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COMPENDIUM OF STATE ADMINISTRATION OF JUSTICE LAWS ANALYSES VOLUME 3

Nigerian Institute of Advanced Legal Studies (NIALS)

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# COMPENDIUM OF STATE ADMINISTRATION OF CRIMINAL JUSTICE LAWS ANALYSES

## VOLUME III

Edited by Prof. M. T. Ladan

# COMPENDIUM OF STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW ANALYSES (VOLUME III)

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# Compendium of State Administration of Criminal Justice Law Analyses (Volume III)

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## Editor's Note

Before 2015, the three main components of the Nigerian criminal justice system- law enforcement, courts, and corrections -could not meet the justice needs of citizens and other persons residing in the country. This was due to inherent challenges in the existing criminal law provisions and legal practitioners' (especially defence lawyers) penchant for exploiting loopholes in the law, which resulted in delays. Some of the existing provisions had the effect of encouraging unnecessary incarceration for minor offences and prolonged detention of persons awaiting trial. The result was that correctional facilities and detention centres became overcrowded due to the huge number of awaiting trial inmates (ATIs), some of who could be held in detention for years without trial. Hence, Nigerians became bitter and aggressive towards criminal justice institutions. The judiciary lost its status as the last hope of the common man, as citizens had lost confidence in the institution's ability to deliver justice.

The needed criminal reform came in 2015 with the enactment of the Administration of Criminal Justice Act (ACJA), with the aspiration to eliminate delays in the criminal justice system and occasion speedy dispensation of justice. The acceptability of the criminal reforms are not in doubt as a total of thirty-one (31) out of thirty-six (36) of the federation have adopted it. While some states replicated the provisions of the ACJA, others adapted its provisions to suit their own context.

This Compendium is third in the series and spotlights a comparative analysis of the Administration of Criminal Justice Laws (ACJLs) of five (5) of the remaining nine (9) states that have passed ACJLs, with the ACJA. The first two volumes contain comparative analyses of 23 states- 13 in the first volume and 10 in the second volume. Analysis of each state ACJL with the ACJA is to underscore points of intersection as well as points

of departure between the ACJ Laws as well as other relevant laws, particularly the Constitution of the Federal Republic of Nigeria, 1999 (CFRN), as amended, the Evidence Act and the Child's Rights Act. The idea is also to understand the extent to which the laws seek to inject international human rights standards into Nigeria criminal justice practices and delivery.

The compilation of analyses of ACJ Laws is part of the Institute's activities set out under the *Supporting the Effective Implementation of and Compliance with the Administration of Criminal Justice Act Laws in Nigeria* (MacArthur 2.0) Project. The Project seeks to deepen understanding of legal instruments relating to criminal justice administration at federal and state levels.

NIALS wishes to use this opportunity to thank the John D and Catherine T. MacArthur Foundation for providing support for the entire Project, as part of the Foundation's *On Nigeria* Grant Program.

***Professor Muhammed Tawfiq Ladan, PhD***
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November 2021

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Administration of Criminal Justice Law, 2016 (Cross–River State).
Advanced Fee Fraud Act 2006.
Anti-Torture Act, 2017.
Child Right Act, 2003.
Children and Young Persons Law Laws of Northern Nigeria (1963).
Constitution of the Federal Republic of Nigeria 1999 (as amended).
Correctional Facilities Act, 2019.
Criminal Procedure Law Cap 31, Laws of Eastern Nigeria 1963 (repealed).
Cybercrimes (Prohibition, Prevention, etc.) Act (CPPA), 2015.
Economic and Financial Crimes Commission (EFCC) Act, 2004.
Economic and Financial Crimes Commission (Enforcement) Regulations, 2010.
Evidence Act 2011.
Money Laundering Prohibition Act, 2011.
Penal Code Law 2017 (Plateau State).
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Suppression of Piracy and Other maritime Offences Act (SPOMO) 2019.

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The Terrorism Prevention Act 2011 (As amended).
Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEAA), 2015.

**Foreign Statutes**

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Criminal Code (As amended, 2016).
Code of Criminal Procedure 1958.

**United Kingdom**

Criminal Justice Act 2003.
Legal Aid, Sentencing and Punishment of Offenders Act 2012.
Police and Criminal Evidence Act of 1984.

**United States of America**

Victims of Crime Act 1984.

**Pakistan**

Pakistani Penal Code (Act XLV of 1860).
Pakistan Code of Criminal Procedure 1898, as amended by Act II of 1997.
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**Sudan**

Code of Criminal Procedure 2003.
Penal Code of 1991.

**Japan**

Code of Criminal Procedure 1948 (as amended in 2006).

**International Treaties and Instruments**

African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981.
American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969.
European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950.

International Covenant on Civil and Political Rights, 16 December 1966.
International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965.
Kampala Declaration on Prison Conditions in Africa Economic and Social Council resolution 1997/36.
United Nations Convention on the Elimination of Discrimination Against Women
Universal Declaration of Human Rights, 10 December 1948, 217 A (III).
United Nations Convention on the Rights of the Child 7 March 1990, E/CN.4/RES/1990/74.
United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).
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## Table of Cases

*Akaeze Charles v. FRN* (2018) LPELR-43922(CA)
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*Sambo Dasuki v. FRN* (2018) LPELR CA/A/523C/2017
*Shema & Ors v FRN* (2018) LPELR-43723 (SC)
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*Udeogu v. FRN* SC 622C/2019
*Wagbatsoma v. FRN,* Suit No: CA/L/348C/2017

## Abbreviations and Acronyms

| | |
|---|---|
| ACHPR | African Charter on Human and Peoples' Rights |
| ACJA | Administration of Criminal Justice Act |
| ACJL | Administration of Criminal Justice Law |
| CAT | Convention Against Torture |
| CJ | Chief Judge |
| CPA | Criminal Procedure Act |
| CPC | Criminal Procedure Code |
| CPCKb | Criminal Procedure Code of Kebbi State |
| CRC | Convention on the Rights of the Child |
| DPP | Director of Public Prosecution |
| ESJRT | Ebonyi State Justice Reform Team |
| FBI | Federal Bureau of Investigations |
| FCT | Federal Capital Territory |
| HRSPP | Human Rights Standards and Practice for the Police |
| ICCPR | International Covenant on Civil and Political Rights |
| ISACJL | Imo State Administration of Criminal Justice Law |
| KbACJL | Kebbi State Administration of Criminal Justice Law |
| LACON | Legal Aid Council of Nigeria |
| OHCHR | United Nations High Commissioner for Human Rights |
| SDGs | Sustainable development goals |
| UNODC | United Nations Office on Drugs and Crimes |

# COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 AND THE KEBBI STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW, 2021*

## 1.1. Overview of the Administration of Criminal Justice Act, 2015 and Kebbi State Administration of Criminal Justice Law, 2021

Before 2015, the criminal justice system in Nigeria was regulated by the Criminal Procedure Act (CPA)[1] and Criminal Procedure Code (CPC)[2]. These legislation guided the conduct of criminal trials in Nigeria for several decades but as the world and society become dynamic, it becomes apparent that the criminal justice sector in the country has not responded effectively to changes in Nigerian societies resulting in ineffective investigation of crimes, poor prosecution of offences and protracted trials. After several years of review of the state of the administration of criminal justice in Nigeria, the Administration of Criminal Justice Act (ACJA) was enacted in 2015 bringing a new dawn in the criminal justice system in the country. ACJA contains innovative provisions which aim *inter alia* at promoting efficient management of criminal justice

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* Arzard Habila, PhD, Senior Research Fellow, Nigerian Institute of Advanced Legal Studies.

1 The CPA came into effect as Ordinance No. 42 of 1945. It was re-enacted as Ordinance No 43 of 1948 and went through a series of amendments over time until it was incorporated as Cap 80, LFN 1990.

2 Cap C30 Laws of Northern Nigeria, 1963 which was enacted by the Northern Region of Nigeria and applied only to the Northern Region and later when states were created, to all the Northern States of Nigeria.

institutions and speedy criminal trials. In Kebbi State (like all States in Northern Nigeria), the CPC[3] guided criminal trials. However, in 1996 Kebbi State passed the Criminal Procedure Code of Kebbi State (CPCKb)[4] which replaced the CPC and guided criminal trials in the state until the passage of the Kebbi State Administration of Criminal Justice Law (KbACJL) or (ACJL) in 2021. Just like the ACJA which in s. 493 repealed the CPC, the KbACJL in s. 480 also repealed the CPCKb.

The KbACJL signed into law on 26th January, 2021 is a fall out of the recommendations of the Committee which was set up by the Governors of the 19 States in Northern Nigeria to review the Penal Code and the CPC with a view to producing laws that meet the modern-day challenges and realities in administration of criminal justice. The committee recommended the domestication of the ACJA and holistic rewriting and redrafting of the Penal Code by the various States in the region taking into consideration the peculiarities of each state but ensuring some degree of consistency of laws across all the 19 States in the Region. Inspired by the ACJA, the KbACJL lucidly spells out its objective to promote efficient management of criminal justice institutions and speedy dispensation of justice in Kebbi State and establishes a mechanism that governs criminal justice delivery in the State to ensure efficiency. It adapted many robust innovations introduced by the ACJA which aims *inter alia* at respecting the human rights of citizens, speedy trial and decongestion of correctional facilities. Thus, the KbACJL bears considerable similarity in content and language with the ACJA and can aptly be described as a rehash of same in several places. For example, the law emphasised respect for the human rights of suspects, abolished arrest *in lieu,* recognizes the right of

3 *Ibid*

4 Cap 41 Laws of Kebbi State 1996

women to stand as sureties, legalised plea-bargaining, provides for frontloading especially by the Prosecution to enhance speedy trials, introduced non-custodial measures as alternatives to incarceration, makes provision for victim compensation and restorative justice in addition to establishing institutional framework for successful implementation. All these innovative provisions were adapted from the ACJA. The KbACJL consists of 48 Parts and 480 sections which combine to provide a holistic mechanism for effective criminal justice administration in the state.

In addition to substantive provisions, the law also contains four schedules (described as First Schedule to Fourth Schedule) basically dealing with Forms relative to various sections of the law and scale of imprisonment for non-payment of money.

### 1.2.Compliance with International Best Practices

For many years, the importance of establishing a criminal justice administration that gives greater protection to the rights of the offender and the victim and the interest of the larger society and at the same time meets generally accepted principles and standards has been a major theme in many criminal justice discourses across the world. A lot of criminal justice reforms have taken place in many countries of the world with regard to treatment of offenders from the time of arrests to the conclusion of trial and imposition of punishment. Greater emphasis is now placed on respect for the human rights of offenders and adoption of non-custodial sentencing among others. The United Nations has kept the issue of criminal justice reforms on the front burner and pushed for its actualisation. In this regard, a number of norms, standards and principles have been developed to guide states in developing acceptable criminal justice administration in their respective states. Some of these standards deal with human

rights and are general in nature. They include the International Covenant on Civil and Political Rights (ICCPR),[5]Convention on the Rights of the Child (CRC)[6]and the African Charter on Human and Peoples' Rights (ACHPR),[7]etc. Some other standards are more subject specific and they include UN Standards Minimum Rules for the Treatment of Prisoners[8] which deals essentially with imprisonment, and the Human Rights Standards and Practice for the Police (HRSPP),[9] which was developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR)[10] in 2004 as a standard reference guide for police operations across the world. The principle of the dignity of the human person is the crux of International human rights standards, best practices and norms which as a whole focuses on this principle. The principle emphasises two key imperatives. Firstly, it underscores the obligation of law enforcement officials to protect human dignity and uphold the human rights of all persons, in addition to respecting the principles of legality, necessity, humanity and

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5 The ICCPR was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966; It came into force on March 23, 1976, in accordance with Article 49.

6 The CRC was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of November 20, 1989. It entered into force September 2, 1990, in accordance with article 49.

7 The African Charter on Human and Peoples' Rights was adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), it entered into force Oct. 21, 1986.

8 United Nations Doc. A/RES/45/110.

9 Professional Training Series No. 5/Add.3

10 As a department of the Secretariat of the UN, the OHCHR has the mandate to work towards the promotion and protection of all rights contained in the Universal Declaration of Human Rights, 1948. See more at <www.un.org> or <www.ohchr.org> accessed 12 August, 2020.

non-discrimination.[11] Secondly, there is the requirement for law enforcement operatives as servants of the people and the government, to be impartial in the exercise of their functions, powers and duties noting that the limitations on the enjoyment of rights and fundamental freedoms of persons shall only be those necessary to secure recognition and respect for the rights of others and for meeting the just requirements of morality, public order and the general welfare in a democratic society.[12] The ACJA and KbACJL are robust frameworks for achieving effective and speedy criminal justice administration in Nigeria and Kebbi State respectively. The question however is whether the provisions of both laws reflect international standards and best practices regarding effective criminal justice systems.

Both the ACJA and the KbACJL can rightly be said to have improved the criminal justice administration in Nigeria and Kebbi State respectively and have also aligned with international standards in several ways including the following:

### 1.2.1. Human Rights Aspects

The push for respect for human rights has been on the global front burner for many years now. To demonstrate the seriousness attached to it by the international community, some developed countries have made respect for human rights by a least developed or developing country as a key indicator in determining whether or not to grant aid or do business with the country. The ACJA and the KbACJL reflect Nigeria's efforts at improving its human rights compliance profile. Both laws

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[11] See generally, UN, Overview of International Legal Framework for Disability Legislation <www.un.org> accessed 20 August, 2020. See also Article 46 of the United Nations Declaration on the Rights of Indigenous People; adopted by the UN General Assembly 13 September 2007, Doc. A/61/295.

[12] *Ibid*

largely promote the principle of equality, non-discrimination and respect for the dignity of the human person. In this regard, they prohibit arbitrary arrests, arbitrary detention and torture and emphasise humane treatment of suspects and to a great extent equal treatment of gender. In general, both laws promote the tenets of human rights not only by law enforcement agencies but by every critical player in the administration of criminal justice. The passage of ACJA in Nigeria and ACJ laws in many states in the country signposts a clear and deliberate desire to bring to an end the era of gross human rights abuse of suspects by law enforcement agencies in the country. This means that every law enforcement agency is required to be responsive and accountable to the society in general in the discharge of its duties.

### 1.2.2. Arrest, Remand/Detention, Investigation, Interrogation, etc.

The minimum international standards regarding arrest, detention and trial require that where a person is arrested, he should be informed of the reasons for the arrest, his right to remain silent, his right to a legal representation etc. and he should be arraigned in court and put to trial within a reasonable time, and given fair hearing.

At all stages, from arrest, searches, investigation, evidence gathering, recording of statements of suspects, witnesses, and victims, international best practice requires that consideration must be given to the following: rights to security of person, fair trial, privacy, dignity, freedom from torture and other inhuman or degrading treatment, among others. Both laws provide mechanisms to prevent extraction of evidence through torture, degrading and other inhumane treatment in line with the Convention Against Torture (CAT) and Nigeria Anti-Torture

Act. The requirement of electronic recording of confessions or for such confessions to be taken in the presence of legal practitioner is not only to ensure that the confession was made voluntarily but also to ensure that investigatory activities are done competently, thoroughly and their objectives achieved. Both the ACJA and KbACJL therefore developed standardised procedures for the recording of arrest, recording of statement of suspect and the keeping of criminal records.[13]

International standards require that where arrest and detention take place, states are to ensure that the detainee is firstly presumed innocent until proven guilty by a court, is treated humanely, not subjected to degrading, cruel or inhuman treatment and is held in a place of detention established by law and made accessible to family and legal representatives. Measures that guarantee these rights are elaborately provided in both laws.[14]

Internationally, it is recognised that where a person is brought before a court, he shall be given fair trial and within a reasonable time. He shall also be given 'adequate time and facility' to prepare his case and to defend himself and be able to examine prosecution witnesses. Both the ACJA and the KbACJL copiously promote this standard as they contain provisions which impel the prosecution to frontload evidence (ss. 300, 379 ACJA and s. 209 KbACJL). The Supreme Court has held in a number of cases such as *Ejike Okoye v Commissioner of Police*[15]and *Shema & Ors v FRN,*[16]among others that 'adequate time and facility' includes "necessary hints… including the statements of the prosecution witnesses and

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13 Generally, ss. 15, 16, 17 ACJA and ss.36, 37, 38 KbACJL.
14 See for example, ss. 6, 14 ACJA and ss. 23- 27, 29 KbACJL.
15 (2015) All FWLR (Pt.799) 1101 at 1126-1127
16 (2018) LPELR-43723 (SC)

his own written statement"; and also, that 'adequate time and facilities' form part of fair hearing and includes frontloading of evidence by prosecution.

The hallmark of efficient justice delivery which is recognised globally is expeditious dispensation of justice epitomised by speedy trial. Inspired by ACJA, the KbACJL has made laudable efforts to achieve this standard by providing for day-to-day trial until conclusion of the matter.[17]

### 1.2.3. A Shift from Adversarial to Restorative Justice

In view of limited evidence of the efficacy of imprisonment in achieving the aim and objectives of punishment and ensuring public safety, there is now advocacy globally for a shift from adversarial justice system that emphasise imprisonment as punishment to one that emphasise alternatives to imprisonment and restorative justice. In addition to achieving prison decongestion, it also gives protection to the vulnerable groups in the society such as women, children, and the mentally ill as groups who often suffer more deleterious consequences of imprisonment. This does not in any way diminish the utility of imprisonment as it remains an important form of punishment and a crucial aspect of criminal justice administration.

Some instruments have been developed and adopted by the international community to promote a shift away from imprisonment as punishment for crime. They include: United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules);[18] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;[19] and Basic Principles on the Use of Restorative Justice Programmes in Criminal

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17 See s.396 ACJA and s.399((3) KbACJL

18 United Nations Doc. A/RES/45/110.

19 United Nations Doc A/RES/40/34

Matters.[20] Other UN instruments that advocate non-custodial measures include: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;[21] Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.[22]

Although the Tokyo Rules[23] were adopted with the aim of reducing the application of imprisonment,[24] a crucial recommendation was made to the effect that non-custodial measures should form part of reductionist criminal justice policy.[25] This is due to several disadvantages associated with imprisonment, especially of low-level or minor offenders and those awaiting trial.[26] The United Nations Office on Drugs and Crimes (UNODC)[27] highlights the drawbacks of imprisonment to include overcrowding and prison congestion, human rights violations and unnecessary cost. Human rights advocates opine that it is more beneficial to punish minor offenders using 'appropriate alternatives'[28] reasoning that effective implementation of 'alternatives to incarceration,' could result in outcomes that benefit the offender, the victim of crime and the society at large. Non-Custodial sentencing also makes it easier to manage detention facilities in a way that allow states to meet

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20 Adopted by the United Nations Economic and Social Council on 24 May 2002, United Nations Doc. E/2002/99.

21 United Nations Doc A/RES/40/34

22 Adopted by the United Nations Economic and Social Council on 24 May 2002, United Nations Doc. E/2002/99.

23 The Tokyo Rules were first discussed and adopted generally in 1986 at the Seventh Congress on Crime Prevention and Criminal Justice and were later adopted by the General Assembly on 14 December 1990.

24 See Rule 1.5

25 This means a justice policy that

26 UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment* (Vienna: United Nations Office on Drugs and Crime, 2007) 3

27 *Ibid*

28 *Ibid*

their obligations to prison inmates and would save the State revenue. Additionally, prisoners have been adjudged incubators of communicable diseases such as tuberculosis and HIV/AIDS[29] which could be rapidly spread upon their release.[30] In light of the glaring benefits of alternatives to incarceration in the administration of criminal justice, Nigeria innovatively introduced several non-custodial measures in ACJA 2015 which have also been adapted in the KbACJL.[31]

## 1.3.Comparative Analysis of ACJA and KbACJL

This section comparatively evaluates selected concepts in both the ACJA and the KbACJL highlighting some of the innovations introduced in both laws with a view to establishing their complementarity, contradictions and point of intersections, not only with each other but also, with constitutional provisions and other extant laws. Table I provides a summary of comparative evaluation.

| # | CONCEPT | ACJA | ACJL | COMPLEMENTARY PROVISIONS | ANALYSIS |
|---|---|---|---|---|---|
| **1** | Objectives/purpose | s.1 | s.3 | | The objectives of both laws are to inter alia achieve speedy dispensation of justice, efficient management of criminal justice institutions, protection of the society from crime as well as the |

[29] UNODC, *A Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment* (New York, United Nations, 2007) 4-5.

[30] *Ibid*

[31] See for example Part 43, KbACJL

| | | | | | |
|---|---|---|---|---|---|
| | | | | | protection of the rights of the suspect, the defendant and victim. This can be seen in the various provisions relative to the treatment of the suspect from the time of arrest up to trial and sentencing, day to day trial and victim compensation. These showcase a major shift from punitive to restorative justice system with emphasis on balanced justice that takes into consideration the interest of the suspect, the victim and the society. |
| **2** | Application | s.2 | s.20 | | The provisions of the ACJA are applicable in all federal courts, and in state courts where the offence is created by an Act of the National Assembly.<br>The ACJL is applicable in criminal trials of offences created by laws passed by the State House of Assembly; and other offences punishable in the state. This latter part of the section simply gives impetus to the applicability of the ACJA in Kebbi state courts, since offences established by it are also punishable in Kebbi State. |

| | | | | | |
|---|---|---|---|---|---|
| **3** | Definition of child/adult | s.494 | s.2 | a). s. 277 Child Rights Act (CRA) 2003;<br><br>b). s. 82 Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEAA), 2015<br><br>c). S.29 (4)(a) CFRN | The ACJA and the KbACJL each provides a definition to "a child" (for purposes of application of the law).<br>While the ACJA defines a child as a person who has not attained the age of 18, the KbACJL defines a child as a person who has not attained the age of 14. Under s. 452 ACJA and s. 444 KbACJL, the provisions of the Child Rights Act (CRA) or Child Rights Law (CRL) as the case may be shall apply in the trial of a child. This means that in regard to the trial of a child, the provisions of both the ACJA and the KbACJL are inapplicable. |
| **4** | Arrest | | | | |
| **i.** | Arrest Generally | s.6 | ss. 23- 27 | s. 35(2) (3) CFRN<br>ss. 26, 27 CFRN<br>ss. 35(6) & 36 CFRN | Both the ACJA and the KbACJL contain elaborate provisions relating to arrest emphasising the power of any police to arrest and implying that persons other than the police could also arrest. Both laws impose a duty on the person making the arrest to immediately inform the person arrested of reason(s) for the arrest and the |
| **ii.** | Right to be informed of reason(s) for the arrest and accruable rights | s.14 | ss. 23- 27 | | |
| **iii.** | Treatment of arrested person | s. 8 | s.29 | a). s. 34 CFRN<br><br>b). s. 29 Evidence Act (EA), 2011<br>s. 35(6) CFRN | |
| **iv.** | Recording arrest | ss. 16 & 17 | s. 36 | | |

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| **v.** | Arrest in lieu | s. 7 | s.28 | | rights available to him such as the right to remain silent until he consults with a legal practitioner or a person of his own choice, right to legal representation by a lawyer of his or her own choice or one from the Legal Aid Council of Nigeria (LACON).<br>Both laws require a suspect to be accorded humane treatment and respect for the dignity of his person. This is in line with the Nigerian constitutional provisions and international best practices, which condemns torture, inhuman and degrading treatment of arrested person for purposes of extracting evidence. By the provision of s. 29 of the Evidence Act, evidence obtained by illegal means cannot be admitted. It is immaterial that the offence was actually committed.<br>These provisions of both the ACJA and the KbACJL can positively impact on trial in the sense that evidence obtained without torture would hardly fail the voluntariness test for admissibility thereby |

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| | | | | | avoiding trial within trial and saving time.<br>Note that guidelines regarding arrests generally, recording of the arrest and information of the suspect, monitoring of the arrest, etc., and whether search is necessary or required are elaborately covered under part 2 of ACJA and part 3 of KbACJL.<br>Both the ACJA and the ACJL require the recording of all arrests. While under the ACJA the recording is to be made within 48hours, under the KbACJL it is to be made immediately the arrested person is taken to a police station or any other agency effecting the arrest and the process shall be concluded within a reasonable time of the arrest but not later than 48 hours. The record shall provide details listed in s. 36 KbACJL, which shall be taken to the Central Criminal Record Registry, established in the State Command of Nigeria Police Force (NPF)(s.37 KbACJL). The purpose for this requirement is to maintain a data base of |

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| | | | | | all arrests and investigations for easy reference.<br>Both laws prohibit the practice of arrest of a person in the place of another thereby preserving the rights of citizens not to suffer punishment for an offence they did not commit. Arrest in lieu is a variant of unlawful arrest. Under s. 35 (6) CFRN, a person who is arrested unlawfully is entitled to compensation and public apology from the authorities. In spite of this constitutional provision, law enforcement agencies have continued to perpetrate arrest in lieu especially when they find difficulty in arresting a suspect. They do this in the belief that when a close relation is arrested in lieu, the suspect would surrender himself. Many victims of unlawful arrest, either due to ignorance or fear of repercussion from security agencies, have failed to exploit the provision of s. 35(6) of the CFRN to seek redress. |

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| **5.** | Preventive Justice | Part 4-ss. 50-64 | Part 5-ss. 66-80 | Chapter 24, Criminal Code (CC) | The provisions of the KbACJL relating to preventive justice is a rehash of the provisions of ACJA on the same issue. These provisions empower the police, a judge, magistrate or any other public officer to proactively prevent crime and ensure the safety of public property even if it means arresting a person. This provision may appear laudable but it can also be problematic. Firstly, the yardstick to determine that a crime is about to be committed is left to the police, judge, magistrate etc thereby making the provision subjective. This can give rise to arbitrary arrests and abuse of the rights of citizens. The application of these provisions could fall into the error of misconception/misjud gment that trailed the interpretation of terms such as "idle and disorderly"; "rogues and vagabonds" under the Criminal Code (CC) and the Penal Code (PC) which are offences attracting punishments of imprisonment. It is indeed germane to point out that these |

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| | | | | | types of imprisonment have, over the years contributed to prison congestion in the country and should be limited. Even if the argument is that a fine can be imposed instead, it is also possible for the magistrate or judge to impose imprisonment since discretion can be exercised here. |
| **6.** | Interrogation, statement taking and confessionals | ss. 15, 17 | ss. 36, 38 | ss. 20, 28 & 29 EA, 2011 | This provision is aimed at addressing the problem of obtaining statements from suspects by duress. In taking a suspect's statement under both laws, the right of the suspect to remain silent is implied. If however he volunteers to make a statement, a duty is imposed on the police or the officer before whom the statement is made to ensure that same is made in writing in the presence of a legal practitioner of the suspect's choice or an officer of the Legal Aid Council of Nigeria (LACON), an official of the civil society or any person of his own choice. However, the statement may be recorded by electronic means. At this point it is not mandatory that a legal practitioner of |

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| | | | | | the suspect's choice must be present. The language adopted by both provisions is **'may'**. In practice, this has created serious problem of interpretation as to whether the word **'may'** as used therein is permissive or mandatory.<br>While in the case of *Akaeze Charles v. FRN (2018) LPELR-43922(CA)***,** the Court of Appeal held the view that **'may'** as used in ACJA 2015 should be construed as mandatory, in the case of *Steve Emeka Ike v. The State of Lagos (2019) LPELR-47712(CA),* the Court of Appeal held that **'may'** as used in the ACJL 2009 of Lagos is permissive.<br>The implication of the above is that it is not very clear the admissibility status of a confessional statement if the requirement of video recording was not complied with. Suffice to say that an oral confession is admissible under ss. 15(5) ACJA and 36(5) KbACJL. The utility of this provision is to forestall statement rebuttals and the attendant *trial-within-* |

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| | | | | | *trial* which delays trials. Where despite fulfillment of the requirements of this provision there is an objection to the admissibility of a statement, under the provision of s 36(7) KbACJL, the court is empowered to record the objection, continue with the trial and rule upon it while delivering judgment in the substantive case thereby obviating delay in the trial. Does this imply that a *trial-within-trial is* no more part of our criminal procedure? Although under s.29 of the Evidence Act the provision on trial within trial subsists, in the light of the foregoing provisions of ACJA and the KbACJL, it is difficult to see how it can be utilized. Practice Directions, and rules etc., have been vastly recommended to address situations such as this and others that create *lacunae*. Although Chief Judges in many States in the country have issued Practice Directions, they however mostly deal with case management in general without specifically addressing the issue of |

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| | | | | | trial within trial in light of the provisions of the ACJA and KbACJL discussed above |
| **7.** | Remand times/ protocols | ss. 293, 295& 296 | ss. 304-310 | a). ss. 35 & 36 CFRN<br><br>b). s. 27 TPA, 2013 | Where a suspect is brought before a Magistrate Court for remand, both the ACJA and KbACJL provide varied protocols regarding the proceedings for doing so. For example, while the ACJA provides for a remand period of 56 days-14 days each time, the KbACJL provides for a remand period of 63 days-21 days in the first instance and subsequently 14 days each time. A remand order can be made only after the court is satisfied that there is a "probable cause". In considering this, the court may be guided by the nature and seriousness of the offence; whether there are reasonable grounds to believe the suspect's involvement in the alleged offence; strong likelihood that the suspect could abscond or reoffend; and any other justifiable ground. The foregoing remand protocol is applicable only where a Magistrate court has no jurisdiction to try |

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| | | | | | the offence for which the suspect was arrested. The question may arise whether a Magistrate court that has no jurisdiction to try the offence for which a suspect was arrested should be donated the jurisdiction to remand the suspect in respect of that same offence albeit pending receipt of legal advice from the Director of Public Prosecution (DPP). Also, although the suspect is not charged before the Magistrate Court, but is brought before the Magistrate court for remand and he is held in custody at the instance of the Magistrate court, can this not be said to be similar to holding charge which has on numerous occasions been held to be unlawful? Why should the suspect not be outrightly brought before the court that has jurisdiction to try the offence for him to be remanded pending the issuance of a legal advice? Furthermore, is the remand time protocol under the KbACJL not in conflict with the provision of s.35(4) of the CFRN 1999 which prescribes a maximum |

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| | | | | | period of 2 months from the time of his arrest and detention to try a person who is in custody? If this is so, the said provision of KbACJL stands the risk of being declared void by virtue of the provision of s. 1(3) CFRN.<br>The implication of ss.293, 295 and 296 of the ACJA and ss. 304 – 310 of the KbACJL is that an investigating agency cannot arrest and keep a suspect in detention while conducting investigation of the crime. It must approach a Magistrate court for an order of remand otherwise it would be in breach of the right to personal liberty of the suspect. |
| **8** | Bail | | | | |
| **i.** | ail/recognisances | ss. 158-163 | ss. ,172, 174, 176 - 180 | | Under the ACJA and the KbACJL a suspect or defendant is entitled to bail except for offences that carry the death penalty in which case bail can only be granted at the discretion of the judge in "exceptional circumstances" such as ill health, extraordinary delay in the investigation, arraignment and prosecution of the case etc and offences |
| **ii.** | Bail pending investigation | ss. 30, 31 | ss. 47-48 | | |
| **iii.** | Recognisances in the case of children | ss.160 & 166 | ss.174,180 | | |

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| | | | | | carrying a term of imprisonment of more than 3 years in which case bail may be denied if there is a likelihood of reoffending or involvement of the defendant in actions targeted at obstruction of justice. In other cases, recognisances may be allowed.<br>Except for capital offences, administrative bail may be granted under these provisions where the suspect was arrested without warrant. Here, bail is granted upon entering a recognisance- with or without sureties for a reasonable sum of money to appear before the court or police station on a designated date and time. This provision aims at preventing arbitrary detention of suspects in a police station without bringing them before a court. It is a nudge in the protection of the fundamental right of citizens to personal liberty.<br>Where a child is arrested for an offence and cannot be brought to court immediately, the requirement is for the police officer in charge of the police |

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| | | | | | station to inquire into the matter and if the offence does not carry death penalty or a term of imprisonment for more than 3 years and in order to remove the child from association with any reputed criminal or prostitute, the child should be released upon entering a recognisance by the parent or guardian of the child undertaking to produce the child at a set date and time. Only parent or guardians can execute recognisances for child offenders. Execution of such recognisances requires the payment of a stipulated sum of money. The provision of s.160 ACJA and s.174 KbACJL appear gender discriminatory in that it gives protection more to a boy child than to a girl child. The use of masculine words such as 'him' and 'his' in the provisions shows that the child referred to is a boy child. Also, the provisions also seek to protect the child from "reputed criminal or prostitute" The word prostitute refers to a person especially a woman who engages in sexual activities for a reward. The word prostitute is |

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| | | | | | mostly associated with a woman. This gives impression that the provisions of both the ACJA and the KbACJL seek to protect the boy child from prostitutes but there is no corresponding protection for a girl child from randy men. |
| **9.** | Women sureties | s. 167 (3) | s. 181 (3) | | The provision of s. 167 (3) ACJA and s. 181 (3) KbACJL is a radical departure from the practice where a woman could not stand as surety for an applicant for bail. This provision now recognizes the right of a woman to stand as surety thereby strengthening the principle of gender equality in the criminal landscape and protecting the constitutional right of women to non-discrimination. |
| **10** | Professional Bondsperson | ss. 187-188 | | | The ACJA mandates the Chief Judge of the Federal High Court or of High Court of the FCT to make regulations on the registration of bondsperson. Under the ACJA, a person or corporate body that wishes to offer services as bondsperson must be duly registered and meet the criteria set |

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| | | | | | out in the regulations made by the Chief Judge (CJ) of FHC or High Court of FCT as the case may be. The criteria include unquestionable character and integrity of the person and ability to deposit sufficient amount of money (as stipulated in the regulations) with the CJ, among others. The ACJA however did not provide the criteria on how to determine that a bonds person is of unquestionable integrity. This would allow for speculation in some occasions which could work against the course of justice. Under the ACJA where a Defendant who is granted bail absconds and is re-arrested, he shall be surrendered to the nearest police station and taken to the appropriate court within 12 hours. The KbACJL however, does not contain provisions for registration of professional bond persons. |
| **11** | **Trial** | | | | |
| **i.** | Day-to-day trial | s. 396 | s. 399 | s. 36 CFRN | Both the ACJA and the KbACJL innovatively provide for day-to-day trial. This is with a view to achieving its |
| **ii.** | Trial in *absentia* | s.352 | s.361 | | |

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| | | | | | purpose of expeditious dispensation of justice and upholding the constitutional rights of suspects to speedy trial. If the law is to be interpreted as it is, day to day trial means that from arraignment, trial shall continue daily until its conclusion. There are however doubts whether this is achievable giving institutional and other challenges that exist in the system of adjudication in the country. In recognition of these challenges, both laws provide alternative. Under both laws, where day-to-day trial is impracticable, a maximum of five adjournments for each party is allowed provided that the interval between each adjournment shall not exceed 14 working days until conclusion of trial. Upon exhaustion of the adjournments, there is room for further adjournments if trial is not concluded. Such adjournments shall not exceed 7 days including weekends. Both laws are however not clear as to at whose instance these latter adjournments should be given and how long |

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| | | | | | it should last. Both laws give the court power to award punitive costs to dissuade litigants from making frivolous applications.<br>Adjournment is an equitable relief and the grant of same is at the discretion of the judge. Thus, despite the provision of both the ACJA and the KbACJL allowing each party 5 adjournments, these adjournments should not be granted as a matter of course but upon cogent and satisfactory reasons placed before the Judge by the applicant<br>One of the problems that had bedevilled criminal trials resulting in trial delays is the absence of the Defendant in court. Once a Defendant was absent in court, trial would not proceed. Defence lawyers who for one reason or another want to stifle trial, often seek adjournments using excuses such as Defendant's absence due to 'ill health' etc. Both the ACJA and the KbACJL have now changed the position by making provisions dealing with the non-appearance of a |

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| | | | | | Defendant in court. Both laws allow a defendant to be tried and convicted in *absentia* under s. 352 (4) ACJA and s. 361 (4) KbACJL. This procedure is applicable only where a Defendant had been brought to court and was granted bail but he absconds. Trial in absentia shall not proceed until after 2 adjournments. Where however, the Defendant was served summons to appear in court but he failed to do so, the court would issue a bench warrant for his arrest. The two situations must be clearly distinguished. |
| **12** | Case management & Disclosure protocols | ss. 300 376(4) & 379 | ss. 311, 385(4) & 209 | FCT High Court Practice Direction, 2017 s. 36 CFRN | Experts have argued that case management under the ACJA "suffers from a lack of clarity and judicial guidance"[32] Despite this, it provides a pathway towards achieving speedy trials, using case management tool. One of the tools in achieving speedy trial |

[32] See Adedeji Adekunle, Overview of the Administration of Criminal Justice Law, being a paper presented at the MacArthur Foundation/NIALS Workshop on Implementation of the ACJL for Judicial Officers, Asaba 17 – 18 February 2020.

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| | | | | | in both the ACJA and KbACJL is the provision requiring the frontloading of evidence. This is to give opportunity to the parties to prepare their case; and to encourage pretrial options where issues not in contention are agreed upon and discarded before trial for purpose of dispensing trial as quickly as possible. Frontloading is an important case management tool with potential to engender speedy dispensation of justice. The requirement of front loading under the ACJA and the KbACJL is applicable only to the Prosecution and does not apply to the Defence. Frontloading complies with the provisions of the CFRN, which require the defendant to be given adequate time and facilities to prepare his or her defence. In *Ejike Okoye v Commissioner of Police*[33], 'facilities' was interpreted by the Supreme Court to include "disclosures". Also, in *Shema & Ors v FRN*[34], the Supreme |

[33] (2015) All FWLR (Pt.799) 1101 at 1126-1127

[34] (2018) LPELR-43723 (SC)

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| | | | | | Court interpreted the concept of "adequate time and facility" to include "necessary hints… including the statements of the prosecution witnesses and his own written statement."<br>The pertinent question relates to the implication of disclosures on the principles of presumption of innocence under s. 36(5) CFRN and s. 135 (1) of Evidence Act, 2011 and also witness protection measures.<br>Furthermore, Justice is not one way traffic but is rather three way i.e. to the Defendant, the victim and the society. This principle has been reiterated by the supreme court in *Josiah v. The State*.[35] To balance the scale of justice and achieve fair outcome, the obligation placed on the Prosecution to front load its list of witnesses and documents ought to also apply to the Defendant. |
| **13** | Sentencing | | | | |
| **i.** | Sentences, sentencing guidelines and | ss. 311, 401, | s. 321, 404, 418 | | The provisions on sentencing under both the ACJA and the |

[35] (1985) 1 NWLR (Pt. 11) 125 at 141

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| | consequential orders | 416 | | | KbACJL depict a major shift from punitive to restorative justice. To this effect both laws provide that in sentencing, Judges and Magistrates shall have regard to certain objectives of sentencing which include prevention, restraint, rehabilitation, deterrence, education of public, retribution and restitution. Also, the sentence to be given should take into consideration a number of factors, i.e. nature and gravity of the offence, age of the offender, and whether he or she is a person of unsound mind, whether it is a pregnant woman among others.<br>Sentencing guidelines are contained in several provisions of both laws. The Child Rights Act (CRA) and the Child Rights Laws of different States have established comprehensive child justice administration, including the establishment of Family Courts at High Court and Magistrate Court levels in ss. 149-153 CRA.<br>Under the ACJA, where a child is convicted of a capital |
| **ii.** | Sentencing relating to child offenders | ss. 405, 452 | | ss. 34, 277 CRA s. 82 TIPPEAA s.33 Plateau State Penal Code Law | |

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| | | | | | offence, a death sentence shall not be pronounced. Instead, the child can be sentenced to life imprisonment or to other term as the court may determine having regard to the principles of sentencing other than capital sentence and the CRA. The CRA also forbids death sentence for children. Some penal legislation such as the Plateau State Penal Code Law provides that no sentence of imprisonment shall be passed on a child. The rationale for this is that a child lacks the mental capacity to fully appreciate the nature and consequences of his action and to mete such actions even if capital in nature with the death penalty may not achieve the objective of punishment on the child. The Terrorism Prevention Act (TPA) makes no distinction between adults and children while prescribing punishment in relation to acts of terrorism which results in the death of a victim. In view of the problem of terrorism and its impact on the country, the question may arise |

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| | | | | | whether it would be appropriate in sentencing involving a child recourse should be made to the CRA and not the mandatory penalty of death as prescribed under the TPA. It is apparent that acts of terrorism were not in contemplation of the CRA; the TPA also did not envisage offenders to be children, and so makes no reference to trial of child offenders. It can however be argued that since the TPA preceded the ACJA, the provisions of the ACJA in ss. 405 and 452 have in its contemplation the sentencing under the TPA when a child is involved in any act of terrorism.<br>Another major issue is the fact that provisions governing child justice are blanket despite the uniqueness of each child. Therefore, experts are now advocating for a "juveniles are different"[36] approach in applying these guidelines, taking into consideration the circumstances and |

[36] See Susan Young, Ben Greer, and Richard Church, Juvenile delinquency, welfare, justice and therapeutic interventions [2017] (41)(1) *BJPsych Bulletin*, 21-29.

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| | | | | | needs of each child. The KbACJL is conspicuously silent on sentencing relating to child offenders. Since under s. 444 the KbACJL provides that in the trial of a child offender the provisions of the Children and Young Persons Law shall apply, it may be implied that sentencing relating to child offenders shall also be guided by the provisions of that law. |
| **14** | Non-Custodial Sentencing | | | | |
| **i.** | Non-custodial sentence/punishment | ss. 314, 321, 327, 453-459, 460-463, 467 & 468 | Parts 43 (Probation and non-custodial alternatives); and 44 (Parole)- ss. 442-456 | ss. 1 (1)(2)(b)(3), 2(4), 4(2)(e); and 37-44 Nigerian Correctional Service Act (NCSA), 2019 | Imprisonment has been imposed as punishment for offences for many centuries. However, over the years it became clear that there are many problems associated with imprisonment. For instance, in countries where custodial infrastructure is inadequate or weak, imprisonment results in congestion of prisons and more worrisome, it hardly meets its design of reformation of offenders as many offenders who are sent to prison become hardened while in prison. As a result of the many shortcomings of imprisonment, non-custodial measures were introduced. These measures |
| **ii.** | Non application of non-Custodial measures | s. 416 (2)(k) | s. 418(2)(k) | | |

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| | | | | | include, probation, parole, suspended sentence, conditional release, community service and confinement in a rehabilitation centre especially in the case of children and other appropriate cases or circumstances.<br>Therefore, the introduction of non-custodial sentencing is a welcome innovation in the administration of criminal justice in Nigeria.<br>Courts are mandated to apply sentencing to a term of imprisonment only in regard to serious and perpetual offenders who should be isolated from the public. This category of offenders are not entitled to non-custodial sentences. |
| **15** | Restorative justice | ss. 336, 337, 338, 342 490 | Part 31 s. 324 - 333 (Costs, Compensation, Damages and Restitution) | a). ss. 48, 49(3) & 51(1) Trafficking in Persons (Prohibition), Enforcement and Administration Act (TIPPEAA)<br>b). s. 49 Cybercrimes (Prohibition, Prevention, etc.) Act (CPPA), 2015<br>c). s. 43 CFRN | Both the ACJA and the KbACJL contain provisions which allow payment of compensation, damages and costs or the making of restitution by the defendant to the victim of his offence. These provisions showcase a shift from punitive to restorative justice which is a system of criminal justice that focuses on repairing the harm caused by crime by promoting |

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| | | | | | reconciliation between the offender on the one hand with both the victim and the society on the other hand. See *Nwude v FRN*[37] on restitution. |
| **16** | Prosecutorial Powers | | | | |
| **i.** | Powers of the Attorney-General | ss. 104-106. | ss.119-121 | ss. 174, 211 CFRN | The power of the Attorney General (AG) under the ACJA and KbACJL is anchored on the wide powers granted to him under the CFRN. These powers may be exercised by the AG in person or by proxy through a mandated law officer or agency. The powers include the power to prefer a charge, issue legal advice, request case file from police, take over and continue or discontinue a criminal trial, as well as undertake the prosecution of offences in any court. The powers of the AG must however be exercised with due regard to *public interest, the interest of justice and the need to prevent abuse of legal process* as stipulated under ss. 174 (3) and 211(3) respectively. Under both the ACJA and the KbACJL, the AG may apply to the |
| **ii.** | Power to vary terms of, or cancel bail | s. 169 | s.183 | | |
| **iii.** | Lay prosecutors | s. 106 | s. 121 | ss. 174, 211 CFRN | |

[37] (2015) LPELR-25858 (CA)

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| | | | | | court to vary bail conditions or cancel bail. Where a suspect has been granted bail and facts emerge that would necessitate a reconsideration of the bail, the court may, on AG's application issue arrest warrant to give the suspect opportunity to be heard. The court may thereafter remand the suspect in prison to await trial or grant bail on stricter terms- mostly higher amount of money payable as bail bond. -<br>Unlike the ACJA, the KbACJL in the first instance permits some categories of persons other than the Attorney General to prosecute offences in a court of law. These categories of persons are: Any legal practitioner and any other person. All the persons listed above must be authorised by the Attorney General to prosecute. What this means is that the Attorney General may authorise even a lay person to prosecute offences. The KbACJL also recognises the power of the police to prosecute offences triable by any Magistrate Court thereby giving |

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| | | | | | legislative backing to the decision of the Supreme Court in Federal *Republic of Nigeria v. Osahon,*[38] where the Court reaffirmed the powers of the police prosecutor whether qualified as a legal practitioner or not to prosecute in any court in line with section 23 of the Police Act. |
| **17** | Witnesses | | | | |
| **i.** | Witness protection | s. 232 | s. 244 | a). s. 36(4)(a)(b) CFRN<br>b). s. 29 TPA, 2011 as amended<br>c). s.47 TIPPEAA<br>d). s. 17 EFCC Act, 2004<br>e). ss. 33, 34 TPA, 2013<br>f). s. 17 Anti-Torture Act, 2017 | Witness protection is not a new phenomenon in Nigeria as it existed for a while (s. 36(4) CFRN). Under both the ACJA and the KbACJL, it is not applicable in all trials but is limited to serious offences, such as sexual offences, Armed robbery, kidnappings, terrorism, economic and financial crimes and corruption etc., among others. A list of measures, which can be adopted, includes evidence via electronic means, written deposition, mask, etc. Witness protection has been criticized by defence lawyers as infringing the rights of |

[38] (2006)5 NWLR (PT. 973) 361

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| | | | | | defendants to fair hearing, particularly the right to examine witnesses against him or her as contained in s. 36 (5)(d) CFRN. However, it is useful in protecting the sanctity of criminal justice process by ensuring protection and preservation of the integrity of vulnerable witnesses. The witness protection regime in Nigeria is not robust enough to give comprehensive protection to particularly where trial involves members of organised criminal groups or high-profile public figures with immense connections and wealth. Witness protection measures have been applied in limited terrorism cases in Nigeria, such as the cases of *Onwudiwe v. FRN*[39] *and Sambo Dasuki v. FRN*[40]. |
| **ii** | Witness expenses | ss. 251-254 | ss. 262-265 | | Under both the ACJA and the KbACJL, while a witness for the State is entitled to payment of reasonable expenses as of right, payment of similar expenses to a defence witness is left to the |

39 (2018) LPELR – 44499 (CA)
40 (2018) LPELR CA/A/523C/2017

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| | | | | | discretion of the trial Judge. The basis for this distinction is not clear. Many trials have suffered delays as a result of difficulty encountered to bring witnesses to court. Most of these difficulties result from inability to meet the expenses of the witnesses. Under both laws the duty is placed on the State to pay these expenses. Despite these provisions, non-payment of witness expenses remains a challenge due to inadequate funding. Many lawyers still pay witness expenses out of their pocket, or pass the burden of paying to their clients, making it still difficult to secure the attendance of the number of witnesses that may be required. |
| **18** | Plea-bargaining | s. 270 | s.281 | a. s. 14(2) EFCC Act, 2004<br><br>(a) Paragraph 22(1) & (2) EFCC (Enforcement) Regulations, 2010 | Plea bargain was not introduced in Nigeria by the ACJA as it existed under the EFCC Act and the EFCC (Enforcement) Regulations, 2010 but was limited to offences relating financial crimes. While the ACJA extended its application to all offences, the KbACJL however excludes its application to offences relating to culpable |

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| | | | | | homicide punishable with death, rape and other sexual offences, terrorism, unnatural offences, acts of gross indecency, thuggery, qazf, robbery, theft, drinking alcohol and related offences. Both laws contain expansive provisions that provide guidelines on initiation of plea bargain by prosecution. Under the ACJA, the prosecutor may enter into a plea bargain with the defendant with the consent of the victim or his representative. Under the KbACJL however, the consent of the victim is required only when the offence is one that affects the human body. Although there are many provisions in the KbACJL providing for victim participation in plea bargain, by not requiring the consent of the victim to be mandatory before plea bargain can be entered into by the prosecution and the defendant, the KbACJL has undermined the interest of the victim and thereby impinged on restorative justice which both laws seek to promote. The major contrast between the provisions of the ACJA and the |

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| | | | | | KbACJL on plea bargain is that whereas under the ACJA, plea bargain may be entered by the prosecutor with the defendant when there is insufficient evidence to prove the offence charged beyond reasonable doubt, where the defendant has agreed to return the proceeds of the crime or make restitution to the victim and where the defendant in a case of conspiracy has cooperated fully with the investigation and prosecution of the crime, under the KbACJL, these conditions need not be present. Despite its perceived benefits as a win – win for all, in light of the way it was carried out pre-ACJA era, its application in Nigeria has been criticized. Some experts have suggested that its application promotes corruption in that the defendant returns only part of the proceeds of his crime and retains the rest and gets only light punishment for his offence. While this may be true before the advent of ACJA, the provision of s. 270(2)(a), (b) and (c) |

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| | | | | | of the ACJA has largely addressed these concerns. However, the same may not be said of the KbACJL which does not contain provision requiring that plea bargain be entered by the prosecution and the defendant only when *inter alia* there is insufficient evidence to prove the offence charged beyond reasonable doubt or where the defendant has agreed to return the proceeds of the crime or make restitution to the victim. It is important to emphasise that under both the ACJA and KbACJL, plea bargain is applied only where it is in the public interest to do so. Despite its criticism, it is clear that under both the ACJA and the KbACJL, plea bargain ensures that the prosecution does not return empty. Also, the practice of plea bargain is cost effective and saves judicial time. The provision of s. 270(18) ACJA which provides that judgment obtained vide plea bargain is final and shall not be subject to appeal except on ground of fraud, was challenged |

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| | | | | | in the Court of Appeal in *Chinaka Promise v. FRN*[41] on the ground that same is in conflict with the provision of s. 241(1)(a) and (b) of the 1999 CFRN which provides for a right of appeal from the decision of a High Court to the Court of Appeal. The court upheld the challenge and declared the said provision of the Act unconstitutional and void. Although the Court of Appeal is not the apex court in the land, until the judgment in *Chinaka Promise v. FRN* (supra) is set aside by the Supreme Court, it remains binding and describes the state of the law. |
| **19** | Interlocutory applications and Stay of proceedings | s.306 | s. 316 | (a) s. 20(4) Money Laundering Prohibition Act, 2011<br>(b) s. 40 EFCC Act, 2004<br>(c) s. 36(4) CFRN | One of the major problems that afflicted Nigerian criminal justice system pre-ACJA was the malaise of undue delays in justice delivery, arising from the use of interlocutory applications, such as stay of execution, stay of proceedings, injunctions and preliminary objections, particularly in cases involving politically |

[41] (2020) LPELR – 4987 (CA)

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| | | | | | exposed persons (PEPs).[42]Before the passing of ACJA in 2015, some anti-corruption laws in the country contain provisions which prohibit the grant of reliefs which tend to delay trials. For example, s.40 EFCC (Establishment) Act 2004 and s. 20(4) of the Money Laundering (Prohibition) Act, 2011, provide that interlocutory application, such as *stay of proceedings* shall not be entertained until judgment is delivered. See also s. 36(4) CFRN. Undue delay in trials undermines public confidence in the justice system and could result in denial of justice to citizens. In *Amadi v. NNPC,*[43] the Supreme Court, cautioned against the filing of frivolous applications by lawyers which could delay trials and reiterate the cliché "justice delayed is justice denied" Also, in *FRN v. Babalola Borisade*[44], the Supreme Court |

42 See for example, Dariye v. FRN (2015) 10 NWLR (Pt. 1467) 358.
43 (2000) NWLR (Pt. 9) 1543, @ 1543, paras D-G
44 (2015) All FWLR (Pt. 785) 227

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| | | | | | condemned the use of interlocutory appeals to frustrate criminal trials especially those involving PEPs. In *Metuh v. FRN*[45] the Supreme Court upheld the provisions of extant statutes which prohibit the grant of stay of proceedings pending appeal in criminal trials.<br>The introduction of measures to address undue delays and enhance speedy trials in both laws such as limiting adjournments to five, abolition of stay of proceedings,[46] reserving ruling on rebutted confessional statements till end of trial-technically clogging *trial-within-trial*, among others, is laudable. Inspite of these provisions, defence counsel continue to try their luck by filing applications for stay of proceedings pending appeals on interlocutory matters. In *Dr. Dayo Olagunju v. FRN;*[47]and *Joshua Dariye v. FRN*[48] the Supreme Court decried eight years delay of |

45 (2017) 11 NWLR (Pt. 1575) 156
46 See *Olisa Metu v. FGN ibi*d.
47 (2018) LPELR-43909 (SC)
48 (2015) 10 NWLR (Pt. 1467) 325

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| | | | | | trial due to unnecessary interlocutory applications. The provisions of both s. 306 ACJA and 316 KbACJL may be open to constitutional debate i.e. whether these provisions do not offend the constitutional provisions of fair hearing as enshrined under section 36 (1)(2)(a) of the CFRN 1999. The language used in these provisions is that such application 'shall not be entertained at all'. This raises a fair hearing issue, which dictates that an application, no matter how frivolous, downright, stupid, reckless, or unmeritorious, must be heard and determined one way or the other. See the cases of *Newwatch Communications Limited v. Alhaji Aliyu Ibrahim Atta (2006)*[49]*; Federal Airport Authority of Nigeria v. Wamal Express Services (Nig) Ltd*[50] *and* |

[49] (2006) LPELR-1986 (SC)
[50] (2011) LPELR-1261 (SC)

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| | | | | | *Elizabeth Monday Sambo & Ors. v. Solomon Etim Ekon & Ors.*[51] The Ogun State ACJL in its section 319(1) adopted a more flexible approach in couching an equivalence of these provisions. The section is phrased in the following words "Subject to the provisions of the Constitution of the Federal Republic of Nigeria, an application for stay of proceedings in respect of a criminal matter before the court shall not be entertained until judgment is delivered." The implication here is that the operation of the section is not absolute but subject to the dictates of the constitutional provisions as to fair hearing. In order ways, on the strength of judicial pronouncements and constitutional provisions, it would have been safer to allow for entertainment of application for stay of proceedings but to provide that same shall not be granted. |

51 (2013) LPELR-20394 (CA)

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| **20** | Prosecuting child offenders | ss. 371, 452 | ss. 380, 444 | Part XIII- ss. 149-162 CRA | Both the ACJA and the KbACJL envisage situations of child trials and provides that judicial process involving child offenders should be conducted under the CRA- in the case of ACJA and the Child Rights Law in the case of KbACJL. |
| | Elevation or transfer of judges, trial *de novo;* and transfer of cases | s. 396(7)<br><br>s. 98 | s. 399(7) | | Transfer and elevation of judges is inevitable. This has however presented a challenge in the speedy dispensation of justice as cases often have to start all over (*de novo*) thereby contributing to congestion of cases in court. The ACJA and KbACJL make robust provisions to cure this problem by providing that where a trial judge is elevated to the Court of Appeal, he could go back to the High Court to conclude trial but such a judge is not precluded from assuming duties as a Justice of the Court of Appeal. The aim of this provision is to avoid situations whereby trials are delayed as a result of elevation of judges or a situation whereby a judge who is qualified for elevation would be denied such elevation simply because he is |

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| | | | | | trying a case which ought to be concluded expeditiously. In *FRN v. Ibori*[52] and several others the cases suffered delays because of the movement of the judges. This was what the provisions of both laws seek to mitigate. This innovation has been challenged in *Udeogu v. FRN*[53] and in a ruling delivered on 8 May, 2020, the Supreme Court held that a practice where a justice of the Court of Appeal is allowed to return to the Federal High Court after his elevation, to conclude trial and give judgment is unconstitutional, thereby striking down s. 396(7) of ACJA and nullifying the conviction of Appellants. The ACJA is silent on the transfer of judges and the status of magistrates who have been elevated to the High Court but the KbACJL expanded the provision to include the transfer of judges and magistrates. The KbACJL further allows a judge or magistrate who takes |

[52] (2014) 13 NWLR (Pt. 1423) CA 168 4

[53] SC 622C/2019

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| | | | | | over a part heard matter from another judge or magistrate who retired, died, was dismissed or in any way became incapacitated, the judge or magistrate may not start the matter *de novo* but may continue same from where the former judge or magistrate stopped. Many cases have suffered delays in their determination as a result of inability of the trial judge to conclude them arising from retirement, death, dismissal of incapacitation. In this circumstance, the matter had to start *de novo*. In some instances, cases have started de novo more than once resulting in frustration and hardship to the parties. The provision of s. 399(9) of the KbACJL will go a long way in mitigating protracted trials in court. The ACJA however, does not have a similar provision to s. 399(9) of the KbACJL. |
| **21** | Monitoring mechanisms | Part 46-ss. 469-476 | s. 479 | | Both the ACJA and the KbACJL established the Administration of Criminal Justice Monitoring Committee *(*s. 469(1) ACJA, and s. 479(1) KbACJL*)* as |

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| | | | | | institutional frame works for effective implementation of the laws. The Committee whose composition cuts across various criminal justice institutions such as the Judiciary, Attorney General, Police, Nigeria Correctional Service, National Human Rights Commission, Legal Aid Council, Nigerian Bar Association and Civil Society Organisations is responsible for ensuring the effective and efficient implementation of the laws by the relevant Agencies. One of the problems that have beset the criminal justice sector is implementation of laws. Both the ACJA and KbACJL contain robust provisions which if diligently implemented would promote efficient management of criminal justice institutions and speedy dispensation of justice. The mandate of the committees under both laws is to ensure that both laws are implemented. If the committees are to succeed, members must work in synergy with each other as well |

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| | | | | | as other criminal justice institutions. The wisdom in drawing membership of the committees from various criminal justice institutions is to ensure that this synergy exists. |

*Table I: Comparative Analysis: ACJA 2015 and Kebbi State ACJL 2021*

## 1.4. Practical Challenges with the *Implementation of the ACJA/KbACJL* Provisions

The advent of ACJA has changed the tide in criminal trials in Nigeria. Several innovative provisions of the Act such as the ones on day-to-day trial, prohibition of stay of proceedings and front loading amongst others have helped to prevent delay in trials. Also, the provisions on recording of confessional statements of suspects through electronics means, humane treatment of suspects and prohibition of torture have improved the human rights profile of the country in the international community and making the ACJA a beautiful piece of State legislation. Most of the provisions of the ACJA have been adapted in the KbACJL. Despite the laudable provisions in the two laws, they are not devoid of challenges which constitute a challenge to their effective implementation.

### a. Unethical Attitude of Defence Lawyers

The co-operation of lawyers is key for effective implementation both the ACJA and the KbACJL. Many lawyers still engage in devices or tactics to delay or frustrate trials in the hope that prosecution witnesses may get fatigued and refuse to come to court to testify.

**b. Funding**

Adequate funding of the judiciary is necessary to ensure that many of the key innovations introduced by both laws such as witness expenses succeed. The judiciary over the years has suffered from inadequate funding and the introduction of the ACJA has not changed this narrative. Other institutions in the administration of criminal justice such as the Police, correctional service etc have also suffered from inadequate funding making it difficult for them to fulfil their roles in achieving the objectives of the ACJA. Underfunding affects investigations, witness expenses programme and facilities for recording arrests, and taking confessional statements, etc. Essentially, in view of the capital-intensive nature of a robust and effective administration of criminal justice, adequate funding is inevitable.

**c. Lack of Awareness**

The ACJA and KbACJL are new legislation in Nigeria and awareness among the populace about their existence is low. Thus, the populace are unable to perform their roles as active citizens in the implementation of the laws. For instance, many citizens are ignorant of the rights they have to arrest an offender or monitor a convict's compliance with sentence such as community service, etc. Similarly, many people are still unaware of the rights of women to stand as sureties or that they can utilize the services of registered bondsperson.

**d. Lack of Synergy between Police Investigators and Prosecutors**

The ACJA and the KbACJL cannot be successfully implemented without synergy by all institutions involved in the administration of criminal justice in the country. The age long inter-agency

rivalry is one of the banes of the ACJ Laws in the country. The police and the office of the DPP of some states have mutual mistrust and, in some occasions, work at cross-purposes. State prosecutors often accuse police investigators of withholding information gotten from investigation and refusing to come to court to testify at trials and the police have also on numerous occasions accused the office of the DPP of lethargy in the issuance of legal advice.

**e. Incessant Transfers of Police Investigators**

One of the reasons causing delays in arraignment and trials of suspects is the incessant transfers of Police investigators or sending them on special duties outside of their formations. These often stall not only investigation but also trials of suspects. In many instances, evidence gathering is affected particularly where the evidence is fragile and needs to be gathered very quickly and effectively.

**f. Inadequate Infrastructure**

Effective implementation of both the ACJA and the KbACJL would require adequate infrastructure. For example, electronic recording and storage devices would have to be provided the investigating agencies if the requirement of both laws on electronic recording of confessional statements of suspects is to be realised. Also, the recording of evidence in long hand by trial judges has to be dispensed with as it prolongs trials and, in its place, electronic recording devises should be installed in the court rooms. Furthermore, supply of electricity is epileptic in the country making it difficult for judges especially those in places with hot weather to sit for long period of time. Infrastructure is not limited to electronic recording and electricity supply. It extends to the provision and adequacy of

all necessary facilities and infrastructural resources, both human and material including an enabling environment that are required for effective administration and delivery of criminal justice. Infrastructure deficit in Nigeria is high.

**g. Omissions**

(i) Pre-trial protocols are important in achieving speedy trials as shown in election petition proceedings. These protocols are however not included in both laws reviewed. The ACJA and KbACJL could have been more effective in achieving the aim of speedy trial if pre-hearing protocols were expressly included in same.

(ii) The ACJA in s. 270(2) mandates the prosecution to enter into plea bargain with the defendant with the consent of the victim of the offence or his representative thereby ensuring that the interest of the victim is not only respected but also protected. However, the KbACJL in its s. 281(2) while mandating the prosecution to enter into a plea bargain with the defendant, does not require the consent of the victim or his representative to be obtained.

(iii) Also, the ACJA in s. 270(2)(a), (b) and (c) permits the prosecutor to enter into a plea bargain with the defendant only where there is insufficient evidence to prove the charge against the defendant or where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or where the defendant has fully co-operated with the investigation and prosecution of the crime. The informing reason for this requirement is to ensure that the practice of plea bargain is not abused but used mostly as a last resort by the prosecution. However, the KbACJL in its s. 281(2) does not contain similar requirement before the prosecution

can enter into a plea bargain with the defendant. This opens the practice of plea bargain to abuse.

**h. Conflict with Other Laws**

(i) Some provisions of the ACJ laws conflict with some provisions of extant laws. For example, the application of ACJA ran into troubled waters when the constitutionality of s. 396(7) was challenged in court in *Udeogu v. FRN*[54]. On 8th May, 2020 the Supreme Court declared that section of the law unconstitutional and struck it down. Similarly, in *Chinaka Promise v. FRN*[55], the provision of s. 270 (18) of ACJA was challenged as being in conflict with the provision of s. 241 (1) (a) and (b) of the CFRN. In a decision delivered by the Court of Appeal, the provision of s. 270 (18) of ACJA was declared unconstitutional.

(ii) The provisions of s. 306 of ACJA and s. 316 of KbACJL outrightly prohibit entertainment of application for stay of proceedings in criminal trials. Although the informing reason for the provisions is the need to prevent delay in criminal trials which is laudable, the language of construction of the sections raises the question of fair hearing which is a constitutional issue. Under the constitutional right to fair hearing, an application brought before a court no matter how frivolous ought to be heard. Whether or not same would be granted is a different thing. Although the constitutionality of these sections has not been challenged in court, it is doubtful if they will not go the way of ss. 270(18) and 396(7) of the ACJA which were declared unconstitutional and struck down by the court if their constitutionality is challenged in court.

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54 SC 622C/2019

55 (2020) LPELR – 49874 (CA)

### i. Ambiguity

The language employed in the provisions of s. 15(4) of the ACJA and s. 36(4) of the KbACJL makes the requirement **of** recording of confessional statement of a suspect ambiguous. This is as a result of the use of the word 'may' in the sections and the different interpretations of the word by the court in similar legislation. Ambiguity in a a provision of the law makes that provision uncertain and less efficacious.

### j. Gender Inequality

Although both the ACJA and KbACJL in several provisions promote gender equality, however the provisions of s.160 (1)(c) of ACJA and s. 174(1)(c) of KbACJL from the language used therein appear to protect the boy child and not the girl child thereby fostering gender inequality.

## 1.5.Recommendations

Arising from the foregoing challenges, the following recommendations are made:

a) Although both the ACJA and the KbACJL do not obligate the Defendant to front load his defence, the ethical discipline of lawyers is to see themselves as ministers in the temple of justice and not to withhold evidence from the prosecution in a bid to secure the acquittal of their client by any means when they know that their client is complicit in the offence charged. They must also eschew the filing of frivolous applications in court with a view to delaying or frustrating trials as this conduct defeats the aim of both the ACJA and the KbACJL. Both the ACJA and the KbACJL should be amended to also place disclosure obligation on the Defendant.

b) Effective prosecution of crime largely depends on effective investigation. Without modern investigating and recording tools, some of the laudable provisions of the ACJ laws such as provision against torture, recording of confessional statements through electronic means would be a mirage. Also, in order to achieve the aspiration of day-day trial, the criminal justice sector needs adequate facilities. For example, the custodial centers require enough vehicles to transport inmates to court, the courts need electronic recording devices and other facilities such as standby generators to provide constant electricity etc. These would require adequate funding. In this vein, it is recommended that increased funding should be provided to the administration of criminal justice institutions to enable them provide facilities that will enhance their operation as provided under the ACJ laws. Closely related to this is the need to improve the working conditions of operatives in the criminal justice sector in order to motivate them.

c) There is need to create more public awareness on the ACJ laws. This can be done through public lectures, round tables, symposiums and mass media advertorials.

d) The importance of training to the successful implementation of programmes, policies or laws cannot be overemphasized. The ACJ laws are relatively new in Nigeria. There is therefore a need to constantly train and retrain personnel critical to the implementation of the laws in order to make them more proficient and efficient in their various areas of operation.

e) Although the CFRN is the grund norm, the importance of the ACJ laws to efficient criminal justice system which is important to national development does not need gain saying. In view of the Supreme Court pronouncement

regarding s. 396(7) of ACJA in *Udeogu v. FRN*, there is need to amend the provisions of s. 241(1)(a) and (b) of the CFRN which made the provision of s. 396(7) of the ACJA invalid. This will ensure that the provision of s. 396(7) of the ACJA which is important to speedy dispensation of justice is revived.

f) The ACJ Laws should be amended to expressly provide for pre-trial options which would aid the speedy dispensation of justice as exemplified by the Electoral Act.

g) The cooperation, working relationship and synergy among the various institutions in the criminal justice sector should be improved. This can be achieved through capacity building for personnel of these institutions.

h) Investigators should always work in a team so that when one investigator is transferred, there would be available someone who could come to court to testify. In this way, trials would not stall as a result of the transfer of an investigator.

i) The provision of s. 15(4) of the ACJA and s. 36(4) of the KbACJL should be amended to make the intent of the legislator clear and not subject to diverse interpretations.

j) The provisions of s. 160(1)(c) ACJA and s. 174(1)(c) KbACJL should be amended to also give protection to the girl child and thereby further ensure gender equality in both legislation. `

k) The provision of s. 281(2) KbACJL should be amended to make it mandatory for the prosecution to obtain the consent of the victim of an offence or his representative to enter into a plea bargain with the defendant. This will ensure that the interest of the victim is better protected. The provision of the section should also be amended to provide that plea bargain can only be entered by the prosecution with the

defendant where evidence to prove the charge against the defendant is insufficient or where the defendant has agreed to return the proceeds of the crime or make restitution to the victim of the crime. This will ensure that plea bargain is not entered by the prosecution with the defendant arbitrarily.

l) Section 306 ACJA and s. 316 KbACJL should be amended to make their provisions subject to the provisions of the constitution. In the alternative, the language of the sections should be rephrased to remove therefrom the words "…shall not be entertained" and replaced with the words "… shall not be granted." This will ensure that the sections do not conflict with the constitutional right to fair hearing and are not declared as invalid whenever their constitutionality is challenged in court.

## 1.6. Conclusion

The passing of the ACJ laws is a timely intervention in ensuring that Nigeria like the rest of the world establishes an efficient and effective criminal justice system which is not only expeditious but also takes care of the interest of the defendant, the victim and the society at large. The laws reviewed highlighted innovative provisions such as plea bargain, non-custodial measures and restorative justice among others which play key roles in the transformation of administration of criminal justice in Nigeria. Despite these laudable provisions, the ACJ laws are not perfect. This analysis examined areas of intersections and divergence of the ACJA and the KbACJL on the one hand and also the intersections of the ACJ laws with other extant laws in Nigeria. The analysis identified the utilities of many provisions of the ACJ laws and also some challenges in the laws. The recommendations made would go a long way in mitigating the

identified challenges, strengthen the laws and ensure a more efficient and effective criminal justice sector in Nigeria.

# COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 AND ADMINISTRATION OF CRIMINAL JUSTICE LAW OF KATSINA STATE 2021*

## 2.1.Overview of the ACJA and Katsina ACJL

The Administration of Criminal Justice Act (2015) was enacted in May 2015, a 495-section law divided into 49 parts. Although the legislation repeals the Criminal Procedure Act (CPA) and Criminal Procedure Code (CPC), it preserves the existing criminal procedures contained in those laws and introduces new provisions that will enhance the effectiveness of the criminal justice system and speedy dispensation of justice in Nigeria.

One essential feature of the ACJA appears to be its paradigm shift from punishment as the main goal of the criminal justice system to restorative justice which pays serious attention to the needs of the society, the victims, vulnerable persons and human dignity generally.[1] This feature is reflected in its section 1 (3), and in the general tone of the Act using the word 'defendant' rather than 'accused;' provision of humane treatment during arrest[2] provisions for speedy trial, suspended sentencing,[3] community service,[4] parole,[5] compensation to victims of crime,[6]

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1 Law Pavilion 'The Administration of Criminal Justice Act, 2015 (ACJA)' https://lawpavilion.com/blog/the-administration-of-criminal-justice-act-2015-acja/

2 Section 8(1), ACJA

3 S. 460 (1), ibid.

4 S. 460 (2), ibid.

5 S. 468.

6 Ss 314, 319.

etc. Innovative provisions of the Act include the protection of the constitutional rights of an arrested person, establishment of an Administration of Criminal Justice Monitoring Committee, a Police Central Criminal Record Registry, quarterly report by the Inspector-General of Police to the Attorney-General of the Federation, among other innovations.

The Katsina State Government re-enacted its Administration of Criminal Justice Law (ACJL) in 2021 and was adopted on 9th March 2021. This law was originally enacted in 2019.[7] However, after operating the law in the State for almost two years, various lacunae in the legislation was discovered. This lacuna included delay in adjudication of criminal cases and failure to include the State's monitoring and coordination committee which ensure that all criminal cases are handled with deserved dispatch.[8] This led to review of the Law, and it was re-enacted and passed into law in 2021, in a bid to continue, inter alia, the speedy dispensation of justice and avert security challenges experienced in Katsina State.[9]

The ACJL, Katsina State is made up of 33 Chapters and 378 sections. The purpose of the Law mirrors that of the ACJA, as its purpose is "to ensure that the system of administration of criminal justice in Katsina State promotes efficient management

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7 The Katsina State ACJL 2021 repeals the previous Katsina State Administration of Criminal Justice Law, 2019, as stated in S. 378 (3) of the Katsina State ACJL.

8 'Katsina governor decries "indiscriminate" release of criminal suspects on bail" Premium Times, October 13, 2021 < https://www.premiumtimesng.com/news/more-news/489671-katsina-governor-decries-indiscriminate-release-of-criminal-suspects-on-bail.html > accessed 15 November 2021.

9 Francis Sardauna 'Nigeria Battling with Archaic Judicial System' says Katsina CJ, This Day, September 21, 2020, < https://www.thisdaylive.com/index.php/2021/09/21/nigeria-battling-with-archaic-judicial-system-says-katsina-cj/ > accessed 29th September 2021.

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." (Article 2 (1).

The ACJL, Katsina State is similar to most ACJLs of Northern Nigerian States, as it alludes to specific provisions of the Penal Code Law of Katsina State. However, the innovative provisions of the ACJL, Katsina State include key provisions with respect to arrest and searches of women and entry into women's dwellings/quarters; medical examination of suspects; taking of suspects fingerprints; variations in the provisions with relation to plea bargain, amongst others. These provisions are examined in more detail in the Table below.

## 2.2.Compliance with International Best Practices

Criminal justice systems, as do all social institutions, evolve out of, and are constantly reformed through a conflict of some kind,[10] or prevailing circumstance warranting such evolution. African governments subscribe to the normative standards of criminal justice articulated by the United Nations, African Union and other regional organisations, and these are enshrined in their constitutions. However, these standards are not met for several reasons: authoritarian systems of government, ineffective procedures, under-equipped, unaccountable, inaccessible and irresponsive law enforcement and justice institutions; and a general climate of helplessness among the

[10] Annie Barbara Chikwanha 'Closing the Gap between theory and practice of criminal justice in Africa' in *Theory and Practice of Criminal Justice in Africa* (African Human Security Initiative: Monograph 161: June 2009) p 114, < https://www.files.ethz.ch/isn/104299/MONO161FULL.pdf> accessed 09 April 2020.

population in relation to criminal justice officials. This sense of powerlessness arises partly because of powerlessness and poverty.[11]

The Katsina State ACJL displays a paradigm shift from the punitive punishment justice system hitherto used in the old Penal Code to a restorative justice system. In the Katsina State ACJL, there is a deliberate attempt to expand the meaning of terms to provide clarity in the application of its provisions. One of the innovative provisions of the Katsina State ACJL which is not immediately present in other State ACJLs is its Chapter 2 titled 'The Constitution and Powers of the Criminal Courts. It delineates the classes of Criminal Courts in Katsina State, and clearly sets out what classes of offences may be tried by Magistrates according to their grade and sentences which may be passed by them. With regards to the issue of arrest and bail, the Katsina State ACJL contains similar provisions with the ACJA. However, while the ACJLA specifically requires that an application for bail be made orally or in writing, the Katsina State ACJL is silent in this regard. Nevertheless, in recognition of the need for protection of women and respect of the human rights of women, the Katsina State ACJL provides for situations of Searches and Arrests, providing that where a woman is arrested, the search of such a person must be carried out by a woman; the necessity of ensuring that the search of a woman 's house be made by another woman *with strict regard to decency* (s. 90).

Whilst it is observed that the Katsina State ACJL meets issues of efficient management of criminal justice administration having incorporated key provisions of the ACJA such as bail, arrest, searches, warrants, plea bargain, the establishment of the State Administration of Criminal Justice Monitoring

[11] Chikwanha, *ibid*, at 111-112.

Committee, etc, unlike the ACJA, the Katsina ACJL does not specifically provide for detention time limits or remand order protocols. This is regarded as a huge gap in the State ACJL. However, the Katsina State ACJL contains some similarities with the criminal law legislation of other jurisdictions and are also discussed below.

## 2.3. Similarity of the Katsina State ACJL with the Criminal Legislation of Pakistan and Sudan

Nigeria, for example, through the enactment of its ACJA, has established a formal criminal justice administration system which aligns with the changing nature of society and international norms established by other States. Whilst Nigeria's ACJA seeks to promote efficient management of criminal justice institutions, speedy dispensation of justice and protecting the society from crime, etc, the variations in State ACJLs like Katsina State warrant a comparison with the criminal law legislation of countries which are predominantly Islamic. For example, in Pakistan, its Code of Criminal Procedure 1898, as amended by Act II of 1997; and the Pakistani Penal Code (Act XLV of 1860) govern the administration of criminal justice in that country. The Pakistani Penal Code expressly sets out the liability of 'every person' to punishment under the Code; and the extension of the Code to extra-territorial offences. Although this Penal Code and the Code of Criminal Procedure 1898 have been further amended by the Pakistan Criminal Law (Third Amendment) Act of 2011[12], the provisions of this Third Amendment Act contain similar provisions to that of the Katsina

[12] Act No. XXVI of 2011 < https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=54f85b7d4 > Accessed 26 September 2021

ACJL. Also, the Sudan Code of Criminal Procedure 2003[13] and its Penal Code of 1991[14] also contain similar provisions to Nigeria's ACJA 2015. However, a Sudanese Law No 12 of 2020 further amends 15 provisions of the Penal Code of 1991. These provisions appear to be in line with current global realities and innovations perceived in criminal justice legislations of other countries. These provisions include amending the definition of an adult under the Penal Code to read 'an adult who reaches 18 years of age', amendment of the provisions on death penalty for minors younger than 18years of age. This provision is amended to ensure that persons under 18 years of age cannot be sentenced to death for the crime of homicide. compared to the previous definition of 'a persons who reaches puberty or has completed 15 years of age;' Another key provision of the Sudanese Penal Code as amended is the criminalization of female genital mutilation (FGM) with punishment for up to three years, a fine and a permanent closure of the site where such a crime of FGM takes place.[15] Thus, **Table II** below highlights key innovations of the ACJL, Katsina State, in comparison with the ACJA 2015, and criminal legislation of Pakistan and Sudan as mentioned above.

Whilst these criminal justice legislation in these three jurisdictions may differ, their aim is in line with international best practices which is to ensure effective, speedy administration of justice for all and protection of the rights of suspects. As

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13 South Sudan Code of Criminal Procedure 2003, available at <https://www.policinglaw.info/assets/downloads/2003_Code_of_Criminal_Procedure_of_Sudan.pdf> Accessed 29 September 2021.

14 Sudan Penal Code of 1991 < https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/80450/118284/F-1325877900/SDN80450%20Eng.pdf> Accessed 26th September 2021.

15 Sudan: New Law Amending Penal Code Takes Effect' July 13, 2020, < https://www.loc.gov/item/global-legal-monitor/2020-07-23/sudan-new-law-amending-penal-code-takes-effect/> Accessed 29 September 2021.

such, in Nigeria, States are obliged to implement the ACJA at State level and adapt same to prevailing circumstances and on case-by-case basis in these States. It can therefore be said that the Katsina State ACJL is in compliance with international best practices as it mirrors majority of the provisions of the ACJA, and some provisions of the Pakistan and Sudan legislations.

## 2.4.Comparative Analysis of ACJA 2015 with the ACJL

Table II highlights the key sections of the Katsina State ACJL and its conformity with international best practices and the ACJA.

| | **CONCEPT** | **ACJA** | **ACJL** | **COMPLEMEN-ARY PROVISIONS** | **ANALYSIS** |
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| **1** | **Preliminary** | Titled: PART 1 - 'Preliminary The citation of the Act is contained in the last section (s. 495), including repeals (s. 493) | Titled- CHAPTER 1: Preliminary Provisions Citation and Repeals are contained in the last section of the Act, immediately after section 378 (3). However, it is not clear if the Repeal provision is meant to be S. 379 as there is no section ascribed to that provision. | These provisions are similar to what obtains in other sectoral legislations in Nigeria.<br><br>S. 4 of the Pakistani Code of Criminal Procedure 1898 as amended defines 'Complaint' verbatim as the Katsina ACJL | Unlike the ACJA, the Katsina ACJL only provides a definition for the word 'investigation.' The Katsina ACJL also expands the meaning of the word' complaint' to include 'the allegation **made orally or in writing to a Court with a view to its taking action under this Law...'** The ACJA |

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| | | | | | definition states 'allegation that any named persons has committed an offence…', without specifying the mode (oral or written) in which the complaint should be made. |
| **2** | | Interpretation section is contained within the last part of the Act (section 494). | Interpretation section is contained within the last part of the Law, i.e. S. 378 (1) – (3). | | |
| | **Constitution and Powers of the Criminal Court.** | | | | |
| **3** | **Constitution of the Criminal Court** | No provision in the ACJA | Chapter 2 titled 'The Constitution and Powers of the Criminal Courts'<br><br>This section sets out the classes of Criminal Courts in Katsina State, and empowers the Chief Judge to divide or constitute parts of the | | |

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| | | | State into a magisterial district, etc (s. 8)<br><br>This section also alludes to the appointment and territorial jurisdiction of Magistrates in the State. | | |
| **4** | **The Powers of Criminal Court** | No provision in the ACJA | Chapter 3 titled 'The Powers of Criminal Courts'<br><br>The Katsina Penal Code excludes certain offences from being tried by any Court in Katsina State | | |
| | Arrest | | | | |

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| **5** | **Arrest: Recording of Arrests/ Confessional Statements** | Title – Arrest, Bail and Preventive Justice **Contains similar provisions to the ACJL** The ACJA allows the recording of a confessional statement in writing and via electronic recording on a retrievable video compact disc or other audio-visual means (s. 15 (4) | Chapter 4 titled 'Arrest and Process **Contains similar provisions to the ACJA**<br><br>The ACJL allows such video recording too under s. 28(4). | Other provisions pertaining to confessions in both legislation are similar.<br><br>Such similar provisions are in alignment with the provisions of the Evidence Act, s. 27. | The Katsina State ACJL's extension of the provision of video recording of a confessional statement alludes to State's brilliant consideration of the use of modern technology applied worldwide in taking of confessional statements. |
| | | The ACJA also allows the admissibility of an oral confession in evidence (s.15 (4). | **The ACJL** provides for admissibility of an oral confession in evidence (S. 28(5) | | |

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| **6** | **Arrest** | Under this part, the ACJA uses the word 'suspect' throughout | The ACJL Katsina State also uses the word 'suspect' throughout this document. | The Pakistani Code of Criminal Procedure 1898 as amended also contains similar provisions to the Katsina ACJL and the ACJA pertaining to when private persons may arrest in its S. 59.<br><br>S. 46 (2) of the Pakistani Code of Criminal Procedure is worded in the same way as S. 34 of the Katsina State ACJL.<br><br>However, subsection (3) of the Pakistani legislation states that 'provided that 'nothing in this section gives the right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for a term which may extent to ten years. | The Katsina ACJL's expansion of the circumstances under which a Police Officer may arrest a suspect is in line with international best practices. This expansion indicates the intention of the drafters that the section should encompass a variety of circumstances which may arise for a police officer to effect an arrest under the Law.<br>The provision under the Katsina ACJL appears to give the authorized person very wide powers i.e. with the wordings of '**use all means necessary to effect the arrest.'** It is argued that the drafters of the Law also considered the possibility of this. As such, the provisions of S. 40 of the |
| **7** | **When Police Officer may arrest a suspect** | Section 18 (1) (a) – (l) provides for instances where a police officer may arrest a suspect without warrant | There is no provision of this nature under this Chapter of the ACJL | | |
| **8** | **When a private person may arrest** | S. 20 authorises the arrest of a suspect by a private persons provided the suspect commits an offence in his presence or is reasonably suspected of having committed an offence. | S. 30 (a) – (l) contains similar provisions with the exception of subsection (d) and (j). These subsections provide for the arrest of any person whose discharge has been cancelled by a Judge of the High Court for failure to furnish security; and the arrest of any person who has | | |

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| | | | escaped or attempts to escape from lawful custody. | | Law reduces the wide effect of these provisions as it states that '**An arrested person shall not be subjected to more restraint than is necessary to prevent his escape.'** This is a very laudable provision which should be emulated by other State ACJLs.<br><br>These provisions set out by the ACJA and ACJL are laudable as it highlights the need to keep national records of arrests. This requirement is in line with international best practices and will contribute to national information on arrests and convictions in the criminal justice sector in Nigeria. |
| **9** | **Other provisions relating to arrest (resisting arrest, seizure of offensive weapons, etc)** | S. 27 states that a person is bound to assist a Judge, Magistrate, Justice of the Peace police officer or other person who reasonably demands his aid in arresting or preventing the escape of a suspect whom the above persons are authorised to arrest. | S. 34 authorises a person authorised to arrest a suspect to use all means necessary to effect the arrest if the suspect resists or attempts to evade the arrest.<br>S. 35 also empowers the person making the arrest to take any offensive weapon from the person arrested and deliver such weapons to the Court or officer.<br>The Katsina ACJL uses the word '**every person'** and limits the assistance to a **police officer.** It also omits the word 'reasonably' from its | | |

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| | | | provisions (s. 36) | | |
| **10** | **Periodic Report of Arrest** | S. 29(1) – Quarterly reports of record of arrests with or without warrant pertaining to federal offences must be remitted to the AGG by the Inspector-General of police and Head of every Agency authorised by law to make arrests | S. 47(1) – **Monthly reports of the record of arrests** submitted on the last working day of every month must be made to the nearest Magistrate by **an officer in charge of a police state or an official in charge of any agency authorised to make arrests** | | The Katsina ACJL does not specify what 'reasonably necessary force' should be. As such, this particular clause appears to provide too much discretion to the police officer to use any means which he/she deems fit to facilitate such a search of the suspect.<br><br>Both the ACJA and Katsina ACJL take into consideration gender aspects in arrests. This is a worthy consideration in view of the varying religious affiliations which exist in Nigeria.<br><br>However, the provisions of S.12(3) (a) & |
| **11** | **Search of Arrested Person** | | The ACJL authorises a police officer making an arrest to place in safe custody, such articles other than necessary wearing apparel, and list such articles and permit the | | |

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| | | | arrested person to retain all articles not so placed in safe custody (S. 48 (2). Such a police officer may also search the suspect using such force **as may be reasonably necessary. (S 48(1)** | | (b), regardless, appear to infringe on the overall right to privacy of persons set out under S. 37 of the 1999 Constitution. This right is guaranteed and must be protected, regardless of if the person making the arrest is a woman. As such, the provisions of the ACJA must be amended to state that such notice **will be necessary.** |
| **12** | **Search of a Person/Place, in the case of a Woman** | requires the person making an arrest to give notice if a suspect enters a house or place in the occupancy of a woman who by custom or religion does not appear in public. Such notice will not be necessary where the person making the arrest | The Katsina State ACJL merely states that where the arrested person is a woman the search shall not be made except by a woman. | | |

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| | | is a woman (S. 12 (3) (a) & (b) | | | |
| **13** | **Warrants** | Set out in Part 3 titled Warrants | Set out under Chapter V – Processes to Compel Appearance | | The ACJA and ACJL clearly states that a warrant of arrest may be executed in any part of Nigeria. |
| **13** | **Searches** | Part 18 – Search Warrants | Chapter 5 – titled Processes to Compel Appearance | S. 52 of the Pakistani Code of Criminal Procedure 1898 as amended mirrors the exact provisions of S. 90 Katsina ACJL | Legislation take into consideration the sensitivity of gender. However, it is laudable that the ACJL has inserted the latter provision in its S. 90 to ensure the right to dignity of human persons (s. 34) is preserved in accordance with the 1999 Constitution. |
| | **Search of a Woman's Quarters** | Contains similar provisions to the ACJL<br>A search of a woman should be done by another woman and taken to a police station for that purpose (S. 149 (3)<br><br>Where the building is occupied by a | Contains similar provisions to the ACJA<br><br>Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, **with strict regard to decency. S. 90** | | |

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| | | woman, who does not appear in public due to religion, the person making the search shall give notice to the woman to withdraw before entering the building (S. 149 (4) | | | |
| **14** | **Dispersion of Unlawful Assembly and Riots** | **No provision in the ACJA** | Chapter 6 titled <u>Procedure for Dispersing Unlawful Assembly and Riots</u><br><br>This unique Chapter of the ACJL allows the use of civil force by a police officer, the Nigerian Security and Civil Defence Corp and Nigerian Vigilante to | Part VIII of the Sudan Penal Code 1991 (as amended) describes the offence of rioting.<br><br>The penalty for rioting is imprisonment for a term not exceeding six months or with a fine or with whipping not exceeding twenty lashes – S. 68<br><br>Where a person carries a weapon or instrument, or | This provision under the ACJL is a unique one but does not define what 'civil force' means.<br><br>Interestingly, s. 96 (1) of the ACJL also provides that 'no officer acting under this Chapter in good faith shall be deemed to have committed an offence.' |

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| | | | disperse any unlawful assembly. | uses it during a riot which is likely to cause death, he shall on conviction be punished with imprisonment for a term not exceeding one year or with fine, or both – S. 68<br><br>These provisions of the Sudan Criminal Law have been amended by the Miscellaneous Amendments Law of 2020 (Repeal or Amend the Provisions Restricting Freedoms), Law No. 12 of 2020, and the words ' with whipping not exceeding twenty lashes' have been expunged | The Chapter does not also define 'good faith'. Therefore, it is assumed that the act of said officer, however unlawful or excessive, will be construed to be in 'good faith'. This section therefore appears to be promote and protect the actions of said officers described in the Chapter and can be interpreted broadly.<br><br>Like the Sudan Penal Code, it is imperative for future amendments of the ACJL to include a penalty for riots or allude to punishment as stated under the Penal Code Law |
| **15** | **Place of Trial or Inquiry** | Part 9 titled – Place of Trial or Inquiry<br><br>The ACJA sets | Chapter 11 titled Place of Trial<br><br>S. 123 - Contains similar | These provisions are similar to the provisions of the Criminal Code Act and the EFCC Act. | The ACJL provisions consider scenarios where there is uncertainty regarding which of several |

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| | | out trial of offences by a court based on various scenarios pertaining to the offence (s. 93(1).<br><br>S. 99 of the ACJA provides for instances where a court before which a person is charged with committing an offence is brought may decide that the offence ought to be conveniently tried or inquired into by another court within a reasonable period **not exceeding 7 days.** | provisions to the ACJA S. 124 provides that where scene of offence is uncertain, the offence may be tried by a Court having jurisdiction over any of the Districts of the State.<br><br>**No timeline within which the Chief Judge is to facilitate such trial in another Court**<br><br>S. 125 – provides for **an offence committed on a journey or voyage** can be tried by a Court through or into the local limits of whose jurisdiction the offence was committed. | | divisions or districts of courts in the State the offence was committed.<br><br>The failure of the ACJL, Katsina State to include a timeline for remittance of the case to a court of concurrent jurisdiction will contribute to delays in cases which defeats the spirit and intent of the ACJL. |

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| | | This includes a transfer of the case and all processes related therefrom to the court in question.<br><br>**S. 94 –** An offence **committed at sea or outside the territory of Nigeria,** may be tried by a Court in the State, division or district of whose jurisdiction the suspect or person against whom the offence was committed, resides, is or passed in the course of that journey or voyage | | | |

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| **16** | **Preventive Action of the Police** | **No provision in the ACJA** | Chapter 8 titled Prevention of Action by Police and Public<br><br>This Chapter requires a Judge, Magistrate or any other public officer with the responsibility of maintaining law and order to intervene to prevent the commission of an offence (s. 105 (1). | This unique provision of the Katsina ACJL can also be found in the Ondo State ACJL. Its Part 5 titled: Preventive Action of the Police requires every police office to prevent offences and injury to public property by interposition ( s 62 (1)<br>On receiving information pertaining to the commission of an offence, notification is to be made to a superior officer (s. 63)<br>A police officer has power to arrest in such an instance without orders from a Magistrate and without a warrant if it appears to him that the intent or actual commission of the offence cannot be prevented (s. 64), particularly section 64 uses the phrase 'notwithstanding the provisions of this or any other written law relating to arrest…' | Whilst the provisions in both State ACJLS are unique, the Ondo State ACJL appears to grant wide discretionary powers to the police to facilitate the prevention of an offence or injury to public property.<br>The margins for error in this provision are manifold, as section 64 will give room for a police officer in Ondo State to arbitrarily utilise his powers of arrest, in disregard to any other legislation existing at the State and Federal Level.<br><br>The same applies to the Katsina ACJL as it states that a person is bound to assist a Judge or Magistrate or police officer or any public officer, *reasonably demanding his* |

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| | | | | This means that the preventive powers of the police under this Law supersede any other Law pertaining to arrest of persons within | *aid* to prevent the commission of an offence; to prevent damage to any property, etc; and prevent the removal of a public landmark, etc (S. 105 (2) (a) – (c) |
| **17** | **Role of Public and District Heads** | No provision in the ACJA | Chapter 9 – titled 'Duty of Public and District Heads to give Information'<br><br>The ACJL requires the public to give information on certain offences like murder, suicide or accident to the nearest Magistrate Court, Police Officer or any Law Enforcement Agent (S.106)<br><br>On receipt of such information relating to a theft, robbery/murder suspect, escaped convict, disappearance of any person, | | it is not clear why the drafters of the ACJL thought it necessary to exclude the passport photos of a person held in custody, name of the prosecuting agency and other relevant information from the list of items to accompany the returns in a prescribed form under the section.<br>The essence of this provision is to enable the AGF and other interested parties to ensure that the person in custody/suspect are identified as such on appearance before the court. This is a |

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| | | | every District Head is to report same to the nearest Magistrate Court, Police Officer or any Law Enforcement Agent (s.107).<br><br>Such a district head may also investigate such information received, before the Police officer undertakes the investigation (s. 108 (1) & (2) | | huge gap within the ACJL. |
| **18** | **First Information Report** | Part 13 – titled <u>First Information Report</u><br><br>This part clearly outlines the procedure for receiving complaints and First Information Report before a police officer in charge of a police station (s. | Chapter 10 titled <u>First Information Report</u><br><br>This part contains similar provisions to the ACJA in its S. 110 (1) – (11)<br><br>**The uniqueness of this Chapter** lies in the requirements that a police officer utilise a case diary which may be | | Apart from these unique provisions, the Katsina ACJL expressly prohibits a police officer or person in authority from making a threat or promise towards any person in an investigation in order to influence nay evidence he may give (s. 113 (1).<br><br>The requirements of a medical |

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| | | 112 (1) – (11) | ordered for by a Court, by the Attorney-General or his officer; or by a police officer to refresh his memory if called as a witness (Ss. 110 & 111)<br><br>The Chapter also allows for the recording of a confession in a case diary in the handwriting of the police officer who owns the case diary (S. 115(1)<br><br>Another unique provision of the ACJL is the provision of medical examination and medical certificate of a an arrested suspect whose state of health is uncertain (s. 116)<br><br>S. 117 also provides that a Court holding a trial | | examination, while laudable, does not clearly state if the medical examination is to be conducted at the expense of the State or at the expense of the suspect. Thus, it can be assumed from the wordings of this section, that the person to bear the cost of same will be determined by the superior police officer mentioned in S. 116.<br><br>The requirement of fingerprint taking has been utilised by developed countries like the United States of America, Canada, United Kingdom, Netherlands, etc for decades and similar provisions contained in their criminal legislation. However, the taking of fingerprints in these |

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| | | | or a police officer conducting an investigation may cause the fingerprints, photographs and measurements of any persons to taken if required for the trial, inquiry or investigation. | | jurisdictions are done after arrest and arrival at a police station.<br><br>As such, this is a welcome and unique development by the Katsina State ACJL. It is recommended that this provision be amended to include the taking of fingerprints on arrest and arrival of the suspect at a police station |
| **19** | **Procedure for Initiation of Judicial Proceedings in Certain Cases** | **No such provision in the ACJA**<br><br>**No such provision in the ACJA** | Chapter 12 titled Procedure for Initiation of Judicial Proceedings in Certain Cases<br><br>Chapter 13 titled Initiation of Judicial Proceedings for Cognizance of Offences by Court<br><br>This chapter requires a Magistrate Court to take | The provisions of Chapter 12 are to be applied in Katsina State in tandem with specific provision of the Penal Code Law of Katsina State | |

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| | | | cognizance of any offence committed within the local limits of its jurisdiction; power of the Court to inspect a case diary; examine the complainant and reduce his complaint to writing; , etc. | | |
| **20** | **Summary Trials** | Part 36 – Trials and Summary Trials Generally<br><br>Record of plea contained in S. 356<br><br>Discharge of Defendant when there's no case to answer – S. 357<br><br>Under the ACJA, reasonable compensation is required to be paid where a defendant(s) **was** | Chapter 14 titled Summary Trials<br><br>This Chapter deals with procedure of summary trials; record of a plea of the defendant; discharge of defendant when there is no case to answer; process for compelling production of evidence by the defendant etc.<br><br>The Chapter also provides for award of costs in the sum N30, 000 (Thirty | | The differences between legislation can be seen in award of costs for frivolous or vexatious. Under the ACJL, the award of costs is only possible where the defendant(s) have been discharged or acquitted by the Court. |

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| | | **arrested and charged** and it appears to the court that there was no sufficient ground for causing the arrest, making such an accusation false, vexatious or frivolous. In default of payment, the Court may award a term of imprison ment against the person against whom the order was made – S. 323 (1) & (2) | Thousand Naira) to be paid to a defendant(s) who is discharged or acquitted, where it is found that the complaint was frivolous or vexatious. (S 154). The Court may also award a term of imprisonment not exceeding three months. | | |
| **21** | **Bail** | Similar provisions relating to Bail | Similar provisions relating to bail, save for the proviso of S. 160 (2) which states that…**'nothin g in this Law** | | Unlike the ACJA which provides for the registration of a bondsperson under S. 187, the ACJL is silent with regards to |

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| | | | **shall prevent a woman from standing as a surety.'** | | registration of a bondsperson and does not use the word 'bondsperson' at all. However, the Law makes reference to 'surety/sureties to a bond' throughout the Chapter. |
| **22** | **Plea Bargain** | Part 28 titled Plea Bargain and Plea Generally<br>S. 270 of the ACJA – contains similar provisions with the ACJL<br><br>S. 270 (5) (a) – the Prosecutor may only enter into a plea bargain agreement after **consultation with the police responsible for the investigation of the case and the victim or his** | Chapter 16 titled Plea Bargain<br>S. 171 of the ACJL – contains similar provisions with the ACJA<br>S. 171 (5) (a) – the Prosecutor may only enter into a plea bargain agreement after **consultation with the victim or his representative**<br><br>**No such provision in the ACJL** | | It can be argued that in consideration of the process of plea bargain which is set out under the ACJA and ACJL, the provisions of S. 270 (14) of the ACJA are apt to prevent a clog in the plea bargain process. |

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| | | **<u>represent ative</u>**<br><br>S. 270 (14) Any person who wilfully and without just cause, obstructs or impedes the vesting, transfer or any money, asset or property commits an offence liable on conviction to imprison ment for 7 years without the option of a fine<br><br>S. 270 (17) prohibits the charge or trial again of a person who is convicted and sentenced under this Part, on the same | **No such provision in the ACJL**<br><br>**No such provision in the ACJL** | | |

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| | | facts or on a greater offence<br><br>S. 270 (18) – Under this Part, the judgement of the Court is final with no appeal against such judgment with regards to award of compensation to the victim where the defendant is guilty, | | | |
| **23** | **Charges** | Part 21 The Charge & Part 22 – Alteration or Amendment of Charges<br><br>**Contains similar provisions as the ACJL** | Chapter 17 – Charges<br><br>**Contains similar provisions as the ACJA** | | |
| **24** | **Presentation of Case by Prosecution** | Part 31 – Presentation of Case by Prosecutio | Chapter 18 – Trials by the High Court | | |

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| | **and Defence** | n and Defence<br><br>**Contains similar provisions as the ACJL**<br><br>The ACJA prohibits an application of stay of proceedings with respect of a criminal matter (s. 306)<br>The ACJA provides an interesting perspective where a question as to the interpretation of the 1999 Constitution arises during the course of a trial and is referred to the Court of Appeal. In such an instance, the Federal | **Contains similar provisions as the ACJA**<br><br>**No provisions in the ACJL** | | |

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| | | High Court has 3 options: adjourn the trial till the question ahs been considered and decided; conclude the trial and postpone the verdict till a decision is reached; or conclude the trial and pass sentence but suspend execution of same till the question has been decided. While this is in consideration, the court may commit the defendant or convict him to provision or grant him bail (s. 305) | | | |

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| **25** | **Previous Acquittals or Conviction** | Part 24 – ACJA<br><br>**Contains similar provisions as the ACJL** | Chapter 19 – ACJL<br><br>**Contains similar provisions as the ACJA** | Section 216 of the Ondo State ACJL gives room for a person acquitted or convicted of any offence to be subsequently charged with and tried for the same or any other offence constituted by the same acts or omissions **if the court by which he/she was first tired was not competent to try the offence for which he/she was first charged.** | This provision of the ACJL, Ondo State which gives room for re-trial of such offence where a court of first trial was incompetent, highlights a key difference between Katsina ACJL and the Ondo State ACJL. However, the provisions of the ACJA and Katsina ACJL are at par with regards to previous acquittals or convictions. |
| | | **Not provided in the ACJA** | S. 213 ACJL provides for the opportunity of a person's acquittal or conviction to be pleaded or proved at any stage of the trial for the same offence or nay other offence to a charge of which it is a bar; upon its been proved, the defendant shall be discharged | | |
| **26** | **General Provisions on Inquiries and Trials** | **Not provided in the ACJA** | Chapter 20 titled General Provisions as to Inquiries, Trials and other Judicial Proceedings<br><br>This part provides for access to a | | |

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| | | | Court by the general public; right of a legal practitioner to practice in a High Court or Magistrate Court; oath taking, swearing of Muslims; protection of witnesses, etc | | |
| **27** | **Sentencing and Conviction of Pregnant Women** | Part 38 titled Provisions relating to Sentence of Death & Part 39 titled Procedure where Woman convicted of Capital Offence is alleged to be Pregnant<br><br>**Contains similar provisions as the ACJL** | Chapter 21 titled The Judgment<br><br>**Contains similar provisions as the ACJA**<br><br>However, S 259 (3) provides that **the test to confirm whether a Convicted Woman is pregnant shall be carried out in a Government Hospital by a Medical Officer.** | | All provisions relating to Death Sentence and Conviction of a Pregnant Women contained within this Chapter of the ACJL. |

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| **28** | **Execution of Sentence** | Part 38 – Provisions Relating to Sentence of Death<br><br>Similar provisions in the ACJA S. 409 – 411 – Procedure for grant of pardon | Chapter 24 – Execution<br><br>Similar provisions in the ACJL S. 301 – Procedure for grant of pardon | These provisions in the Katsina ACJL are similar to what obtains in the ACJLs of other Northern States such as Kano and Kaduna.<br><br>S. 270 (1) of the Sudanese Code of Criminal Procedure 2003 contains verbatim provisions , with the whipping to be inflicted in the presence of the official of the prison unless the Magistrate orders the whipping to be inflicted in his own presence<br><br>Verbatim provisions are contained in S. 271 of the Sudanese Code of Criminal Procedure | The similarity of provisions in the Sudanese Code of Criminal Procedure and the Katsina ACJL are important and highlights the fact that this part of the Katsina ACJL is in conformity with best practices. |
| | | **No provisions in the ACJA** | S. 306 prohibits the execution of the sentence of Haddi lashing on a person other than a Muslim S. 307 (1) - (3)– where an offender is sentenced to caning, the sentence shall be inflicted in the presence of the Registrar of the Court, and such caning shall not be executed in instalments.<br><br>A stay of execution of the sentence of caning can | | |

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| | | | be granted by the Court where the offender is not in a fit state of health to undergo the caning (S. 307 – 311) | | |
| **29** | **Persons of Unsound Mind** | Part 29 – Persons of Unsound Mind<br><br>**Contains similar provisions as the ACJL** | Chapter 26 – Persons of Unsound Mind<br><br>**Contains similar provisions as the ACJA**<br><br>**However,** S. 324 provides for the judgement or acquittal of a person on the ground that at tie time where he was alleged to have committed an offence, he was by reason of unsoundness of mind incapable of knowing the nature of the act alleged. | | The provisions of S 290 ACJA grants the AGF wide discretionary powers to transfer or release any person from one prison or asylum to another.<br><br>Whilst this is lawful, it is important to amend this provision to include that 'in the case of release of a person from an asylum, a proper medical examination should be carried out on such a person by a certified government psychiatrist before such release is effected. |
| | | S. 290 ACJA empowers the | S. 324 provides that where a person is | | |

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| | | Attorney General of the Federation to direct such a transfer **from one prison or asylum to another prison or asylum, as often as may be necessary or may at any time order for his release or detention as he may consider necessary** | confined in any place, the Governor may direct his transfer from one medical facility to the other | | |
| **30** | **Non-Custodial Alternatives** | **Part 44 titled 'Probation and Non-Custodial Alternatives'**<br><br>A convicted defendant may be sentenced and ordered to serve such sentence at a Rehabilita | **No such provision in the ACJL** | | The provision under the ACJA is commendable and a welcome innovation. |

| | | | | | |
|---|---|---|---|---|---|
| | | tion and Correctional Centre established by the Federal Government in lieu or imprisonment (s. 467 (1) In making such an order, the court shall consider the age of the convict, the fact that the convict is a first offender, or any other relevant circumstance necessitating such an order of confinement at the Centre (s. 467 (2). In the case of a child, a court may order the remand of such a child standing | | | |

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|---|---|---|---|---|---|
| | | criminal trial at the Centre (s. 467(3). | | | |
| **31** | **Power of the Chief Judge to make Rules** | Part 48 – Fees and Miscellaneous Provisions<br><br>**Contains similar provisions to the ACJL**<br><br>S. 490 (e) provides that the Chief judge may **prescribe anything or any person required to be prescribed under the provisions of this Act** | Chapter 30 titled Miscellaneous<br><br>**Contains similar provisions to the ACJA**<br><br>**However, the ACJL expands the purposes for which the Chief Judge of Katsina State may make rules to include:**<br><br>The making and forwarding of returns of cases decided in the Magistrate Courts to the Chief Judge or any other; or prescribing the conditions under which statements may be made to the police by defendant and other persons and under which such statements | | |

| | | | | | |
|---|---|---|---|---|---|
| | | | may be admitted in evidence (s. 359 (1) (c) & (f) | | |

*Table II: Comparative Analysis- ACJA 2015 and Katsina State ACJL 2021*

The Katsina State ACJL contains Appendices which set out a Tabular Statement of Offences, the type of offences, if an arrest may be made with or without warrant; punishment under the Penal Code and the ACJL; court with least powers to try the offence, and Sharia Court with the least powers to do so. This Tabular Statement of Offences which delineates these issues is noteworthy and innovative, as it may be one of the first State ACJLs to do so. This innovation provides effective guidance to judges, defence lawyers, prosecutors, the general public with regards to specific offences.

## 2.5.Practical Challenges with the *Implementation of the ACJA/ACJL* Provisions

The following are the perceived challenges which may be inimical to the practical implementation of the Katsina State ACJL

a. Despite the provision pertaining to the recording of confessional statements on video set out under the ACJL s. 10 (3), there may be instances where police officers in the State may continue to record confessional statements in writing. For this practice to be discouraged to ensure conformity with current technological standards, it is imperative that the government provide recording devices and other video recording devices to aid in recording confessions by the police in the State.
b. The provision relating to taking of fingerprint for the purpose of trial or inquiry, while laudable, is not practicable

as Nigeria does not have a comprehensive database where fingerprinting can be linked to a person's identity as obtains in other developed countries.

c. Lack of awareness of key provisions of the ACJL relating to arrests, bail procedures, etc by justice sector collaborators such as the police, defence counsel, and prosecutors and judges.

## 2.6. Recommendations

In view of the above analysis and challenges, the following recommendations are proffered:

a. Immediate capacity building in the State, particularly the Katsina State Police Command;
b. Maintain a physical and online register of defence lawyers within Katsina State which should be made available to arrested persons should they require the immediate services of a lawyer, if the arrested person does not have one;
c. Establishment and commencement of Katsina States' use of social media, electronic and print media to generate public awareness of the innovative provisions under the ACJL which is meant to ensure justice for all;
d. The Katsina State Government must leverage on the innovative provisions of its ACJL and create awareness on same which can be used by academic institutions, civil society organisations and other international bodies to facilitate training of justice collaborators in the State – particularly the police and prosecuting officers - on the practical implementation of the ACJL in comparison with other States in Nigeria and the ACJA;
e. Amendment of the identified gaps in the ACJL from the above table in order to enhance transparency in the justice

sector in the State and facilitate the speedy dispensation of justice.

## 2.7.Conclusion

The ACJA 2015 was established to cure the lacunas in existing criminal procedure laws in Nigeria. Whilst this legislation has received various accolades over the past six years for facilitating long-needed reforms in the criminal justice sector, the implementation of this legislation in States within Nigeria leaves much to be desired. Katsina State can be described as a trail blazer for repealing its previous ACJL 2019 and adopting its current ACJL 2021 to ensure conformity with international best practices and other State ACJLs in Nigeria. This proactive step will facilitate the implementation of the Law in the State and promote synergy among justice collaborators in the State.

# CRIMINAL JUSTICE ADMINISTRATION: A COMPARATIVE ANALYSIS BETWEEN IMO STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW 2020 AND ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015*

## 3.1.Introduction

Procedures for the administration of existing substantive criminal laws are key to the smooth running of societies and the maintenance of law and order. Until recently in Nigeria, these procedures were encapsulated in the Criminal Procedure Act and Criminal Procedure (Northern States) Act and the respective state laws applicable in the Southern and Northern parts of Nigeria at federal level and state level respectively.[1] Following the persistent clamour from relevant stakeholders for criminal justice reforms in Nigeria to address pertinent lapses in the extant criminal justice system and at the same time revolutionise the system to conform with international best practices, the Administration of Criminal Justice Act, 2015 was enacted, repealing previous laws on criminal justice administration. Various states in Nigeria, have now passed replicas of the Administration of Criminal Justice Act, into law.

This write-up focuses on criminal justice administration in Imo State.[2] It provides a general overview of the Imo State Administration of Criminal Justice Law (ISACJL) and highlights the extent of compliance with global standards and best practice in criminal justice administration. Furthermore, the write-up compares the Imo State Law with the federal equivalent

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* Osatohanmwen O.A Eruaga, PhD

1 Nigeria's criminal justice administration as a reflection of a federalist mode of government practiced, comprises both federal and state laws.

2 Imo State Administration of Criminal Justice Law No 2 of 2020

to unravel and highlight the potential impact of similarities and distinctions in the legal instruments before addressing practical challenges in the implementation of the ISACJL.

### 3.2. Overview of the Imo State Administration of Criminal Justice Law

The Imo State Administration of Criminal Justice Law (ISACJL) was signed into law by the governor on the 11th of March 2020. Prior to the enactment of this Law, the erstwhile Criminal Procedure Law (CPL)[3] regulated the procedure for the administration of criminal justice in the state. This law reflected the procedural system applicable to Nigeria's Southern States under the Criminal Procedure Act (CPA). The CPL like the now repealed CPA, was fraught with numerous loopholes and that generated a lot of challenges with respect to practical implementation of the provisions.[4] Key among these challenges were issues connected to coerced and involuntary confessions, detention of persons in lieu of the suspect, delays in trials and detention of awaiting trial suspects. Furthermore, the criminal justice system failed to reflect emerging trends in criminal behaviour and procedures. With the ISACJL in place, the AG of the State explains that '…all aspects of speedy administration of justice.… small handicaps that impede the administration of justice and make cases continue to be in courts for long periods of time, accused persons remanded in custody without trial for long periods of time.… have been taken care of."[5] The ISACJL

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3 Criminal Procedure Law Cap 31, Laws of Eastern Nigeria 1963

4 R v. Zik Press Ltd (1947) 12 WACA 202, 205, 206. The now repealed CPA was described as an ill drafted legislation in many respects.

5 Iheanyi Nwachukwu, 'Governor Uzodimma Signs Criminal Justice Bill into Law' Business Day (Online) 11 March 2020 < https://businessday.ng/uncategorized/article/governor-uzodimma-signs-criminal-justice-administration-bill-into-law/

by virtue of section 542 expressly repealed the Criminal Procedure Law.

### 3.2.1. Purpose and Extent of Application

Section 2 of the ISACJL captures the purpose of the Law. The four purposes of the Law are to:

a. promote efficient management of criminal justice institutions;
b. ensure speedy dispensation of Justice;
c. protect the society from crime; and
d. protect the rights and interests of the suspect, the defendant, and the victim.

These objectives are on all fours with the federal legislation on administration of criminal justice. The ISACJL is applicable in the trial of offences in the High Court and Magistrates' courts, except express provision to the contrary is made by the Law itself or any law with respect to any particular court or form of trial.[6] This provision complements section 86 of the ACJA which recognises that although the Act applies to criminal trials for offences punishable under or by an Act enacted by the National Assembly and other offences punishable in the Federal Capital Territory (FCT), certain aspects of the Act are not relevant to trials where specific provisions are made in respect of any particular court or form of trial or proceedings. The application of the ACJL in this manner is connected to the similar jurisdiction conferred on state high courts by the 1999 Constitution (as amended), to hear and determine criminal trials of persons for federal offences. Precisely section 268(1)(c) provides that the Jurisdiction conferred on a Court of a State pursuant to subsection (1)(b), 'shall be exercised in conformity with the practice and procedure for the time being prescribed in

[6] ISACJL, s. 4

relation to its jurisdiction over … criminal causes other than Federal causes.' In Wagbastoma v FRN, the Court of Appeal in deciding the extent of application of a state ACJL noted that the provisions of the ACJA:

> *are... in clear recognition and in line with 286(3) of the Constitution vesting State Courts with the jurisdiction to try Federal offences and apply state law on practice and procedure in such trials.*[7] Accordingly, the Court held that '*by both the provisions of the Constitution and the ACJA, 2015 ...the provisions of the ACJL, 2011 and not the ACJA, 2015 were applicable to and in the trial of the Appellant before the High Court of Lagos State for the Federal offences he was charged for.'*[8]

In the absence of provisions on procedure for the determination of a case, the ISACJL empowers the Court to apply any procedure that meets the justice of the case.

### 3.2.2. Summary of the Imo State Administration of Criminal Justice Law

The ISACJL, 2020 consists of 542 sections, grouped into 47 Chapters. There are 5 schedules with appropriate forms, made pursuant to various sections of the Law.

Chapter One deals with preliminary matters relating to the citation, purpose, application and interpretation of words and terms used in the Law. The adopted style of including the interpretation section early in the law ensures that interpretation

7 Wagbatsoma v. FRN, Suit No: CA/L/348C/2017

8 *ibid*

issues are addressed before going into substantive provisions of the law.

Arrest, bail (before conclusion of investigation), and preventive justice are the focus of Chapter 2, covering sections 8 -36. Chapter 2 provides for the process of arrest of a suspect by police, other private persons[9] or a Magistrate,[10] with or without a warrant, upon commission or reasonable suspicion of the commission of an offence. This Part also provides for how a person should be treated to ensure respect for human dignity and prevent a violation of the rights and interest of the suspect as provided for under the Constitution.[11] Furthermore, the provisions in Chapter 2 address a fundamental flaw in the state criminal justice processes that allowed common police practices such as arrest in lieu or arrest for a civil wrong, that violates the rights of persons who have not been involved in or suspected to have committed a crime.[12] It provides specifically in sections 11(6) and 20(3) for personal liability on the part of the police officer for violation of the law in the course of arrest and investigation. The Officer shall compensate the person or any person injured by his conduct, as determined by the court. Section 20(4) provides that compensation shall be paid by direct deduction from the salary of the officer. The provisions relating to compensation and individual liability for violation of rights are innovative and highly commendable. Sections 17, 19, 35 and 36 provide for sharing of information on records of arrest and concluded trials between the Court, Police and the office of the Attorney General at state level and the relevant institutions at federal level. These provisions are part of the monitoring

9 ISACJL, ss. 22-25
10 ISACJL, ss. 26-27
11 ISACJL ss 9-11, 18
12 ISACJL, s 9, 11(4)

framework created by the Law to guarantee compliance and collaboration among justice sector actors for an improved criminal justice system. Another novel provision in this part of the Law relates to the establishment of a Forensic Laboratory at the State Police Headquarters or any appropriate location under section 19(8) to aid effective investigation.

Parts 3 and 4 cover issuance and execution of an arrest warrant, prevention of offence as well as security of good behaviour and the procedure for furnishing same. Section 31 of ISACJL obligates the Commissioner of Police and the head of every agency with arresting powers to remit quarterly to the Attorney-General, a record of all arrests made within the State with or without warrant. Failure to comply with this requirement is treated as a misconduct to be dealt with in accordance with the applicable disciplinary procedure of the agency concerned.[13] Section 37 provides for the issuance of a warrant of arrest even where there is power to arrest without a warrant. Such a warrant must be in writing and on oath. Section 65 highlights the role of the police officer in the prevention of the commission of an offence. It places an obligation on a police officer to act within his ability to prevent the commission of a crime.

Provisions relating to bail and recognisance are the focus of Chapter 5. Section 87(1) of ISACJL provides for a twenty-four-hour timeline for admitting to bail, a person who has been taken into custody without a warrant for an offence other than an offence punishable with death, if it will not be practicable to bring such person before a Magistrate having jurisdiction with respect to the offence charged. Where the offence appears to the officer to be of a serious nature, the suspect may be discharged

[13] ISACJL, s 31(a)

upon his entering into a recognizance with or without sureties, to appear before a court at a time and place named in the recognisance. With respect to bail after the conclusion of investigations, the ISACJL contains a clear-cut classification of bail based on the offence as one punishable with death, life imprisonment or felonies punishable with other terms of imprisonment.[14] The Law provides that women can stand as sureties for the purpose of a defendant making bail. The inclusion of this provision is commendable as it shows the contemporary approach of the law and its consistency with the global objective of gender equality as recognised under the sustainable development goals (SDGs). The use of bondspersons is also recognised by the Law. Section 119 empowers the Chief Judge to make regulation for the registration of individuals or corporations to provide or stand as sureties for a defendant, as a commercial service. Such a bondsperson is required by law to maintain sufficient bank guarantee in line with the stipulated regulation.

Parts 6 to 10 relate to enforcing appearance of the defendant(s) and witnesses in court, remand in certain circumstances where bail is refused, error in court processes, control of criminal proceedings and institution of criminal cases respectively. With respect to enforcing witness attendance, the Law provides for the issue and service of summons or warrant of arrest where the witness fails to appear in court to give evidence. The court may order payment of the witness' expenses. S. 153(1) of ISACJL establishes a special unit in the office of the Chief Registrar of the High Court called Witness Support Unit with detailed responsibilities, including the payment of witness' expenses. Where bail is refused the defendant, s 158 obligates the court to, as far as practicable hear

[14] ISACJL, s. 89

the matter from day to day. Compared with the provisions of section 257(1) of the same legislation which provides that "upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial", it reveals that the law is in tune with the reality and challenges of conducting daily proceedings with respect to a case. The Attorney-General's constitutional power to enter *nolle prosequi* in criminal proceedings at different stages of the trial is restated in sections 168 and 169.Criminal proceedings in Imo State may be instituted in the Magistrate Court by a Charge or Complaint. At the High Court, proceedings are commenced by way of Information. Section 182 identifies persons who may prosecute criminal cases. Contrary to the position of the Administration of Criminal Justice Act, it still confers powers on members of the Nigeria Police Force to prosecute cases. However, it whittles down the powers by restricting such prosecution to offences with punishment of imprisonment not exceeding 1 year.

Chapter 14 comprising sections 223 to 232 addresses issues of remand and other interlocutory proceedings. section 226 of ISACJL, 2020 provides a robust time protocol for remand orders covering a period of 56 days. Section 226(7) states that no further application for remand will be entertained after the procedures and time frame provided in section 226 have been exhausted.

Issues of the trial proceedings relating to summary trial of a child, trial on information, preparation and use of proofs of evidence are covered by Chapters 15 to 17. Outside the requirement to conduct day to day trial, "time standards" are set for criminal proceedings in the Court under section 258 of the ISACJ. These maximum time standards are not cast in stone as the Court may, on cogent reasons being adduced, extend time if the case is not concluded within the stipulated time standards,

provided that the period will not exceed half of the period originally provided.[15]

Sections 346 to 362 cover procedures during the course of the trial including the position of the defendant in the court, determining the age of the defendant and taking the plea. Section 268 provides for electronic recording of proceedings to prevent a matter from starting de novo. The Law is however silent on the conditions that would warrant the assignment of another judge to a case. Issues such as the elevation of the original presiding judge, death, accusation of bias or ill health may be considered as factors affecting the need to assign a new judge to an ongoing proceeding.

Presentation of the case by the prosecution is covered by the provisions of sections 363 to 375 of Chapters 24 to 26 respectively. Section 377 spells out the position of the Law on stay of proceedings. This provision is similar to section 306 of the Administration of Criminal Justice Act, 2015 and the Apex court has affirmed that the non-entertainment of an application for stay until judgment is delivered is not a violation of the constitutional rights.[16]

The ISACJL provides that upon the conclusion of the case by both sides, the court may adjourn the matter for judgment.[17] Judgement of the court shall be in writing. In the event that the defendant is found not guilty, he shall be discharged forthwith with an order of acquittal recorded. Where the defendant is found guilty, section 382 empowers the court to pass sentence immediately or adjourn to do so at a later date. Chapters 28 to 32 covering sections 385 to 446 deal with passing sentence, capital sentence, fines, imprisonment as well as the award of

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15 ISACJL, s 259(1)

16 Olisa Metuh v FRN [2017] 11 NWLR (part 1575) 157

17 ISACJL, s 378

cost compensation and damages during sentencing. The sections under these parts highlight what the court considers in choosing appropriate sentence;[18] death sentence and the procedure for carrying it out;[19] situations where a death sentence may not be passed;[20] and procedure for seeking prerogative of mercy.[21] Sections 405- 446 provide for sentences other than capital sentence which includes imprisonment or payment of fine or both. Sections 448-470 under Chapters 34 and 35 provide for non-custodial measures as an alternative to imprisonment. Such non-custodial measures include release on condition of payment of compensation for loss or injury and of costs; probation; community service; confinement in rehabilitation and correctional centres as well as parole. Section 471 provides that punishment of child offenders is subject to the provisions of the Child Rights Act.

Section 484 provides that where any person is ordered to be detained during the Governor's pleasure, he shall notwithstanding anything in the ISACJL, 2020 or contained in any other written law liable to be detained in such place and under such conditions as the Governor may direct Such persons detained may at any time be discharged by the Governor on licence but such licence may at any time be revoked. The provisions relating to detaining persons at the Governor's pleasure unduly empowers the Governor of the state in a manner that contravenes the constitutional rights of citizens to freedom to personal liberty, fair hearing and movement. It is doubtful if it would be upheld in any court if and when it is sought to be utilised by the Governor.

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18 ISACJL, s 386.
19 ISACJL, s 388 and 389
20 ISACJL, s 391-392
21 ISACJL, s 395.

Chapter 44 encompassing sections 256 to 533 provides for the set-up and running procedures of the Justice Sector Reform Team (JSRT). The JSRT is part of the elaborate monitoring architecture of the ISACJL which to helps to ensure compliance with the provisions of the law as a means of improving the state's justice delivery system. Section 535 provides that the Law shall be reviewed not later that 10years from its commencement. This provides some certainty with respect to the review obligation of the law to ensure that it remains in tune with contemporary developments in criminal justice administration.

### 3.3.Compliance with International Best Practices

Traditionally, the global community considered the realm of criminal justice and its administration as entirely territorial in the sense that it was concerned with conduct which specific countries regarded as criminal within their territory. However, this notion of divergence has since been largely reversed to reflect consensus on closer ties among criminal justice systems and administrative cultures, based on a generally accepted minimum set of principles and standards otherwise known as best practices. The shift in perception of administrative cultures links with several pertinent factors- the transnational nature of some offences; the realisation of the value of sharing experiences; and the increasing respect for human rights.

International criminal justice standards have been defined and guaranteed by a plethora of human rights treaties at global and regional levels. Significant among these instruments are the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Rights of the Child;

African Charter on Human and Peoples' Rights; Inter-American Convention on Human Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.[22] These treaties provide minimum rights protection of persons putting into consideration their status within the criminal justice system. For instance, the right to freedom of a suspect is curtailed by the state but is not totally abrogated. Additionally, International human rights standards within the criminal justice realm reflect several other non-treaty standards relating to the role of judges, prosecutors and lawyers; the protection of detainees/prisoners, juvenile offenders, persons facing the death penalty; and providing safeguards against disappearances and torture. Additionally, the standards emphasise restorative justice and the adoption of imprisonment/incarceration as a last option. The United Nations Compendium on Standards and Norms in Crime Prevention and Criminal Justice identifies that these non-treaty standards and norms provide a significant

[22] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III); UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195; UN Commission on Human Rights, Convention on the Rights of the Child, 7 March 1990, E/CN.4/RES/1990/74; Organisation of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982); Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950

contribution to promoting more effective and fair criminal justice structures by shaping the vision of how criminal justice systems should be structured.[23]

Contemporary reforms within the legal architecture of criminal justice administration in Nigeria align with major international best practices. Following the adoption of the ACJA 2015 several states, including Imo state, in adopting the state-level legislation have adhered to the underlying principles and best practices reflected in the national law. Consequently, the Imo State Administration of Criminal Justice Law (ISACJL) 2020 contains various provisions which are in line with international instruments and best practices

### 3.3.1. Compliance with Human Rights Principles and Standards

The general tenor of the ISACJL, 2020 reflects respect for the rights and interest of all persons, including the suspect. The provisions promote law enforcement activities that are devoid of discrimination especially based on gender;[24] as well as those that are effective and leading to the speedy dispensation of justice.[25] The ISACJL provides that at the point of arrest, a suspect must be informed of the reason for his arrest, even if he was in the actual course of the commission of the offence.[26] The various paths for procedural protection of the rights of the suspect during the arrest and investigation of the suspect under the ISACJL conform with several fundamental rights provisions of the 1999 Constitution (as amended) and also the provisions of

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23 (Tokyo Rules, A/RES/45/110), vii

24 ISACJL, s. 97(3) on sureties

25 For instance, the audio recording of confessional statements to do away with trial within trial procedures. See ISACJL, s. 18(2)

26 ISACJL, s. 11

several international instruments dealing with the similar subject matter of rights protection.[27] The relevant provisions in this regard in the Nigerian Constitution relate to those concerning the entitlement of every individual to respect for the dignity of the human person,[28] and the rights of an arrested or detained person to silence; being informed in writing of the grounds for his arrest as well as being brought before a court of law within a reasonable time.[29] Still on reflecting human rights principles, the ISACJL provides a procedure for obtaining statements during the course of investigation and interrogation of suspects that addresses the use of unconventional means including torture to elicit the suspect's account. Ordinarily, a confession without more, is sufficient to ground a conviction.[30] Hence, reliance on confessional statements are prevalent, as the easiest way to secure conviction within the Nigerian criminal justice system. Regrettably, the police may employ unconventional means, including torture to obtain the confessional statement from the accused. In addition, the accused bears the onerous burden to prove during trial, the involuntariness of the confession. Section 18(4) requires that a confessional statement is recorded on video disc or other audio-visual means *'and shall be in writing in the presence of a legal practitioner or any other person of his choice'*. As an added layer of protection, a Human Rights Desk officer or a superior police officer must be present during the making of the statement or its endorsement. The innovation of the ISACJL in this regard is critical to curtailing the abuse of

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27 For instance, see International Covenant on Civil and Political Rights (ICCPR), art. 7; Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3 and African Charter on Human and Peoples Right, art.5

28 1999 Constitution, s.34(1)(a)

29 1999 Constitution, s.35(2)-(4)

30 Evidence Act 2011, s. 27

police power. Section 11(6) of ISACJL, 2020 provides that where a person or officer of any agency violates the provisions of the ISACJL in the course of an arrest and investigation, he shall be personally liable to pay compensation to the person(s) or any injured person(s) as may be determined by the court. This is in line with the international standard that anyone who has been a victim of unlawful arrest or detention has an enforceable right to compensation[31]

The alignment with global best practices from the perspective of respect for human rights of the suspect continues during trial and even till the process of sentencing. This is clearly illustrated by the provision of the law on sentence passed on a pregnant defendant under s391. The International Covenant on Civil and Political Rights (ICCPR) provides that the 'sentence of death shall not…be carried out on pregnant women.'[32] The American Convention on Human Rights and the Japan Code of Criminal Procedure 1948 (as amended in 2006) also contain similar provisions. The ISACJL adopts this practice of death sentence substitution by replacing a capital sentence with life imprisonment.

The ISACJL contains a problematic section 484 which provides that the governor can detain anyone at his pleasure. The section says: "Where any person is ordered to be detained during the governor's pleasure, he shall notwithstanding anything in this law or in any other written law be liable to be detained in such place and under such conditions as the governor may direct and whilst so detained shall be deemed to be in legal custody." The provision as it currently reads, vests unfettered powers on the governor to detain any person. In addition, the law does not stipulate the activities for which a person may be

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31 ICCPR, art 9(5)

32 Article 6 (5), ICCPR 1966.

detained. In the current manner in which it is expressed in the law, the provisions contravene the provisions on fundamental right to freedom of movement as protected by the Constitution and other minimum human rights benchmarks under international and regional instruments. Notably, the ACJA 2015 contains provisions that are closely linked with the ISACJL provision. However, that of the ACJA 2015 is phrased thus- 'where any person ordered to be detained in a safe custody or suitable place other than in prison or mental asylum…' The inclusion of the phrase in a safe custody or suitable place other than in prison or mental asylum, arguably creates room for the proper interpretation of the provision. With the wordings of the ISACJL, the notion of detaining persons at the pleasure of the state is not properly qualified.

### 3.3.2. Compliance with Juvenile Justice

It is increasingly a common trend among contemporary criminal justice systems to provide protection for juveniles as a vulnerable class of persons requiring special attention. According to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),[33] juvenile justice as an integral part of the national development process of each country aims to provide a comprehensive framework that emphasises the well-being of the juvenile.[34] The same rules recognise that children and young persons are susceptible to deviant behaviour and as such when they commit offences, must be treated in a manner appropriate for their age.[35] These principle are similarly recognised in the Kampala Declaration on Prison Conditions in Africa which indicates that

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33 General Assembly resolution 40/33, Annex.

34 *Ibid*, art. 5

35 *Ibid*

child offenders must be separated from their adult counterparts and treated in a manner appropriate to their age.[36] The Convention on the Rights of the Child provides that neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.[37] The Convention also provides that a variety of measures should be made available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.[38]

The ISACJL reflects these principles of well-being and proportionality which Juvenile justice standards and norms encompass. It provides a definition of child offender and young persons to cater for the notion of a minimum age.[39] The ISACJL provides that no infant can be tried.[40] The Law further provides that the trial and punishment of child offenders shall be in line with the provisions of the Child Rights Act, the national version of the international Convention on Child Rights.[41] The law ensures that child defendants found guilty of capital offences would not be inflicted with the death sentence. In lieu of the death sentence the court is obligated to sentence to life imprisonment or some other term which the court deems appropriate.

### 3.3.3. Compliance with Non-Custodial Measures Standards.

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36 Economic and Social Council resolution 1997/36, annex.
37 CRC, art 37(a)
38 CRC, art 40(4)
39 ISACJL, s 3
40 ISACJL, s232.
41 ISACJL, s 471

In many countries the prison system faces major challenges arising from overcrowded facilities. Contemporary trends reduce emphasis on incarceration of convicts as it is increasingly accepted that imprisonment especially of non-violent criminals does not constitute a panacea to crime prevention or to promote the social reintegration of offenders. Consequently, International standards promote measures that reduce the rate of imprisonment.

The UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[42] encourage criminal justice systems of states to provide non-custodial measures. These non-custodial measures provide greater flexibility consistent with the nature and gravity of offences; the personality and background of the offender; the protection of society and avoid unnecessary use of imprisonment. Several jurisdictions including France[43] and the United Kingdom adopt this concept of non-custodial measures. The United Kingdom criminal justice system reserves custodial sentences for serious offences involving violence[44] and adopts the consideration of measures such as Discharge, fines, community orders and suspended sentence orders for other offences. [45] In line with international best practice, the ISACJL tackles the problem of excessive use of imprisonment with the introduction of alternatives to incarceration. Examples of these non-custodial measures include conditional release (s. 448),

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42 (Tokyo Rules, A/RES/45/110)

43 French Criminal Code, Articles 132-154; French Code of Criminal Procedure Art. 747. See also Richard Frase, 'Sentencing Laws and Practices in France' 1995 7 (6) Federal Sentencing Reporter 275

44 UK Parliament, "Non-Custodial Sentences" Post Note, (No 613, January 2020)

45 UK Criminal Justice Act 2003 section 162-164 (discharge); UK Criminal Justice Act 2003 section 162-164 (fines); UK Criminal Justice Act, 2003, sections 147, 177 (community order); UK Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 66 (suspended sentence order)

suspended sentence and community services (s.462.), confinement to a rehabilitation centre (469) and parole (s.470)

### 3.3.4. Compliance with a Restorative Justice Perspective

Prevailing trends in criminal justice system and its administration underscore the concept of restorative justice as a means of redirecting focus from an offender- centric justice system to one that accommodates the feelings of the victim. Restorative justice targets the rehabilitation of offenders through reconciliation with victims and the community at large. The ACJL through several provisions reflects a shift from the traditional justice system of punishing the offender to include the participation of the victim. The Law recognises that although the criminal act is prosecuted by the state, the victim is directly affected by the actions of the suspect/defendant. The ISACJL utilises compensation and restitution as a significant means of achieving victim involvement in the administration of criminal justice.

## 3.4. Comparing the ISACJL with the ACJA

Scholars within the administration of criminal justice circles generally identify the ACJA as the instrument whose adoption significantly heralded the revolution in the administration of criminal justice architecture in Nigeria. This section undertakes a comparative analysis of the ISACJL and the ACJA to tease out minute yet significant differences between both legislation that have implication on justice service delivery. Table III below highlights and compares some key reforms between the ISACJL and the ACJA 2015.

| | CONCEPT | ACJA | ACJL | COMPLEMENTARY PROVISIONS | ANALYSIS |
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| A. | Preliminary Matters | | | | |

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| 1. | Purpose of the Legislation | S. 1 | S. 2 | | Both legislation reflect the four objectives of addressing speedy dispensation of justice; crime prevention, rights and interests protection and efficient management of criminal justice institutions. |
| 2. | Application | S. 2; S. 86 | S. 4 | S. 286, 1999 Constitution (as amended) recognises the jurisdiction of High Courts shall be in conformity with its extant practices and procedures.<br>S.4 Police Act places the responsibility of *the apprehension of offenders* on the Police. | The ACJA explicitly provides for the scope of the application of the federal legislation. The ACJA provides for the applicable procedure in all criminal trials in the Federal Capital Territory. The ACJA also applies to offences established by an Act of the National Assembly except express provision is made in another court. However, the ACJA accommodates the applicability of state ACJL in instances where state is vested with power to try federal offences. |
| 3. | Interpretation | S. 494 | S. 3 | | Aside from location in the instruments, the legislation reflect distinctions in the concept of young persons. While the ACJA interprets a young |

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| | | | | | person to mean 14 years but not yet 17, the ISACJL identifies a young person as one who has not attained the age of 17. It goes further to ascribe young person as being the same with a minor or child. |
| | | | | | The definition of chief judge in the ISACJL is context specific and refers only to the Chief Judge of Imo State while the ACJA is more general in its definition of chief judge. |
| B | Arrest and Preventive Justice | | | | |
| 4. | Mode of Arrest | s. 4, 5 | s.8; 10 | S.4, Police Act; 35 (4) and (5) of the Constitution of the Federal Republic of Nigeria 1999 delimits the time a suspect shall remain with the Police after which he must be charged to court | While both instruments provide that in making an arrest, the person making the arrest shall touch or confine the body of the suspect unless there is submission by word or action, both instruments also provide that restraints or handcuff are unnecessary unless in line with specific situations as envisaged by law. |
| 5. | Notification of cause of arrest and rights of suspects | s. 6 | s. 11 | Ss.35(2), (3), & 36 1999 Constitution; s. 14 ACJA; s. 18 ACJL | Both instruments recognise the obligation on the police or other arresting officers to inform the suspect of his rights. |

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| | | | | | However, the ACJA goes a step further to explicitly indicate that the arresting officer or person in charge of arrest must inform the suspect of his right to legal representation before answering any questions or endorsing statements, right to free legal representation by the Legal Aid Council where applicable . Additionally, ACJL extends the responsibility of the authorities to include affording the suspect a phone call to any person of his choice as an alternative to being responsible for notifying the suspects relative or next of kin of the arrest. The ACJL provides that the notification of relatives or next of kin of the arrest must take place within 24hours of the arrest. However, there's no similar provision as highlighted above under the ISACJL. This does not mean the suspect's right to remain silent and |

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| | | | | | right to legal representation has been overlooked. Sections 35(2) and 36(6)(c) of the Constitution of The Federal Republic of Nigeria 1999 as amended provides for both rights respectively. |
| 6. | Prohibition of Arrest in Lieu and for civil wrong | s. 7, 8(2) | ss.9, 11(4) | Section 35(1)(c), 1999 Constitution; ss. 11(6) and 20(3)(4) ISACJL | Both instruments include these laudable provisions that ensure that arrest of persons are carried out upon reasonable suspicion of the commission of a criminal offence only.<br>The ISACJL in ss 11(6) and 20 (3),(4) provides for compensation to be paid by the arresting officer for unlawful arrest which would include arrest in lieu. |
| 7. | Search of a place entered by a suspect sought to be arrested | s.12 | s 15 | | Both instruments allow for the search of the premises where a suspect to be arrested has entered. The ACJA in s.12(3) provides that a woman who by custom or religious practices does not appear in public must be notified by the person making the arrest to allow her withdraw and also afford her |

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| | | | | | reasonable opportunity to withdraw. The ISACJL makes no specific provision as highlighted above. The absence of such provision in the ISACJL may be connected to the predominance of Christianity which does not reflect general restriction on women in Imo State |
| 8. | Personal Liability of an arresting officer and compensation for violations related to arrest and investigation | Nil | Ss 11(6); 20(3) & (4) | S. 10, Enugu State ACJL | The ISACJL has the innovative provision of holding arresting officers personally liable for violations that arise in the course of arrest or investigation. These provisions align with the Enugu State ACJL which provides for compensation in similar situations. The ISACJL goes further to provide that the compensation would be paid through salary deductions. The inclusion of such redress should be considered during the amendment of the ACJA as a means of deterring violations. |
| 9. | Humane treatment | s. 8 | s. 11(2) | s. 35, 1999 Constitution | Both Instruments contain provisions that reflect the |

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| | of the suspect | | | | protection of the fundamental rights and interest of a suspect during an arrest either by a police officer or other persons authorised to make arrests including private persons(s). |
| 10. | Arrested person to be taken immediatel y to police station | s.14 | s.18(1) | | In line with protecting the rights of the suspects indicated in sections 8 and 11 of the ACJA and ISACJL respectively, both instruments provide that an arrested person shall be taken to the police station with reasonable dispatch. Both instruments also provide that the suspect be given (communication) facilities to obtain legal advice and furnish bail. |
| 11. | Recording of Arrest | s. 15(1) | S 17(1) | | ISACJL include DNA samples among the records to be taken. This inclusion indicates that the process of record taking provided is in line with contemporary global standards. However, ACJA is arguably wide enough to accommodate contemporary global trends because it includes |

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| | | | | | 'such other means of identification' in identifying the records to be taken. |
| 12. | Recording of Confessional statement | s. 15(4) | s.18(2) | S. 27 Evidence Act on confessional statement | The ACJL includes a proviso stating that in the absence of video facility such statement shall be made in writing in the presence of any person of his choice. The wordings of the *provisio* reflect the reality that not all police stations may have the necessary electronic recording facilities. However, it negates the objective of improving the criminal justice system through the reduction of incidents of retraction of confessional statement or trial within trial. This position is supported by the decision of the Court of Appeal in Charles v FRN,[46] where in interpreting s. 15(4) of the ACJA which is similarly worded, held that using recording devices is obligatory and not permissive. |

[46] (2018) LPELR-43922(CA)

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| | | s. 17 (3),(4) ,(5). | s. 18 (3),(4), (5) | S. 27 Evidence Act on confessional statement | Both Instruments ensure that the statement of a suspect is taken if he wishes to make one. Where the suspect does not understand, speak or write in English, the instruments provide for an interpreter who at the end of the statement, is obligated to endorse his name and other particulars on the statement. In addition, the ACJL provides that the interpreter shall indicate the language which he interpreted to the suspect. This modification serves as a further confirmatory step that the suspect understood the statement. |
| | | - | s. 18(4) | S. 27 Evidence Act on confessional statement | The ISACJL provides that the statement or endorsement shall be made in the presence of an officer in charge of Human Rights Desk or a superior police officer. This is to further ensure the confessional statement is voluntary. |
| C | Bail | | | | |
| 13. | Bail before investigatio | s. 30-32 | s.32-34, 87 | s. 35 (4) and (5) 1999 Constitution- delimits | Both Instruments provide for the |

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| | n is concluded | | | time a suspect shall remain with the Police after which he must be charged to court. Ss 17 and 15 of the ACJL and ACJA respectively on recording arrest. | release of a suspect arrested without warrant for an offence other than one punishable by death, if it will not be practicable to bring the suspect before a court within 24 hours of the arrest. Where the suspect is not released within 24 hours, the court may be notified by an application on behalf of the suspect. The Instruments also provide a monitoring mechanism whereby the Police makes a monthly report to the supervising Magistrate (s 33(1) ACJA; s. 33 ISACJL), to ensure compliance. These provisions on bail before investigation is concluded help to prevent an abuse of the fundamental rights of the suspects.<br>Curiously, the ISACJL repeats the provision for bail before the conclusion of investigation in s 32 and s 87(!).The reason for repeating the provision is unclear. A deletion of the repeated |

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| | | | | | provision should be considered in subsequent amendment. |
| 14. | Entitlement to bail | s. 158, 165 | ss. 89, 93-94 | a. S. 30-32 ACJA and 31-34 ACJL on bail before the suspect is charged;<br>b. s. 293- 295 ACJA and 223-228 ISACJL on remand proceedings; s c.36 (5) 1999 Constitution- presumption of innocence. | The provision of both statutes on bail show that suspects are generally entitled to bail, subject to the classification of offences, as stated in s. 93(1) ISACJL; s163 ACJA)<br>While the ACJA provides for this entitlement to bail expressly in s 158, this entitlement under the ISACL is only discernible from a reading of several sections referring to the classification of bail and which court has jurisdiction to grant bail. (ss 89, 93-94)<br>The ACJA expressly provides that persons charged with offences punishable by death shall only be admitted to bail by a High Court Judge in exceptional circumstances(s161( 1)). The ISACJL on the other hand is silent as to the circumstances under which the High Court Judge may exercise his discretion (s 89(1) ISACJL). |

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| | | | | | Under both the ACJA and ISACJL, for other felonies, other than one punishable by death, the court may admit the suspect to bail. |
| 15. | Bail at an appropriate amount | S. 165 (1) | 95 | | Both instruments provide that the conditions/security for bail are at the discretion of the court, with due regard to the circumstances of the case but should not be excessive. |
| 16. | Sureties and Recognisance | Ss 166, 167 | Ss 97, 96 | | The ISACJL provides that the court shall impose conditions it deems necessary to properly verify the surety's identity and residence. This is an improvement on the provisions of the ACJA, to take care of situations where sureties are not properly profiled. In addition, both instruments provide that a person would not be denied or prevented from standing surety or providing any security on the ground of gender. With respect to minors, the parent or legal guardian shall either on their own or with sureties enter into recognisance. |

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| 17. | Bondsperson | s. 187 | s. 119, 120 | | Both Instruments make provisions for the registration of individuals or corporate bodies as professional Bondspersons. The introduction of the position of the bondsperson into the criminal justice architecture helps to make bail readily accessible.<br>The Bondspersons may fulfil the conditions of the bail condition of any person granted bail by the court within the jurisdiction in which the bondsperson is registered. The State goes further to provide that the regulation should stipulate the qualification for registration and grounds for revocation of licence of the bondsperson.<br>The statutes (ACJA s. 187(8) and ISACJL s.119(8)) give the Chief Judge the power to withdraw the licence of the bondsperson. Both statutes identify the contravention of the terms of license as a ground for withdrawal. |

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| | | | | | Both statutes permit the bondsperson to arrest a suspect whom he believes is absconding to trying to evade appearance in court. With respect to the arrest of absconding suspects, the statutes differ on the time within which the person should be taken to the nearest court. ACJA provides for a maximum of 12 hours while ISACJL requires at most 48 hours |
| E. | Control of Criminal Proceedings | | | | |
| 18. | Control of Proceedings | S 107-108 | Ss167-171 | S 174(1)(2); s. 211(1)(2) 1999 Constitution | Both statutes restate the general powers of the Attorney-General to enter *nolle prosequi*/discontinuance in criminal proceedings at different stages of the trial.<br>A novel provision is found in section 170 of ISACJL and is applicable where any charge of an indictable offence is being proceeded with summarily by a Magistrate. A Law Officer may apply (in writing) to the Magistrate to stop further proceedings and to transmit the case file and all |

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| | | | | | statements and documents in the case to the Attorney-General for the purpose of preparing the proof of evidence in respect of the charge with a view to preferring an information. |
| 19. | Prosecutorial powers | s. 106 | s. 182 | S 174(1)(2); s. 211(1)(2) 1999 Constitution; s. 23 Police Act | Sections 106 ACJA and 182 of the ISACJL stipulate that prosecution of all offences in any court shall be undertaken by: the Attorney-General of the state or a Law Officer in his Ministry or Department; legal practitioner authorized by the Attorney- General of the Federation; and a legal practitioner authorized to prosecute by law. In addition to these persons, the ISACJL includes members of the Nigeria Police Force where the offence on conviction is punishable with maximum term of one year. This provision arguably perpetuates lay prosecution among members of the Nigeria Police who |

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| | | | | | are not legal practitioners, which is known to contribute to the delay in the criminal justice process. However, the provision also provides a balance for the practical reality of insufficiency of state prosecutors to timeously handle all criminal matters at magistrate and high courts. |
| 20. | Name under which prosecution can be brought | - | s.172 | | The ISACJL provides that proceedings can be instituted in the name of a public officer or Police officer instituting the proceedings in exercise of his official duty, provided that there is no written law that precludes him from doing so. The liberty to bring the proceedings in the name of the officer is subject to special or general directions by the Attorney General. The section contains a minor contradiction by providing also that in the case of a member of the police force, proceedings should be in the name of the Commissioner of |

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| | | | | | Police. The ACJA contains no such provision. |
| 21. | Methods of Instituting Criminal Proceedings | S 109 | 179 | | Both statutes provide similar pathways to instituting criminal proceedings as charge or complaint in the Magistrate court and information or charge in the High Court. |
| F. | Remand Protocol / Detention Limit | | | | |
| 22. | Application for Remand | s. 294 | s. 223 | | Both statutes provide for the procedure for an application for remand. The ACJA provides that the application shall be *exparte* while the ISACJL is silent on this.<br>Under a similar provision in the Delta State ACJL, the application for remand must be accompanied with the original or certified true copy of the case file and advice from the Attorney General's office. The inclusion of these provisions lays emphasis on two key administrative processes involved in the application for remand and where the Court finds |

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| | | | | | probable cause to remand a suspect. By transforming these administrative duties to legal obligations, the Delta ACJL ensures that the interest of the suspect is protected. Such innovation should be considered for inclusion in the ISACJL and the ACJA during the process of amendment. |
| 23. | Remand Order time limit and protocol. | S. 296 | S. 226 | a. S. 36(5) 1999 Constitution on the presumption of innocence;<br>b. S. 27 Terrorism Prevention (Amendment) Act as an exception to detention time limits as envisaged under the ACJA<br>c. s. 9(1) Suppression of Piracy and Other maritime Offences Act (SPOMO) 2019 | Both instruments provide for remand not exceeding 56 days in total, following the protocol established in the respective sections. The slight difference is in relation to the persons to whom the Court issues a hearing notice to inquire into the position of the case and show cause why the suspect should not be released. The persons under the ACJL are the Commissioner of Police and the Attorney General of the State while under the ACJA the court enquires from the Inspector General of Police, the Attorney General of the |

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| | | | | | Federation and the Commissioner of Police of the FCT |
| G. | Presentation of Case by Prosecution and Defence | | | | |
| 24. | No case submission | s. 302, 303 and 357 | s. 202 | | Both statutes provide for no case submission where the prosecution has not made a prima facie case that requires explanation on the part of the defendant.[47] The ACJA provides that the no case submission may be at the instance of the court or upon application by the defendant.<br>The ACJL on the other hand does not provide for the defendant to make a case submission. Under the ISACJL, it is a power of the court exercisable in certain instances. Through this provision, the Law arguably provides balance between the need to ensure that a key element of the trial process is not sacrificed on the altar of striving to develop a speedy process of dispensation of cases. However, it can also be argued |

[47] *Atoyebi v. FRN* (2017) LPELR- 43831(SC)

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| | | | | | that by not allowing the defendant the opportunity to make a no case submission, the law might distort a crucial aspect of the criminal justice system which seeks to ensure that the prosecution has prima facie grounds for the trial. |
| 25. | Stay of Proceedings | s. 306 | s. 376 | S 36(4) 1999 Constitution providing for the right to fair hearing within a reasonable time;<br>S. 40 EFCC Act precluding the court from entertaining a stay of proceedings | Both statutes provide that applications on preliminary matters may only be determined at the time of delivering judgement in the matter. The Supreme court has stated in *Metuh v. FRN*[48] that the stay of proceedings in criminal matters as provided by the ACJA is not in violation of the defendant's right to fair hearing.<br>The unprecedented provision in both instruments puts a gag on delays occasioned to the trial process by interlocutory applications to stay proceedings pending |

[48] [2017] 11 NWLR (part 1575) 157

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| | | | | | appeal on preliminary matters even when the substantive issues are yet to be tried on the merits. |
| 26. | Defence and Prosecutor's right to reply | S 304(1), (2) | s. 370(1), (2), (3) | | Following the conclusion of the prosecution's case, the defendant is entitled to address the court and if no witness (other than the defendant) is called and no document is put in evidence, the prosecution shall not be entitled to address the court a second time.<br>The ISACJL provides that reply shall be in writing unless otherwise directed by the court. |
| H. | Witnesses | | | | |
| 27. | Compelling attendance of a witness | s. 241-250 | s. 141-149 | | The laws both provide that a witness may be compelled by summons to attend court to give evidence. A warrant may also be issued where the witness is unlikely to attend without being compelled or fails to attend court at the time indicated on the summons<br>The ISACJL (s. 129(2)) empowers |

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| | | | | | the Chief Judge to make regulations or Practice Directions on the use of electronic mails in service of summons or other processes. This provision is key to ushering e-practices into criminal proceedings. |
| 28. | protective measures for witnesses and vulnerable persons | 232(2) – (5) | S. 334, 350, 351 | a. S. 231 ACJA sexual related offences S. 260 ACJA and s. 350 ISACJL on taking evidence of a child | The criminal procedure laws allow the court to take certain measures to protect the identity of witnesses and victims with respect to certain offences listed in s.232(4) of the ACJA. Such protective measures include the non-disclosure of the particulars of the victim and witness in the record of proceedings as well as not revealing the facial identity. These provisions are imperative in contemporary criminal processes in view of the risk witnesses and victims face especially in high profile and sensitive cases. |
| 29. | Witness Expenses | s. 251-254 | s.141(2), 150, 151, 153 | Ss 141-144 ISACJL and 241-243 ACJA on compelling the attendance of a witness. | Both statutes provide for the payment of the expenses of witnesses and |

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| | | | | | 'compensation for inconvenience and loss of time.' The ACJA (s 254) provides that payment would be processed and paid by the Registrar to the witness out of the relevant vote so appropriated by the Judiciary.<br>The ISACJL (in s. 153(1)) provides a more definitive structure and process for handling witness expenses through the Witness Support Unit, headed by a senior ranking officer to among other duties, keep records of witnesses bound over for the state, pay witnesses and ensure summons for witnesses are sent out |
| I. | Trials Generally | | | | |
| 30. | Withdrawal from Prosecution and its implication | S. 108, 237, 355 | S. 169, 200, 332 | | Both laws provide for the instances of withdrawal by the prosecution of any or all offences with which the defendant is charged. A distinction in the effect of a withdrawal before and after the defendant has been called to make his defence is a |

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| | | | | | discharge or an acquittal respectively. |
| 31. | Withdrawal from Prosecution and its implication | S. 108, 237, 355 | S. 169, 200, 332 | | Both instruments provide for the instances of withdrawal by the prosecution of any or all offences with which the defendant is charged. A distinction in the effect of a withdrawal before and after the defendant has been called to make his defence is a discharge or an acquittal respectively. |
| 32. | Frontloading of processes | 379 | 181, 237 | 269(1) ISACJL on proof of evidence for the purpose of determining if an information may be preferred. | The ACJA and ACJL in 379(2) and 237 respectively provide that additional evidence may be filed and served by the prosecution, any time before judgement.<br>However, the ACJA does not place the same obligation on the defendant. The provision of 237(2) places the obligation to frontload such statements of witnesses he intends to rely on.<br>The ISACJL prescribes novel provisions on front loading of processes by both the prosecution and |

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| | | | | | defendant in the Magistrate Court. |
| 33. | issuance of process to compel production of evidence at the instance of the defendant | S. 359 | - | | The ACJA provide for the defendant to apply to the Court to compel the attendance of a witness for the purpose of providing evidence. The ISACJL dos not have such provisions that allows the defendant request that a person be compelled to give evidence. S.141 of the ISACJL only provides for the court to issue summons to a witness to give evidence for the prosecution or the defendant. |
| 34. | Dispensing with the personal attendance of the defendant | s. 135 | s. 148 | s. 36 1999 Constitution on the right to fair hearing which connotes that the defendant should be present in court during the trial | The Instruments empower the court to dispense with the personal attendance of the defendant under certain circumstances. |
| 35. | Objection to the information / charge | s. 396(2) | s.257(2) | | The ACJL provides that an objection to the information or charge may be taken before the plea of the Defendant. Thereafter, all objections to the charge shall be taken at the final address. The ACJA only provides for objection after the plea has been taken. |

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| 36. | Day to Day trial | s. 396(3)--(6) | S. 257(4)-; 158 | | Both statutes provide for continuous trial until the conclusion of the case. Where day-to-day trial is impracticable after arraignment, parties shall only be entitled to specific number of adjournments. Under the ACJA (s.396(5)), it is 5 adjournments each while the ISACJL (s 257(5)) is limited to not more 6 adjournments (2 each at the instance of either party and 2 at the instance of the court).<br>The interval between each adjournment shall not exceed 14 days, inclusive of weekends under the ISACJL. The stipulation about the day-to day trial is to ensure that criminal cases are expeditiously dealt with in line with the provision of the Constitution. |
| 37. | Time Standard for Criminal Trials | - | s. 258,259(1) | | The ISACJL taking into cognisance the need for speedy conduct of criminal trials provides in s 258(a) to (e), for time standards for criminal proceedings.<br>Notably, these |

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| | | | | | timelines can be dispensed with at the instance of the court, based on cogent reasons being adduced. The extension shall not exceed half of the period originally provided (ISACJL s 259(1))<br>There is no corresponding provision in the ACJA providing for standard timelines. |
| 38. | Right of the public to attend court sitting | s.259 | s. 350 | | Members of the public can attend as far as the court can conveniently contain them. However, the presiding judge or Magistrate may exercise his discretion to exclude the public at any stage of the hearing on grounds of public policy, decency or expedience.<br>The court may also exclude some persons as identified under the instruments when taking the evidence of a child/ minor. |
| 39. | Trial of a Child | s. 371 | s. 230-232 | | Both legislation provide that the trial of a child summarily before a Magistrate Court shall be in accordance with the Child Rights Act. |
| 40. | Electronic recording of | s. 364 | s. 268 | | Both legislation make provisions for the electronic |

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| | proceedings | | | | recording of proceedings, printed to enable certification by the judge or magistrate. The reason for recording the proceedings as stated by both legislation differ. While the ACJA provides for such electronic recording to form part of the record of court *simpiciter,* the ISACJL identifies that recording electronically as necessary for a trial to be re-assigned without having to start de-novo. This innovative provision would aid in the speedy dispensation of cases. The ISACJL does not indicate under what circumstances a case would be re-assigned to another judge. Notably, the ACJA has provision that allows an elevated judge to complete a criminal proceeding to prevent cases from starting de novo.[49] The Supreme Court in *Udeogu v FRN* held that this was a contravention of the |

[49] SCJA s 396(7)

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| | | | | | constitutional provision on the composition of courts.[50] Non-recording of proceedings does not vitiate a valid trial. |
| J. | JUDGMENT | | | | |
| 41. | Judgement in writing | s.308 | s. 379 | | Both legislation provide for judgement to be in writing. They also accommodate the Magistrate recording briefly in his book the reason for the decision before delivering an oral judgment. The ISACJL provides that the decision may also be recorded in a prescribed form. |
| K. | Cost, Compensation, Damages and Restitution | | | | |
| 42. | Compensation to victims. | S. 319, 321, 336 and 341 | s.433, 435, 443 and 446 | a. S. 49 Cybercrimes (Prohibition, Prevention, etc) Act - order for payment of compensation or restitution; b. S. 11 Advanced Fee Fraud Act 2006- Order of restitution. | Both statutes provide that the court may either during the course of the proceedings or at the time of passing judgement, order the payment of a sum in compensation to a victim who is injured by the |

[50] *Ude Jone*s *Udeogu v Federal Republic of Nigeria & 2 Others*(SC622c/2019)

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| | | | | | offence; order restitution or restoration of possession of stolen property. The victim may choose to refuse compensation. These provisions on the compensation of victims are driven by the restorative justice concept in which remedy to the victim and the community who suffer the direct consequence of the crime are given prominence |
| L | Sentencing, Non-custodial measures and restorative justice. | | | | |
| 43. | Non-custodial measures | Ss.453 -467 | Ss 448-469 | S. 311 (2) and 385(1) of ACJA and ISACJL respectively, on what the court should consider in pronouncing sentence of a convict. S. 15(6)(a) Child Rights Act- non-custodial measures applicable to a parent who fails in the duty to ensure his child or ward completes primary and junior secondary school education | The measures include conditional release and payment of fine; entry into his own recognisance; suspended community services; community services and confinement in a rehabilitation centre. The inclusion of these measures in both statutes is commendable as they ensure the state can punish while spending substantially less in terms of cost than imprisonment. |

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| | | | | | The ISACJL also provides for the payment of such damage for loss suffered as the court thinks reasonable, by the defendant and the parent/ guardian if it appears that they had contributed to the commission of the offence |
| M. | Monitoring Mechanism | | | | |
| 44. | Criminal Records Registry of concluded criminal trials | S. 16 | S. 19 | | The criminal records registry created by the ACJA is a national collation centre for reports from all criminal records registries created at the state police command, made pursuant to section 16(2). The Imo State criminal records registry is one of such state registries that submits its own records to the Central Criminal Records Registry.[51] However, the ISACJL erroneously utilises the same nomenclature to describe the Registry at the State Police Command level. Furthermore, while the ACJA places an obligation on the respective |

[51] ISACJL, s 19(2); ACJA 2015, s 16(2)

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| | | | | | state police commands to transmit records to the Central Registry within 30 days of judgement, the ISACJL requires transmission of decisions by the Chief Registrar to the Imo State Police Command within sixty days of judgement with liability to appropriate disciplinary measures for failure to transmit within thirty days. The difference in 'days-requirement' affects the practicability of enforcing these provisions. |
| 45. | Quarterly Report on records of arrest | None | 31(1) | s. 17 ISACJL | The ISACJL requires that every agency with powers to arrest shall make quarterly submissions of all records of arrest, showing information as required under section 17 of the Law. Failure to comply shall be treated as misconduct and dealt with under the relevant disciplinary laws and procedures guiding the Police |
| 46. | Records of persons | | 183(1) | | Comptroller of Prisons (Now correctional |

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| | awaiting trial | | | | facilities) shall make quarterly returns of persons awaiting trial beyond 180 days from arraignment. |
| 47. | Report on Bail status of arrested persons | None | S 91 | | Officers in charge of police stations are to make quarterly reports to the nearest Magistrate of cases of all persons arrested without warrant within the limits of their respective stations disclosing whether such persons have been admitted to bail or not. The Magistrate shall notify the Chief Registrar of such report who shall forward the same to the Chief Judge for necessary action. |
| 48. | Routine visits | S. 34(1) | S. 36(1) | | The ACJA and ACJL provides for routine visits to the police stations, prisons or other places of detention to review case files of detained suspects. These routine visits help to ensure that persons in charge of making arrest comply with the law with regards to proper records and ensuring a suspect is brought promptly before the court. |

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| 49. | Monitoring Committee | S. 469 | S. 526 | Sections 110(7) ACJA on the monitoring role of the ACJMC in ensuring expeditions disposal of cases. | Both instruments provide for the establishment of a monitoring team to ensure that the provisions of the instruments are effectively complied with by all stakeholders in the criminal justice system, which include judges, correctional facilities staff, police officers, social workers, the victims and defendants. The ACJA identifies the team as the Administration of Criminal Justice Committee while the ISACJL tags it the Imo State Justice Sector Reform Team |

*Table III: Comparative Analysis- ACJA 2015 and Imo State ACJL*

## 3.5. Identifying and Addressing Practical Challenges with the Implementation of the ISACJL

The ISACJL from all indications, is a progressive piece of legislation that provides radical innovations that are key to improving criminal justice delivery at the state level. There are several perceived practical challenges which may be inimical to the proper implementation of the Imo State ACJL and the improvement of the state's criminal justice system. They include:

a. ***Incompatibility Issues:*** The ISCJL contains certain provisions that appear to be incompatible with extant criminal

processes under the ACJA, within the ISACJL itself as well as some other criminal law related legislation. One example is the provision allowing for the detention during the Governor's Pleasure. This provision allows for arbitrary detention practices, in contravention of the rights of citizens. An important instance of incompatibility within the ISACJL itself is in the definition of 'young persons' and 'child' under the interpretation section and the subsequent use of the term in the Law. The ISACJL defines a child as one who has not attained the age of eighteen years. In the same interpretation, it defines a young person as a person who has not attained the age of seventeen. However, in section 392 it defines a young offender as one who has not attained the age of eighteen. These definitions do not allow for proper differentiation between a child offender and a young offender and may have implications in the implementation of the law.

Yet another instance of incompatibility is with respect to the recently enacted Correctional Facilities Act, 2019 and non-custodial measures. Section 469 of the Imo State Law allows for commitment to a rehabilitation or correctional centre in lieu of imprisonment as a non-custodial measure. With the recent enactment of the Correctional facilities Act repealing the Prisons Act, a clear demarcation of what is meant by correctional facilitates becomes an issue.[52]

A holistic review of the law viz a viz other relevant laws both at state and federal level would help in addressing the

[52] Section 46 Correctional Facilities Act 2019 defines a correctional centre as "a prison or any centre that serves as a place for detention, imprisonment or incarceration aimed at promoting a reformation, rehabilitation and reintegration of inmates. Additionally, it provides for non-custodial centres as "designated centres in the community for the administration of non-custodial measures." The latter definition appears to be more in line with the intendment of the ISACJL (s 463)when referring to community service centres for non-custodial sentences.

incompatibility issues. Although the ISACJL provides that the law shall be reviewed not later than 10years after its commencement, it does not preclude the process from being conducted at an earlier time.

b. ***Lack of Awareness by the General Public of the Rights and Protection Contained in the Law:*** Limited knowledge of the laudable provisions of the law acts potentially as a hinderance to the proper implementation of the ISACJL. A significant portion of the populace is unaware that the Law empowers persons to arrest a suspect in the course of committing an offence and the connected duty to hand over the arrested person to the police. Furthermore, suspects and their relatives are often subjected to treatments not in line with the protection afforded under the Constitution and the ACJL. Unfortunately, due to ignorance of their rights, these persons are unable to insist on having them respected.

As a way of addressing this challenge, the state especially through the established Justice Sector Reform Team should conduct continuous sensitisation of the public on the content of the law and the relevance of its effective implementation

c. ***Attitudinal Issues:*** There is currently failure to adhere to key provisions of the ACJL such as those relating to arrests, bail procedures, trial procedures and remand protocols by justice sector stakeholders such as the police, defence counsel, prosecutors and judges. This may be due to a lack of or limited awareness as well as poor understanding of the provisions of the ACJL. How the justice sector stakeholders observe the provisions of the Law remains key to how potent the innovative provisions of the ISACJL would be in the near future.

Notably, the ACJL imposes some sanctions, especially on the Police officers or those authorised to arrest and investigate criminal offences as well as the Registrars saddled with the responsibility of transmitting records to the central criminal registry for failure to adhere to the provisions.

There is a need to constantly sensitise the justice sector stakeholders on the respective provisions of the law and how they can be effectively implemented. It is also important to ensure that the sanction provisions included in the law are also implemented to serve as a deterrent to other persons and prevent further violations of the Law.

d. ***Limited Tangible Resources:*** The ISACJL is progressive in its approach to criminal justice administration processes. Consequently, it makes provisions for contemporary requirements such as audio-visual recording of statements and electronic recording of trial proceedings by both the high and magistrate courts. In spite of these laudable provisions, police officers in the state continue to utilise rudimentary processes and investigatory approaches due to the absence of the necessary tangible resources such as audio-visual devices at the police stations. Similarly, the Courts are ill-equipped to engage in electronic recording which would serve as the day-to-day record of proceedings as stipulated in section 268. Limited tangible resources required to adhere to the provisions of the law defeat the goal of protecting the interest of the suspect and ensuring speedy dispensation of justice.

e. ***Lay Prosecutors in Magistrate Courts:*** The ISACJL allows for lay prosecutors to institute criminal proceedings in Magistrate courts for certain offences. Retaining the use of lay prosecutors addresses the practical reality of the shortage of law

officers to handle all criminal matters in the state. Notably, advocates against the engagement of lay prosecutors canvassed for the abolition of their engagement in criminal proceedings due to their known inefficiencies which contribute to delays in criminal justice administration. Since their inefficiencies contribute to delays in the dispensation of cases, the involvement of lay prosecutors may ultimately pose a challenge to the state's criminal justice system.

To balance the practical realities, there is need to conduct trainings for the lay prosecutors who are currently prosecuting cases. There is also need to trigger long term plans to increase the number of law officers in the state.

f. ***Limited Funding:*** The laudable provisions of the ISACJL require adequate funding to bring them to fruition. Police stations and personnel need to be properly equipped with modern investigative tools and techniques while carrying out proper sensitisation to jumpstart attitudinal changes for proper implementation of the law. Similarly, the courts and other relevant criminal justice systems require key changes to achieve effective implementation. Consequently, the paucity of funds may be a hinderance to its implementation. Government needs to commit more resources to the justice sector to ensure that effective implementation can be achieved.

## 3.6.Conclusion

The ISACJL is an integral part of the criminal justice administration reform architecture in Nigeria. Generally, the provisions of the ISACJL are progressive and commendable. The ISACJL was passed five years after the ACJA 2015. Certain unique provisions of the ISACJL demonstrate the fact that while the Law replicates several provisions of the ACJA, the law is

not a simplistic reproduction of the ACJA, as the former contains provisions that are radical departures from the ACJA 2015 provisions. The ISACJL generally meets contemporary global standards in criminal justice administration. However, the knotty situation created by the provision of section 484 already referred to, requires urgent attention.

In ensuring the realisation of an effective criminal justice administration system in the state, it is evident from the foregoing that the state cannot stop at enacting the Law. How the justice sector stakeholders observe the provisions of the Law would determine how potent the innovative provisions would be in the near future. In addition, the novel and ambitious provisions of the ISACJL relating to things like maintaining of Central a Criminal Record Registry, filing of Quarterly Reports, maintaining of Case Management Register, establishment of Community Service Centre in every Judicial Division manned by Registrars who are Legal Practitioners and actualising the aims and objectives of setting up the Justice Sector Reform Team will go to waste if there is inadequate funding to bring them to fruition.

# COMPARATIVE ANALYSIS OF EBONYI STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW AND THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015*

## 4.1.Overview of ACJL Ebonyi State 2019

The passage of the federal Act[1] on administration of criminal justice necessitated that constituting states domesticate the law to enable same apply to their state administration of justice systems. According to the then sitting state attorney general(AG), commissioner for justice and chairperson Ebonyi state Criminal Justice Sector Reform Committee, Mr. Cletus Ofoke in a press release, the Ebonyi state house of assembly passed a state version of the national law in 2019.[2]The AG further stated that the state constituted a Justice Reform Committee charged with a duty to domesticate the national Act, and the committee submitted a bill on administration of criminal justice which has been accented to by the state governor, Mr. David Umahi.[3] The AG while describing the new law stated, that all other laws in the state governing criminal justice

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1 Administration of Criminal Justice Act 2015

2 Opara Chukwuemeka, Ebonyi State domesticates criminal justice Act, <Ebonyi Domesticates Administration Of Criminal Justice Act — NNN> accessed 28 August 2021

3 Clement Nnachi, 'Ebonyi government domesticates administration of justice law in high/magistrate courts,' *The Nigerian Express* (Abakaliki, 13 September, 2019)<Ebonyi govt. domesticates Administration of Criminal Justice Law in High/Magistrate Courts (thexpressng.com)> accessed 28 August 2021

administration are now repealed, all matters pending before the magistrates and high courts in the state will going forward be governed by the new Administration of Criminal Justice Law Ebonyi State (ACJL), police officers who are not lawyers will no longer act as prosecutors. Matters under the new law will then be prosecuted by state counsels under the state ministry of justice. Among other things the law provides for compensation of victims in addition to established systems of sentencing.[4]

The law came into force on Thursday 1st August 2019,[5] repealing Ebonyi state Criminal Procedure Law Cap.31[6] and applicable to all criminal matters filed and arising after its commencement.[7] The law is thematically arranged in chapters, parts, sections and subsections. There are forty-five (45) chapters further divided into 552 sections with a Schedule. The law applies to criminal trials in the state high and magistrate courts[8] and does not invalidate procedural forms specified in other laws.[9] Unlike the ACJA the law begins with the interpretation section. The law generally uses the word person to refer to individuals within the purview of the criminal process as against the established use of words such as suspects or accused persons. The law very importantly while repealing the Criminal Justice Committee Law of Ebonyi state provides for the establishment of Ebonyi State Justice Reform Team (ESJRT).[10]

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4 Opara Chukwuemeka, Ebonyi State domesticates criminal justice Act, <Ebonyi Domesticates Administration Of Criminal Justice Act — NNN> accessed 28 August 2021

5 Ebonyi State Administration of Criminal Justice Law No.13 of 2019 section 1

6 *ibid* section 1(1)

7 *ibid* section 1(2)

8 *ibid* section 3

9 *ibid* section 4

10 *ibid* Section 538

### 4.1.1. Objectives of the ACJL Ebonyi State

Unlike many laws in Nigeria the Ebonyi State ACJL did expressly use the words, purpose or objective of the entire law in its provisions. However according to the title of the law and the gamut of provisions within the Ebonyi State ACJL, the law is geared among other things towards providing a legal basis for the procedures to be followed in criminal justice administration within the high and magistrate courts in the state and all other matters incidental thereto. The law further provides for the effective management of the criminal justice infrastructure, dispensation of justice and the insulation of the state and those found therein from criminal acts, rights of individuals who find themselves within the purview of the criminal justice system in different capacities.

### 4.1.2. Summary of the ACJL Ebonyi State

The law primarily begins with an elaborate interpretation section,[11] detailing the meaning of concepts, words and criminal justice administration officials used in the text of the law to ensure clarity in the understanding of the law. The criminal justice administration process as provided for under the Ebonyi state ACJL commences with the details of the process of arrest of an individual suspected of committing an offence or to have committed an offence with or without warrant.[12]The law specifies how a person under arrest must be treated and how law enforcement agents under the law must conduct themselves in the execution of an arrest or search warrant or while performing their statutory responsibilities under the law. On the subject

[11] *ibid* Section 7

[12] Ebonyi State ACJL section 7

matter of warrants both for arrest and search, the law stipulates who may be arrested with warrant, when an individual maybe arrested without warrant,[13] how and what time of day a search warrant may be executed on a property.[14] Regarding prevention of offences, the law provides for the powers of law enforcement agents to arrest to prevent the commission of an offence, empowers the Commissioner of police or the Commissioner of Corrections to make regulations for the registration of suspects, prescribing the duties of law enforcement and correctional officers and for the purpose of giving effect to the objects and purposes of the ACJL Ebonyi State.[15] The law further creates a Central Criminal Records Registry to be populated by the office of the Chief Registrar and to be overseen by the Judicial Service Commission.[16]The law also seeks to regulate such matters as bail and recognizances.[17] appearance in court of defendants and witnesses; remand of juveniles and other interlocutory proceedings;[18] powers to control criminal proceedings; it enumerates means of commencement of criminal proceedings;[19] trials[20] including summary trial[21] and trial on information;[22]details the contents of a proof of evidence; charges; contents of court processes; addresses; judgement in criminal matters;[23] costs; damages; probation and other non-custodial alternatives; seizures; restitution; forfeiture; and

13 Ebonyi State ACJL Chapter 3 part A
14 *ibid* Chapter 3 Part B
15 *ibid* section 67 (a – d)
16 *ibid* Section 18
17 *ibid* chapter 5
18 *ibid* chapter 14
19 *ibid* chapter 10
20 *ibid* section 191
21 *ibid* chapter 11 and chapter 13
22 *ibid* chapter 16
23 *ibid* chapter 27

disposition of property before the courts;[24] detention; and trial of corporations.[25]

Regarding sentencing, the law references the principles of reformation and deterrence as its objectives.[26]The law establishes a justice sector oversight Team known as the Ebonyi State Justice Reform Team (ESJRT) charged with the responsibility to monitor the delivery of justice, identify issues that impede efficient, speedy and equitable justice delivery, initiate reforms within the justice sector of the state, coordinate inter-organisational synergy and encourage the domestication of international minimum standards for treatment of offenders and prisoners among other things.[27]

## 4.2. Compliance With International Best Practices and Innovations

The ACJA 2015 and the ACJL Ebonyi State 2019 blazed the trail in meeting international best practice in innovative ways on a few concepts and processes. This section will highlight these provisions in addition to highlighting deviations from international best practice where applicable.

### 4.2.1. Observance of Human Rights of Accused Persons During an Arrest

The ACJL Ebonyi State mandates all arrests made for any offence within the state, be carried out in compliance with Section 10 which provides for the observance of human rights to the dignity of human person and other fundamental freedoms

[24] *ibid* chapter 37
[25] *ibid* chapter 41
[26] *ibid* section 391
[27] *ibid* section 538 and 539

guaranteed under the 1999 Constitution. This is following international best practice on the humane and dignifying treatment of arrested individuals.

### 4.2.2. Victims Right to Compensation, Damages and Restitution

The ACJL also provides that all violations of its provisions on the observance of the human rights of individuals processed through criminal justice system in the state entitle the victim to compensation[28]thereby further entrenching the realisation of constitutional rights in criminal processes. The court is empowered to order a defendant to make restitution or pay compensation ti a victim of a crime of his estate, order restation or compensation for the loss or restitution for the loss or destruction of victims property including returning of property, where this is impossible pay an amount equal to the value of property and where insufficient to pay an amount equal to the property calculated on the basis of fairness and what is just.[29]Under Chapter 32 the ACJL Ebonyi State provides unequivocally for the power of a court in a criminal proceeding to order a defendant to pay compensation to the victim of an offence, compensating a bona fide purchaser for value without notice of defect in title and defraying medical expenses arising from the treatment of injuries sustained from the defendant.[30]

Also, offenders under the law can be ordered to pay damages to a victim or pay cost of proceedings and in some instances can order the parent[31] of a minor offender to pay

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28 Section 10(7)
29 Section 442
30 Section 440
31 Section 455(3)3(b)

damages to a victim of an offence.[32] victims of vexatious, frivolous or false arrest or arrest and charge can be compensated under the Ebonyi state ACJL.[33]However these provisions can be accompanied by custodial sentences, where victims have been restituted or compensated particularly in the case of crimes against property, it will be in the interest of prison decongestion to keep such offenders out of the correctional system as much as practicable.

### 4.2.3. Non-Institutional Treatment of Offenders and Non-custodial Alternatives

Criminal justice administration has long left the era of emphasis on custodial sentences. The ACJL Ebonyi state particularly makes elegant provisions on non-custodial alternatives such as community service, whipping, probation, parole and suspended sentences. sentencing patterns such as these that conduce to rehabilitation and diversion from the correctional system is most welcome, especially for Nigeria with of the least funded and congested prison systems in the world. it is also in keeping with international best practice of deemphasizing custodial sentences and increasing access of offenders to non-institutional alternatives that these sentencing options are given due consideration in criminal justice procedure. Unfortunately, the law retains capital offence as an option open to justices of its courts in appropriate cases.[34]This is a deviation from international best practice.

### 4.2.4. Right to Legal Representation

[32] Section 456
[33] Section 446
[34] Section 394

Unlike the ACJA which guarantees the right of access to free legal representation via the federal run Legal Aid Council,[35] the ACJL Ebonyi state unfortunately avoids mentioning the right to legal representation for defendants. This is a derogation from international best practice. It however provides that a form under the First Schedule to the law indicating a desire for legal representation from the Office of the Citizens Right and Mediation Centre, the Legal Aid Council of Nigeria or any other organisation offering *pro bono* representation be attached to the Attorney general's legal advice for the endorsement of the defendant.[36] This affords an accused person who elects to be so represented a modicum of legal representation. It would have been more beneficial if this were construed under the law as a positive right in the way and manner the ACJA provided and international best practice.

### 4.2.5. Prohibition of Arrests on Breach of Contract

Before the ACJL and the ACJA individuals could approach the police for any reason whatsoever and arrest another individual for all kinds of reasons including breach of contracts. The era of criminal justice administration has at least by way of legislation brought a decisive end to that Section 10(3) of the ACJL `Ebonyi State and Section 8(2) of the ACJA prohibits arrests based on breach of contracts.

### 4.2.6. Centralised Criminal Records Registry

One of the hallmarks of a progressive fight against crime is the existence of a continuously updated centralized criminal

[35] Section 6(2)(c)
[36] Section 235(5)

registry. In some countries like the United States of America criminal registries are state based and continuously updated to ensure that records of arrests and outstanding warrants are easily accessible to law enforcement across a given state. The ACJA[37] and ACJL[38] Ebonyi state provides for a federal and states central criminal records registry with a weekly and monthly updates requirement. This is step ahead of the American systems that is strictly state based besides the records held by the American Federal Bureau of Investigations (FBI). if indeed these provisions are implemented as envisaged under the new administration of criminal justice regime, it will ensure that records of criminal processes are accessible for speedy dispensation of justice and crime prevention in the country and indeed the West African subregion.

### 4.2.7. Chief Magistrate's Monthly Visit to Police Stations.

A monthly visit by the chief magistrate or his nominee under the ACJA[39] and the ACJL[40] Ebonyi is an important innovation especially for a jurisdiction like Nigeria with one of the highest awaiting trial inmates in the world.[41] Even with a very slow criminal justice system, a conscientious implementation of these provisions under both laws will improve awaiting trial persons/prisoner ratio in state and federal correctional centres.

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37 Section 16
38 Section 18
39 Section 34 ACJA 2015
40 Section 35 ACJL Ebonyi State
41 68 percent of the total population of Nigerian prison system is made up of awaiting trial persons. See Godfrey Udenze and Phillip Njeteneh, Congestion in Nigerian Prisons' (26 June 2019) <Congestion in Nigerian prisons - Vanguard News (vanguardngr.com)> accessed 12 September 2021

### 4.2.8. Female Sureties

Women in Nigeria before the current administration of justice legal framework went into were unable to enter recognizance for an arrested person however under the new regime, both the ACJA[42] and the ACJL Ebonyi state[43] enable women to stand as surety for an arrested individual. This is in keeping with the fundamental right to non-discrimination under the 1999 Constitution, the Convention on the Elimination of Discrimination Against Women and other international instruments guaranteeing equality to all persons.

### 4.2.9. Right to Speedy Trial

The duration of criminal proceedings can in some situations lead to the miscarriage of justice as some suspects may remain in detention/remand longer than the term of imprisonment prescribed by law for the offence for which they are accused. The ACJA[44] and the ACJL Ebonyi state[45] make provision for day-to-day trial with provision for only two adjustments which must not exceed 14days and only two adjournments at the instance of the Court. This is in keeping with international best practice where parties to criminal proceedings have their matters decided within reasonable time depending on the complexity of the matter. Also, this is most innovative as it challenges the unreasonable number of adjustments requested for by prosecutors and litigants for all kinds of frivolous reasons.

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42 Section 167 (3)
43 Section 96(3)
44 Section 396
45 Section 258(2)(a-b)

### 4.2.10. Public Defence Fund Under the ACJL Ebonyi State

Under the ACJL Ebonyi state there is provision for a fund to bank roll the legal representation of indigent defendants.[46] The ACJL Ebonyi state may not have provided for a positive right for residents and citizens to legal representation, it however provided for a state funding in situations where it is needed. This is most innovative and aligns with international best practice as it increases the probability that a defendant within the state will not only be able to communicate a desire for free legal services, but that the state will indeed fund his/her defence.

## 4.3.Comparative Analysis of the ACJA and the ACJL

Table IV provides a summary comparative analysis between the ACJA 2015 and the Ebonyi State Law.

| S/N | Concept | ACJA 2015 | ACJL 2019 | Complementary Provision | Analysis |
|---|---|---|---|---|---|
| A | **Transitional Provisions** | | | | |
| 1 | Application | Section 2 applies to criminal trials for federal offences and the FCT. Not applicable to court martial. | Section 1(2) applies to cases filed or arising after the commencement of the law. | | |
| 2 | Repeals | Section 493 repeals Criminal | Section 1(1) repeals Criminal | | Laws in Nigeria more often than not will provide for repeals |

[46] Section 257(2)

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| | | Procedure Act Cap.C41 LFN 2010 Criminal Procedure (Northern States) Act Cap C42 LFN 2010 and the Administration of Justice Commission Act Cap.A3 LFN 2004. | Procedure Law Cap.31 | | enabling those within the purview of the law to know for certainty the direction practice should be. |
| 3 | Age of Majority | ACJA- section 494(1) defines an adult as a person of 18years of age and above | ACJL – section 2 defines adult as a person of 18years of age or above | the Child Rights Act section 16(1)(a) defines a child as a person below 18years of age, the 1999 Constitution section 29(4)(a) defines a person of 'full age' as a person of 18years and above. | The Ebonyi state ACJL 2019 reinforces the national age of majority as provided in a number of laws at the national level including the CFRN 1999. |
| 4 | Interpretation | Section 494 | Section 2 | Section 318 CFRN 1999, interpretation section appears towards the end of the legislation as seen in the | The ACJA defines a few more words than the ACJL Ebonyi State. However, in most instances the same words feature in both laws. Again, the ACJL Ebonyi |

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| | | | | ACJA, unlike the ACJL Ebonyi state. Many other laws follow the elaborate definition sections towards the end of the legislation, the ACJL seem to have taken a different view/direction . | State appears to attempt to summarize or be narrower in its definitions unlike the ACJA as can be seen in the definitions of the words 'Court', 'Charge' and 'Complaint' among others. The ACJA is a national law enacted in anticipation that states of the federation will domesticate same to fit local peculiarities. That may account for the slight differences particularly in how robust some of the ACJA provisions appear. |
| B | **Arrest** | | | | |
| 5 | Mode of Arrest | Section 3 | Section 7 | Sections 34 and 35 CFRN 1999 on the right to personal liberty and dignity of the human person | The ACJA and the ACJL are an improvement on arrest provisions under the law in Nigeria because it clearly proscribes unnecessary manhandling and violence towards suspects of crimes. |
| 6 | Notification of Cause of Arrest | Section 10 The ACJA mandates arresting | Section 6 The Ebonyi state ACJL concentrates | | ACJL Ebonyi State seems to have taken a less progressive route |

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| | | officer to issue *Miranda*-like warnings, guarantees access to free legal aid through the Legal Aid Council and mandates officers to inform relatives of an arrested suspect of his/her whereabouts at no cost to the suspect. | on the observance of select fundamental rights such as the right to dignity of human person. It also provides for compensation for violation of these rights and other fundamental rights under the 1999 Constitution. | | by avoiding the guarantee of free legal aid which is an important minimum best practice in criminal procedure. |
| 7 | Arrest Without Warrant | Section 18 The ACJA does not provide for compensation under this section. | Section19 (3) and (4) specifically provides for compensation for a victim of an illegal arrest and mode of payment to be done through arresting officers salary direct deductions. | The 1999 Constitution section 37 provides for respect for the right to personal liberty with a few exceptions. | Both sections provide for arrest without warrants however the ACJL blazes a trail by providing for compensation for illegal arrests effected by anyone or law enforcement officers. This strengthens the respect for fundamental freedoms by requiring persons effecting arrest to be sure that it is legal knowing that they are |

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| | | | | | personally responsible for compensation in the event of violation. |
| 8 | Power to Arrest on Warrant but without the Warrant | Section44 warrant maybe shown to the suspect as soon as practicable . | Section 43 warrant must be shown to the arrested person within 24hours of arrest. | | The provision under the ACJA leaves room for abuse of the criminal administration process as arresting authority is not bound to notify arrested individual within a stipulated time reason why he is custody. |
| C | **Bail** | Section 160 | Section 88 | | |
| 9 | Capital Offences | In capital offences bail maybe granted by a judge of the High court under exceptiona l circumstan ces including ill-health, extra ordinary delay in investigati on or any other circumstan ces that the judge considers | In capital offences bail maybe granted by a high court judge however there are no provisions for discretionar y powers or conditions upon which such discretion may be exercised as is the case under the ACJA | | Bail under the Ebonyi state ACJL appears to be guaranteed even in capital offences, however the ACJA is very explicit in retaining a discretionary approach to access to bail. Even with other dichotomies of scenarios for bail applications the judge/magistrate under the ACJA has an ambit within which bail could be legally refused. Section 163 |

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| | | extraordinary. | | | |
| 10 | Powers of the Attorney General | Section 104 the Attorney general of the federation or his nominee can prefer information in any offence created under a federal law in any court, and is empowered to offer legal advice to the police Section 107 | Section 166 to section 170 Same powers | | Provisions under both laws appear identical in providing for the functions/powers for both the attorney general of the federation and that of Ebonyi state. |
| D | **Institution of Criminal Proceedings** | | | | |
| 11 | Methods of Instituting Criminal Proceedings | Section 109 Lists the following as the means of instituting criminal proceedings, Charge, Information of the attorney general of the federation, | Section 178(a) (iii) adds Information filed at the high court after the preparation of the proofs of evidence as a means of instituting a trial. | | Means of instituting proceedings appear to be the same under both instruments except for filling information after the preparation of proofs of evidence under the ACJL Ebonyi state |

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| | | Information or Charge filed where a defendant is summarily committed for perjury, or Charge filed. It does not list by a private prosecutor leaving out Information filed after the preparation of proofs of evidence | | | |
| E | **Warrants** | | | | |
| 12 | Search Warrants | Section 143 - 157 | Section 52 - 63 | | |
| | | In most of its provisions for search warrants same procedure and conditions are provided. | However, on time when warrants may be issued and executed the ACJL Ebonyi state delimits time of execution to the hours of 5am to 8pm. However, issuing authority | Section 37 199 Constitution on the right to private and family life. The ACJL sems to complement this provision under the Constitution. | The provision under the ACJL humanizes subjects of search warrants, by giving them a reasonable expectation of times within which the sanctity of their private premises maybe invaded for the execution of a search warrant. |

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| | | | may allow for execution at any time by adding same to the search warrant at the time of issue or endorsing same thereafter. | | |
| F | **Charges** | | | | |
| 13 | Contents of a Charge Sheet | Section 193 – in most respects provisions on charges under both laws are *Pari Materia* however, under the ACJA a charge sheet is to be accompanied by biodata of suspect including fingerprint impressions and photograph etc. | Section 283 No biodata requirement under the ACJL | | The inclusion of biodata requirement in a charge sheet strengthens the reliability of the data that is so represented particularly for purpose of proper identification and research. |
| 14 | Plea Bargain | Section 270 | Section 367 | | Provisions under both laws are identical. However, the ACJA is more elaborate in its use of the concept than the ACJL |

| G | **Unsoundness of Mind** | | | | |
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| 15 | Persons of Unsound Mind | Section 278 – 292 Remand of persons of unsound mind in an asylum | Section 499 – 515 Remand of persons of unsound mind in an asylum | Lunacy Act 1958 provides for institutionalization of mental health patients. The Discrimination (Prohibition and Prevention) Against persons with Disability Act 2019 Section 21(2) guarantees access to free healthcare services to persons of unsound mind in federal health facilities. Prisons Act[47] section 7(3)(b) and (4)(a) requires that mentally ill prisoners including those under the sentence of death be transferred to a suitable mental hospital. Section 35(e) CFRN 1999 restriction on | Both the ACJL and the ACJA model provisions on the institutional treatment of mentally ill persons as seen under the Lunacy Act 1958. The appropriate response to unsoundness of mind for suspects or prisoners should be a removal to a mental hospital as provided under the 1999 Constitutions and the prisons act, and not asylums where they are often times inhumanely restrained without treatment or appropriate medical attention. |

[47] Prisons Act 1972 CapP29 LFN 2010

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| | | | | personal liberty for the care and treatment of a person of unsound mind. | |
| H | **Remand and other Interlocutory Proceedings** | Section 293 - 299 | Section 223 - 229 | | |
| 16 | Time Protocol for Remand Orders | Section 295(5)(a) on a successful demonstration of good course for further remand of a defendant a court may extend remand by a period not exceeding 14days. | Section 226(5)(a) where the commissioner of police (CP) or director of public prosecutions (DPP) successfully show a good cause for further remand of a defendant after three earlier extensions, the court may order remand for a further thirty (30) days. | | This implies that a defendant under the ACJL Ebonyi state may spend a longer time in custody while awaiting trial. This increases the already protracted problem of prison congestion in Nigeria. Awaiting trial persons in Nigeria's correctional centers outnumber persons who are serving jail times further challenging how correctional these centres are as they are housing individuals who may not need correction. |
| I | **Sentencing** | | | | |
| 17 | General Principles/Objectives for Sentencing | Section 40(1) – (2) - Generally sentencing for federal offences are underpinn | Section 391 of the ACJL Ebonyi state provides that its principles in sentencing include reformation | | If a judge in the process of sentencing a convicted offender indeed takes into consideration these |

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| | | ed by the objectives of prevention, restoration, rehabilitation, deterrence, education of the public, retribution and restitution. Under the ACJA in addition to hanging use of lethal injection where available is an option for capital punishment. | and deterrence. Execution under the ACJL retains hanging as the only means of execution | | principles/objectives it will improve correctional outcomes. The inclusion of lethal injection is progressive as this is considered a more humane way of executing an otherwise inhumane punishment for crimes. |

*Table IV: Comparative Analysis between Ebonyi ACJL and ACJA 2015*

## 4.4. Practical Challenges with the Implementation of ACJA/ACJL Provisions

### *a. Recording of Arrests*

Both the ACJA/ACJL Ebonyi state stipulate that biodata including photographs and fingerprint impressions and DNA

samples of arrested defendants be taken to form part of the innovative Central Criminal Registry both at the national and state levels.[48] However the equipment is largely unavailable in police stations across the country. These provisions necessitate the presence of at least one police officer who understands the intricacies of the workings of this equipment and how to obtain these datasets from defendants, it also always requires constant power supply either through the national electricity grid or otherwise at the police stations across the country. This may not be achievable in the nearest future in police stations across the country and will continue to be a challenge to the implementation of these elegant provisions in the law.

### *b. Arrest by Private Persons*

As innovative and progressive as these provisions are under the ACJA[49] and the ACJL[50] Ebonyi state it presents a number of challenges for implementation. First, it requires that a private person arrest an individual committing an offence for which the police will arrest without warrant. This will mean that the private person will need to have a fair knowledge of the criminal process in order to correctly effect an arrest under this section. Again, a private person under this section may be putting themselves in danger as the person committing an offence maybe violent or simply willfully resists the private person authority to arrest. Furthermore, the private person is required to supply their private information including their address and also furnish a witness statement, this is burdensome and may discourage a private person even when they are aware of how to effectively effect an arrest under this provision.

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48 Section 18 ACJL Ebonyi state and section 16 ACJA

49 Section 20 ACJA

50 Section 21 ACJL Ebonyi State 2019

### *c. Preparation of Reports/Returns*

Both the ACJA 2015[51] and ACJL Ebonyi State 2019[52] provide for a number of monthly, weekly reports to be sent to the Attorney general, to the Chief judge and to the visiting/ supervising chief magistrate on arrests. With the provision on a centralized criminal records system, it becomes herculean and impracticable to keep replicating the same data for all kinds of sundry purposes within the same administration of criminal justice system. A better and more workable and practical provision have been for these authorities to access this same information on the criminal justice system centralized database through their staff. Therefore, allowing these police units/stations to concentrate on ensuring that the data put in the centralized criminal record system is accurate, continuously updated and responding to the constant change in technology and accessibility.

## 4.5. Recommendations

As innovative and far-reaching as the current administration of criminal justice is, there remains more that can be done to improve on the provisions enshrined in the framework. The following are recommended in order to improve on the ACJL Implementation.

a. The use of the term 'asylum' should be expunged from the laws to make room for the proper treatment and routing to mental hospitals of persons of unsound mind processed through the national and state criminal justice systems.

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51 Section 29, section 111

52 Section 90 reports lie from police stations to the nearest magistrate for all arrests without warrant

b. Law enforcement personnel must be appropriately trained to carry out their novel and profound responsibilities under the new administration of justice regime.
c. An all-important infrastructural upgrade and equipping of police stations. This is because the successful change and improvement in the criminal justice system as provided under the ACJA and ACJL Ebonyi State relies heavily on the police and its infrastructure.
d. A general and close attention must be paid to the provision of power (electricity) in the country. The improved means of identification and biodata collection is not workable without a reliable and stable national electricity grid. There is no other way to get this done. Crime prevention remains a developmental issue and as a jurisdiction, Nigeria must wholistically approach key issues as they impact directly on criminal justice administration.
e. Besides capacity building in the area of trained personnel within the police force to collect biodata, law enforcement must be trained, and retrained in the observance of human rights as this remains an issue even in countries that are well advanced in their criminal justice systems.
f. Judges and magistrates under the ACJL Ebonyi State must interpret the law in the general progressive spirit replete in the provisions of the law particularly in situations where the law appears to leave room for the exercise of discretionary powers, is ambiguous or can easily lend itself to abuse in the hands of a lazy or mischievous law enforcement officer.

## 4.6. Conclusion

Domestication of the national Act in the Ebonyi state ACJL 2019 is a fair attempt at providing for an efficient and fair criminal justice administration system both for defendants and victims of

crime resident in Ebonyi state. Ranging from provisions on the arrest, remand, detention or release on bail of an accused person to actual trial whether summarily or on the specified means of commencement of criminal proceedings such as trial on information, charges, or information after the preparation of proofs of evidence, the availability of non-custodial sentences, and the option to award compensation and restitution or replacement of victims property destroyed in the commission of a crime and the establishment of a monitoring team in the Ebonyi State Justice Reform Team, the ACJL Ebonyi State has made an important and sustainable progress in improving on the criminal justice administration system in the state taking a que from the ACJA 2015.However, a vigorous, responsive and responsible Ebonyi State Justice Reform Team(ESJRT) remains crucial and will be required to keep the institutional and legal framework responsive to advancement in criminal justice technology and techniques.

# COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015 AND THE ADMINISTRATION OF CRIMINAL JUSTICE LAW OF CROSS-RIVER STATE 2016*

## 5.1. Overview of the Cross–River State Administration of Criminal Justice Law, 2016

The Administration of Criminal Justice Law (ACJL) Cross River State was enacted by the Cross-River State House of Assembly in 2016. The Law is divided into 49 parts and 492 sections and it covers areas such as Arrest, bail, plea, trials, plea bargain, and sentencing among others. The ACJL repealed the Criminal Procedure Code.[1] However, the law does not have a commencement date.[2] The objectives/ purpose of the ACJL Cross River state is to ensure that the system of administration of criminal Justice in Cross River State 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, defendant and victim. In implementing these objectives, it is expedient that the courts, Law enforcement agencies and other authorities or persons involved in the entire criminal justice system administration in Cross-River State ensure adequate compliance with the provisions of the ACJL. These objectives are similar to the objectives of the ACJA 2015.The provisions of the ACJA and ACJL Cross River State, are generally the same, except for few

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1 Cap C17, Vol 3 Laws of Cross River State

2 ACJL, section 492

differences in provisions which is considered later on in this analysis.

## 5.2. Compliance with International Best Practices

In recent years there has been the need for criminal justice system to be in line with generally accepted international best practices in the administration of criminal justice such as witness protection, plea bargain, compensation and non-custodial measures among others. Justice is seen as a three-way traffic that considers the victim, defendant and the society. However, in Nigeria, this has not been achievable due to our obsolete laws and practices. To ensure Nigeria meets up with these new ways of criminal justice administration embedded in laws, codes, standards which serve as guides, [3] there became a need to amend our laws to reflect these best international practices. Generally, these best international practices are hinged on the observance and protection of human rights, speedy dispensation of justice, prison reforms and restitution.

In Jurisdictions such as United States and United Kingdom, there are arrangements in their criminal justice systems for the compensation and reparation of victims of crime, whether they are resourced publicly (by the state) or privately (by offenders). In Nigeria, this is resourced by offenders.[4] Victims' compensation was introduced in response to an increasingly vocal victims' lobby that repeatedly drew attention to the perceived secondary victimisation that victims suffered at the hands of criminal justice systems whose objectives and values

[3] with particular regards to the treatment of offenders from arrest to conclusion of the trial, sentencing and even reintegration of offenders into the society and protection of the rights of victims and the society at large.

[4] Section 17 ACJL Cross River State

were focused upon offenders.[5] Also, the United State(US) has the Victims of Crime Act 1984 (VOCA), which established the Crime Victims' Fund to support state crime compensation and victim advocacy schemes, and on the increasing focus in restorative community justice on offender accountability and the empowerment of crime victims.[6] There have been similar developments in the European Union by which offenders are to be encouraged to compensate their victims or to make reparation via restorative justice.[7] The Cross-River State ACJL in its part 32 provides for costs, compensation, damages and restitution. This is in line with international best practices on crime compensation.

Another area is the electronic recording of confessional statements by the Police. This is to promote transparency and reducing false confessions. It also helps preserve statements as they are stored away in the cloud and can be accessed at any time and at trial. Other recording benefits include: deterring the police from using extreme physical or psychologically coercive tactics. In the US, the first state to mandate recording of custodial interrogations was Alaska. In 1985, the Supreme Court of Alaska in *Stephan v State* required recording of

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5 David Miers, 'Offender and state compensation for victims of crime: Two decades of development and change' International Review of Victimology 2014, Vol 20(1) 145–168, 146

6 *Ibid,* 147

7 European Commission (2009) Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Directive 2004/80/EC relating to compensation to crime victims https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52009DC0170 accessed 14 September 2021

custodial interrogations for all offenses.[8] Law enforcement in the United Kingdom, Canada, New Zealand, and Australia have recording requirements for all serious felonies. Audio-recording of custodial interrogations has been a requirement in the United Kingdom for more than 30 years after the passing of the Police and Criminal Evidence Act of 1984.[9] This provision on electric recording of statement shows that the ACJL is compliant with international best practices in speedy dispensation of justice and preservation of evidence during trial and protection of witnesses[10] in line with Nigeria's Evidence Act 2011 on admission of electronic evidence. Witness protection is an innovation in the ACJL. Before now, there was no clear provision on witness protection. The need for witness protection was exacerbated by cases on terrorism and technological advancement. The witness protection provision will aid speed dispensation of Justice and trials as delays experienced during trial due to absence of witness is reduced as recourse is made to ICT facilities such as video conferencing in conducting trials.

### 5.3. Comparative Analysis Between ACJA 2015 and ACJL, Cross River State.

The ACJA 2015 and ACJL Cross River State appear to have similar objectives and similar provisions, from arrest, to plea bargain, search of arrested suspect, central criminal registry, arrest by private persons, person of unsound mind, previous acquittals and convictions, trials and summary trials generally

8 *Stephan v State* cited in Brandon Bang, Duan Stantong and Others, 'Police recording of custodial interrogations: A state-by-state legal inquiry' International Journal of Police Science & Management 2018, Vol. 20(1) 3–18, 10

9 *Ibid,* 15

10 ACJL Cross River State, Section 17(2)

among others. However, the analysis as shown in Table V, identified some differences in both laws.

*Table V: Comparative Analysis- ACJA 2015 and Cross River State ACJL*

| S/N | CONCEPT | ACJA | ACJL | COMPLEMENTARY PROVISIONS | ANALYSIS |
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| 1 | Application | Section 2 | Section 2 | | The ACJA provides that the Act shall apply to criminal trials for offences by an Act of the National Assembly and other offences punishable in the Federal Capital Territory Abuja while the ACJL shall apply to criminal trials for offences established by a Law of the House of Assembly and other offences punishable in the State. |
| 2 | Mode of Arrest | Section 4 | Section 4 | Powers of the police under the Police Act 2020 on mode of arrest, Section 33 provides that the police officer making the arrest shall actually touch or confine the body of the suspect. This gives effect to the provision of the ACJA. Going by the provision of the ACJL, it | The ACJA in its section 4 provides that when making an arrest, the police officer **shall** actually touch or confine the body of the suspect while section 4 of the ACJL provides that the police officer while making an arrest **may** touch or confine the body of the suspect. We understand that in interpretation of statutes, the word |

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| | | | | means that there will be conflict in perfecting arrest as the ACJL provides that the police officer is not obliged to touch the suspect during an arrest. | Shall is compulsory while the word 'may' is not compulsory. This means that under the ACJL, the police officer is not obliged to touch the suspect during arrest. |
| 3 | Recording of arrest | Section 15(2) | Section 15(2) | On confessions, the Evidence Act 2011 in its Section 29 provides that: In any proceeding, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section. Thus, it becomes difficult for the implementation of the provision of the ACJL on admission of oral confession. Circumstances that render confession inadmissible is provided for in section 29(5) In this section "oppression" includes torture, inhuman or | The ACJA provides that the process of recording of arrest shall be concluded within a reasonable time, but not exceeding 48 hours while the ACJL provides that the process of recording of arrest shall be concluded within a reasonable time but not exceeding 24 hours. Also, Section 15(5) ACJA provides that an oral confession of an arrested suspect shall be admissible in evidence, whereas section 15(2) ACJL makes no provision for the admission of oral evidence or any of the suspects confession. |

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| | | | | degrading treatment and the use or threat of violence whether or not amounting to torture. | |
| 4 | Recording of statement of the suspect | Section 17 | Section 17 | Section 35(2) 1999 Constitution provides that any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice. Furthermore, the Nigeria Police Act 2020 in its section 35(2) (b and C) supports the ACJA position that police officer should inform the suspect that he can consult a legal practitioner of his choice and free legal representation by the Legal aid Council. The ACJL did not provide for representation by a legal aid officer. Section 35(3) of the Constitution of the Federal | The ACJA in section 17(2) provides that statement be taken in the presence of legal practitioner; officer of the legal aid council, Civil society organisation etc, the ACJL in section 17(1) did not make provision for the presence of a legal aid officer or civil society organisation. The ACJL does not make provision for an interpreter where a suspect does not understand English language, whereas the ACJA provides for an interpreter in its section 17(3-4) |

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| | | | | Republic of Nigeria 1999(as amended) provides that any person who is arrested or detained shall be informed in writing of the offence within twenty-four hours (and in a language that he understands) of the fact and ground for his arrest or detention" Section 36(6)(a) of the Constitution guarantees the right of the accused to be informed promptly in the language that he or she understands and in detail of the nature of the offence alleged to have been committed. Section 36 (6) ( e) provides specifically that the person shall be entitled to have , without payment, the assistance of an interpreter if he cannot understand the language used at | |

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| | | | | the trial of the offence. To ensure a defendant understands the charge before him or questions during recording of statements, an interpreter in the language he understands is sacrosanct as this will aid communication in writing. | |
| 5 | Venue generally | Section 91 | Section 92 | | The ACJA provides that the place of trial is where the offence was wholly or in part committed while the ACJL provides that place of trial shall be in the division or district where the offence was committed. The ACJL did not include as a place of trial or inquiry as a place where the offence is partly committed. See section 92(1) (a) ACJL. |
| 6 | Withdrawals from prosecution in trials and inquiries before the court | Section 107(2 and 3) | Section 106(2 and 3) | | The ACJA uses the word suspect while the ACJL uses the word defendant |
| 7 | Mode of instituting criminal proceeding | 110(3) | 109(3) | Section 36 (4) of the Constitution provides that whenever a | The ACJA provides that a charge under this section 1(a) and (b) shall be |

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| | in a magistrate court | | | person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to fair hearing within a reasonable time by a court or tribunal. This provision is in line with the provision of the ACJA while the ACJL provides for reasonable time not less than 180 days. This may bring about problems during prosecution as to whether to adhere to constitutional provision or be time bound in line with the ACJL. By virtue of section 1(3) of the Constitution, on inconsistency, Constitutional provision shall prevail | commenced not later than 30 days and be completed within a reasonable time whereas, the ACJL provides that a charge under this section1 (a and b) shall be commenced not later than 30 days and be completed within a reasonable time not less than 180 days from date of commencement. |
| 8 | Search Warrants. Time when search warrant may be issued | Section 148 | Section 146 | The Nigeria Police Act in its Section 74 provides that warrants may be issued on any day including a Sunday or public holiday | The ACJA provides that search warrant may be issued and executed at any time on any day whereas, the ACJL goes further to state that search warrant shall only be executed from the hours of 7pm -6am where there is a likelihood |

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| | | | | | of a person disposing of the thing named in the search warrant before its execution. |
| 9 | Discontinuance of Criminal Cases | Section 107(3) (b) | Section 106(3) (b) | | The ACJA in section 107(3) (b) provides that where the suspect is not in custody, the suspect and his sureties shall by notice in writing to be giving to any witness **bound** over to prosecute while the ACJL in its section 106(3) (b) provides that when the suspect is not in custody, the suspect and his sureties shall by notice in writing to be giving to any witness bond over to prosecute. The term bond and bound over where used, I think the bond used in the ACJL is not appropriate in this context. |
| 10 | Defendants who may be charged Jointly | Section 208(e and f) | Section 206(e and f) | | The ACJA in subsection e used the word 'and' to connect with subsection f while the ACJL used 'or'. This brings a different interpretation to the subsections e and f in the ACJL |
| 11 | Time and protocol for remand orders | Section 296 | Section 293 | | The ACJA in its section 296(1) provides that where an order of remand |

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| | | | | | of the suspect is made, it shall be for a period not exceeding 14 days in the first instance. Subsection 2 provides that an extension of remand, the court may make an order for further remand not exceeding 14 days while the ACJL in section 293(1) provides for a period not exceeding 7 days and extension not exceeding 14 days in subsection 2. Generally, these sections provide for 14 and 7 days respectfully for time and protocol for remand orders. |
| 12 | Procedure for trial on charge for certain offences | Section 232(4) | Section 230(4) | Section 33 and 34 of the Terrorism Prevention Act 2013 on protection of Informants and Information and protection of persons and Witnesses. Section 17 of the Economic and Financial Crimes Act | The ACJA and ACJL made provisions for witness protection in line with some legislation that seek to protect witnesses. Such legislation includes the Terrorism prevention amendment Act and the Trafficking in Persons and related offences Act and any other act of the National and House of Assembly that permits the use of such protective |

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| | | | | | measures . This also reflects international best practices on witness protection. |
| 13 | Summary trial of a child by a magistrate court | Section 371 | Section 367 | Section 204 of the Child Rights Act 2003- Child to be subjected to only child justice system and processes. This is in accordance with provision of the child right Act or law. This is in line with section 452 and 448 of the ACJA and ACJL respectively for child offenders. | The ACJA provides that where a child is proceeded against before a court for an offence, the court shall have regard to provisions of the Child Rights Act. The ACJL will comply with the Child Rights Law. |
| 14 | Time for raising Certain objections day-to day trial and adjournment | Section 396(7) | Section 392(7) | Section 253 CFRN 1999 provides that the Federal High Court shall be duly constituted if it consists of at least one judge of the Court. The decision of the Supreme Court in unreported cases of *Orji Uzor Kalu and Ude Jones Udeogu V. Federal Republic Of Nigeria And Others*, the court held that Section 396(7) ACJA by extension Section 392(7) ACJL is in conflict with Section 253 CFRN thus | This provision of the ACJA and ACJL is intended to make for effective case management, reduce hardship on litigants and address the case of starting a case *denovo* where a judge of the high court in a part heard criminal matter is elevated to the court of appeal. These provisions in the Act and law appear to be inconsistent with the provision of the CFRN as to the proper quorum of the court. This speaks to the issue of jurisdiction and status of the Judge elevated to the Court of Appeal to |

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| | | | | inconsistent with the Constitution in line with Section 1(3) CFRN 1999 | conclude a part heard matter in the high court. section |
| 15 | Sentencing in the case of a child offender | Section 405 | Section 401 | The Child Rights Act 2003 in section 213(2) provides that the word 'sentence' and Convict shall not be used in relation to a child in the court. Section 204 also provides that Child to be subjected to only child justice system and processes. See also, Cross River Child Rights Law 2003. | Both provisions provide that in sentencing a child who has not attained the age of 18, found guilty of a capital offence, sentence of death shall not be pronounced, the court shall sentence the child to life imprisonment in line with the provision of section 401 ACJA and 397 ACJL. However, the Child rights Act provides that recourse shall be made to the law as regards the child. |
| 16 | Administration of Criminal Justice Monitoring Committee | Section 469 | Section 466 | | The ACJA in constituting members of the committee provides that there should be a Judge of the Federal High Court while the ACJL does not include a Sitting Judge as one of its members of committee. Also, the ACJL provides that there should be a representative of the speaker of the House of Assembly, the representative of the speaker of the National Assembly |

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| | | | | | is not present in the ACJA |

## 5.4. Practical Challenges with the Implementation of the ACJA and ACJL Cross-River State Provisions

Although the ACJA and ACJL Cross River State are positive and progressive laws on criminal justice administration, its implementation is fraught with some challenges such as:

a. Challenges facing the judiciary such as low level of accountability, corruption, lack of transparency in the appointment of judicial officers, low remuneration, insecurity, poor infrastructure, and lack of case management are great challenges to the implementation of these laws.
b. incessant adjournments, non- sitting of courts without adequate notice to lawyers and litigants and lack of diligent prosecution
c. the issue of recording of confessional statements electronically, as there is the lack of infrastructure such as information communication technology facilities for electronic recording during arrest subsequently produced during trial and epileptic power supply which may not allow officers carry out their work effectively.
d. The ACJA and ACJL respectively use the word 'may' in relation to recording of confessional statement through electronic means. This creates a loophole and may be susceptible to exploitation by the arresting officer or law enforcement, which will also affect the admission of such confessional statements during trial. Although the ACJL did not make it mandatory to record through electronic means, the implication is that recourse will always be made

to taking statements in writing, thereby defeating the aim of the law.

e. The ACJA and ACJL make provisions for ensuring that the decisions of the court in all criminal matters are transmitted to the central criminal records registry within 30 days of judgment, it is difficult to ascertain whether this transmission is made as a result of the lack of database / data and logistics in Nigeria.
f. Also, the ACJL in some sections adopt the word suspect in some cases and defendant in some cases. There is thus not a uniform way of addressing offenders in the ACJL as applicable in the ACJA which uses the word defendant. Uniformity is vital.
g. Another challenge is the lack of establishment of institutional facilities as provided by the ACJL. Institutions such as Community Service Centres, Drug Rehabilitation Centres and Parole/Probation Unit are yet to come into existence.
h. Lack of understanding of key provisions of the laws by law enforcements such as Police force especially in the areas of arrest and recording of confessional statement is a key challenge to effective implementation of the law. The Police are not always thorough with their investigations, which often lead to slow dispensation of justice.
i. There is also the lack of awareness of the laws by the people including judicial workers on their role to ensure the purposes of the ACJL are achieved.
j. There is lack of adequate funding in the criminal justice system thus, this will affect areas such as witness protection as the lack of resources to ensure the presence of and

protection of witnesses in court, and the use of video conferencing are hampered.

k. Lack of political will to execute the ACJA and ACJL by the government of the day.

### 5.5. Recommendations

a. There should be uniformity in the addressing offenders under the ACJL, the term defendant should be adopted across board as applicable in the ACJA

b. The composition of the Administration of Criminal Justice Monitoring Committee in both the ACJA and ACJL appear to be grossly inadequate to handle its functions. Most of the committee members already hold different positions which may make it difficult to carry out their function under the Act and Law. Furthermore, the composition of the Committee does not indicate an inclusion of social workers, criminologists, sociologists and psychologists who are professionals that could help monitor and build robust parole, probation and rehabilitation centres. It is thus recommended that there is a need for restructuring the existing Committee both in compositions, name and expand the scope/ functions of the proposed new committee to include high combinations of professional from different backgrounds to make it more functional and more efficient for the purposes of implementation.

c. The criminal justice system should be adequately funded so that the law can be implemented effectively.

d. There should be training and retraining of the police and other law enforcement agencies, staff of the correctional centres, judiciary and judicial workers, research assistants and everyone involved in the entire justice system to understand the implementation of the ACJA and ACJL

e. Relevant physical and other complimentary structures for the operation of non-custodial sentencing provision and correctional centres should be adequately provided to encourage judges who are willing to adopt non-custodial measures.
f. There should be provision of internet services to facilitate the recording of statements in police stations, to facilitate preservation and transmission of recorded confessional statement to the appropriate authority.

## 5.6. Conclusion

The Cross River State ACJL 2016 is modelled after the ACJA 2015 with the objective to ensure an efficient criminal justice dispensation and responsive justice services. In as much as the laws are similar, there are some identified differences in the laws which have been identified in the analysis. Having identified the challenges and recommendations, it is hoped there will be efficient implementation of the ACJL Cross River State.