

AN EXAMINATION OF THE EFFICACY OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 IN ENHANCING JUSTICE DELIVERY IN NIGERIA: A CRITICAL APPRAISAL

Ekwueme Akunna Ihuoma*

Abstract

The Nigerian criminal justice administration has been plagued with manifest challenges ranging from poor handling and inhuman treatment of suspects, proxy arrests, onerous and practically impossible bail conditions, delayed prosecution of cases blamed on the court, the prosecution and the counsel, to terribly poor living condition of prisoners in our various prisons to corrupt practices of the law enforcement officers, magistrate/judges and lawyers. It is against this background that the Administration of Criminal Justice Act (ACJA) 2015 was promulgated to bring sanity, legality and justice to our criminal justice jurisprudence. The said Act is the focus of our discussion in this paper. It is apposite to mention that while space will not allow us to evaluate all the provisions of the Act, this paper shall concentrate on some of the innovative and revolutionary provisions of the Act particularly as it serves to better the lot of our criminal justice administration. The instrumental and institutional parameters for measuring the performance of criminal justice administration shall be discussed. This paper shall also make various recommendations towards ensuring proper and just criminal justice administration in Nigeria.

Keywords: Administration, Courts, Criminal, Justice and Prosecution.

Introduction:

The administration of Criminal Justice Act (ACJA) 2015 is a significantly improved version of a merger of the Criminal Procedure Act (CPA)¹ enacted in 1945 and the Criminal Procedure Code (CPC)² enacted in 1960. These were the two principal statutes governing the administration of criminal justice in Nigeria prior to 2015. Though the CPA and CPC applied respectively in the southern and Northern parts of the country at the federal and state levels and in all courts, they both applied in the Federal capital territory, Abuja. It was challenging having two different criminal laws for the north and south of the country. As the need for a more efficacious administration of criminals in Nigeria beckoned, some sections needed amendments to mirror the intent of the constitution and societal changes. There was also evidence of outright abuse of the provisions of the laws by the police, prosecutors and lawyers.

The ACJA, described as probably the most potent instrument of criminal justice administration for initiating change and restoring sanity to a degenerate society, was one of the Acts enacted by the 7th National Assembly. It was enacted because the criminal justice system of the Country had lost its capacity to quickly respond to the needs of the society such as checking the rising rate of crime, speedily holding criminals accountable and protecting the victims of crime. It considerably preserves the existing criminal procedure system whilst introducing elaborate, innovative and revolutionary provisions. These provisions aim at promoting fairness, transparency, accountability and integrity of Nigeria's criminal justice processes and enhancing the efficiency and credibility of the criminal justice administration

* Ekwueme Akunna Ihuoma, LL.B B.L., LL.M, Lecturer Faculty of Law, Abia State University

¹ Cap C41 Laws of the Federation of Nigeria 2010

² Cap C39 Laws of the Federation of Nigeria 2010

system in the Country. The Act is uniformly applicable in all federal courts across Nigeria. Going by how long its twin predecessors, the CPA and the CPC had endured and the perennial problem of delay in criminal justice administration accompanying their implementation, the ACJA is indeed an Act that was long overdue. Its enactment has heralded a sigh of relief by stakeholders, particularly the countless victims of criminal justice delay and denial.

Brief Overview of the ACJA 2015

The essence of the ACJA, as captured in the purpose clause in Part 1, is to provide for the administration of criminal justice system in Nigeria, which promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crimes and protection of the rights and interest of the suspect, the defendant and victims.³ This, as Akinseye-George observes, indicates 'a deliberate shift from punishment as the main goal of the criminal justice to restorative justice which pays attention to the needs of the society, the victims, vulnerable persons and human dignity.'⁴

The Act is divided into 49 parts with 495 sections dealing with a variety of subjects that had previously bedevilled the criminal justice system and slowed down the wheels of justice. Among others, Part 2 addresses the critical issues of arrest, bail and preventive justice; Part 3 provides for the general authority to issue warrants and allied issues while Part 4 provides for prevention of offences and security for good behaviour. Part 5 is on proceedings in subsequent cases, subject to order to furnish security and Part 6 focuses on public nuisance. Part 7 deals with attachment of property where there is disobedience to summons or warrant while Parts 8 and 9 provide, generally, for criminal trial and inquiries. Parts 10 and 11 relate to the powers of the Attorney-General and his or her control of criminal proceedings while Parts 12-18 cater for institution of proceedings, appearance, service, validity of process, search warrants and related matters. Part 19 is on bail and recognizance while Part 20 covers ownership of property, including a wife's remedy against her husband as it relates to her person or property and their competence as witnesses. Parts 21-23 address the various ramifications of charges for offences, and Parts 24-27 deal with previous acquittals or conviction, attendance and examination of witnesses as well as their expenses. Part 28 covers the controversial issue of plea bargaining and pleas, generally; Part 29 provides for the procedure to be adopted where a defendant or suspect is of unsound mind; and Part 30 takes care of the thorny issue of detention time limits. Part 31 is on presentation of case and conclusion of trial. Part 32 provides for costs, compensation, damages and restitution while Part 33 provides for custody, disposal, and restoration of property. Part 34 provides for seizure, forfeiture, confiscation and destruction of the instrumentality of crime while Parts 35-37 address the procedure in perjury, summary trials and trials by way of information. Part 38 relates to provisions on death sentence, Part 39 provides for pregnant woman convicted of capital offence while Part 40 deals with sentencing other than capital sentence. Parts 41-46 provide for detention in a safe custody other than prison or mental health asylum; deportation; child offenders, with specific focus on the procedure for trying child offenders; probation and the long canvassed for non-custodial alternatives, parole and the Administration of Criminal Justice Monitoring Committee.

³ S.1(1)

⁴ Yeti Akinseye-George 'An overview of the changes and application of the administration of criminal justice Act 2015' in Adedeji Adekunle, Suzie Oyakhire and Chukwuemeka C Nwabuzor (eds), *issues in criminal justice Administration in Nigeria (NIALS 2016)* 1-2

The Act introduces innovative provisions that, if strictly applied, will enhance the efficiency of the criminal justice system. It builds on the existing framework of criminal justice administration in the Country while filling the gaps observed in this framework over the course of several decades. One of such innovative provisions is the abolition of the arrest of family and friends in lieu of the suspect as a means of compelling the suspect to submit to arrest, even when such family and friends are not connected with the alleged offence.⁵ If this provision is properly implemented, it has the potential to reduce prison and police cell congestion. Another innovation is the requirement of electronic recording of confessional statements.⁶ This is a vital provision that is aimed at proving the voluntariness of a confessional statement and preventing its retraction by an accused person claiming it was obtained under duress. Such denial usually requires a trial within trial to resolve; a necessity that had compounded the problem of delay in criminal trials. The Act has been rightly criticised, though, for making the requirement of electronic recording of confessional statement discretionary by using 'may' instead of 'shall', which is mandatory. This creates a loophole which is susceptible to exploitation by not only the police, but other government departments involved in recording statement of suspects.⁷

Thankfully, in *Nnajifor v FRN*,⁸ though the Court acknowledged that the ordinary interpretation of 'may' is permissive, as established in a long line of cases, it nevertheless, held that the word 'may' in *section 15(4)* read along with *section 17(1)* and (2) is mandatory and not permissive. This position of the Court is in line with a long line of other cases that have held the word 'may' to be mandatory and not permissive.

This decision was based on the application of the mischief rule of interpretation in the light of the mischief which the ACJA set out to cure. Part of this mischief is the protection of the right of an accused, who, under the Constitution, is presumed innocent until proven guilty.

Note, however, that the general position of the courts is to interpret the words of any statute in its ordinary and literal meaning once they are clear and unambiguous. The only exception to this is where it will result in absurdity to do so as the Court of Appeal indicated in *Julius Berger (Nig.) Plc v Anizzeal Eng. Project Ltd.*⁹ quoting with approval the Supreme Court's decision in *Araka v Egbue*¹⁰ that -The duty of the Court is to interpret the words contained in the statute and not to go outside the words in search of an interpretation which is convenient to the Court or to the parties or one of the parties. Even where the provisions of a statute are hard in the sense that they will do some inconvenience to the parties, the Court is bound to interpret the provisions once they are clear and unambiguous. It is not the duty of the Court to remove the chaff from the grain in the process of interpretation of the statute to arrive at favourable terms for the parties outside the contemplation of the lawmaker. This will be tantamount to travelling outside the statute in a voyage of discovery. This Court cannot embark upon such a journey.

⁵ Section 7, Administration of Criminal Justice Act 2015

⁶ Section. 15(4) *ibid.*

⁷ Estine Okolo, 'issues in the administration of criminal justice Act 2015-opinion' <<http://investadvocate.com.ng/2016/10/21/issues-administration-criminal-justice-act-2015-opinion/>>accessed 1st March 2024. S. 494(1) of ACJA 2015 defines a police officer to include any member of the Nigerian Police force established by the police Act or where the context so admits shall include any officer of any law enforcement Agency established by the Act of the National Assembly.

⁸ (2018) LPELR-43925 (CA). See also *Charles v FRN* (2018) LPELR-43922 (CA)

⁹ (2013) LPELR-20694(CA)

¹⁰ (2003)MJSC17

This view reinforces the fact that the purpose of law is better served by using precise language. The intention of the lawmaker should be made as clear as possible. This is to avoid going through the rigors of the court process to determine the intention of the law over an issue that could easily have been resolved by the use of 'shall' as was done in other parts of the same section. This is more so since it is not every accused whose voluntary confessional statement is not electronically recorded that will have the opportunity of having such discretionary exercise of power by a police officer tested through the court process. Many such suspects would have ended up, and many more will still end up, not having the benefit of their rights protected in this regard. Clearly, the provision of *section 9(3)* of the Administration of Criminal Justice Law of Lagos State (ACJL), 2007, mandating the Police to ensure that confessional statements are recorded on video, and the said recording and copies filed and produced at the trial, is better.

Attendant to the challenge of electronic recording of suspects' confessional statement is the question as to whether the equipment required for recording the statement will be readily available and functional as and when needed. Incidentally, ACJA 2015 has no answer for this eventuality, except to provide that notwithstanding the provision of *section 15(4)*, 'an oral confession of an arrested person shall be admissible in evidence'.³⁰ This provision significantly undermines the mischief sought to be addressed by *section 15(4)*. Again, *section 9(3)* of the ACJL of Lagos State preventively addresses such a situation where a video facility may not be available. The section mandates that the statement should be made in writing in the presence of a legal practitioner of the suspect's choice.

The ACJA deliberately mainstreams human rights and the protection of vulnerable persons by elaborately providing for the need to treat arrested persons humanely. It equally outlaws malicious instigation of the arrest, detention and prosecution of another because of civil wrong or contract.¹¹ This is a very welcome development as it had become rampant in Nigeria for the police and other law enforcement and security agencies to be used to settle such matters, which were clearly outside their call of duty.

Also noteworthy is *section 396(3)-(5)* requiring a day-to-day trial from arraignment till the conclusion of trial, reducing total adjournments throughout the trial to not more than five for each party, with interval between adjournments not exceeding 14 working days. Where it is impracticable to conclude the trial within the given number of adjournments and interval, additional adjournments may be granted at intervals not exceeding seven days, including weekends. Incessant, and often avoidable, adjournments have been the bane of timely criminal justice delivery in Nigeria. A strict adherence to the provisions of this section will remarkably speed up criminal justice administration. The flip side of this provision, however, is that it could result in the maintenance of the status quo, especially with a judge that is not disciplined enough to take proper control of proceedings in his or her court. This is because the provision on additional adjournments does not peg the number of such adjournments. Again, it could result in criminal matters being struck out for want of diligent prosecution because of the frequently shoddy way prosecution is conducted by some prosecutors who rush to court without proper investigation and preparation. This often leads to unjustified requests for further adjournments as evident in Ubani's lamentation on the effect of incessant adjournments of cases on criminal trials -The worst scenario is now at the various High Courts and Federal High Courts across the federation. To be sincere I am handling some of

¹¹ *Section 8(2)* Administration of Criminal Justice Act 2015.

these cases in the High Court, Lagos State presently in which I think if the prosecution should come up with diligent handling, the defendants should smell the rod in Correctional Centres.

Yet another novel provision of the Act is *section 396(7)*. The provision allows a Judge of the High Court, who has been elevated to the Court of Appeal, to continue to sit as a High Court Judge in order to conclude any part-heard criminal matter pending before him or her at the time of the elevation. Such a judge must conclude the matter within a reasonable time, provided this does not prevent him or her from taking up the new post. This offers a great relief to parties to such cases as it mitigates the waste of efforts, time and resources suffered when such elevation occurred in the past and the case had to start afresh before another judge. The practice of having such cases start afresh before a new judge contributed to the prolonged duration of many criminal cases in the courts.

Incidentally, *Section 396(7)* ACJA has recently been held by the Apex Court, the Supreme Court of Nigeria, to contradict and challenge the letters, substance and spirit of *section 290(1)* of the 1999 Constitution. Therefore, it is to the extent of such inconsistency void by virtue of *section 1(3)* of the Constitution.³⁵ According to the Court, the effect of *section 290(1)* of the 1999 Constitution, as amended, is that a Judge elevated to a higher Court has ceased to be a Judge of the Court from which he or she was elevated. Such a judge has, by that appointment, been deprived of the jurisdiction to conclude the hearing of the case before him or her at the Court from where he or she was elevated. The Supreme Court, in arriving at this decision, followed its earlier decision in *Ogbunyinya & Ors v Okudo & Ors*¹² and affirmed in *Our Line Ltd v S.C.C Nigeria Ltd & Ors*.¹³ This is a serious drawback on the relevance of this provision and the grounds so far gained through its application. It also reveals the significant gap of failure to take adequate cognisance of constitutional provisions in the enactment of the law. Resolving this problem may require the National Assembly amending the relevant sections of the Constitution to accommodate this novel provision of the Act. This is not an easy task going by the stringent requirement for constitutional amendment in Nigeria. The responsibility for ensuring compliance with the provisions of the Act for the realisation of its goal rests with the courts, law enforcement agencies and other authorities or persons involved in criminal justice administration.¹⁴ The responsibility for making arrangements and rules to enhance the proper application of the Act rests on the shoulders of heads of Federal courts, including the Chief Judge of the Federal High Court.¹⁵

The Abia State Administration of Criminal Justice Law, 2017

The Abia State Administration of Criminal Justice Law (ACJL) 2017 is a landmark legislation that revolutionizes the administration of criminal justice in Abia State, Nigeria. This comprehensive law aims to ensure efficient and effective justice delivery, while protecting human rights and promoting rehabilitation. The ACJL consists of 48 parts and 479 sections.

The ACJL 2017 regulates various aspects of criminal justice administration, including arrest and detention, investigation, prosecution, trial, sentencing, appeal, and review. It emphasizes human rights and due process, ensuring that suspects and accused persons are treated fairly and justly. The law also outlines procedures for investigation, prosecution, and trial, promoting efficiency and consistency in justice delivery.

¹² (1979) NSCC 77

¹³ (2009) 17NWLR (pt. 1170) 383

¹⁴ *Section 1(2)* Administration of Criminal Justice Act 2015

¹⁵ *Section. 490 ibid.*

This law introduces several innovative features that enhance the criminal justice system. Plea bargaining¹⁶, sentencing guidelines¹⁷, restorative justice, and victim and witness expenses¹⁸ are some of the notable innovations. Plea bargaining reduces case backlog and promotes efficient justice delivery, while sentencing guidelines ensure consistency and fairness. The ACJL 2017 has a profound impact on the criminal justice system in Abia State. It reduces case backlog and delays, promotes efficient justice delivery, protects human rights and due process, enhances prisoner rehabilitation and reintegration, and improves victim and witness protection. The law also promotes alternative dispute resolution mechanisms, reducing the burden on the courts and promoting community-based justice. In the case of *State v. Nwadike*¹⁹, the defendant was arrested without a warrant, and the police relied on *Section 5* of the ACJL, which allows for arrest without a warrant in certain circumstances. The defendant argued that his arrest was unlawful and that the evidence obtained during the arrest should be excluded. The court considered the provisions of *Section 5* of the ACJL and held that the arrest was lawful, and therefore, the evidence obtained during the arrest was admissible.

Innovations of the Administration of Criminal Justice Act 2015:

1. *Unlawful Arrest*: This is one provision that is very much welcomed in the sense that under *Section 10 (1)* of the CPA, the Police could arrest without warrant, any person who has no ostensible means of sustenance and who cannot give a satisfactory account of himself, which provision was greatly abused by the police as a ground to arrest people indiscriminately but has been deleted by the ACJA, 2015. The police now, cannot arrest persons in lieu of suspects²⁰, where actual arrest is entitled to notification of cause of arrest²¹ and shall be accorded humane treatment, having regard to dignity of his person²². Furthermore, gone is the era where the police gets involved in civil matters or even simple contracts and use their power of arrest as a weapon to intimidate or oppress parties. It is now illegal for the police to arrest parties over a civil wrong or contract under the ACJA.²³

2. *Plea Bargain*:²⁴ Under the ACJA 2015, plea bargain means the process in criminal proceedings where the defendant and the prosecution work out a mutually acceptable agreement as to a lesser offence than what was actually charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than for a higher charge subject to the courts approval.²⁵ This saves the time and resources that would have been wasted in trial hence ensuring quick dispensation of justice. In the case of *State v. Kalu*²⁶, the defendant was charged with murder and entered into a plea bargain with the prosecution, as provided for under *Section 267* of the ACJL. The defendant pleaded guilty to a lesser offense and was sentenced accordingly. However, the defendant later appealed the sentence, arguing that the plea bargain was not voluntary and that he was not adequately represented by counsel. The court considered the provisions of *Section 267* of the ACJL and held that the plea bargain was valid and that the defendant's rights were not violated.

¹⁶ *Section 267 ACJL 2017*

¹⁷ *Section 399 ibid*

¹⁸ *Section 248-251 ibid*

¹⁹ (2018)LPELR-44215 (CA)

²⁰ *Section 7 ACJA 2015*

²¹ *Section 6 ACJA 2015*

²² *Section 8 ACJA 2015*

²³ *Section 8(2) ACJA 2015*

²⁴ *Section 270 ibid*

²⁵ *Section 494 ibid*

²⁶ (2019) LPELR-46735 (CA)

3. *Trial of Corporation:*²⁷By virtue of provision of the ACJA,²⁸a corporation can now be sued for criminal matters through its representative, which was not so before. A company is treated as an adult 'defendant' for any offence without exception.²⁹

4. *Suspended Sentence and Community Service:*³⁰Pursuant to its restorative and reformatory approach, the ACJA 2015 provides that a court, in furtherance of decongesting the correctional centres and rehabilitate prisoners, can make them undertake productive work and prevent convicts of simple offences from mixing with hardened criminals. This can be achieved by suspending the sentence of the said convict or the convict may be asked to carry out community service in a community chosen by the court.

5. *Speedy Trials:* The ACJA 2015 makes the following provisions, to help expedite trials-

(a) *Stay of proceedings:*³¹ This is a new provision in the ACJA 2015 that discourages application for stay of proceedings in a criminal matter before the court. This puts a gag on delays which can be caused to the trial process by interlocutory applications to stay proceedings pending appeal on preliminary matters even when the substantive issues are yet to be tried on the merits. See *Frn v Lawan*³² where UWA, JCA stated in p. 33, paras A-F;

the essence of the Administration of Criminal Justice Act, 2015 was to ensure amongst others, speedy trial and quick disposal of criminal cases in the interest and as of right, of a suspect, the defendant, the victim and in fact the society at large. Section 98 (2) of the ACJA was put there to ensure that part heard criminal matters do not suffer unnecessary transfers from one court to the other for whatever reason, where an unsatisfied party has the option of an appeal if not satisfied with the outcome of the trial. The popular saying that, justice delayed is justice denied or no justice at all. In some cases, some of the accused persons do not live to see the end of their trials for offences alleged to have been committed by them, due to long and unending trials. To curb this trend is the essence of the ACJA.

(b) *Day to Day trial:*³³ Once arraigned, the trial of the defendant will proceed from day to day until conclusion. Where this is not possible, the Act provides that parties are entitled to only five (5) adjournments each, the interval for each adjournment shall not exceed two weeks. Where this does not conclude the trial, the interval for adjournment will be reduced to seven (7) days each.

(c) *Assignment of Information and Issuance of Notice of Trial:* ³⁴Information filed are to be assigned by the Chief Judge within fifteen (15) days and the Judge is to issue notice of trial within Ten (10) working days of the assignment of the information to his court.

²⁷ Section 477 ACJA 2015

²⁸ *ibid* Section 477 *ibid*

²⁹ Section 484 *ibid*

³⁰ Section 460 *ibid*

³¹ Section 306 ACJA 2015

³² (2018)LPELR-43973(CA)

³³ Section 396 ACJA 2015

³⁴ Section 382 *ibid*.

(d) **Objection to the Validity of Charge:**³⁵ Any objection as to the validity of the charge or information raised by the defendant shall only be considered along with the substantive issues and a ruling therein made at the time of delivery of judgment.

6. **Electronic Recording of Confessional Statements:**³⁶ To avoid denial by the defendant of making a confessional statement voluntarily, the ACJA 2015 has made a provision for recording of such statements of the defendant electronically in a retrievable video compact disc or such other audio virtual means.³⁷

7. **Remand Time:**³⁸ In time past, suspects were remanded at will or sometimes indefinitely, leading to the congestion of the correctional centres. However, the ACJA 2015 provides that a suspect shall not be remanded for more than fourteen (14) days at the first instance and renewable for a time not exceeding fourteen (14) days where 'good cause' is shown. At the expiration of the remand order, if the legal advice is still not issued, the court can go ahead to 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 to inquire into the position of things and adjourn for another period not exceeding fourteen (14) days for the above mentioned officials to come and explain why the suspect should not be released unconditionally.

8. **Compensation to Victims of Crime:** The Act has brought relief to victims of crime by awarding compensation to them once the defendant is found guilty of the crime. The court may within the proceedings, or when passing judgment, order the convict to pay compensation to any person injured by the offence.³⁹ This is very commendable for it does not only seek to punish the offender, but also cushions the hardship occasioned by the commission of the offence by ensuring justice is served both ways.

Conclusion and Recommendations

The ACJA 2015 presents an opportunity to entrench common standards and principles in Criminal justice Administration. Therefore States should make efforts to adopt the ACJA as it is the new uniform criminal procedure. Already States like Lagos, Ekiti, Ondo, Abia, Cross River, Edo, Rivers and Bayelsa, have their Administration of Criminal Justice Law. All stakeholders involved in the administration of criminal justice are urged to collaborate to ensure the intents and purposes of the law are successfully and effectively implemented. The Abia State Administration of Criminal Justice Law 2017 is a comprehensive framework that revolutionizes the administration of criminal justice in Abia State. Its key provisions, innovative features, and impact on the criminal justice system make it a model for other states to follow. By promoting efficient justice delivery, protecting human rights, and enhancing rehabilitation, the ACJL 2017 ensures that justice is served in a fair, efficient, and effective manner.

³⁵ Section 396(2) *ibid*.

³⁶ Section 15(4) ACJA 2015

³⁷ Section 15(4) *ibid*

³⁸ Section 296 *ibid*

³⁹ Section 319(1) *ibid*