading treatment of suspects and lays down procedures for the arrest and detention of a person against whom a criminal allegation has been made. Sections 4 and 5 of the ACJA provide:

4. In making an arrest the police officer or other person making the arrest shall actually touch or confine the body of the suspect, unless there be a submission to the custody by word or action.

5. A suspect or defendant may not be handcuffed, bound or be subjected to restraint except (a) there is reasonable apprehension of violence or an attempt to escape, (b) the restraint is considered necessary for the safety of the suspect or defendant, (c) by order of the court.

³²International Rules and Standards for Policing, a publication of ICRC 2015 available at <https://www.icrc.org/eng/assets/files/other/icrc-002-0809.pdf> last visited 22 June, 2022.

³³ Gen. Ass. Res. 3452 (XXX) adopted 9/12/1975 (hereafter referred to as Declaration)

³⁴ See article (1) of the Declaration.

³⁵ See the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment signed on 10 December 1984 and entered into force on 26 June 1987.(hereafter UNCAT). Nigeria became signatory to this Convention in 1988 and ratified same in 2001.

³⁶While we may not be able to rely on the UNCAT in Nigeria because of constitutional constraints (section 12 of the Constitution), the enactment of the ATA has put Nigeria among the comity of nations as far as the demand for local legislation against torture is concerned.

³⁷ See Uwaezuoke, C. N. ‘Harnessing Extant Laws in the Battle against the use of Torture by Officers of the Nigeria Police Force’ (2010) 1/1 *Human Right Review*, 482

³⁸Acts constituting torture are elaborately enumerated in section 8 (2) ATA to include (2) torture includes.- (a) physical torture, which refers to such cruel, inhuman or degrading treatment which causes pain, exhaustion, disability or dysfunction of one or more parts of the body, such as - (i) Systematic beatings, head-hangings~ punching, kicking, striking with rifle bus and jumping, on the stomach, (ii) food deprivation or forcible feeding with spoiled food, animal or, human excreta or other food not normally eaten, (iii) electric shocks, (iv) cigarette burning, burning by electrically heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wounds, (v) the submersion of the head in water or water polluted with excrement, urine, vomit or blood, etc.

Contrarily, both the lowly and the highly placed citizens of Nigeria have been hand cuffed and dragged off in very inhumane manner without a court order to that effect even though suspects never presented any cause for apprehension of violence or attempted to escape. It has become a common practice for law enforcement agents in Nigeria to parade suspects almost naked before camera and widely show such pictures in news media with the label of criminal on their head as against the right of the suspect to presumption of innocence and to dignity of his human person. In fact, high profile cases, especially those involving politicians and judges which generally do not generate difficulty in securing the appearance of the suspect, ironically provide law enforcement agents in Nigeria, most of the time, with very fantastic opportunity to showcase to the society how effective Nigerian policing strategies are. As was rightly observed, inhumane treatments in Nigeria include:

severe beatings with metal rods and wooden sticks or planks, as well as other implements ... tying of arms and legs tight behind the body; suspension by hands and legs from the ceiling or a pole; resting concrete blocks on the arms and back while suspended; spraying of tear gas in the face and eyes; electric shocks; death threats, including holding a gun to the victims head; shooting in the foot or leg; stoning; burning with clothes irons or cigarettes; slapping and kicking with hands and boots; abusive language or threats; and denial of food and water. There were also numerous cases of the molestation and rape of female detainees; use of pliers or electric shocks on the penis; insertion of broom bristles into the penis; beating the penis with cable wire; and spraying of tear gas on genitals.³⁹

8. Recording of Arrest

One of the major challenges of effective policing in Nigeria is the absence of complete lack of criminal records or data base. People commit crime every day and are arrested and either granted bail at the police station or charged to court, prosecuted and either jailed or acquitted in Nigeria yet there is no organized or nationally controlled data base of such records. No doubt, the absence of general crime register has made proper investigation an illusion in Nigeria. Police torture suspects in Nigeria mostly to obtain confessional statement which may not be necessary in some cases if the Police is fully equipped with proper data of all record of crime in Nigeria. In some other jurisdiction e.g. United States, there are public websites for different categories of offenders. There is the national public website for sex offenders coordinated by the Justice Department which enables the citizens to search the latest information on sex offences and sex violators. This is outside websites maintained by the various state jurisdictions. Sometimes people commit crime in Nigeria and when they are apprehended it is difficult to tell, except for the information they offer, whether they are Nigerians or from across the border. In order to develop a comprehensive system of criminal records of arrested and convicted persons in Nigeria, the ACJA establishes the Central Criminal Records Registry (CCRR) for the police.⁴⁰ The CCRR is for the keeping of decisions of courts in all criminal trials which must be transmitted to the CCRR within thirty days of the judgment.⁴¹ Section 16 (2) of the ACJ Act provides for the establishment of Criminal Records Registry (CRR) at every state police command which shall keep and transmit all such records to the CCRR. It is in this light that section 16 of the Statutes at State level provide for the establishment of the CRR for State Command of the Nigeria Police.

By the provisions of the Administration of Criminal Justice Law of Delta State 2017⁴² ‘where the person arrested is charged and tried, the Registrar of the court where the offence is tried shall upon conclusion of the trial forward to the appropriate Police Division the judgment of the court within fourteen days. It shall be the duty of the Divisional Police Officer to transmit same to the State Criminal Records Registry immediately upon receipt. The State CRR at the State Police Command shall upon receipt of the copy of the judgment transmit same to the Central Criminal Records Registry, Abuja within ten days.’⁴³

Besides judgment of courts in criminal trials, the ACJA also provides for the keeping of some other records of suspects upon arrest. s

- (1) Where a suspect is arrested, whether with or without a warrant, and taken to a police station or any other agency effecting the arrest, the police officer making the arrest or the officer in charge shall cause to be taken immediately, in the prescribed form, the following record of the suspect arrested:

³⁹ ‘Rest in Pieces’ Police Torture and Deaths in Custody in Nigeria available at https://www.hrw.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria#_fn12. According to OpkaraOkpara, ‘The Right to Personal Liberty’ in OpkaraOkpara (ed.) *Human Rights: Law and Practice in Nigeria* (Enugu: Chenglo Ltd, 2005) 151, ‘Nigerians live in a frightening situation where the police shoot innocent people with impunity.’ See the case of *Uzomba v State* (2005) 1 NCC 406 where ‘the police penchant for shooting people with guns bought with tax payers money’ was highly deprecated by the Court of Appeal.

⁴⁰ See section 16 of the ACJA.

⁴¹ Section 16 (3), *Ibid*

⁴² Hereafter ACJL

⁴³ See section 16(2) (b), *Ibid*

- (a) the alleged offence(s);
 - (b) the date and circumstances of his arrest;
 - (c) his full name, occupation and residential address; and
 - (d) for the purpose of identification;
 - (i) his height;
 - (ii) his photograph;
 - (iii) his full fingerprint impressions; or
 - (iv) such other means of his identification.
- (2) The process of recording in subsection (1) of this section shall be concluded within a reasonable time of the arrest of the suspect, but not exceeding forty-eight hours.

The ACJL places a duty on any police officer in charge of any police station, or officers in charge of any agency authorized by law to make arrest and take records as provided in section 15 (1) to forward the records to the CRR at the State Police Command on the first week of every month, all records taken at that station or agency in the manner prescribed for entry into the Register kept for that purpose.⁴⁴ Interestingly, the ACJL guarantees the person arrested or his legal representative in line with the spirit of the Freedom of Information Act 2011 the right to have access to all the information in the Register with regard to his arrest or information relevant for his defence. Worthy of note is the liability of the police officer for failure to comply with the requirement of recording and transmitting the records to the appropriate quarter within the stipulated time. The Bill provides that such default shall be treated as misconduct and shall be dealt with in accordance with the relevant Police Regulations under the Police Act, or pursuant to any other disciplinary procedure prescribed by any provision regulating the conduct of such officer or official of such agency.⁴⁵ The Administration of Criminal Justice Monitoring Committee (ACJMC)⁴⁶ is such measures put in place to checkmate non compliance by officers saddled with responsibility in the ACJL.

9. Recording of Statement of the Suspect after Arrest

After arrest the most traditional thing to do by the police is the taking of his statement. Unfortunately, the old rules of criminal procedure in Nigeria made no provision for regulating the process of taking extra judicial statement from suspects, the resultant effects is the wide spread practice of torture of suspects into confession. Though, the Evidence Act⁴⁷ provides for the condition for the admissibility of confession, the law of evidence further complicates the situation of the defendant as the burden of disproving voluntariness during trial within trial (TWT) is naturally heavier than the one on the prosecution to prove voluntariness. Where there are no physical injuries or at least scars in the accused body to add weight to the allegation of use of force, it is almost a futile exercise by the defendant in the attempt to discredit the claim of voluntariness by the prosecution. The ACJA however has provided a measure to disabuse the common practice of torturing suspects into volunteering confession by setting fresh conditions which must exist before confession can become admissible during criminal trial. Section 17 (1) – (2) of the ACJA provides:

Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement and such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice. Provided that the Legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement except for the purpose of discharging his role as a legal practitioner.

Section 17 (2) is a complete innovation on the old law. It re-emphasizes and further fortifies the right of the suspect to be free from coercion and intimidation in his decision to make statement to the police. Again By section 17 (3) and (4) of the ACJA, where a suspect does not understand English, there must be a JURAT in his statement that same has been read and explained to him and he understood same before appending signature or affixing his thumb.

10. Quarterly Remittance to the AG of Record of Arrest

Apart from recording the details of suspects and transmitting same to the CRR for onward transmission to the CCRR, the Commissioner of Police in a State and head of every agency authorized by law to make arrest within

⁴⁴ Section 16 (4)(4) , Id

⁴⁵ See section 16 (4) (b) of the Bill. One of such disciplinary measures is reduction in rank especially for non commissioned officers. See section 172 of the Police Act Cap. P19 Laws of the Federation of Nigeria, 2004. See also paragraph 371 of the First Schedule to the Police Act which provides other punishment as dismissal; (b) withholding or deferment of increment; (c) reprimand; (d) fine not exceeding ₦10; (e) confinement to barracks for any number of days not exceeding fourteen days;

⁴⁶ This Committee is established by section 464 ACJA.

⁴⁷ See section 29 of the Evidence Act 2011

a State is under a further obligation to remit quarterly to the Attorney-General of that State a record of all arrests made with or without warrant in relation to State offences or arrests within the State.⁴⁸ The report shall contain the full particulars of arrested suspects as prescribed by section 15 of this Law.⁴⁹ A Register of arrests containing the particulars prescribed in section 15 of this Bill shall be kept in the prescribed form at every police station or agency authorized by law to make arrests, and every arrest, whether made with or without warrant, within the local limits of the police station or agency, or within Delta State, shall be entered accordingly by the officer in charge of the police station or official in charge of the agency as soon as the arrested suspect is brought to the station or agency.⁵⁰ As a follow up, the AG is to establish an electronic and manual database of all records of arrests at the State and Federal level.⁵¹ Where the offence is a non capital offence (i.e. offences which do not attract death penalty), the Bill frowns at detention of the suspect beyond 24 hours for any reason.⁵² Where a suspect for non capital offences is detained beyond 24 hours without being released on bail or charged to court, the Bill authorizes that an application be made to Court to consider and grant bail. By extension, it is now a ground for granting bail that the suspect was arrested for a non capital offence and he has been in police detention for more than 24 hours.

11. Arrest Without Warrant

Section 10 of the CPL and section 20 of the Police Act generally give the police very wide powers to arrest without warrant. Section 18 of the ACJA provides for arrest without warrant. Under the CPA, section 10 (1) (i) gives the police power to arrest *any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself*. The said section 10 and particularly the provisions of section 10 (1) (i) have been criticized as encouraging the Police to indulge in indiscriminate and arbitrary arrest. According to Achara:

The police powers of arrest without warrant display an insensitive disregard for the right of the individual. They could have been justified when they were made as an alien oppressor's necessary weapons to suppress the reaction of subdued natives. But how can Nigerians possibly explain these tools of degradation against their fellow citizen?⁵³

While it is not reasonable to conceive that the police should seek for warrant for every arrest, it must be emphasized that the greatest inroad to police illegal arrest and detention is the power to arrest without warrant. The drafters of the ACJA therefore took a bold step in excluding such provisions like section 10 (1) (i) of the CPA from the new law. Besides, the ACJA places further obligation on any officer in charge of a police station or an official in charge of an agency authorized to make arrest to report to the nearest Magistrate the cases of all suspects arrested without warrant within the limits of their respective stations or agency on the last working day of every month whether the suspects have been admitted to bail or not.⁵⁴ The report shall contain the particulars of the suspects arrested,⁵⁵ and the Magistrate shall on receipt of the reports, forward them to the Criminal Justice Monitoring Committee which shall analyze the reports and advise the Attorney-General as to the trends of arrests, bail and related matters.⁵⁶

12. Police Cell Visitation by Chief Magistrate

The ACJA by section 35 authorizes the Chief Magistrate, or where there is no Chief Magistrate within the police division, any Magistrate designated by the Chief Justice of Nigeria to conduct an inspection of police stations or other places of detention within his territorial jurisdiction⁵⁷ other than the prison⁵⁸ at least once every month. During the visit the Magistrate may: (a) call for, and inspect the record of arrests; (b) direct the arraignment of the suspect; (c) where bail has been refused, grant bail to any suspect where appropriate if the offence for which

⁴⁸ See section 30 (1) of the Bill

⁴⁹ *Id.*, Section 30(2).

⁵⁰ *Id.*, Section 30 (3).

⁵¹ *Id.*, Section 30 (4).

⁵² *Id.*, section 33(1).

⁵³ Achara, (n 15) p 84.

⁵⁴ *Id.*, section 34(1).

⁵⁵ *Id.*, section 34(2).

⁵⁶ *Id.*, section 34(3).

⁵⁷ By section 35 (4) of the Bill it is the High Court Judge that can visit other detention facilities belonging to federal government agencies having power to make arrest, e.g DSS, EFCC detention facilities .

⁵⁸ The power of the Chief Judge to release person in prison custody was provided for by Decree No.19 of 1977 i.e. The Criminal Release from Custody (Special Provision) Decree, (now an Act). By section 1 (1) the CJ of CJN can release from prison custody any person detained in any prison in Nigeria not being a person detained in execution of a sentence of a tribunal or court duly constituted by law provided his satisfied that the detention of that person is manifestly lawful and the person detained has been in custody for a period longer than the maximum period of his imprisonment which the person detained could have served had he been convicted of the offence in respect of which he was detained.

the suspect is held is within the jurisdiction of the Magistrate. The officer in charge is under obligation to make available to the visiting Chief Magistrate or designated Magistrate (a) the full record of arrest and record of bail; (b) applications and decisions on bail made within the period; and (c) any other facilities the Magistrate requires to exercise his powers under that subsection. From the foregoing, the visit by the Magistrate to Police Cells can be more than once every month. It is suggested that police cells within busy jurisdictions be visited at least twice a month. Sections 34 and 35 of the ACJA are aimed at curtailing the rising wave of incessant and indiscriminate arrest and the awful case of illegal detention. While section 34 gives the suspect and those representing him the right to apply to court for his release where he has been detained beyond 24 hours, section 35 provides a back up to ensure that the objective of the Act is achieved in this regards even if no application is made from the suspect. Thus, where the suspect makes no application for his release or makes application but such application is refused by the police, the visiting magistrate has power to review the situation and make the appropriate order under section 35 ACJA. This visit has proven to be very effective and rewarding, though with associated challenges.

13. Conclusion

The Administration of Criminal Justice statutes introduce very important innovations into the *corpus juris* of criminal procedure in the area of arrest. The Laws place obligations on the defence lawyer/NBA, the Attorney-General/ Ministry of Justice, the Police, the Police disciplinary authority, the Prisons, the Chief Judge, the Registrar of Court, the Chief Magistrates/Magistrates and certain bodies which are to be created under the Law as stakeholders in the criminal justice system. The implementation of the Act and the ACJ Laws in most states where the law has been domesticated is still far from acceptable. It is hoped that the executive arm of the government will exercise its requisite powers in ensuring full implementation of the ACJ statutes at all levels. It is suggested that the government should not only set up the Administration of Criminal Justice Monitoring Committee as required by law but must provide the logistic for the realization of the objectives of the law as the success of the ACJ statutes is heavily predicated on this Committee. It is expected that the Attorney –Generals will set up an electronic and manual database of all records of arrests within their States⁵⁹ if this has not already been put in place. Having regards to the role of the police in the actualization of the laudable objectives of the ACJ statutes, and the fact that the police is a federal institution and not under state control, an appeal is made to the Inspector General of Police to ensure, with the collaboration of the State Government, that the CCRR and the CRR are set up at their various levels. These registries are not aimed only at storing criminal data but to check arbitrary arrest and illegal detention. The ACJ statutes are a masterpiece capable of generating the expected results in the criminal justice sector and in particular as regards arrest but only if all stakeholders arise to their full responsibilities.

⁵⁹*Id.*, Section 30 (4).