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This Guidebook is drafted to assist the integration of the Administration of Criminal Justice Act (ACJA, 2015) 2015 in the teaching relevant laws in Nigeria. Since the enactment and subsequent domestication of ACJA 2015, the landscape of administration of criminal justice has continued to undergo significant changes in the implementation of the primary objective of maintaining speedy dispensation of justice.

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GUIDEBOOK ON INTEGRATING ACJA, 2015 IN THE TEACHING OF RELEVANT LAW COURSES IN NIGERIA - NIALS

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Edited by M. T. Ladan

Nigerian Institute of Advanced Legal Studies NIALS

MacArthur Foundation





NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

GUIDEBOOK

ON INTEGRATING ACJA, 2015 IN THE TEACHING OF RELEVANT LAW COURSES IN NIGERIA

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Preface

This Guidebook is drafted to assist the integration of the Administration of Criminal Justice Act (ACJA, 2015) 2015 in the teaching relevant laws in Nigeria. Since the enactment and subsequent domestication of ACJA 2015, the landscape of administration of criminal justice has continued to undergo significant changes in the implementation of the primary objective of maintaining speedy dispensation of justice.

The Guidebook is a progressive step in the process of developing and strengthening our criminal justice system and equally deepening law students' knowledge of criminal law and procedure.

This Guidebook is the result of extensive research, review and gap analysis of existing legal literature, which has provided a strong justification for the teaching ACJA, 2015 as part of criminal law and procedure, the law of evidence and anti-corruption studies in the law faculties of Nigerian universities and the Nigerian Law School.

The 10-chapter document focuses on the innovative and salient provisions of the ACJA, 2015, 2015. Chapter 1 contains the overview and objectives of the Act, which are: efficient management of criminal justice institutions; speedy dispensation of justice; protection of society from crime; and protection of the rights and interest of the suspect, the defendant and victims in Nigeria.

Chapter 2 examines ACJA, 2015 provisions on arrest, search and seizure. The chapter draws a nexus between the new provisions on Arrest Protocols and the objectives of the Act.
Chapter 3 evaluates bail provisions under the ACJA, 2015 to ascertain the innovations made with respect to bail applications, especially as they relate to administrative bail, capital and non-capital offences, women sureties and child offenders.

Chapter 4 analyses the innovative provisions of the Act on charges, plea bargain, and arraignment. It explains how innovations such as including the photograph and finger impression of a defendant in the provisions on particulars of a charge, the timely arraignment of a suspect and plea bargain have reformed the criminal justice system.

Chapter 5 examines the trial provisions in the Act by discussing wide range of issues that, before the enactment of the ACJA 2015 were responsible for trial delays in the criminal justice system.

Chapter 6 discusses the sentencing provisions under ACJA, 2015, 2025 and examines the sentencing guideline as parameters put in place to guide courts in imposing punishment and restorative justice mechanisms as innovative provisions in the Act.

Chapter 7 considers the various non-custodial measures under the Act, their purpose and mode of implementation
.

Chapter 8 discusses the concept of restorative justice and highlights its application under the ACJA, 2015, 2015.

Chapter 9 considers the various administrative measures put in place by the Act to enhance effective implementation of its provisions with a view to achieving its objectives.

Chapter 10 concludes by examining the role of legal education in promoting the administration of justice and combatting corruption.

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African Union Convention on Preventing and Combating Corruption (AUCPCC) (adopted in Maputo 11 July 2003; entered into force 5 August 2006

Convention on the Elimination of Discrimination Against Women (CEDAW) A/RES/34/180, 18 December 1979

International Covenant on Civil and Political Rights, 1966

United Nations Convention Against Corruption (UNCAC) (A/Res/58/422; Adopted 31 October 2003: came into force 14 December 2005)

United Nations Convention Against Transnational Organised Crime (UNCTOC) (A/Res/55/25; Adopted 15 November 2000: came into force 29 September 2003)

Universal Declaration Of Human Rights (UDHR)

Chapter One
OVERVIEW OF THE OBJECTIVES AND INNOVATIVE PROVISIONS OF ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015

1.1. Learning Objectives

It is expected that at the end of this chapter, the user is able to:

- understand the objectives and innovative provisions of the ACJA, 2015,
- appreciate the impact the provisions of ACJA, on the criminal justice system.

1.2. Objectives of ACJA, 2015

ACJA, 2015, was passed to transform criminal justice administration in Nigeria. Its objectives are stated in the Explanatory Memorandum and section 1 of the Act. The Explanatory Memorandum states the overall goal of ACJA, 2015 as: establishment of a criminal justice system which promotes (a) efficient management of criminal justice institutions; (b) speedy dispensation of justice; (c) protection of society from crime; and (d) protection of the rights and interest of the suspect, the defendant and victims in Nigeria. This is replicated in section 1(1). However, a specific obligation is imposed on "the courts, law enforcement agencies and other authorities or persons involved in criminal justice administration," to ensure that the objectives and purposes of the Act are achieved. This they must carry out by ensuring compliance with the provisions of the Act (**see section 1(2) ACJA, 2015**).

With respect to the objective of restorative justice, the courts have the responsibility to ensure the applicability of restorative justice, which is essentially geared towards achieving an egalitarian society- a system that balances the interest of everyone-suspect, defendant and victim in terms of criminal justice delivery. Oputa JSC lent credence to this in the case of ***Josiah v. State*** **[1985] NWLR (Pt.1) 125 @ 141** when he observed that it would be erroneous to refer to justice as a one way or two-way traffic; and went on to state that justice is:

> …*really a three-way traffic, justice for the appellant accused of a heinous crime of murder, justice for the victim, the murdered man, the deceased whose blood is crying to heaven for vengeance and finally, justice for the society at large- the society whose social norms and values had been desecrated and broken by the criminal act complained of.*

Furthermore, courts have a duty to ensure speedy dispensation of justice. Delays that occasioned glut and stagnation in the Nigerian criminal justice system necessitated criminal justice reforms that brought about ACJA, 2015. This is to shift from a system in which, hitherto, a criminal trial, particularly of high-profile corruption cases sometimes lingered for an upward period of 10-20 years. Ensuring speedy dispensation of criminal justice is in line with provisions of section 36 (4) of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN) as well as international best practices as expressed in the International Covenant on Civil and Political Rights, 1966 (ICCPR,) (**see Articles**

9 and 13), Universal Declaration of Human Rights, 1948 (UDHR) **(see Article 10)**, African Charter on Human and Peoples' Rights, 1981 (ACHPR) **(see Article 7(4)**), among others. It must be noted that speedy criminal justice delivery must be within the context of fair trial. A fair trial is one, which is held within a reasonable time, gives all parties equality of arms and held by competent, independent and impartial court.

To achieve the objective of speedy dispensation of justice, the Act introduced a number of innovations, which are highlighted below (**see 1.4. *Analysis of Innovative Provisions of ACJA, 2015***); more fundamentally, timelines are provided to guide the actions of the court. For example, sections 110 (3) ACJA, 2015 provides for timelines for instituting criminal proceedings in Magistrate Courts. Under section 111 (1), the Comptroller-General of Correctional Services (formerly known as Prison Services) must "make returns every 90 days to the Chief Judge of the Federal High Court, Chief Judge of the FCT, the President of the National Industrial Court, the Chief Judge of the State in which the prison is situated and to the Attorney-General of the Federation." The return to be made is a comprehensive report of all persons awaiting trial "held in custody in Nigerian prisons beyond 180 days from the date of arraignment." Furthermore, remand time limits are covered under sections 293-298 (see **NIALS Training Manual on the Implementation of the Administration of Criminal Justice Act, 2015 for Judicial Officers, 2020**).

On the part of law enforcement agencies and other authorities or persons involved in criminal justice

administration, they must work collaboratively to limit factors that inhibit speedy dispensation of justice. A number of these factors have been identified (**see Professor Akinseye George, *Administration of Criminal Justice Act, [ACJA, 2015] with Explanatory Notes and Cases,* Marvellous Mike 2017**). They include: (a) poor investigation of cases, (b) lack of and uncooperative attitude of witnesses, (c) low morale of prosecutors, (d) lack of technological support, among a host of others **(see Akinseye George, Ibid, at pp 8-9)**. By and large, the Act recognises that its objectives can only be achieved if and only if every criminal justice stakeholder play its part effectively and efficiently.

1.3. Impact of ACJA, 2015 on the Administration of Criminal Justice in Nigeria

Although the road to achieving the aspirations of ACJA, 2015 has been windy and slow, progress has undeniably been made. Some of the impacts of ACJA, 2015 are summarised below:

- **Legal Activism:** since its enactment, ACJA, 2015 has attracted intense legal activism that has led to some critical judicial pronouncements; and a litany of litigation by lawyers who have been vocal regarding some provisions such as section 306 and 270. They became even more popular due to some significant judicial pronouncements including ***Ude Jones Udeogu v. FRN* (SC.622C/2019)**. In ***Olisa Metu*** (**Appeal No: CA/A/767/2019)**. The Court of Appeal's pronouncement on section 270 (18) ACJA, 2015 (appeals in plea bargain agreements) was that it contradicts the provisions of sections 240 and 241 (1) of CFRN, 1999, as amended, particularly section 241 (1) that guarantees the right of

appeal to litigants. According to the court, s. 270(18) ACJA, 2015, is *ultra vires* the legislative powers of the National Assembly, and therefore null and void. It held further that the section conflicts with the provisions of ss. 240 and 241 (1) of CFRN 1999, as amended. Hence, it is void by virtue of s. 1(3) of CFRN. Legal activism has, more crucially, initiated the discussions of amending the Act to conform to the CFRN and or amending the CFRN to give effect to contradictory provisions of the Act. This shows that the country has recognised and embraced the impact of ACJA, 2015 and is determined to ensure its effective implementation. Indeed, ACJA, 2015 motivated the enactment of the Nigerian Correctional Service Act (NCSA), 2019 to give effect to provisions relating to restorative justice and non-custodial measures.

- **Research, Workshops and Capacity Building**: Intense ACJA, 2015 focused workshops, trainings, colloquia, lectures, symposia, etc., is a clear testimony of the fact that ACJA, 2015 has changed criminal justice delivery in the country. This has been made possible through grants from donor agencies-local and international- that desire clear changes in the criminal justice system. This is notwithstanding the numerous challenges bedevilling its effective implementation. Although criminal justice institutions, particularly the police still face the challenge of inadequate facilities to enable them function optimally, officers and men of the police have learnt the rudiments of acceptable processes of arrest, searches, interrogations and obtaining confessional statements, among others.

- **Acceptability:** Evidently, ACJA, 2015 is one of the laws that enjoy general acceptability. This is reflected in how states quickly adopt and adapt it to suit their context. Currently, 31 states of the federation have passed their ACJ laws. States such as Anambra and Lagos that passed their ACJLs before ACJA, 2015 have either reviewed or are reviewing theirs. In this regard, while Lagos State has amended its ACJL about four times since it was passed in 2011, Anambra ACJL is currently undergoing review for the first since it was passed in 2010 **(see<https://www.partnersnigeria.org/acjl-tracker/> accessed 20 August 2021)**.

- **Advocacy:** In line with section 469 of ACJA, 2015, the Federal government established the Administration of Criminal Justice Monitoring Committee (ACJMC) for the purpose of monitoring effective implementation of the Act. The ACJMC meets regularly in Abuja, where it resolves issues affecting effective implementation of ACJA, 2015. The ACJMC has been able to attract funding from donor agencies such as the MacArthur Foundation to enable it carry out its functions. Members include academic institutions, non-governmental organizations, local charities, and legal defence funds. Also, all 31 states that have passed the ACJLs have inaugurated their Monitoring Committees with similar powers and functions as the ACJMC. In addition, following the directives issued by the then Chief Justice of Nigeria (CJN), Justice Walter Onongen in 2017, Corruption and Financial Crimes Cases Trial Monitoring Committees (COTRIMCO) were set up in various states to accelerate trial of corruption cases in compliance with ACJA, 2015. While these do not reflect

ultimate success in terms of implementation of ACJA, 2015, commendable progress has indeed, been made.

- **Civil Society Involvement:** The Act has garnered considerable interest from civil society organisations (CSOs). Currently, 12 CSOs and private legal practitioners working in the area of criminal justice have come together to form a partnership to observe and advocate for the effective implementation of ACJA, 2015. The group seeks to identify violations of the Act by agencies and to influence advocacy for purposes of sensitising the public on the provisions of the Act. Since its inauguration, the CSOs observatory group has made a number of observations relating to the various agencies' capacity to implement the Act.

1.4. Analysis of Innovative Provisions of ACJA, 2015

Prior to the enactment of ACJA, 2015, the Nigerian criminal justice system was characterised by delays, lengthy trial periods, lack of or limited use of technological aid, reliance on outdated criminal law provisions, and ultimately focused extensively on punishment, which was sometimes misapplied. The repealed Criminal Procedure Act (CPA) *(CAP 80, Laws of Federation of Nigeria (LFN), 1990)* combined with the Criminal Procedure Code (CPC), to perpetuate an undesirable criminal justice system due to their limitations and inability to meet the standards of Administration of Criminal Justice in modern democracies. Accordingly, the need for extensive overhauling of the Nigerian criminal justice system brought about the enactment of ACJA, 2015. Although not perfect, (as some judicial pronouncements have revealed), the ACJA, 2015 has brought about changes in Nigeria's mode of criminal

justice delivery. The impact of ACJA, 2015 on the criminal justice system in Nigeria has been examined above (see **item 1.3: *Impact of ACJA, 2015 on the Administration of Criminal Justice in Nigeria***). Suffice to say that the progressive makes this impact possible and forward-looking provisions, which introduced several innovations to Nigeria's criminal justice administration. More importantly, these innovations have brought our criminal justice system in line with global best practices, especially in terms of respect for the rights of suspects, alternative punishment to incarceration and a tilt towards restorative justice. Some of the innovations are discussed below:

- **Preventive Justice - Part 4 - Sections 50-64**

The provisions of ACJA, 2015 relating to preventive justice impose a responsibility on the police and other law enforcement officials, including a judge and magistrate to proactively prevent crime and ensure security in the community, even if it means arresting a person. The question is how does a judge or police officer conclude that a crime is about to be committed even if there is no indication that an offence is about to be committed.

- **Arrests- Sections 6, 7, 8, 14,16 and 17**

The police is the primary arresting agency, although private persons and other agencies can also arrest **(*Egube v. FRN* (2020) 11 NWLR 1734, 113; *Salihu v. Gana* (2014) LPELR 23069).** In exercising the power of arrest, the arresting officer must comply with section 6, which seeks to protect the rights of the suspect such as the right to be informed of reason(s) for the arrest and accruable rights. Under section 8, arrested persons must be treated humanely with arrest *in lieu* prohibited in

section 7. The provisions of ACJA, 2015 on arrest are extensive, emphasising the power of *any police officer* to arrest; and respect for the *dignity of the person*, which reinforces the provisions of sections 26, 27, 34, 35(2) (3) 35(6) and 36 CFRN as well as section 29 Evidence Act (EA), 2011. Guidelines relating to arrests generally, recording of the arrest and information on the suspect, monitoring of the arrest, and whether search is necessary or required are elaborately covered under part 2 of ACJA, 2015.

- **Mandatory Inventory of Property- Section 10**

This provision makes it mandatory for law enforcement officers to take inventory of all items or properties recovered from suspects. The police officer and the suspect must sign the inventory. The law further specifies that refusal by a suspect to sign the inventory shall not invalidate the inventory as copies will also be given to the suspect as well as to his or her legal practitioner or such other person as he or she may direct. Under the section, where a suspect is not charged but is released on the grounds of insufficient reason, any property taken from him or her shall be returned, provided the property is not connected with or the same as the proceeds of crime. Actions under this section are therefore subject to the procedure for seizure and confiscation of instrumentality of crime during arrest or investigation under section 337.

- **Interrogations, Statement Taking and Confessionals - Sections 15 and 16**

In taking a suspect's statement, the right of the suspect to *remain silent* is impliedly re-echoed but limited however to the period before a legal practitioner or another person is

present. The suspect's statement must be recorded-electronically or in writing. Confessions made orally are admissible under section 15(5) ACJA, 2015. This is in a bid to forestall statement rebuttals, and the attendant *trial-within-trial* and delays in trials, which often arise from claims of making statements under duress or outright denial. The FCT High Court Practice Directions emphasise case management, and High Courts of states are encouraged to tow that line. **(See sections 20, 28 and 29 EA, 2011 for more on confessionals)**.

- **Establishment of the Police Central Criminal Registry-Section 16**

This section provides for the establishment of a Police Central Criminal Registry, which is located at the Force Headquarters Abuja. The section also provides for the creation of Criminal Records Registries in all the Police Commands of the 36 states All states, including the Federal Capital Territory, are to ensure that the decisions of the courts in all criminal trials are transmitted to the Central Criminal Registry within 30 days after the delivery of judgement. However, whether this is done in practice or not is unclear.

- **Monthly Report by the Police to Supervising Magistrates - Section 33**

The Act directs the police to remit a report on the last working day of every month to the nearest magistrate on the cases of all suspects arrested with or without warrant within the limit of their respective stations or agency, whether the suspect has been admitted to bail or not. Upon receipt, the magistrate is to forward the report to the Administration of Criminal Justice Monitoring Committee.

The Committee shall analyse the report and advice the Attorney General of the Federation on the trends of arrest, bail and related matters. The Attorney General of the Federation, upon request, shall also make the report available to the National Human Rights Commission, the Legal Aid Council and Non-Governmental Organisations.

- **Monthly Inspection of Police Stations and Other Detention Centres - Section 34**

The Chief Judge is to designate the Chief Magistrate or any other magistrate to carry out, on a monthly basis, a visit to police stations and other detention centres. The purpose of the visit is to call for and inspect the record of arrests, direct the arraignment of suspects, or where bail has been refused, grant bail to any suspect where appropriate. The visiting magistrate is empowered to treat any default by an officer in-charge of a police station or any agency as misconduct and deal with such in accordance with the relevant law. This is innovative and has the effect of decongesting detention centres.

- **Bail and Recognisances - Sections 158-163**

Under ACJA, 2015, bail can be granted in all offences. However, for offences that carry the death penalty under ACJA, 2015, bail can only be granted at the discretion of the judge in "exceptional circumstances." For offences carrying a term of imprisonment of more than 3 years, bail can be granted but a judge may deny bail if there is a likelihood of reoffending, and actions targeted at obstruction of justice have been noticed. In other cases, recognisances may be allowed.

- **Bail Pending Investigation - Sections 30, 31**

Except for capital offences, administrative bail may be granted under these provisions. 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 can be a veritable tool in achieving prison decongestion, if effectively applied.

- **Recognisances in the Case of Children - Sections 160, 166**

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 station to inquire into the matter and if the offence does not carry the death penalty or a term of imprisonment for more than three (3) years, then, 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 parents or guardians can execute recognisances for child offenders. Execution of such recognisances requires the payment of a stipulated sum of money.

- **Women Sureties - Section 167**

Under section 167 (3) ACJA, 2015, women can stand as surety for purposes of bailing suspects. This provision is a shift from the repressive practice, which precluded women from standing as sureties, and consequently addresses the problem of discrimination against persons on grounds of gender.

- **Professional Bondspersons - Sections 187-188**

The provisions of ACJA, 2015 regarding bondspersons are innovative. Under its provisions, anybody can be registered as a professional bondsperson subject to regulations made by the Chief Judge (CJ) of the High Court of the FCT or CJ of the Federal High Court (FHC). The law also stipulates that a person or corporate body that wishes to offer services as bondsperson must be duly registered and meet the criteria set out in the regulations made by the CJ of the FHC or High Court of the FCT. The criteria include: unquestionable character and integrity of the person and ability to deposit a sufficient bank guarantee (as stipulated in the regulations) with the CJ. It is however curious how the integrity of a proposed bondsperson would be verified or established, considering that Nigeria lacks the capacity to track people and records.

- **Remand and Time Protocols - Sections 293, 295 & 296**

Where it is necessary to remand, ACJA, 2015 allows for a remand period of 56 days - 14 days each time. The decision to remand a suspect must however be justified by the establishment of "probable cause", in which case consideration must be given to the nature and seriousness of the offence; reasonable grounds to believe the suspect's involvement in the alleged offence; strong likelihood that the suspect could flee or commit further offence; and any other justifiable ground. **See *Achem v. FRN* (2014) LPELR-23202 (CA) and *Mohammed v. State* (2015) NWLR (pt. 1468) 496 at 512.**

- **Case Management and Disclosure Protocols - Sections 300 and 379 (see also** FCT High Court Practice Direction, 2017 and **section 36 CFRN, 1999)**

Case management is not expressly addressed in ACJA, 2015. However, it provides for mechanisms, such as frontloading/disclosure protocols to induce case management. Criminal justice experts contend that case management under ACJA, 2015 "suffers from a lack of clarity and judicial guidance" (**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**), but agree that there is a deliberate effort towards achieving speedy trials, using case management tools. Operation of disclosures under ACJA, 2015 exonerates the defence from responsibility to disclose. But the Practice Direction of the FCT High Court recommends disclosure by the defence within the intent of Rule 37 of the Rules of Professional Conduct for Legal Practitioners, which enjoin legal practitioners to see themselves as ministers in the temple of justice, to realise that they owe a duty to the courts and society to do justice and not to ensure freedom of offenders. For more on disclosures, see ***Ejike Okoye v. Commissioner of Police*** **(2015) NWLR (Pt 799) 1101, 1127-1127** and ***Shema & Ors v. FRN*** **(2018) LPELR-43723 (SC**) as well as section 135 (1) of Evidence Act, 2011

- **Abolition of Lay Prosecutors - Section 106**

ACJA, 2015 prohibits the use of lay prosecutors without exception even though criminal proceedings may be signed by a police officer. This effectively means non-

lawyers can no longer prosecute even in magistrate courts. This position jettisons the Supreme Court ruling in ***Federal Republic of Nigeria v. Osahon*** **(2006) 5 NWLR (PT. 973) 361**.

- **Prosecution of Child Offenders - Sections 452, 371**

ACJA, 2015 formally recognises the Child's Right Act (CRA) directing that child offenders should be subjected to child justice system established under CRA, except with regard to bail which should be in accordance with the general provisions on bail in both laws. See further **sections 149-162 of CRA**.

- **Trial**

- **Day-to-day trial - Section 396**

Section 396 provides for day-to-day trial, which has, however been subjected to diverse interpretations, for example, whether daily means every day until conclusion of trial, or every other day? Under the provisions, where day-to-day trial is "impracticable" a maximum of five adjournments-each adjournment not exceeding 14 days, until conclusion of trial is allowed. Upon exhaustion of the adjournments, there is also a further leeway for further adjournments if trial is not concluded. Such adjournments shall not exceed 7 days including weekends; and the court has power to award punitive costs to dissuade litigants from making frivolous applications. Beyond punitive costs for frivolous adjournments, the way to go is basically to address institutional challenges that impede day-to-day trial as the provision seems to defeat the essence of its own recommendation.

- **Trial *in Absentia* - Section 352**

ACJA, 2015 allows a defendant to be tried and convicted in *absentia* under s. 352 (4) ACJA, 2015 where the procedure laid down in subsections (1-3) have been exhausted and the defendant still fails to attend trial. This is to checkmate the attitude of lawyers (and clients) who usually exploit the absence of suspects to make frivolous applications.

- **Plea Bargaining - Section 270**

This innovative provision found expression in the case of **PML (*Securities Co Ltd v. FRN* (2018) LPELR 47993 (SC)).** Conditions for effective plea bargain agreement are contained in the section, which provides guidelines for initiation of a plea bargain agreement, securing victim's consent in the agreement, the role of the judge and the need to adhere strictly to the concept of "reasonableness" when negotiating a plea bargain agreement. A major setback for this innovative provision is the Court of Appeal pronouncement which struck down an aspect of the section for conflicting with the CFRN. The court, per Justice Ige stated:

> *"there is no doubt that section 270 (18) of ACJA, 2015, is glaringly in conflict with section 241 of the CFRN (as amended). Section 270 (18) of ACJA, 2015, is hereby declared void to the extent of its inconsistency with the provisions of section 241 and 257 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)"*
> (**Appeal No: CA/A/767/2019)**.

- **Interlocutory Applications and Stay of Proceedings - Section 306**

Prior to ACJA, 2015, lawyers used interlocutory applications as tools to cause undue delay, particularly in high profile cases involving politically exposed persons (**Dariye *v. FRN* (2015) 10 NWLR (Pt. 1467) 358).** The outcome of undue delays in our criminal justice system included frustration of the judiciary, loss of public confidence in the justice system, and denial of justice to citizens (in some cases), and defeat of the intent and purpose of s. 36(4) CFRN. **In *Amadi v. NNPC* (2000) NWLR (Pt. 9) 1543, @ 1543, paras D-G ,** the Supreme Court, decried delays arising from frivolous applications by lawyers and admonished counsel to understand that they owe a duty to court to help reduce delays by "avoiding unnecessary preliminary objections such as the one here; so that the adage justice delayed is justice denied may cease to apply to the proceedings in our courts" per Uwais, CJN (as he then was). See also ***FRN v. Babalola Borisade* (2015) All FWLR (Pt. 785) 227,** where Nweze, JSC condemned the use of interlocutory appeals to frustrate criminal trials especially those involving politically exposed or highly placed defendants. Measures to curb undue delay include abolition of stay of proceedings (***Olisa Metu v. FGN* [2017] 11NWLR (Pt. 1575) 156 at 176-178**). In spite of these provisions, counsel continue to approach the courts with interlocutory applications, forcing the courts to condemn actions of lawyers in that regard **(*Dr. Dayo Olagunju v. FRN* (2018) LPELR-43909 (SC)*;* Joshua *Dariye v. FRN* (2015) 10 NWLR (Pt. 1467) 325).** See further, section 40 EFCC Act, 2004 and section 36(4) CFRN

- **Elevation of Judges and *De Novo* Trials - Section 396 (7)**

The issue of trial starting all over (*de novo*) upon the transfer or elevation of judges also contributed to the glut in case files before now. ACJA, 2015 ensures that that situation is dispensed with by providing that where a trial judge is elevated to the Court of Appeal, he or she could go back to the High Court (temporarily) to conclude trial but such a judge is not precluded from assuming duties as a Justice of the Court of Appeal. This is to avoid a reoccurrence of the situation in ***FRN v. Ibori* (2014) 13 NWLR (Pt. 1423) CA 168 4**, *and* several other cases. Unfortunately, this provision was struck down by the Supreme Court in ***Udeogu v. Federal Republic of Nigeria* (SC. 264)** (SC.622C/2019) for being in conflict with section 253 CFRN.

- **Sentences, Sentencing Guidelines and Consequential Orders - Sections 311, 401, 404, 416**

Guidelines for sentencing and consequential orders are provided in the sections above. Notably, the sentence to be meted out depends on a number of factors including the nature and gravity of the offence; age of the offender; whether he or she is a person of unsound mind and whether the woman is pregnant. These factors must be considered with the objectives of sentencing-prevention, restraint, rehabilitation, deterrence, education of the public, retribution and restitution. This is in furtherance of the drive towards a shift from punitive to restorative justice.

- **Sentencing of Child Offenders - Sections 452, 405**

Generally, subjecting children to formal criminal justice apparatus should come as a last resort. If there is no choice, then the child offender is to be tried and sentenced subject to the provisions of CRA, particularly sections 149-153 that created different levels of Family Courts. The idea is to treat such children as victims needing rehabilitation or reformation except where they fully understand their actions and are willing to take responsibility, in which case, they can be tried as such and if convicted, sentenced to life imprisonment in accordance with the law. Experts have however condemned juvenile laws for providing blanket justice despite the uniqueness of each child, and call for a "juveniles are different" approach in applying these guidelines, taking into consideration the circumstances and needs of each child (**Susan Young, Ben Greer, and Richard Church, Juvenile delinquency, welfare, justice and therapeutic interventions [2017](41)(1) *BJPsych Bulletin*, 21-29)**.

- **Restorative Justice – Sections 336, 337, 338, 342 490**

These provisions reemphasise a shift from punitive justice to restorative justice that addresses everybody's needs-society, offender and victim. See ***Nwude v. FRN* (2015) LPELR-25858** on restitution. See also the following provisions: sections 48, 49(3) & 51(1) TIPPEAA; 49 Cybercrimes (Prohibition, Prevention, etc.) Act (CPPA), 2015 and section 43 CFRN.

- **Non-Custodial* Sentences and Punishment - Sections 314, 321, 327, 453-459, 460-463, 467 and 468**

The counterproductive nature of imprisonment accounts for the introduction of non-custodial measures, which aim to address the problem of prison congestion and awaiting trial inmates (ATIs) and their associated problems. Measures include, *inter alia,* probation, parole, suspended sentences, conditional release, community service and confinement in a rehabilitation centre especially in the case of children. The provisions of sections 1 (1) (2) (b) (3), 2(4), 4(2) (e); and 37-44 Nigerian Correctional Service Act (NCSA), 2019 give effect to these provisions. Section 416(k) fundamentally excludes serious and perpetual offenders from benefiting from non-custodial punishment.

- **Powers of the Attorney General – Sections 104 - 106**

The powers of the Attorney General under ACJA, 2015 are exercisable in furtherance of his or her constitutional powers relating to public prosecution, which must however be exercised with due regard to *public interest, the interest of justice and the need to prevent abuse of legal process* under section 174 (3) of CFRN. Powers of the AG also extend to the power to vary bail conditions or cancel bail. Where a suspect has been granted bail and facts emerge that render the bail undesirable, the court may, on the AG's application issue an arrest warrant to give the suspect opportunity to defend himself/herself. The court may thereafter remand the suspect in prison to await trial or grant bail on stricter terms-mostly higher sums of money, payable under section 169. See section 174 CFRN

- **Witness Protection - Section 232**

Although witness protection is shrouded in controversy and often touted by defence lawyers as infringing the rights of defendants to fair hearing, particularly the right to examine witnesses against him or her as contained in s. 36 (5) (d) CFRN, it actually protects the sanctity of the criminal justice process by ensuring protection and preservation of the integrity of vulnerable witnesses. Witness protection measures under ACJA, 2015 can only be applied in serious offences, such as sexual offences, financial crimes-money laundering, corruption etc, and terrorism, among others. A list of measures, which can be adopted, includes evidence via video link, written deposition, mask, etc. Although witness protection measures have existed in Nigeria for a while, as seen in the complementary provisions highlighted, there is no robust witness protection programme capable of offering the required protection for witnesses, particularly where the testimony would be against a member of an organised criminal group or a public figure with necessary connections and wealth.

It is imperative for the country to put in place appropriate machinery for establishing a witness protection programme as done in other climes, despite its expensive nature. Note that the constitutional approval of witness protection (see s. 36 (4)) relates to “hearing in private” in the interest of defence, public safety, public order, welfare and protection of minors as well as protection of lives of parties. Witness protection measures have been applied in limited terrorism cases, such as the cases of ***Mohammed Nazeef Yunus v. FGN***

(FHC/ABJ/CR/13/14)*; and Sambo Dasuki v. FGN* (2021) NWLR Pt. 1781, 251*.*

Other legal provisions that address aspects of witness protection are sections 36(4)(a)(b) CFRN; 29 TPA, 2011 as amended; 47 TIPPEAA; 17 EFCC Act, 2004; 33, 34 TPA, 2013; and 17 Anti-Torture Act, 2017. Witness expenses is also provided for and addressed in sections 263-266.

- **Monitoring Mechanisms - Part 46; Sections 469 - 476**

ACJA, 2015 establishes an institutional framework for the monitoring of effective implementation of the Act, i.e. the *Administration of Criminal Justice Monitoring Committee (*section 469(1). The Committee, whose members will be remunerated, has a responsibility to ensure the effective and efficient implementation of the laws. The Committee has since been constituted and has commenced work. Importantly, members of the Committee must work in synergy with each other as well as other criminal justice institutions to succeed. There must also be dedication, commitment and resilience on the part of committee members as they are bound to meet bottlenecks along the way.

1.5. Learning Outcome

At the end of this chapter, the user should be able to:

- Comprehend the innovative provisions introduced by ACJA, 2015;
- appreciate the impact of ACJA, 2015, 2015 on the administration of criminal justice in Nigeria;

- demonstrate advocacy and leadership skills in anti-corruption advocacy.

1.6. Further Reading Materials

- Akinseye George, *Administration of Criminal Justice Act, [ACJA, 2015] 2015 with Explanatory Notes and Cases,* Marvelous Mike 2017).
- Adedeji Adekunle, Susie Oyakhire and Emeka Nwabuzor, *Issues in Administration of Criminal Justice Act, 2015* (NIALS 2016).
- Ngozi Ndombana, "Administration of Criminal Justice Act of Nigeria 2015: A Critique of Selected Legislative Expressions" *IALS Students Law Review (2020)7(2),* 51-65.
- UNODC, *Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery* (UNODC 2014).
- UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Punishment* (Criminal Justice Handbook Series, 2007).

Chapter 2

OVERVIEW OF ARREST, SEARCH AND SEIZURE

2.1. Learning Objectives

This chapter examines ACJA, 2015 provisions on arrest, search and seizure. It is expected that at the end of this chapter, the user is able to:

- comprehend the protocols of Arrest and other legal parameters put in place by the ACJA, 2015, to prevent arbitrary arrest and safeguard the rights of the persons arrested,
- understand the nexus between the new provisions on Arrest Protocols and the objectives of ACJA, 2015, in the context of protection of human rights,
- identify the legal measures guiding search of persons and premises as well as dealing with seized property.

2.2. Meaning and Nature of Arrest, Search and Seizure

2.2.1. Meaning and Nature of Arrest

Arrest refers to the act of taking a person into custody under the authority of the law or by compulsion of another kind and includes the period from the moment he is placed under restraint up to the time he is brought before a competent authority to order his continued custody or to release him. Also, it could mean seizure or forcible restraint or the taking or keeping of a person in custody by legal authority especially in response to a criminal charge; specifically, the apprehension of someone for the purpose of securing the administration of law, especially of bringing that person before a court. (See the cases of ***Ayakndue & Ors v. Ekprieren & Ors*** **[2012] LPELR-2007** (CA);

Emodi v. Regd Trustees of Asaba Sports Club & Ors **[2020] LPELR-52681** (CA).

Every person in a society has the right to enjoy his liberty. It therefore becomes evident that the absence of proactive guarantee of the liberty of a human person, invariably affects the protection of other individual rights such as the right to freedom of movement guaranteed under section 38 of the 1999 Constitution (CFRN). That is why a violation of this right is frowned upon by a lot of international Instruments and even domestic laws (See section 35 CFRN). This is also why the innovative provisions on arrest, search and seizure should be assessed in the light of the fundamental purposes of ACJA, 2015 under section 1, particularly as it concerns the protection of human rights of persons. For instance, the International Covenant on Civil and Political Rights, 1966 also prohibits arbitrary arrest and detention.

Article 9, ICCPR

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Arrests particularly arrests without reasonable cause and without effective legal remedies for the victims concerned; arrest by proxy; arrest for civil wrongs and inhumane treatment of arrested persons are some of the issues that were commonplace in the Nigerian Criminal justice

system until the passage of the Administration of Criminal Justice Act in 2015.

2.2.2. Meaning and Nature of Search and Seizure

A search is simply an examination of a person's body, property, or other area that the person would reasonably be expected to consider as private, conducted by a law-enforcement officer for the purpose of finding evidence of a crime. Seizure on the other hand, refers to the act or an instance of taking possession of a person or property by legal right or process; especially, in constitutional law, a confiscation or arrest that may interfere with a person's reasonable expectation of privacy. (See ***Bukur v. Kaashima*** **[2004] LPELR-12597** (CA)).

Search and seizure are practices usually employed by law enforcement agents to obtain credible evidence leading up to arrest and conviction of a suspect. The scope of powers of the police and other law enforcement agents to carry out searches and seizures vary from country to country. There are also issues bordering on the individual rights of the accused person on privacy and respect for personal property. That is why it is imperative for such searches and seizures to be carried out within the ambit of the law and such powers exercised fairly, responsibly and respectfully.

2.3. Arrest Protocols and Other Preliminary Issues

This sub-theme addresses issues of arrest bordering on notification of arrest, arrest in *lieu,* record of arrests, confessional statements, inventory of property, etc.

2.3.1. Notification of Cause of Arrest

The Act places a duty on the arresting officer to inform the suspect of the reason for his arrest and his constitutional rights to remain silent, consult a lawyer of his choice or enjoy free legal representation and also notify the next of kin or relative of the suspect. **(See section 6 ACJA, 2015, and section 35(2) of the 1999 Constitution).**

2.3.2. Prohibition of Arrest in *lieu*

The ACJA, 2015 expressly prohibits arrest by proxy or arrest in *lieu.* Before the Law, it was common practice to arrest the relatives or friends of the suspect who have absolutely nothing to do with the offence. **(See section 7 ACJA, 2015,** and **Article 7(2) of the African Charter on Human and Peoples' Rights).**

2.3.3. Unlawful Arrest

The Act in an attempt to eliminate arbitrary arrest categorically prohibits the arrest of persons for a civil wrong or breach of contract. This provision thus eliminates the practice of arresting persons over acts of a civil nature or on frivolous grounds which was the prevalent practice under section 10(1) of the CPA. (See section 8(2) ACJA, 2015). In conclusion, a person who has been unlawfully arrested and detained can claim damages. (See ***Igbokwe v, COP Edo State and Ors*** **[2017] LPELR 42072** (CA), ***Mittin v. COP Bayelsa & Ors*** **[2017] LPELR - 43064** (CA) and ***Isiyaku & Anor. v. COP Yobe State & Ors*** **[2017] LPELR-43439** (CA)). See also **section 35(6) CFRN**.

2.3.4. Humane Treatment of Suspects

The ACJA, 2015 resonates the constitutional provision on the right to dignity of a person by expressly stipulating that every suspect must be given humane treatment and not subjected to any form of torture, cruel, inhuman or degrading treatment. This provision is consistent with the right to dignity of human person guaranteed under the Constitution. **(**See **section 8(1) ACJA, 2015,** and **section 34 CFRN).**

2.3.5. Mandatory Inventory of Property

In a bid to ensure transparency and accountability, the Act imposes a duty on the police officer making an arrest or receiving an arrested person to record his details including items or property recovered from him. The recorded inventory is to be signed by the police officer and the arrested suspect after which a copy is to be handed over to the suspect's lawyer or any person authorised by him. (See **section 10 ACJA, 2015**).

2.3.6. Record of Arrests

Mandatory record of arrest is one of most laudable provisions of the ACJA, 2015, reason being that it was absent under the old Criminal Procedure Laws. The Act provides that the police officer must ensure that a suspect who has been taken to the station must fill out his details in the prescribed form. They are details of the alleged offence, date and circumstances of the arrest, full name, occupation and residential address. It goes further to provide for additional details of identification such as height, photograph, full fingerprint impressions and such other means of identification. **(See section 15(1) ACJA, 2015).**

2.3.7. Electronic Recording of Confessional Statements

The Act charges the police officer to ensure that confessional statement(s) is either made in writing or recorded electronically (in a retrievable video compact disc or other audio-visual means) where a suspect volunteers to make a statement. It also provides that an oral confessional statement shall nonetheless be admissible in evidence. **(See section 25(4) & (5) ACJA, 2015).** This no doubt takes care of situations where the suspect can retract his statement on the grounds that it was made involuntarily or as a result of undue influence or torture from the police culminating in a trial within trial procedure. (See the cases of ***Balogun v. FRN*** **[2018] LPELR-44099** (CA) and ***Abubakar v. State*** **[2021] LPELR-54740** (CA)).

2.3.8. Standard procedure for taking Statement of Suspects

With regard to the procedure for taking statement of suspects, the Act expressly provides that such statements are to be taken in the presence of the suspect's lawyer or a Legal Aid Officer or an official of the Civil Society Organisation, Justice of the Peace or any other person of the suspect's choice.

Note that none of the aforementioned persons is allowed to interfere with suspect's making of statement. Furthermore, the provision accommodates situations where the suspect does not understand or speak English language in which case an interpreter is to be provided. (See section 17 ACJA, 2015). (See also the cases of

***Orjiakor v. State* [2017] LPELR-42739**(CA) and ***Ali v. State* [2018] LPELR-48687** (CA)).

2.4. Search of Persons and Premises

In recognition of women's rights, the ACJA, 2015 provides that the search of a suspect shall be conducted decently and by a person of the same sex. (**See section 9(3) ACJA, 2015)**. The said provision is commendable as it guarantees that the search of a woman is decently conducted only by another woman except where it is impracticable as a result of the urgency of the situation or in the interest of due administration of justice.

Furthermore, the Act in a bid to protect and respect female decency and sexuality permits a woman whose custom or religious practice does not allow her to appear in public to withdraw from the house or place where a suspect is to be arrested. Due notice is to be given to her that she is at liberty to withdraw. This provision is however jettisoned where the person making the arrest is a woman. **(See section 12(3) ACJA, 2015).**

2.5. Protocols for Seizure of Goods

The ACJA, 2015 empowers the Court to restore property wrongfully obtained to the true owner which may sometimes be the State. In addition, it also gives the Court discretionary powers to award damages to the persons entitled to the property. **(See section 328 ACJA, 2015).** This provision no doubt could serve as a veritable tool for the recovery of stolen assets in corruption cases. With respect to how property is to be dealt with, it stipulates a timeframe of 48 hours within which the police must report to the court any property seized during an arrest or

investigation. The Court shall thereafter make an order for the disposal or delivery of the property to the true owner. (See section 337 ACJA, 2015, See also **The Lagos State Administration of Criminal Justice (Amendment) Law (ACJL) 2021).**

It is noteworthy that such property may be forfeited to the Federal government of Nigeria in a situation where nobody shows up to claim it after six months' notice.

2.6. Learning Outcomes

At the end of this chapter, the user should be able to:

- understand the nature of arrest, search and seizure,
- comprehend the arrest protocols and other attendant issues,
- appreciate the innovative provisions of the ACJA, 2015 on search of persons and premises,
- assess whether the innovative provisions meet the aims and objectives of ACJA, 2015,
- comprehend the steps to be taken by the police and the court with regard to seized property.

2.7. Further Reading Materials

- 'Chapter 5 Human Rights and Arrest, Pre-trial Detention and Administrative Detention' <https://www.ohchr.org/documents/publications/training9chapter5en.pdf>
- 'Tariere Egbegi, 'The Administration of Criminal Justice Act (ACJA, 2015) Overview and Tools for the Protection of the Rights of Women and Children' <https://fida.org.ng/wp-content/uploads/2020/11/THE-ADMINISTRATION-OF-CRIMINAL-JUSTICE-ACT-ACJA, 2015 .pdf >

- 'Searches and Seizures' <https://www.britannica.com/topic/search-and-seizure>
- Bryan A Garner (ed) *Black's Law Dictionary* (9th edn, West, A Thomson Reuters Business, 2009
- E4J University Module Series: Counter-Terrorism-Module 10: Arrest and Detention' <https://www.unodc.org/e4j/en/terrorism/module-10/key-issues/inetrnational-humaqn-rights-instruments.html
- Peter A Akhihiero, 'Arrest, Remand and Awaiting Trial Syndrome in Criminal Justice: Fixing the Jigsaw to end Prison Congestion' (Being a Paper presented at the Law Week of the Ekpoma Branch of the Nigerian Bar Association, 2018) < http://edojudiciary.gov.ng>
- Adedeji Adekunle, 'An Overview of the Administration of Criminal Justice Act 2015' (Paper presented at the 2016 Induction Course for newly appointed Judges and Kadis organised by the National Judicial Institute 23rd may – 3rd June 2016, Abuja) <http://nji.gov.ng/images/Workshop_Papers/2016/Induction_Course/s11.pdf >
- Yemi Akinseye George, 'ACJA, 2015,-Background, Underlying Principles & Innovations' <http://www.censolegs.org › publications>
- Yemi Akinseye-George, 'The Administration of Criminal Justice Act (ACJA, 2015) - Introductory Notes (GIZ)

CHAPTER 3

BAIL

3.1. Learning Objectives

This chapter examines bail provisions under the ACJA, 2015, with a view to ascertaining the innovations made with respect to bail applications especially as it relates to administrative bail, capital and non-capital offences, women sureties and child offenders. At the end of this chapter, the user should be able to:

- understand the meaning and purpose of bail;
- appreciate the types of bail provided for by the law;
- comprehend the ACJA, 2015, provisions on sureties, bonds person and recognizance in respect of children and women; and
- appreciate the various circumstances under which bail conditions can be varied.

3.2. Meaning and Purpose of Bail

Bail refers to security such as cash or a bond; especially security required by a court for the release of a prisoner who must appear in court at a future date. It could also mean a process by which a detained person is temporarily released until the conclusion of investigation or trial. Bail is a basic constitutional right of a suspect who is being held in custody or arraigned in court on criminal charges pending the conclusion of the case against him.

Chukwu v, FRN & Anor. **[2018] LPELR-44519 (CA)**

Without doubt, the authorities are replete on the position that bail is the setting at liberty of an accused person subject to certain conditions, but mainly of which will ensure that the person being set free from custody will appear at a certain place on prescribed day as he will be required to.

Under the Nigerian criminal justice system, the right to bail is directly linked to the constitutional right to personal liberty (section 35(1) CFRN); right to freedom of movement (section 38); right to presumption of innocence (section 36(5)); and right to be brought before a court of law within a reasonable time **(section 35(4) and (5)).** It can therefore be said that bail is a conditional constitutional right. **(*Shoneye v. State* (2015) LPELR-25862** (CA), ***Ani v State* (2002) 1 NWLR (pt7471) p.217**, ***Eyu v. State* (1988) 2 NWLR (pt 78) p.602**, ***Okafor v. State* (2015) LPELR-25681)**.

In the ACJA, 2015, a liberal regime is adopted with regard to the issue of bail to a suspect, since the purpose of bail is to respect the above constitutional rights and guarantee that the suspect returns to face his or her trial. The

Section 158, ACJA, 2015

When a person who is suspected to have committed an offence or is accused of an offence is arrested or detained, or appears or is brought before a court, he shall, subject to the provisions of this Part, be entitled to bail.

conditions for the grant of bail should therefore not be stringent or excessive in so far as the police or other arresting agency has adequate details of the suspect which could easily be used to track him down, where necessary (**sections 165(1) ACJA, 2015**). The right to bail is clearly provided for under the ACJA, 2015.

Generally, all offences are bailable except capital offences. The Judge exercises the discretion to either grant or not to grant bail and as such, he may refuse to grant bail if he reasonably believes that the suspect may commit another offence, may not return for the trial; or may interfere with the investigation (either by influencing witnesses or tampering with evidence). A Judge is required to exercise his discretion judiciously and judicially bearing in mind the suspect's fundamental right to freedom. (***Lateef Akin v. FRN v. The State*** **[2018] LPELR-45845** (CA); ***Onipede Kayode v. FRN*** **[2018] LPELR-45852** (CA)).

3.3. Types of Bail

3.3.1. Administrative Bail

Under the ACJA, 2015, the Police is empowered to grant bail to a suspect who has been taken into police custody (without a warrant) for an offence not punishable with death. This is done after the suspect must have entered into a recognizance with or without sureties for a reasonable amount of money. The recognizance shall also specify the time and place for the suspect's later appearance in court (**section 30 ACJA, 2015**).

3.3.1.1. Bail in Capital Offences

The ACJA, 2015, in making clear and detailed provisions on the grant of bail in capital offences, provides that bail may only be granted by a High Court Judge under exceptional circumstances. The circumstances include: ill health, extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year or any other circumstances that the Judge may deem exceptional depending on the facts of the case, (**section 161 ACJA, 2015,**. See also, ***Adeleke v. State*** **[2018] LPELR-45242**(CA); ***Wilfred Ezike v. State*** **[2019] LPELR-47711**(CA); ***Joseph Amaga v. State*** **[2015] LPELR-40645**(CA)). What can be garnered from this provision is that the Magistrate court does not have power to grant bail in capital offences. Also, the import of the provision is not lost in the sense that even though, bail is a constitutionally guaranteed right based on the presumption of innocence, it cannot ordinarily avail a suspect who is charged with a capital offence (i.e., an offence punishable with death) except any of the 'exceptional circumstances' mentioned under the ACJA, 2015, have been established.

3.3.1.2. Bail in Non-Capital Offences

With respect to bail in non-capital offences, the ACJA, 2015, provides for a bail application to be made on behalf of a suspect who has been taken into custody and not released on bail after 24 hours. The Court with jurisdiction to which such application is made shall order the production of the suspect, inquire into the circumstances of the detention and admit the suspect to bail where necessary. It is important to point out that the ACJA, 2015, allows such applications to be made orally (**section 32 ACJA, 2015,)**. (See, ***Felicia Ahukanna v. The State*** **[2017] LPELR-42619** (CA)).

3.4. Sureties, Bonds Persons and Recognizance in Respect of a Child

This ACJA 2015 makes provision for sureties, bondspersons and recognizance in respect of a child. These provisions are important as they are directly linked to bail. This is because bail is granted to the suspect either unconditionally or subject to the fulfilment of certain conditions which may include the production of sureties, or bondsperson, entering recognizance, etc. These terms or conditions are considered imperative to secure the suspect's availability to attend trial until the final determination of his case. The Law therefore places an obligation on a surety or bondsperson to produce a suspect who jumps bail. (***Ajayi Taiwo Olayiwola v. FRN*** **[2018] LPELR-46772** (CA)).

3.4.1. Sureties

The ACJA, 2015, has abolished the age long discriminatory practice against 'women sureties' in Nigeria by making express provisions for entering into

recognizance as sureties. It provides that no person shall be denied, prevented or restricted from entering into a recognizance or standing as a surety for any defendant or applicant solely on the ground of being a woman (**section 167 (3) ACJA, 2015).** This provision has been commended for being in consonance with section 42 CFRN and the Convention on the Elimination of Discrimination against Women (CEDAW) which Nigeria has ratified.

3.4.2. Bonds Persons

One of the innovative provisions of the ACJA, 2015, deals with professional bondspersons. It makes express provisions for the registration and use of bondspersons that may enter recognizance, stand as sureties or guarantee the deposit of money to meet the bail conditions of any person granted bail by the court within the jurisdiction of the bondsperson's registration. The Act specifically empowers the Chief Judge of the Federal High Court or Federal Capital Territory to make regulations for the registration and licensing of corporate bodies or persons to act as bondspersons within the jurisdiction of the court (**section 187 ACJA, 2015,**).

3.4.3. Recognisance in Respect of a Child

The ACJA, 2015, makes elaborate provisions with respect to recognizance of a child. It provides for recognisance for a child arrested with or without warrant that cannot be immediately taken before a court. The police officer in charge is required to inquire about the case with the exception of cases bordering on homicide or offences punishable with imprisonment for a term exceeding three years. He shall thereafter release the child on

recognizance entered into by his parent or guardian with or without sureties. This is done in order to remove the child from possible association with any reputed criminal or prostitute. The parents or guardians of the child are required by law to execute a bond with an amount which in the opinion of the officer will secure the attendance of the child for the hearing of the charge **(section 160 ACJA, 2015).**

It goes further to provide that a child defendant to whom a court orders that a recognizance be entered into on his/her behalf shall not execute the recognisance. Rather, the court requires a parent, legal guardian or other fit person, with or without sureties, to enter into a recognizance to the effect that the child shall do what is required under the order of the court **(section 166 ACJA, 2015,).**

3.5. Learning Outcome

At the end of this chapter, the user should be able to:

- understand the meaning and purpose of bail,
- comprehend the types of bail provided under the ACJA, 2015,
- appreciate the position of ACJA, 2015, on women sureties,
- understand the provisions under the ACJA, 2015, on professional bondspersons,
- appreciate the provisions of recognizance with respect to a child under the ACJA, 2015,
- understand the power of the court to vary bail conditions.

3.6. Further Reading Materials

- *NIALS Training Manual on the Implementation of the Administration of Criminal Justice Act 2015 for Prosecutors, Defence Lawyers and Judges* (2018).
- Yemi Akinseye George, 'ACJA, 2015 -Background, Underlying Principles & Innovations' <http://www.censolegs.org › publications>.
- Yemi Akinseye-George, 'The Administration of Criminal Justice Act (ACJA, 2015) - Introductory Notes (GIZ).
- Bryan A Garner (ed) *Black's Law Dictionary* (9th edn, West, A Thomson Reuters Business, 2009)
- 'Tariere Egbegi, 'The Administration of Criminal Justice Act (ACJA, 2015) Overview and Tools for the Protection of the Rights of Women and Children' <https://fida.org.ng/wp-content/uploads/2020/11/THE-ADMINISTRATION-OF-CRIMINAL-JUSTICE-ACT-ACJA, 2015-.pdf >.
- 'Arrest, Detention and Bail-United Nations Office on Drugs and Crime' <https://www.unodc.org/documents/nigeri/publications/coourtusersrguides/Arrest_Detention_Bail_Pamphlet.pdf>
- Sylvester Udemezue and Chukwunye A Ojeih, 'An Appraisal of Emerging Issues in the Law and Practice Relating to Bail, Bondspersons and Forfeiture of Recognizance in Nigeria' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3847265>.
- Adedeji Adekunle, 'Bail and Pre-trial Detention: Pertinent Considerations under the Administration of Criminal Justice Legislation'

<https://nji.gov.ng/wp-content/uploads/2020/02/PRE-TRIAL-MATTERS-AND-BAIL.pdf.>

CHAPTER 4

CHARGE, ARRAINGMENT AND PLEA BARGAIN

4.1. Learning Objectives

This chapter examines the innovative provisions of the ACJA, 2015 on charges, plea bargain, and arraignment. It explains how innovations like the inclusion of the photograph and finger impression of a defendant in the provisions on particulars in a charge, timely arraignment of a suspect and plea bargain have reformed the criminal justice system by addressing delay in criminal trials in Nigeria. It is expected that at the end of this chapter, the user is able to:

- comprehend the meaning, particulars, alteration and amendments of a charge,
- appreciate the relevance of plea bargain in criminal trials in Nigeria, and
- understand the importance of timely and proper arraignment under the ACJA, 2015.

4.2. Meaning and Form of a Charge

A charge refers to the statement of offence or offences by which a defendant is charged in a criminal trial before a court. It can be by way of summary trial or trial by way of information **(section 494 (1) of the ACJA, 2015).** The court applied this definition of charge in the decided case of ***Federal Republic of Nigeria v. Air Marshal Adesola Amosu Nunayom (Rtd) and Ors. FHC*/L/280c/16**. The ACJA, 2015, contains provisions on how defendants are to be charged. The Act provides that defendants are to be charged with incidental offences in the same transaction **(section 215 of the ACJA, 2015**, separately for distinct

offences **(section 209 of the ACJA, 2015**, and offences that fall within two definitions (section 212 of the ACJA, 2015. The defendants may also be charged jointly especially where they are accused of the same offence, where they are accessory to or attempt to commit same offence etc **(section 208 of the ACJA, 2015**.

The ACJA, 2015, provides that a charge may be in the forms set out in the Second Schedule of the Act with necessary modifications **(section 193 of the ACJA, 2015).** The Second Schedule of the ACJA, 2015, provides for forms of charges under the Penal Code and forms of charges under the Criminal Code respectively. Thus, for charges drafted under the Penal Code, the presiding officer of the court prepares the charge, and these charges contain the preamble introducing the presiding officer and the provision for the signature or seal of the presiding officer. However, for charges drafted under the Criminal Code, there is no preamble, as the person who drafts and signs, is the person who undertakes the prosecution – the law officer or legal practitioner authorised to prosecute (**section 106 of the ACJA, 2015**)

The ACJA, 2015, provides that information shall be in the form set out in Form No. 11 in the First Schedule (**section 377 of the ACJA, 2015)**. However, information precedents are contained in the Third Schedule to the ACJA, 2015. The precedents found in the Third Schedule to the ACJA, 2015 apply to information prepared in both the Criminal Code and the Penal Code. The Information contains the following: the statement of the offence which briefly describes the offence and refers to the law creating the offences, the particulars of the offence which sets out

particulars of the defendant, time and place of the alleged offence, the victim, if any, or thing against whom or in respect of which the offence was committed, and such other particulars as are reasonably sufficient to give the defendant notice of the offence with which he is charged **(section 378 of the ACJA, 2015).**

One innovative provision of the ACJA, 2015 on a charge is the mandatory requirement and the duty placed upon the prosecutor to make available to the defendant the proof of evidence it would be relying upon in proof of the offences stated in the counts of the Charge or Information **(section 379 of the ACJA, 2015).** The content of the proof of evidence is provided for in the Act (**section 379 (1) (a) and (b) of the ACJA, 2015.** The prosecutor has the power under the Act to file and serve additional proof of evidence before judgment is delivered **(section 379 (2) of the ACJA, 2015).** The Act also provides for who may file an information and they are: The Attorney General of the Federation or officers in his office; a public officer acting in his official capacity; a private legal practitioner authorized by the Attorney General of the Federation; a private person provided the information is endorsed by a law officer that had the information but declined to prosecute at the instance of the public and the private person enters into a bond to prosecute the matter to a logical end **(section 381 of the ACJA, 2015).** The Act further provides that the provisions relating to charges under the Act shall apply to information **(section 380 of the ACJA, 2015).**

4.3. Ingredients of a Charge

A charge must contain ingredients such as the name of the defendant(s), the offence the defendant is being charged, the law that is violated, the time and place of commission of the offence **(section 194 of the ACJA, 2015),** the photograph and finger print impression of the defendant. However, a proviso to **(section 196 (2))** states that the unavailability of the photograph and finger print impression of the defendant shall not invalidate a charge. The ACJA, 2015, also provides that a charge may describe the manner the offence was committed by the defendant **(section 199 of the ACJA, 2015).** The court affirmed the provisions of the ACJA, 2015 on ingredients of a charge in the following cases- ***The Federal Republic of Nigeria v. Akowa Stanley & 3 Ors.*** **FHC/ASB/11C/2015**, ***Federal Republic of Nigeria v. Nosa Ohenhen*** **Suit N: FHC/ASB/HC/2015**.

4.4. Amendment of Charges

The ACJA, 2015, vests the court with power to permit an alteration or amendment to a charge or framing of a new charge at any time before judgment is pronounced **(section 216(1)** of the ACJA, 2015 2015). The ACJA, 2015, also provides for alteration or amendment of the charge after the defendant is arraigned (section 216(3) of ACJA, 2015. The Act vests on the court the power to permit or direct the framing of a new charge or amendment of the original charge. The power that is vested in the court to frame a new charge or amend a charge can be exercised either *suo motu* or on application of the prosecution.

If a Judge is allowed suo *motu* to amend a charge after evidence has been taken and closed, can it not be said that the ACJA, 2015, allows the Judge to descend into the arena in a trial?

The ACJA, 2015, provides for alteration or amendment of a charge even before arraignment **(section 216(4) of ACJA, 2015).** The section authorises the court to frame a charge or add or alter the charge where the defendant is standing trial without a charge or with an erroneous charge.

The Act also provides that the court shall not entertain any objection at any stage of the proceeding on grounds of an imperfect charge **(Section 221 of the ACJA, 2015).** The ACJA, 2015, provides for the procedure to be followed after amendment or alteration of a charge **(sections 216(2), 217, 218, and 219 of the ACJA, 2015)**. The Act requires the amended charge to be read and explained to the defendant and the court shall call for a fresh plea. Reasonable adjournment may be granted if the court is of the opinion that proceeding with the amended charge will prejudice the defendant or the prosecutor. The Act, also allows the prosecutor and the defendant to recall or re-summon and examine any witness who may have been examined and to call any further witness after amending or altering a charge. A note of the order for amendment shall be endorsed on the charge signifying that the charge is filed in the amended or altered form **(section 218 (2) of the ACJA, 2015).** The court in ***Federal Republic of Nigeria v. John Ayoade Shamonda*** **Charge No: FCT/HC/CR/162/16**, affirmed that the innovations of the ACJA, 2015 on amendment of a charge are an expansion

of the provision of the Criminal Procedure Code on amendment of charges and are considered to be sacrosanct.

4.5. Purpose of Arraignment

Arraignment is the process of placing the defendant in the dock unfettered, reading over and explaining the charge to the defendant to the satisfaction of the court, and calling on the defendant to plead to the charges **(section 271 and 356 of the ACJA, 2015.** The purpose of arraignment is to ensure that the suspect is granted the constitutional right of fair hearing. This is because arraignment is a constitutionally guaranteed right of fair hearing available to the defendant in all criminal trials (section 36 (6) (a) CFRN). In the case of **Ibrahim *v. Federal Republic of Nigeria* (2016) All FWLR (pt. 829) 1093** (at 1102 G-H), the court affirmed that arraignment of a defendant is a mandatory requirement in every criminal trial and not optional. The elements of a valid arraignment are: the defendant is placed before the court unfettered unless he is violent or the court otherwise directs; the charge is read and explained to the defendant to the satisfaction of the court and; the defendant is called to take a plea. In the case of ***Idemudia v.The State* (1999) 1 NWLR (pt. 610) 202** (at 214 paragraphs C-D), the court held that the failure to comply with the provisions of the law on arraignment will lead to the proceedings being declared a nullity. Arraignment and taking of a plea commence a criminal trial.

4.6. Plea and Types of Pleas

A plea refers to a defendant's formal response of guilty or not guilty to a criminal charge. There are different types of

pleas available to the defendant during a criminal proceeding. These are: plea bargain; guilty plea; plea of not guilty; plea of insanity; stays mute; plea of *autrefois acquit* or *autrefois convict*. The ACJA, 2015, also makes provisions for other pleas available to a defendant in a criminal trial where the defendant did not enter a plea bargain**.**

4.6.1. Guilty Plea

Where the defendant pleads guilty to the charge, he is admitting that he committed the crime to which he is pleading guilty. Where the court is satisfied with the guilty plea of the defendant, the court shall convict and sentence the defendant **(section 274 (1) and (2) of the ACJA, 2015**. The court has affirmed the above provision of the ACJA, 2015 on convicting a defendant on his own plea of guilty (***Federal Republic of Nigeria v. Salihu Abdullahi*** **FHC/BAU/25C/2016**; ***Federal Republic of Nigeria v. Muhammadu Sani*** **FHC/BAU/45C/2016**).

Where the defendant pleads guilty to an offence not charged, the court shall direct the prosecutor to amend the charge and the defendant will take a fresh plea on the amended charge (section 275 of the ACJA, 2015). Where the defendant pleads guilty to a capital offence, the court will record a plea of not guilty and require the prosecution to lead evidence (section 274 (3) of the ACJA, 2015).

4.6.2. Plea of Not Guilty

Where the defendant pleads not guilty to the charge, the defendant is challenging the prosecution to prove beyond a reasonable doubt that he or she committed the crime charged. When the defendant pleads not guilty, he has

put himself on trial **(section 273 of the ACJA, 2015).** The court affirmed this position of the ACJA, 2015 in the case of ***Rickey Tarfa Mustapha (SAN) v. Federal Republic of Nigeria*** **(2017) LPER-43131** (CA))

4.6.3. Plea of Autrefois Acquit, Autrefois Convict or Pardon

The ACJA, 2015, also provides that a defendant can plea to autrefois acquit which means that he has been tried for the same offence before and has been acquitted. The plea is an application of the rule against double jeopardy, which states that a person cannot be tried twice for the same offence. The defendant can also plead to autrefois convict, which means that he has been tried and convicted previously for the same offence. The defendant may also plead pardon, which means that he has obtained pardon for the offence **(sections 238 and 277 (1) (a) and (b) of the ACJA, 2015 and section 36(9) and (10) CFRN).** Where any of these pleas are raised by the defendant, the court shall inquire if the pleas are true and where they are false, the defendant will be required to plead to the charge **(section 277(2) and (3) of the ACJA, 2015).** The court in the case of (***Attorney General of the Federation v. Azeez Taiwo and Ibrahim Taiwo Isiaq*** **FHC/IL/IC/2017)**, upheld the provisions of the law that a defendant convicted or acquitted shall not be tried again for kindred offence.

4.6.4. Failure of the Defendant to Plead Due to Malice

The defendant may decide to keep mute, that is, where the defendant decides not to say anything, the court is required to enter a plea of not guilty which will have the same effect as if the defendant pleaded to the charge

(section 276 (1) and (2) of the ACJA, 2015). The court is required to inquire into the mental state of the defendant and where the defendant is of sound mind, the court will proceed with the trial **(section 276 (3) and (4) of the ACJA, 2015).** But, where the defendant is of unsound mind, the court shall order for a medical examination to ascertain the mental state of the defendant **(section 278 of the ACJA, 2015).** Where the court is not satisfied that the defendant is capable of making a defence the court can adjourn the trial and remand the defendant in a suitable place for observation for not more than one-month **(section 278 (3) ACJA, 2015).** Where the defendant is certified to be of unsound mind on a bailable offence, the court may release him based on discretion and where it is not a bailable offence, the court shall report to the Attorney General of the Federation who may order the defendant to be confined in a lunatic asylum or a place of safe custody **(section 281 of the ACJA, 2015).** The court affirmed in the case of ***Alake v. The State*** **(1991) 7 NWLR (Pt.205)** 567, that any criminal trial no matter how well conducted without the plea of the accused first and properly taken is a nullity.

4.7. Plea Bargain

Plea bargain refers to a situation where a defendant pleads guilty to a charge or a lesser charge in exchange for a lighter sentence. Plea bargain is one of the innovative provisions of the ACJA, 2015. The Act defines plea bargain as the process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable agreement including the plea of the defendant to a lesser offence than that charged in the complaint or information and in conformity with other

conditions imposed by the prosecution, in exchange for a lesser sentence subject to the approval of the court **(section 494 of the ACJA, 2015).** Plea Bargain could take any of the following two forms; it could either be 'Sentence Bargain' or 'Charge Bargain **(section 270 (4) (a) of ACJA, 2015).** It is noteworthy that plea bargain can only come up after criminal proceedings had been commenced. This is because the Act states that it is 'a process in criminal proceedings.'

The ACJA, 2015 provides elaborate guidelines for the conduct of plea bargain in Nigeria **(section 270** of the ACJA, 2015) and these guidelines were affirmed by the court in the case of ***FRN v. Michael Ogun*** **FCT/HC/CR/15/14**. The ACJA, 2015 allows a prosecutor or the defence to initiate a plea bargain. The Act provides that a prosecutor may accept or offer plea bargain to a defendant charged with any offence, though this has to be done with the consent of the victim or his representative after the presentation of the evidence of the prosecution **(section 270 (1) and (2) of the ACJA, 2015 2015).** The prosecutor must ensure that the acceptance of such plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process **(section 270 (3) of the ACJA, 2015).** In determining whether it is in the public interest to enter into a plea bargain, the prosecution must weigh all relevant factors, including: the defendant's willingness to cooperate in the investigation or prosecution of others; the defendant's history with respect to criminal activity; the defendant's remorse or contrition and his willingness to assume responsibility for his conduct; the desirability of prompt and certain disposition of the case; the likelihood

of obtaining a conviction at trial; the probable effect on witnesses; the probable sentence or other consequences if the defendant is convicted; the expense of trial and appeal; the need to avoid delay in the disposition of other pending cases and the defendant's willingness to make restitution or pay compensation to the victim where appropriate **(section 270 (5) (b) of the ACJA, 2015).**

The ACJA, 2015, provides for the prosecutor to enter into a plea or sentence agreement only after consultation with the investigating police officer and the victim or his representative **(section 270 (5) (a) of the ACJA, 2015).** Where it is reasonably feasible to afford the victim or his representative the opportunity to make representations regarding the contents of the agreement and the inclusion in the agreement of compensation or restitution order, such agreements between the parties must be in writing and signed. The presiding judge or magistrate is not permitted to be part of the discussions **(section 270 (8) of the ACJA, 2015).** Where there is an agreement between the parties, the prosecutor shall inform the court of the agreement reached by the parties, it is the duty of the presiding judge or magistrate to inquire from the defendant to confirm the correctness and the voluntariness of the agreement **(section 270 (10) of the ACJA, 2015).** After considering the agreed sentence, the presiding judge or magistrate may impose the sentence agreed upon, or impose a lesser **(section 270 (11) of the ACJA, 2015).** Where a presiding judge or magistrate is of the view that the offence requires a heavier sentence, than the one agreed, he is required inform the defendant of his view about the heavier sentence **(section 270 (11) (c) of the ACJA, 2015).** The defendant may decide to

abide by his plea of guilty and accept the sentence by the judge or magistrate, or he may decide to withdraw from his plea agreement. If he withdraws his plea, the trial precedes *de novo* before another presiding judge or magistrate **(section 270 (16) of the ACJA, 2015)**.

> The Act provides that any judgment delivered by the court under a Plea Bargain cannot be subject to an appeal unless fraud is alleged (Section 270 (18) of the ACJA, 2015). This provision is similar to Consent Judgment in civil proceedings.

The provision, which allows the judge or magistrate to decline to be bound by the sentence agreed by the parties, is a safeguard for situations where public sensibility may be offended by the agreed sentence. Where a person is convicted and sentenced under a plea bargain agreement, the ACJA, 2015 provides that the person shall not be charged or tried again on the same facts for the greater offence earlier charged to which he had pleaded to a lesser offence **(section 270 (17) of the ACJA, 2015)**.

4.8. Purpose of Plea Bargain

Plea Bargain is one of the tools employed in the criminal justice system for management of caseload of prosecutors and the court. It reduces the burden on prosecutors and saves resources for the State especially resources that would have been spent investigating the matter. Plea bargain hastens the process of criminal trials. It is significant in reforming offenders by allowing offenders voluntarily submit before the law without having to waste time on their trials. Plea bargain eliminates any form of

uncertainty and may help the defendant in receiving lighter sentence. Plea bargain is a framework where the defendant and the prosecutor can reach an agreement which settles the matter in what appears to be fair to all parties concerned. A defendant that plea bargains to a joint charge, may be crucial in supplying information which may be useful in the prosecution of other suspects. It may help in the protection of victims and witnesses in criminal trial who may not be required to give evidence during trial.

4.9. Learning Outcome

At the end of this chapter, the user should be able to:

- understand the innovative provisions of the Administration of Criminal Justice Act of 2015 on content of a charge, the procedural requirement for filing and alteration of Charges;
- appreciate the innovations of the Act with regards to the guidelines for plea bargain; and
- understand the implication of terms such as arraignment and pleas.

4.10. Further Reading Materials

- Yemi Akinseye – George, *Administration of Criminal Justice Act (ACJA, 2015) with Explanatory Notes and Cases*(Centre for Social Legal Studies, 2017) pp. 249
- Jiti Ogunnye, and others*, Criminal Justice System in Nigeria the Imperative of Plea Bargaining* (Lawyers' League for Human Rights, 2005) pp.186
- Adedeji Adekunle(ed), *Digest of Cases on the Administration of criminal Justice Act 2015* (NIALS press with the support of Macarthur Foundation, 2019) Yemi Akinseye – George, The Administration of

Criminal Justice Act (ACJA, 2015) Introductory Notes, Implemented by GIZ.

- G.P West, Charge and Information Paper Presentation at the Three –Day Legal Department In-House Training Workshop on the Administration of Criminal Justice Act, 2015.
- Emmanuel Reason Abajuo, 'An Appraisal of the Administration of the Criminal Justice Act, 2015<https://www.researchgate.net >
- Bryan Garner, 'Definition of Plea,' *Black's Law Dictionary* Nineth Edition pp.126.

CHAPTER 5

TRIAL

5.1. Learning Objectives

A key objective of the ACJA, 2015 is to ensure speedy dispensation of justice by ending delays in criminal trials. The objective of this chapter is to examine the various ways that the ACJA, 2015 addresses a wide range of issues that prior to the enactment of the Act in 2015, were responsible for trial delays under the Nigerian criminal justice system.

It is expected that at the end of this chapter, the user is able to:

- comprehend the innovative provisions on trials in the light of the ACJA's objective of dispensation of maintaining speedy trial,
- Understand the time protocol for remand orders;
- appreciate the difference between holding charge and remand orders,
- appreciate the essence of abolishing stay of proceedings and frivolous adjournments,
- understand the essence of case management, witness expenses and witness protection.

5.2. Meaning of Trial

Trial refers to a legal process in which someone who stands accused of a crime or misdemeanour is judged in a court of law. The Black's Law Dictionary defines it as a formal judicial examination of evidence and determination of legal claims in an adversary proceeding. It connotes the gamut of processes involved in a case from the commencement to the point when judgment is finally given. Judgment is the final stage of a trial. A criminal trial

commences with arraignment and ends with a sentence. A criminal trial must be before a court of law (section 93 (1) of the ACJA, 2015), the court approved this position in the case of ***Ikenyi v. Ofene*** **(1985) 2 NWLR (Pt 5) 126**. A trial must also be in public as required by the Constitution. **(Section 36 (3) and (4) of the Constitution of Federal Republic of Nigeria (CFRN 1999)** 1999 see **section 259 and 260 of the ACJA, 2015)**.

Virtual court proceedings are public sittings should be encouraged (*AG Lagos state v. AGF* (2020) 12 NWLR (Pt 1738) 345, and *also AG Ekiti state v. AGF* 2020) 12 NWLR (Pt 1738) 349) Note also that also the provisions in Practice Directions of the various courts during the Covid 19 pandemic.

The ACJA, 2015 provides that a defendant shall be present in court during the whole of his trial **(section 266 of the ACJA, 2015).** There are however some permissible circumstances where the defendant may be absent. These are: when the defendant misconducts himself in such a manner as to render his continuing presence impracticable or undesirable; or at the hearing of an interlocutory application. The above provision, however, is made subject to the power of a Magistrate as provided under the Act to dispense with personal attendance of a defendant where a summons is issued and the offence has a penalty of fine not exceeding N10,000 or imprisonment for a term not exceeding 6 months; where the offence is punishable by fine or imprisonment or both; and the offence is punishable by fine only, if the defendant pleads guilty in writing or appears and so pleads by his legal practitioner **(section 135 of the ACJA, 2015,).**

Where the attendance of the defendant has been dispensed with and subsequently required, the court may adjourn the proceedings and direct on the attendance of the defendant **(section 135 (4) and (5) of the ACJA, 2015).** Where the defendant fails to appear and no sufficient cause is given for his absence, then if the court is not satisfied that the defendant was duly served with the summons or that a warrant issued was not executed, the court may adjourn the hearing to another day until the service is effected or warrant executed. On the other hand, if the court is satisfied that the summons was duly served or that the defendant had notice of hearing, the court may issue a bench warrant for his apprehension to stand for his trial **(section 352(1) and (2) of the ACJA, 2015)**. The court approved this provision of the law in the case of ***Federal Republic of Nigeria v. Jimoh Hassan*** **FCT/HC/M/339/2016**.

Where the defendant appears in obedience to a summons and the complainant fails to appear the court shall dismiss the case **(section 351 of the ACJA, 2015)** and where both parties fail to appear, the court shall make orders to ensure that justice is done **(section 353 of the ACJA, 2015).** Where a defendant charged before the court is not represented by a legal practitioner, the court shall inform him of his rights to a legal practitioner, and enquire from him whether he wishes to engage his own legal practitioner, or a legal practitioner engaged for him by way of legal aid **(section 349 of the ACJA, 2015,).** The Act provides that the court shall ensure that the defendant is represented by Counsel in capital offences **(section 349 of the ACJA, 2015)**. A defendant who refuses to be represented by Counsel shall, after being informed of the

risks of defending himself in person, be deemed to have elected to defend himself in person and absence of counsel shall not vitiate the trial **(section 349(6) of the ACJA, 2015).**

5.3. Trial Generally

The ACJA, 2015 contain some innovative provisions aimed at addressing the problem of delays in criminal trials. These provisions have been put in place to ensure amongst others, quick disposal of criminal cases in the interest of justice and the rights of a suspect, the defendant, the victim and the society at large.

5.3.1. Trial in Absentia

The ACJA, 2015 provides that a defendant must be present all through his trial that is from arraignment to conviction and sentence unless he falls under any of the exemptions provided under the Act **(section 266 of the ACJA, 2015).** The presence of a defendant is therefore mandatory except where permissible under the Act. However, ACJA, 2015 provides an exception to the mandatory requirement of the presence of a defendant in court for his trial. The Act permits a court to continue with the trial of a defendant who is on bail, but fails or refuses to return for his trial after arraignment **(section 352 (4) of the ACJA, 2015).** After two adjournments without reasonable explanation, the court is empowered to continue with the trial in the absence of the defendant and convict him, unless the court sees reasons to the contrary. Sentence shall be imposed when the defendant is arrested or surrenders to the custody of the court **(section 352(5) of the ACJA, 2015).** The court affirmed this

provision of the law in ***FRN v Alhaji Abdulwaheed Popoola*** **CR/50/10**.

> The provisions of section 352(4) on trial in absentia will not apply to try (sic) a defendant who is standing trial for a capital offence. To do so will be an infringement on the fundamental right to fair hearing of the defendant.
> - *FRN* v. *Maxwell Ajukwu and 3 Ors* FCT/HC/CR/292/15.

5.3.2. Trial of Child Offenders

The ACJA, 2015 provides for application of the Child Rights Act 2003 to criminal proceedings against children **(sections 371 and 452(1) of ACJA, 2015).** However, the provisions of ACJA, 2015 relating to bail shall apply to bail proceedings of a child offender (section 452(2) of the ACJA, 2015). This innovative provision of the Act seeks to protect children.

Another innovative provision of the Act which seeks to protect children is the prohibition on children from being present in court during the trial of other persons except: an infant in the arms of a parent or guardian, the child is the defendant charged with the offence or he is a witness or his presence is required for the purposes of justice in which event he may remain to the extent that his presence is necessary **(section 262 of the ACJA, 2015).**

The Act also provides that for determination of the age during any criminal proceedings where the age of a person is in issue, the court may determine the question by taking into account the physical appearance of the person concerned or any evidence in relation to the age of

the person concerned, received by the court in accordance with the provisions of the Evidence Act 2011, the Child Rights Act or any law in force **(section 264 of the ACJA, 2015).**

The Act provides for death sentence to be substituted with life imprisonment or to a term as the court may consider appropriate in consideration of the principles in **section 401** of the Act for child offenders found guilty of capital offences at the time the offence was committed **(section 405 of ACJA, 2015).**

5.3.3. Trial of Corporations

The ACJA, 2015 provides for the trial of a corporation with its representative appearing on its behalf **(section 478 of the ACJA, 2015).** The corporation in the Act refers to a corporate body, incorporated in Nigeria or elsewhere **(section 477 of the ACJA, 2015).** However, when the corporation appears or fails to enter a plea, the court shall order a plea of not guilty to be entered and the trial shall proceed accordingly.

More so, any requirement of the Act that says anything must be done in the presence of the defendant, or shall be read or said or explained to the defendant, shall be construed as a requirement that the thing was done in the presence of the representative or read or said or explained to the representative **(section 482 of the ACJA, 2015).** The Act expressly provides for the application of its provisions to a corporation, in much, the same way as they apply to any adult. It also provides that a corporation may be charged jointly and tried with an individual for any offence (section 484 of the ACJA, 2015,

see also **Orji Uzor Kalu and Slok Nig *Ltd* SC.622C/2019**) By virtue of the provision of the ACJA, 2015, an information may be preferred against a corporation **(section 479 of the ACJA, 2015).** This was not the position of the law before the enactment of the ACJA, 2015.

5.4. Prosecution of Offences

The ACJA, 2015 contains some innovative provisions on prosecution of offences. The Act provides for persons who can prosecute offences under the Nigerian Criminal justice system. These are: The Attorney-General of the Federation or a Law Officer in his Ministry or Department; A legal practitioner authorised by the Attorney-General of the Federation; A legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly **(section 106 of the ACJA, 2015).** The Act provides that the Attorney General of the Federation may prefer information in any court in respect of an offence created by an Act of the National Assembly. **(section 104(1) of The ACJA, 2015).** The Attorney General of the Federation also has power to issue legal advice or directives to the police **(section 105(1) of the ACJA, 2015).**

The powers to discontinue criminal cases by entering a *nolle prosequi* and to withdraw from prosecution in trials and inquiries and the legal effects of any of such powers when exercised are also provided for in the Act **(section 107 of the ACJA, 2015).** Where the Attorney-General of the Federation enters a *nolle prosequi* the suspect shall be discharged and released if he is in custody, where the

suspect is on bail the recognizance shall be discharged **(section 107 (2) of the ACJA, 2015).**
The Act provides that the effect of the discontinuance is a mere discharge and shall not operate as a bar to any subsequent criminal proceedings against the suspect on the account of the same facts **(section (107(4) of the ACJA, 2015).** However, it is important to state that the stage at which discontinuance is made is very significant because it goes to the root of the case. To buttress this point, the Act explicitly provides that where the withdrawal is made before the defendant is called upon to make his defence, he shall be discharged of the offence **(section 108 (2) (a) of the ACJA, 2015).** But, where the defendant has made his defence, he shall be acquitted of the offence **(section 108 (2) (b) of the ACJA, 2015).** The court shall in all cases, endorse its reasons on the record **(section 108 (3) of the ACJA, 2015).**

A private person can institute criminal proceedings under the Act by fiat of the Attorney-General of the Federation **(section 381 (1) (d) of the ACJA, 2015);** by complaint, **(section 89 (3) of the ACJA, 2015)** or by information **(section 383 of the ACJA, 2015),** subject to compliance with the conditions in that section. The conditions are that: the information must have been endorsed by the Attorney-General of the Federation or a law officer acting on his behalf that he has seen the information and has declined to prosecute the offence set out therein; the private person must enter a recognizance in such sum as may be fixed by the court with a surety, to prosecute the information to conclusion from the time the defendant shall be required to appear; pay such costs as may be ordered by the court; or deposit in the registry of the court,

such sum of money as the court may fix. Where a private prosecutor withdraws from prosecution the court may in its discretion award costs against the prosecutor **(section 108(4) of the ACJA, 2015).**

The ACJA, 2015 provides for the different methods of instituting criminal proceedings **(section 109 and 110(a) of the ACJA, 2015).** In a Magistrates' Court, criminal proceeding may be instituted by a charge; a complaint whether or not on oath; or upon receiving a First Information Report as provided **(section 109 of ACJA, 2015).** While in the High Court, criminal proceedings may be instituted by an information by the Attorney-General of the Federation **(section 104 of the ACJA, 2015);** by information or charge filed in the court after the defendant has been summarily committed for perjury by a court under the provisions of the ACJA, 2015 **(section 109 (c) of the ACJA, 2015);** by information or a charge filed in the court by any other prosecuting authority **(section 109 (d) of the ACJA, 2015)** and by information or charge filed by a private prosecutor subject to the provisions of the ACJA, 2015 **(section 109 (e) of the ACJA, 2015, 2015).** Noteworthy, is the fact that where in the proceeding before a Magistrates' Court, the court at any stage before judgment, is of the opinion that the case is one which ought to be tried by the High Court, he shall transfer the case along with the suspect to a High Court for trial upon a charge or information **(section 112(11)** of the ACJA, 2015). Under the ACJA, 2015, leave is not required to file information in the High Court **(section 379 of the ACJA, 2015)**. Trials shall be held in the High Court by information filed by the persons listed therein **(section 348(1) of the ACJA, 2015).**

5.4.1. Abolition of Lay Prosecution

It has been stated above that the ACJA, 2015 has changed the law with respect to persons authorized to prosecute criminal cases in Nigeria. The Act has limited the power to prosecute criminal cases to the Attorney-General of the Federation or a Law Officer in his Ministry or Department; a legal practitioner authorised by the Attorney General of the Federation or a legal practitioner authorised to prosecute by this Act or any other Act of the National Assembly **(section 106 of the ACJA, 2015),** See also **Section 66 of the Police Act 2020).** The implication is that the ACJA, 2015 has by this provision abolished lay prosecution. Therefore, the decision of the Supreme Court in ***Federal Republic of Nigeria v. Osahon (2006)5 NWLR (PT.973)*** 361 with respect to lay prosecution is no longer good law. Lay prosecution contributes to the delay of criminal trials in Magistrate courts which ought to be courts of summary jurisdiction.

5.5. Remand Proceedings and Time Protocol for Remand Orders

The ACJA, 2015 has abolished the practice of holding Charge whereby suspect is taken to a magistrate court that lacks jurisdiction for the purpose of getting a remand order to detain the suspect pending when the Police are ready to charge the suspect to court. Holding charge made it easy for police to remand suspects at will or sometimes indefinitely, leading to the congestion of the correctional centres. The ACJA, 2015 has set time limits for remand of suspects to ensure that suspects are not kept indefinitely and to reduce the number of suspects awaiting trial in the correctional centres.

The ACJA, 2015 has authorised a Magistrate or a Judge to remand a suspect in prison custody if the court is satisfied that there is a probable cause to remand the suspect pending the receipt of a copy of the legal advice from the Attorney General of the Federation and arraignment of the suspect before the appropriate court that has jurisdiction over the offence **(section 294) of the ACJA, 2015).** The remand order shall be for a period not exceeding fourteen (14) days at the first instance, **(section 296 (1) of the ACJA, 2015,)** and renewable for a time not exceeding fourteen (14) days where good cause is shown in writing **(section 296 (2) of the ACJA, 2015,).** After the period of 28 days, if the suspect is still in custody, the court may grant the suspect bail **(section 295 of the ACJA, 2015).**

However, the court may also not grant bail to the suspect but issue hearing notices on any of the authorities concerned **(section 296(4) of the ACJA, 2015)** and adjourn the matter for a period not exceeding fourteen (14) days with the suspect still remanded. On the return date, if the authority concerned requests for and shows good cause to another remand, the Court may remand the suspect for a final period not exceeding fourteen (14) days for the suspect to be arraigned for trial before an appropriate court **(section 296 (5) (a) of the ACJA, 2015,).** At the end of this final period of remand, if good cause is not shown by the authorities concerned, the suspect shall be immediately released from custody **(section 296 (6) of the ACJA, 2015).**

The ACJA, 2015, by this provision seeks to end the practice of detaining suspects indefinitely. The Magistrate

who ordered the remand is obliged to recall the case after fourteen (14) days in order to ascertain whether there is justification for the remand. By the provisions of the ACJA, 2015, a remand proceeding will commence with the filing of an *exparte* application using the report and request form contained in Form 8 in the First Schedule of the Act and the forms will be verified on oath and contain reasons for the remand request **(section 293 (2) of the ACJA, 2015).**

5.6. Case Management and Disclosure Protocols

The ACJA, 2015, contains innovative provisions that are useful in managing case flows in order to eliminate delays in criminal proceedings. These provisions are as follows:

5.6.1. Stay of Proceedings and other Preliminary Objections

The ACJA, 2015 abolished applications for stay of proceedings in criminal trials. (**section 306 of the ACJA, 2015).** The provision has the potential to curb the misuse of interlocutory appeals to delay trials. The effect of this section is that applications for stay of proceedings shall no longer be entertained. The court affirmed this decision in the following cases: ***Ikechukwu v. Federal Republic of Nigeria & 2 Ors*** **(2015) NWLR (PT.1457)**; ***FRN v. Babalola Borisade (2015) All FWLR (Pt. 785) 227***.

The ACJA abolished Stay of Proceedings in criminal trials to eliminate undue delay occasioned by interlocutory appeals. (Section 306 of the ACJA, 2015) Olisah Metuh v. FRN (2017) 4 NWLR (pt. 1554) 108 at 131. The Supreme Court upheld the provisions of the ACJA, by holding that no court in Nigeria has the power to stay criminal proceedings.

The ACJA, 2015 also provides that objections shall not be entertained during criminal trials on ground of imperfect or erroneous charge **(section 221 of the ACJA, 2015, 2015)**. The court affirmed this provision of the Act in case of ***FRN v. Alex Badeh* FHC/ABJ/CR/46/2016**. The ACJA, 2015 also provides that after the plea is taken, the defendant may raise any objection to the validity of the charge or the information at any time before judgment, provided that such objection shall be considered along with the substantive issues and a ruling made at the time of delivery of judgment **(section 396 (2) of the ACJA, 2015**). A community reading of the two provisions (**section 221 and 396(2) of the ACJA, 2015)** reveals that the court will only rule on any objection raised during delivery of judgment. The court affirmed this decision in the following cases (***FRN v. Lawan* (2018) LPELR-43973 (CA); *Joshua Dariye v. FRN (2015)10 NWLR (pt 1467))***. *This* is to avoid delays on criminal trials arising from preliminary applications.

5.6.2. Day- to- day Trial and Adjournments

The ACJA, 2015 provides that on arraignment, the trial of the defendant will proceed from day-to-day until conclusion (**section 396(3) of the ACJA, 2015; section**

35 (4) and (5) of the CFRN, 1999). The court held in ***Olaolu v. FRN*** **(2015) LPELR- 24778** (SC)) that the defendant is entitled to speedy trial. Where the day- to-day trial is impracticable after arraignment, no party to the proceedings shall be entitled to more than five (5) adjournments from arraignment to judgment (**section 396 (4) of the ACJA, 2015**), provided that the interval between each adjournment shall not exceed fourteen (14) working days. Where it becomes impracticable to conclude the trial after both parties have exhausted five adjournments each, the court shall grant adjournment where necessary and it shall not exceed seven (7) days inclusive of weekends (**section 396 (5) of the ACJA, 2015**). The Act empowers the court to award cost with the purpose of discouraging frivolous adjournment (**section 396 (6) of the ACJA, 2015**).

5.6.3. Elevation of a Judge

The ACJA, 2015 allows a Judge of the High Court who is elevated to the Court of Appeal to preside as a High Court Judge for the purpose of concluding partly heard criminal cases pending before the Judge at the time of the elevation. The cases shall however be concluded within a reasonable time **(section 396 (7) of the ACJA, 2015).** This provision will not prevent the Judge from resuming duty as a Justice of the Court of Appeal. This novel provision of the ACJA, 2015 was designed to solve the problem where trials have to commence *de novo* due to elevation of trial Judges and also ensure speedy trials. This provision has however been struck down by the Supreme court for being unconstitutional in the case of ***Udeogu v. FRN & 2 Ors, SC.622C/2019.***

The provision of the ACJA on elevation of Judges has recently suffered technicality as the Supreme Court held that the provision (section 396(7) of the ACJA, 2015) is inconsistent with the provisions of the Constitution (section 290(1) and 250 (2) of CFRN, 1999). The Supreme court based on the above decision nullified the decision of the Court of Appeal in *Udeogu v. FRN &2ors*

- *Orji Uzor Kalu and Slok Nig Ltd* SC.622C/2019

5.6.4. Timeline for Trials in Magistrate Courts

The ACJA, 2015 prescribes the time within which criminal trials shall be commenced and concluded in the Magistrates' Court. The Act requires that trial must commence within thirty (30) days of filing and concluded within a reasonable time **(section 110 (3) of the ACJA, 2015).** The Act further provides that where trial is not commenced within stipulated time (30 days) and concluded within a hundred and eighty (180) days of arraignment, the particulars of the charge shall be forwarded to the Chief Judge with reasons for failure to commence or conclude the trial **(section 110 (4) of the ACJA, 2015).** It therefore follows that, reasonable time as envisaged by the Act means not more than one hundred and eighty (180) days of arraignment.

5.6.5. Assignment of Information and Issuance of Trial Notices in the High Court

The ACJA, 2015 empowers the Chief Judge to take appropriate steps to assign information filed to a court for trial within fifteen (15) working days after filing **(section 382 (1) of the ACJA, 2015).** When the Information is assigned, the court shall within ten (10) working days issue trial notices to the witnesses and defendants and

where the defendant is in custody, a production warrant properly endorsed by the judge in respect of the defendant charged, to ensure the defendant's appearance in court on the date of arraignment. The section states further that, the Chief Registrar shall ensure the prompt service of the notice and Information not more than three days from the date of issuance **(section 382 (2) of the ACJA, 2015).**

5.6.6. Quarterly Returns to the Chief Judge

The ACJA, 2015 contains provision for courts to make quarterly returns to the Chief Judge on particulars of all cases, including charges, remand or other proceedings commenced and dealt with in the court within the quarter. This is a way of promoting accountability with respect to the use of judicial time and resources **(section 110 (4) of the ACJA, 2015).**

5.6.7. Returns by Comptroller General of Correctional Service

Another provision of the ACJA, 2015 aimed at speeding up criminal trials is the requirement for mandatory returns by the Controller General of Service of all persons held in correctional centres for more than one hundred and eighty days (180) days after the date of arraignment. These returns are to be made every ninety (90) days. The contents of the returns include the name of the suspect, passport photograph, date of arraignment or remand, date of admission to custody, particulars of the offence charged, court of arraignment, name of prosecuting agency and any other relevant information. These returns shall be made to the following persons: The Chief Judge of the Federal High Court; Chief Judge of the Federal

Capital Territory; President of the National Industrial Court; Chief Judge of the State in which the prison is situated and; the Attorney-General of the Federation (**section 111 (1) of the ACJA, 2015**).

5.6.8. Timeline for Issuance of Legal Advice

The ACJA, 2015 provides for timeline for the Attorney General of the Federation to issue legal advice. The Act provides that the timeline for such legal advice shall be within fourteen (14) days of receipt of police case file. The Attorney-General of the Federation by this provision is mandated to issue and serve such legal advice indicating whether or not there is a prima facie case against a suspect for which the suspect can be prosecuted. If the Attorney General is of the opinion in his legal advice that the suspect has no *prima facie* case to answer, he shall serve a copy of the legal advice on the police or the head of the police legal unit, the court before which the suspect was remanded in custody or before whom the suspect was granted bail, the suspect or his legal representative **(section 376 (2) and (3) of the ACJA, 2015).**

5.6.9. Witness Refusal to be Sworn or Produce Evidence should not Affect the Disposal of Criminal Proceedings.

The ACJA, 2015 provides that the refusal of a witness to answer any question put to him or his refusal or neglect to produce any document the court requires of him will not preclude the court from disposing the case according to any other sufficient evidence taken by the court **(section 250 of the ACJA, 2015).** This is to prevent delay of the trial.

5.6.10. Disclosure Protocol

The ACJA, 2015 strengthens the constitutional provision on right to fair trial (**section 36 CFRN, 1999**) by making it mandatory for the prosecution to disclose to the defence all relevant materials he will be relying upon during the trial. This disclosure has to be at the commencement of the trial **(section 350 (2) of the ACJA, 2015).** The Act requires the prosecution to disclose materials which include the proof of evidence consisting of: the list of witnesses; the list of exhibits to be tendered; summary of statements of the witnesses; copies of statement of the defendant; any other document, report, or material that the prosecution intends to use in support of its case at the trial; particulars of bail or any recognizance, bond or cash deposit, if defendant is on bail; particulars of place of custody, where the defendant is in custody; particulars of any plea bargain arranged with the defendant; particulars of any previous interlocutory proceedings, including remand proceedings, in respect of the charge; and any other relevant document as may be directed by the court **(section 379 (1) of the ACJA, 2015).**

5.6.11. No Case Submission at the Instance of the Court

One of the innovations of the ACJA, 2015 is the power of the Court to raise a no case submission on its own motion after hearing the evidence of the prosecution, and the court is of the opinion that the evidence is not sufficient enough to justify the continuation of the trial or at the close of the evidence in support of the charge against the defendant **(section 302 and 357 of the ACJA, 2015)**. The court affirms the provision of the ACJA, 2015 which empowers the court, on its own motion, to discharge a

defendant if it finds that no *prima facie* case has been established at close of prosecution's case. (***Federal Republic of Nigeria v. Halilu Mohammed Jega & Suab Nigeria Ltd*** **Charge No: FCT/HC/CR/15/14**; ***Commissioner of Police*** **v.** ***Julius Akhere*** **& 2 Ors FCT/HC/CR/268/13)**.

5.7. Witnesses

A witness is a person who has information which is crucial to judicial proceedings, including criminal proceedings. In criminal proceedings, the testimonies of witnesses are the prime source of evidence for the prosecution in discharging their burden of proving the alleged guilt of the defendant. The provisions of the ACJA, 2015 regarding the rights of witnesses are simply the right to compensation for expenses incurred to attend the court proceedings as well as ensure witness protection.

Types of witnesses are provided under the Evidence Act and they are the accomplice **(section 177 of the Evidence Act 2011),** the child witness, **(section 182 (1) of the Evidence Act 2011)** and the expert witness **(section 56 of the Evidence Act 2011).** The ACJA, 2015 has made provisions for the right of witnesses which includes; the right to their expenses, right to protection especially during serious crimes, and right to be issued the notice of trial.

5.8. Witness Expenses

The ACJA, 2015 has made it mandatory for the court to order the payment of an appropriate sum to a witness who testifies as a state witness **(section 251 of the ACJA, 2015).** In the case of the witness for the defence, the Act

provides that the court may at its discretion on application to the court, order the Registrar to make payment of a reasonable sum to the witness **(section 22 of the ACJA, 2015).**

The Act also provides that the court may direct the party at whose instance an adjournment is granted to pay such sum as the court may fix to a witness whose evidence could not be taken as a result of the adjournment **(section 253 of the ACJA, 2015).** The witness expense payment mentioned in **section 251 and 252 of the ACJA, 2015**, are to serve as compensation for the expenses the witness incurred in attending the court proceeding and are to be paid by the Registrar of the Court out of the relevant vote as appropriated by the Judiciary **(section 254 of the ACJA, 2015).**

5.9. Witness Protection

Witness protection is a standard global practice in criminal trials. Witness protection is one of the innovative provisions of the ACJA, 2015 **(section 232 of the ACJA, 2015)**. The Act specified offences where witnesses require protection and they are: sexual related offences, terrorism offences, offences relating to economic and financial crimes, trafficking in persons and related offences, and any other offence in respect of which an Act of the National Assembly permits the use of such protective measures. The ACJA, 2015 also provides that witnesses in the above-mentioned offences may not give evidence in an open court **(section 232 (1) of the ACJA, 2015,)** This is to ensure their protection.

The ACJA, 2015 grants wide discretion to the court to apply witness protection measures considered appropriate in the circumstance of each case even in cases not specifically listed in the Act. The protective measures that may be taken by a court include: non-disclosure of the names, addresses, telephone numbers and identity of the victim of such offences or witnesses in any record/report of the proceedings; the court is permitted to receive evidence by means of video link, the witness can use face masks and screens and other protective measures which the judge considers appropriate in the circumstance. **(See section 232(2) and (3) of the ACJA, 2015).** The Act is fiercely protective of these provisions as it further provides in **section 232(5)** that anyone who contravenes the provisions of the Act commits an offence and liable on conviction to a minimum of one year (1) imprisonment. This provision is commendable as it protects the identity of witnesses in sexual related crimes and child witnesses. In the case of ***Sambo Dasuki v. FRN*. (2018) LPELR 43969** (CA) the court applied the witness protection measure by allowing a witness to testify behind a screen.

5.10. Learning Outcomes

At the end of this chapter, user should be able to:

- understand the innovative provisions of the Administration of Criminal Justice Act of 2015 with respect to speedy trial,
- appreciate the rationale for abolition of stay of proceedings and preliminary applications,
- comprehend remand time limit, the limit of adjournments available to parties in criminal trials, disclosure protocols etc,

- appreciate the innovations of the Act with regards to witness protection and witness expenses,
- understand the timelines for criminal trials under the Administration of Criminal Justice Act,2015.

5.11. Further Reading Materials

- Administration of Criminal Justice Act, 2015
- The Constitution of Federal Republic of Nigeria 1999 (as amended)
- Yemi Akinseye – George, *Administration of Criminal Justice Act (ACJA, 2015) with Explanatory Notes and Cases* (Centre for Social Legal Studies, 2017).
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CHAPTER 6

SENTENCING GENERALLY

6.1. Learning Objectives

It is expected that at the end of this chapter, the user is able to:

- Understand the purpose/ objectives of sentencing,
- comprehend sentencing and the objectives of sentencing by focusing on the sentencing guidelines as well as the procedures of sentencing in various offences.

6.2. Meaning of Sentencing and Consequential Orders

Sentencing in criminal trial means the judgment that a court formally pronounces after finding a criminal defendant guilty. It is punishment given to a person who has been convicted of a crime. It can also be defined as the pronouncement by the Court, upon the defendant after his conviction in criminal prosecution, imposing the punishment to be inflicted. Conversely, any direction made by the court in the course of sentencing the defendant for the defendant to fulfil some certain purposes while serving the sentence may be referred to as consequential orders. Therefore, sentencing provides the means by which offenders are held accountable for their actions after being found guilty of an offence punishable by law.

6.3. Objectives of Sentencing

Section 401(2) provides that in determining a sentence, the court shall have the following objectives in mind, and

may decide in each case the objectives that are more appropriate or even possible. These are:

a. Prevention
b. Restraint
c. Rehabilitation
d. Deterrence
e. Education of the public
f. Retribution
g. Restitution

6.4. Application of Sentencing Guidelines

Sentencing guidelines simply refer to those parameters that are set out to guide courts in imposing punishment on a person who has committed an offence. Sentencing guidelines are a set of standards that are generally put in place to establish rational and consistent sentencing practices within a particular jurisdiction. What sentencing guidelines achieve is that, it allows Courts to exercise their discretion in sentencing a person within the purview of the guidelines. The Court when imposing a sentence, will consider certain factors in determining the nature of the punishment to be imposed. This the court will do while also bearing in mind the statutory provisions of the law prescribing the offence. These guidelines help the court in applying its discretion.

The Judge is bound to consider factors such as the seriousness or otherwise of the offence, the prevalence of the offence, whether the convict is a first offender, and prevailing attitude of the populace to the offence. In this case, the lower court failed to take into consideration the fact that the appellant is a first-time offender, which is one of the major considerations in sentencing.

- *Zacchaeus v. The People of Lagos (2015) LEPLR 24531*

6.5. Classes of Sentencing

When making a pronouncement of a sentence on a guilty person, the court considers some factors particularly in choice of words/text, nature and implementation of the sentence. These factors include the age of the convict and/or the state of mind, health of the convict including if the convict is pregnant.

6.5.1. Sentencing in Capital Offences in the Case of a Pregnant Woman

Section 404 of the ACJA, 2015 provides that where a woman found guilty of a capital offence is pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned. This means that though she has been sentenced to death, the execution of that sentence will be on hold until her baby has been born and nursed by her. In some state versions of the Administration of Criminal Justice Laws, a time frame is set as to the period for weaning or nursing a child. The ACJA, 2015 is silent on the time frame, hence this may be determined by those in charge of her at the correctional facility in whose custody she has been kept.

The position of the law in the Administration of Criminal Justice Act 2015 regarding the sentence of death on a pregnant woman is that the said sentence is passed on the convict regardless of the pregnancy but the execution of the said sentence is delayed until after the baby is born and weaned.
- *Orijiakor v. State* (2017) LPELR-42739 (CA)

6.5.2. Sentencing of a Child Offender

Section 405 provides that where a convict, who has been determined to not have attained the age of 18 years at the time the offence was committed is found guilty of a capital offence, the sentence of death shall not be pronounced or recorded on him but the court, shall sentence the child to life imprisonment or to such other term as the court may deem appropriate while considering the basic principles or objectives of sentencing such as deterrence for future offenders; rehabilitation of the offender; prevention of future crimes; retribution and restitution.

The position of the Law is that the Court cannot go outside this provision in sentencing an offender who was under the age of seventeen at the time of commission of an offence punishable with death.
- *Da'u v. State (2015) LPELR-40410 (CA)*

6.6. Sentencing other than Capital Offence

Generally, a court will sentence the convict to a term of imprisonment as prescribed by the law, but while exercising its discretion of sentencing the court is expected to treat each case on its own merit and also consider the objectives of sentencing, bearing in mind the

basic principles of reformation and rehabilitation of the convict. The court is also to consider evidence of previous conviction and the antecedents of the convict and where such a convict is a first offender the maximum sentence shall not be imposed.

Other factors the court is to consider include the period spent in custody awaiting or during the trial, which should be computed in the sentence as well as issues surrounding consecutive sentences where the convict has been found guilty of multiple charges within the same transaction.

6.7. Sentencing Hearing

A sentencing hearing is when the judge or magistrates decide what punishment an offender will receive. If a defendant pleads guilty or is found guilty by a court, they will become a convict and will need to be sentenced. Sometimes the convict will be sentenced immediately after the trial. Sometimes another court date will be set for the sentencing hearing. Usually at the sentencing hearing, the court will assess all aspects of the offence and the offender to arrive at a sentence that is deemed fair and proportionate.

The court will outline the facts of the case, highlighting things that make it more or less serious, including the impact on any victims, may consider previous conviction of the offender, if any, which is called aggravation. The court will also consider the circumstances of the offence and the offender's background – this is called mitigation. The aggravating and mitigating factors are serious determinants on the sentence a court will pass. In

considering these factors, the court relies on sentencing guidelines while following any mandatory rules while making its pronouncement.

6.8. Learning Outcome

At the end of this chapter, the user should be able to:

- appreciate the practice and procedure of sentencing in criminal trials under the ACJA, 2015,
- understand the factors to consider when imposing a sentence in a capital offence,
- comprehend objectives of sentencing and the effectiveness of sentencing guidelines in a criminal trial.

6.9. Further Reading Material

- ACJA, 2015, Part 38, particularly sections 401-405,
- ACJA, 2015, Parts 39 and 40, particularly sections 415-420,
- *Yakubu v. State (2015) LPELR- 40867* on objectives of sentencing,
- *Ilu v. State (2014) LPELR-24609 (CA)* on death sentence,
- *Orjiakor v. State (2017) LPELR -42739 (CA)* on sentencing a pregnant woman to death,
- *Da'U v. State (2015) LPELR-40410 (CA)* on sentencing a child offender,
- *Bashir v. Kano (2016) LPELR-41561 (CA)* on factors to consider in sentencing.
- *Kayode v. FRN (2017) LPELR-51865(CA)* on time effect of sentencing,
- Adekunle Adedeji, *Guidance Notes on the Administration of Criminal Justice Act 2015 for Judicial Officers* (NIALS 2015),

- Yemi Akinseye – George, *"The Administration of Criminal Justice Act (ACJA, 2015) Introductory Notes"*.
- *Dr J. A Agaba, Practical Approach to Criminal Litigation in Nigeria, revised 3rd edition 2017,*
- *The FCT Courts (Custodial and Non-Custodial Sentencing) Practice Directions 2020.*

CHAPTER 7

NON-CUSTODIAL SENTENCING

7.1. Learning Objectives

It is expected that at the end of this chapter, the user should be able to:

- understand the various non-custodial measures available in the ACJA, 2015,
- appreciate the purpose of non-custodial measures;
- comprehend the mode of implementation and monitoring of these measures.

7.2. Meaning of Non-Custodial Sentencing

Generally, a sentence is the judgment that a court formally pronounces after finding a criminal defendant guilty. It is the judicial determination of the penalty for a crime hence the punishment imposed on a criminal wrongdoer. It is usually custodial which requires that the convict be detained in prison thereby legally deprived of liberty. Therefore, where the sentence of the court does not require the convict to be kept in any prison or correctional centre, it is said to be a non-custodial sentence. Non-custodial measures such as community service, parole, probation and suspended sentencing are useful in restorative justice. These measures aid in prison decongestion, rehabilitation of prisoners, convicts and offenders and prevent minor offenders from mixing with hardened criminals.

In line with the objectives of ACJA, 2015, the management of non-custodial measure shifted to the Nigerian Correctional Centre in line with the Provision of

the Nigerian Correctional Services Act (NCSA) 2019. The legal framework for this is contained in the NCSA 2019, which established the Nigerian Correctional Service. Part II provide for its functions, power to make regulations and guidelines and allowing for parole, probation, community service, restorative justice measures and any other non-custodial measure assigned to the Correctional Service by a court of competent jurisdiction **(Section 37).** Under the NCS Act, Non-Custodial Service is defined as an aspect of the Nigerian Correctional Service that serves as an alternative to going to a custodial centre **(section 46).**

7.3. Forms of Non-Custodial Sentences

There are various forms of non-custodial sentences. These include probation, suspended sentence, parole, community service, confinement at rehabilitation center.

7.3.1. Probation

This is an order from the Court to abide by certain conditions for a specific period of time. The primary purpose is to influence the future behaviour of the offender. Probation is seen as a rehabilitative tool as it is not considered punitive in nature. It does not seek to reflect the seriousness of the offence or the offender's degree of culpability. Rather, it is designed to reintegrate offenders into the community as well as protect the public. The order may be used to deter the offender from committing future offences and ensure good conduct. **Section 455 (1) and (2) of the ACJA, 2015** deals with conditions to be observed by any person on probation.

7.3.2. Suspended Sentence

Suspended sentence is a sentence postponed so that the convicted criminal is not required to serve prison time unless he or she commits another crime or violates some other court-imposed condition(s). **Section 460 of the ACJA, 2015** provides that the court imposed condition(s) **Section 460 of the ACJA, 2015**, provides that the court may after imposing a sentence under the law creating the offence, order that the sentence be suspended with or without conditions. In this case, the convict is not required to serve the sentence provided the convict observes the conditions of the suspension.

Section 460 (1) of the ACJA, 2015

Notwithstanding the provision of any other law creating an offence, where the court sees reason, the court may order that the sentence it imposed on the convict be, with or without conditions, suspended, in which case, the convict shall not be required to serve the sentence in accordance with the conditions of the suspension

7.3.3. Community Service

Community Service, also known as community restitution, is a form of punishment intended to benefit the community that has been harmed by a defendant's crime. A Court may pass a Community Service Order if an offender is found guilty of a crime that does not meet the threshold for a custodial sentence. After convicting the defendant, the court may with or without conditions sentence the defendant to perform specific service. The purpose of community sentencing is to secure the rehabilitation of the offender and protect the public from harm. It is achieved

by social sanction in the form of ridicule and stigmatisation the offender is liable to in the society.

This type of non-custodial sentence is imposed on offenders who the court considers should make reparation to the community, but also require supervision to reduce their future risk of offending. Section 460 of the ACJA, 2015 provides for the court to pass community sentence on offences but expressly excludes certain offences, such as sexual offences and offences involving the use of arms or weapons among others.

7.3.4. Parole

Parole is the conditional release of an inmate from custody while serving his sentence on the recommendation of the Comptroller General of the Nigerian Correctional Center. It allows prisoners to serve part of their sentence of imprisonment in the community. While on parole, the inmate will be subject to parole conditions and supervision. Parole provides inmates with a structured, supported and supervised transition. It facilitates the adjustment of prisoners back to the community at the end of their sentence. By supporting inmates to return to the community under supervision towards the end of their sentence, parole aid the reintegration of the prisoner into the community and promotes safety.

The ACJA, 2015 provides under section 468 for parole to be given by the court based on the report of the Comptroller General of Nigerian Correctional Centre. The court may then direct the release of an inmate before the completion of his sentence. The condition is that at least

one third of the term must have been served for terms under fifteen (15) years and for a life sentence after a hearing by the court. The inmate is then moved to a rehabilitation centre for the purpose of supporting him to properly reintegrate into the society.

7.3.5. Confinement at a Rehabilitation Centre

This means sentencing a defendant to reside in a community treatment centre, halfway house, restitution centre, mental health facility, alcohol or drug rehabilitation centre, or other community facility for the purposes of rehabilitation of the defendant. The court under section 467(1) shall consider the age of the defendant, whether the defendant is a first offender, and the circumstances of the case. The court using its discretion may sentence a defendant convicted of an offence triable summarily to serve the sentence at a government owned rehabilitation centre.

Section 467 (1) of the ACJA, 2015

A defendant convicted of an offence triable summarily may be sentenced and ordered to serve the sentence at a Rehabilitation and Correctional Centre established by the Federal Government in *lieu* of imprisonment.

7.4. Learning Outcome

At the end of this chapter, the user should be able to:

- understand the types, use, aims and objectives of non-custodial sentencing in light of the reform objective of the ACJA, 2015,

- comprehend its application and the conditions precedent for the courts to pass these sentences,
- appreciate that the responsibility for the implementation of these sentences has moved to the Nigerian Correctional Service, but the award of which resides with the court under the express provisions of the ACJA, 2015, and the NCSA 2019.

7.5. Further Reading Material

- ACJA, 2015, Part 44,
- *Nigerian Correctional Service Act 2019,* Part II,
- *Childs Rights Act* 2003, section 223.
- Adekunle Adedeji, *Guidance Notes on the Administration of Criminal Justice Act 2015 for Judicial Officers* (NIALS Publication 2015)
- Yemi Akinseye-George, *The Administration of Criminal Justice Act (ACJA, 2015)* Introductory Notes,
- Explanatory Notes on The Administration of Criminal Justice Act 2015 NIALS Publication 2019.

CHAPTER 8

RESTORATIVE JUSTICE MECHANISMS UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

8.1. Learning Objectives

This chapter discusses the concept of restorative justice and highlights its application under the Administration of Criminal Justice Act **(ACJA, 2015).** It is expected that at the end of the chapter, the user is able to:

- understand the concept and objectives of restorative justice,
- appreciate the various restorative justice mechanisms contained in the ACJA, 2015 and how they are applied.

8.2. Concept and Objectives of Restorative Justice

At the time of Independence in Nigeria in 1960, the principal legislation that prohibited and punish crime in the country were the Criminal Code **[Cap C38 Laws of the Federation of Nigeria 2004**] applicable in the southern part and the Penal Code **[Cap 89 Vol. III Laws of Northern Nigeria 1963]** applicable in the Northern part of Nigeria respectively. Those pieces of legislation treated crime as offence against the state and it was prosecuted with the sole aim of punishing the offender. This often alienates the victims of crime leaving them with no remedy to assuage the injury they suffered from the criminal act of the offender. Also, in view of limited evidence of the efficacy of imprisonment and fine in achieving the aim and objectives of punishment, there has been growing advocacy globally for a shift from retributive justice system that emphasises imprisonment as punishment for an

offence, to one that emphasises alternatives to imprisonment and promotes restorative justice.

Restorative justice is a system of justice that promotes repair to the harm occasioned by a criminal conduct. Its primary goal is to heal the victim's wounds by making the offender take responsibility for his conduct (Unini Chioma, *'A Simple Guide to Understanding Restorative Justice'* https://thenigerialawyer.com/a-simple-guide-to-understanding-restorative-justice/). The concept treats crime first as a wrong against an individual who may have suffered harm or losses from the criminal act of the offender. The harm suffered may be physical, emotional, mental, economic or substantial impairment of fundamental rights of a victim. In contrast to retributive justice which seeks punishment for the offender for his crime, restorative justice seeks to repair the harm caused by crime usually by bringing together the offender, victim and the community to discuss the harm and how healing for the victim in particular can be achieved. At the heart of Restorative justice is the desire to:

(a) Restore the victim of a crime as nearly as possible to the position he was prior to the commission of the crime that caused him harm.
(b) Make the offender to take responsibility for his action
(c) Make the offender to make amend for his conduct.
(d) Heal the victim's wounds. [**Ajibolu Afolabi and Eseni Azu Udu*'The Jurisprudence of Restorative Justice for Victims of Crime in Nigeria'*** 1 JOCLLEP 1 (1) 2019 <https://www.nigerianjournalsonline.com>]

The concept of restorative justice is not a new phenomenon as it has been practiced from biblical times [Exodus 22 v. 3; Leviticus 6:1 – 6]. The concept is rooted in the principle of justice which states that:

> *"Justice is not a one-way traffic. It is not justice for the appellant only. Justice is not even only a two-way traffic. It is really a 3-way traffic, justice for the appellant-accused of a heinous crime of murder; justice for the victim, the murdered man, the deceased, whose blood is crying to heaven for vengeance and finally justice for the society at large**. [Josiah v. The State [1985] 1 NWLR (Pt. 11) 125 at 141].***

Restorative justice produces the following outcomes: restitution, reparation, restoration, reintegration and where possible, reconciliation. Restitution, reparation and restoration are interrelated as they all mirror the concept of compensation. Restitution connotes reinstatement of the victim of crime as nearly as possible financially or materially to his status before the commission of the offence. It is compensation for loss paid by an offender to a victim as part of a criminal sentence**. [Bryan A. Garner (ed.), *Black's Law Dictionary (11)* (West Group, 2014) 1507].** Restitution therefore, can be described as rehabilitative as it makes the defendant to confront the harm his criminal conduct has caused**. [*People v. Moser, 50 Cal. App. 4th 130, 135 (1996)*].**

Restoration is a derivative of Restitution. Although the two terms appear the same, they however have slight differences. While restitution is used basically as

recompense to the victim of a crime by the offender, restoration does not necessarily stop at that but could extend to include remediation by a community or the state. The Supreme Court clarified restoration to presuppose that something which was originally put in a particular place or position was displaced but returned to its former place. **(*Kubor & Anor v. Dickson 4 Ors, (2013) 4 NWLR (pt. 1345) 534*).** Thus, restoration is a principle which seeks to return the victim of an offence to the position or place from which he was displaced. Despite their slight differences, both restitution and restoration connote a return of the victim of an offence to his status before the offence was committed.

Reconciliation is the coming together of the victim of an offence and the offender to enable the offender have an appreciation or understanding of the extent of the harm his conduct has caused the victim and to address some fears or concerns of the victim of his offence. Reconciliation may provide the victim of an offence a closure which may help in healing him of his trauma. In some instances, reconciliation enables the victim and the offender to continue in a form of relationship which may have existed before the offence was committed but broken as a result of the offence.

Reintegration is a mechanism which imbeds the offender back into the society. This mechanism is closely associated with the rehabilitation theory of punishment. Reintegration helps in protecting offenders from stigmatization and gives them opportunity to be useful members of the society capable of making contributions to the development of the society.

Justice is never really achieved if it only results in incarceration and punishment of the offender. It is only said to be achieved if the victim of a crime feels it. The Administration of Criminal Justice Act 2015 recognises this and has introduced several provisions which promote restorative justice.

8.3. Award of Cost

The general principle of law in litigation is that costs follow the event. It is therefore the practice of the court to award costs to a successful party to litigation. Costs are awarded as indemnity to a successful party and not imposed as punishment on the party who pays them nor are they given as bonus to the party who receives them. (***O.N. Rewane v. Festus Sam Okotie-Ebo [1960] SCNLR 461; Kupoluyi v. Phillips [2001] 13 NWLR [Pt.731] 736 at 773 – 774****).* The award of cost to a successful litigant was mostly practiced in civil litigations. However, the ACJA, 2015 has now introduced this practice in criminal trials. Although under the Act the power to prosecute all offences in any court is given to the Attorney General of the Federation (s. 105), subject to this power however, the Act grants rights to a private person to file a complaint against any other person and to a private prosecutor to file information or charge against any other person in court (ss. 88(1), 109 (a) and (e)). This practice is often described as direct criminal complaint. By the provision of s.322(1) of the Act, where a private person or a private prosecutor initiates criminal proceedings against a defendant but the defendant is acquitted, the court may order the private person or private prosecutor to pay to the defendant such reasonable costs as it may deem fit. The

courts have interpreted the word 'may' as indicative of discretion or choice between two or more alternatives (***Wilson v. Okeke [2011] 3 NWLR [Pt. 1235] 456***). Thus, the decision whether or not to award cost against the private person or private prosecutor in favour of the defendant and the amount to award as cost is discretionary to the trial judge. The provision could have been more effective in achieving restorative justice if the word 'shall' was employed. This is because the word 'shall' has been interpreted to denote an obligation or a command thereby removing from the trial judge the discretion whether or not to award such costs ***(Emordi v. Igbeke [2011] 9 NWLR [Pt.1251] 24; Nwankwo v. Yar'Adua [2011] 13 NWLR [Pt. 1263] 81).*** Furthermore, the cost envisaged in the section can only be awarded where the defendant is acquitted and not where he was merely discharged. The reasoning for this is that whereas an acquittal is judgment on the merit which has vindicated the defendant and brings the matter to close with finality, a mere discharge is not so. Having been vindicated, the defendant who has been traumatised by the criminal trial ought to be indemnified. Prior to the enactment of the ACJA, 2015, a defendant who was acquitted in a criminal trial, could only pursue a remedy in tort for malicious prosecution. The Plaintiff in a case of malicious prosecution has the burden of proof placed on him. He must prove that:

(a) he was prosecuted by the defendant. In this regard, it must be shown clearly that the defendant set the law in motion against the plaintiff leading to a criminal charge;

(b) as a result of the prosecution, the plaintiff was tried by a court of competent jurisdiction, discharged and acquitted
(c) the prosecution of the plaintiff was completely without reasonable and probable cause; and
(d) the prosecution was as a result of malice by the defendant against the plaintiff.

All the four elements must co-exist and must be proved by the plaintiff (***Ojo v. Okitipupa Oil Palm Plc [2001] 9 NWLR (Pt. 719) 679 at 695 – 696; C.C.B. (Nig.) Ltd. v. Odogwu [1990] 3 NWLR [Pt.140] 646; Iyalekhue v. Omoregbe [1991] 3 NWLR [Pt. 177] 94***].

This would subject the plaintiff in a malicious prosecution case who has just come out from a tortuous criminal trial to another round of litigation with its attendant cost in time and resources. The provision of s.322(1) of the ACJA, 2015 is better appreciated from this background as it has obviated the need for the defendant in a criminal trial who has been acquitted and has suffered no special damages arising from his trial to embark on another litigation for malicious prosecution. However, where the defendant has suffered some form of special damages as a result of his prosecution, the award of cost to him against the private person or private prosecutor would not debar him from seeking remedy in tort. Since the cost envisaged under s.322(1) of the Act is discretionary to the judge, it can be likened to general damages. General damages are such as the law would presume to be the direct natural probable consequence of the act complained of. They need not be pleaded or specifically proved and are given from the inferences drawn by the trial judge. Special

damages on the other hand are such that the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and therefore they must be claimed specifically and proved strictly (***Kopek Const. Ltd. v. Ekisola [2010] 3 NWLR [Pt. 1182] 618; Odulaja v. Haddad [1973] 11 SC 357; Kalu v. Mbuko [1988] 3 NWLR [Pt. 80] 86***). A defendant in a criminal trial who has suffered special damages arising from his trial may not be adequately compensated by the cost awarded to him under s.322(1) of the Act. If he desires adequate compensation, he must in a subsequent action plead the damages he suffered and specifically prove same.

8.4. Award of Compensation to Victim in Judgment

Compensation is an indemnity given to a party for loss sustained or injury suffered. It is anchored on the principle of *restitutio in integrum* and is given to restore an injured party to his former position. Before the enactment of the ACJA, 2015, compensation was a remedy available in civil litigation for harm that results from a wrong for which the plaintiff sues. This follows the principle of law encapsulated in the maxim *ubi jus ibiremedium* which means where there is a wrong, there is a remedy **(*H.A.S. (Nig.) Ltd. v. Keazor [2011] 3 NWLR [Pt. 1264] 320)***.Compensation is not given as a reward to a successful party in litigation but is given to remediate a loss or injury and nothing more. Therefore, where no loss is sustained or injury suffered, compensation cannot be given. The ACJA, 2015 has empowered the court in a criminal trial to award compensation in different circumstances. Unlike in civil litigation in which the court cannot give what is not asked for by a party

(***Olowoofoyeku v. Olowoofoyekwu [2011] 1 NWLR [Pt. 1227] 177; Shuaibu v. Mu'azu [2007] 7 NWLR [Pt. 1033] 271***), under the ACJA, 2015, the power of the court to award compensation is not circumscribed **[s.314(1) & (2)].** Under the provision of s.314(1), the Act makes it clear that the power of the court to award compensation while delivering its judgment is not circumscribed by the limit of its civil and criminal jurisdiction. This means that the court can award compensation even in sum above the limits of its monetary jurisdiction. Although the High Courts generally have unlimited jurisdiction and can make award in any sum, the monetary jurisdictions to the various grades of Magistrate court are limited. The provision of s.314(1) of the Act therefore empowers the magistrate court more. In determining the quantum of compensation to award to a victim, the court may call for additional evidence (s.314(2)). This is to assist the court in determining the adequacy of the compensation to award. The calling of evidence at this stage should not be construed as re-opening trial as the evidence to be adduced shall be limited to the question of quantum of compensation.

8.4.1. Power of Court to Order Payment of Expenses or Compensation

Under s. 319(1) (a), of the Act, the court is empowered, within the proceedings or while passing judgment, to order the defendant or convict to pay a sum of money:

(a) As compensation to any person injured by the offence irrespective of any other fine or punishment that may be imposed or that is imposed on the defendant or convict,

(b) In compensation to a *bona fide* purchaser for value without notice of the defect of the title in any property which is the subject of the offence the defendant or convict is charged and the *bona fide* purchaser is compelled to surrender the property,
(c) In defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.

With regard to paragraphs (a), (b) and (c) of sub-section 1 of the section, the power of the court to make an order for compensation may be made at any stage of the proceedings. Therefore, a defendant need not be convicted before he can be ordered to pay compensation to the categories of persons mentioned therein. Under s. 36(5) of the 1999 Constitution as amended (CFRN), every person who is charged with a criminal offence is presumed to be innocent until he is proved guilty (***Nwaturuocha v. State [2011] NWLR [Pt. 1242] 170; Agbiti v. Nigerian Navy [2011] 4 NWLR [Pt. 1236] 175).*** If within the proceedings (i.e., before judgment), the court is allowed to order the defendant to pay compensation to any person, could it not amount to pronouncing the defendant guilty before the conclusion of trial? If yes, is the provision of s.319(1)(a), (b) and (c) of the Act not an infringement of the right of the defendant to a fair hearing and in conflict with the provision of s. 36(5) CFRN? As of now, the constitutionality of the foregoing provisions of the Act has not been challenged in court and remains the law. [In the past, some provisions of the ACJA, 2015 have been struck down by the court for being in conflict with some provisions of the constitution. For instance, in ***Chinaka Promise v. FRN*** **(CA/A/767/2019**

(unreported)), the validity of the provision of section 270(18) of the ACJA, 2015 was challenged before the Court of Appeal and the Court declared that the provision is in conflict with the provision of section 241(1) (a) and (b) of the CFRN and is thus unconstitutional and void].

Under paragraph (a) of the sub-section, the defendant or convict may be ordered to pay compensation:

(i) To any person injured by the offence,
(ii) Irrespective of any other fine or punishment that may be imposed or that is imposed on the defendant or convict.

Any person injured by the offence' could be a natural or juristic person who has suffered injury from the offence directly or indirectly. In the case of a natural person, it includes the victim of the offence, his family, dependents or estate while in the case of a juristic person it includes the entity itself or its members.

The compensation the defendant or convict may be ordered to pay under this provision is distinct from any other fine or punishment that may be imposed on him by the court. The compensation is neither punishment for the offence nor alternative to punishment for the offence but rather it is indemnity to a person injured by the offence. Therefore, the defendant or convict cannot be said to suffer double jeopardy where in addition to a fine or other punishment imposed on him, he is ordered by the court to pay compensation under this provision. ***In Nwude v. FRN & Ors [2015] LPELR – 25858 (CA)*** the Appellant was sentenced to five years imprisonment and in addition was ordered to forfeit the sum of $110 million to the victims of

the offence for which he was convicted. On appeal, he argued that having been sentenced to a term of imprisonment, it was absurd to award compensation to the victims of the offence as that would be tantamount to subjecting him to double jeopardy. It was held that sentencing to a term of imprisonment and/or with an order of forfeiture does not amount to double jeopardy because s. 11 of the Advance Fee Fraud Act under which the Appellant was charged provides that in addition to any other penalty prescribed under the Act, the court shall order a person convicted to pay to the victim of the offence an amount equivalent to the loss he suffered.

Thus, where a statute provides for the payment of compensation to a victim of a crime in addition to any other punishment imposed on the defendant, it cannot amount to double jeopardy.

Under paragraph (b) of the sub-section, the beneficiary of the compensation must:

(i) be a *bona fide* purchaser of the property in respect of which the offence was committed,
(ii) have paid value for the property,
(iii) not have had knowledge of the defect of the title in the property,
(iv) have been compelled to give up the property.

All these four conditions must co-exist. The court must satisfy itself that the purchaser of the property in respect of which the offence was committed did not conspire, aid, abet or collude in the commission of the offence. The court must also be satisfied that the purchaser acquired the property in good faith and had no knowledge whether actual or constructive of the defect of the title in the

property. This is important because the law is well established that no one can be allowed to benefit from his own wrong (***P.T. Adedeji v. Dr. Moses Obajimi [2018] LPELR – 44360 (SC); Enekwe v. I.M.B. (Nig.) Ltd [2007] All FWLR [Pt. 349] 1053 at 1081***). The court must also satisfy itself that the beneficiary has paid value for the property and that he is compelled to give up the property. Where no value was paid for the property, there is no loss to be compensated.

The compensation envisaged under paragraph (c) of the sub-section is to defray expenses incurred on medical treatment of a victim injured by the convict in connection with the offence. Before the court makes an order for compensation under this paragraph, the following conditions must exist:

(i) The injury suffered by the victim must be connected with the offence charged
(ii) The defendant must have been convicted of the offence

The order for compensation under section 319 of the Act may be made irrespective of the fact that no fine has been imposed on the defendant in the judgment [s.319(3)].

8.4.2. Payment of Compensation to be Taken into Consideration in Subsequent Civil Suit

Under s. 320 (2) of the Act, the fact that a defendant is standing trial in criminal proceedings shall not be a bar to a civil action against him in respect of the same subject matter. This provision does not offend the provision of s. 36 (9) CFRN in that while the notion of criminal trial is punishment for the offender, the notion of civil trial is

redress for an aggrieved party. The concept of double jeopardy applies only to criminal trials. It is a procedural defence which prevents a person from being subjected again to criminal trial on the same or similar charges and on the same facts after a valid acquittal or conviction **(*Gava Corp. Ltd. v. FRN [2019] 10 NWLR [Pt. 1679] 139 at 151)*.** The provision of this sub-paragraph does not promote simultaneous criminal trials but allows criminal and civil trials to go on simultaneously in respect of the same subject matter.

Under s. 320(1) of the Act, where in a criminal trial in respect of an offence, the court makes an order of compensation, in any subsequent civil suit in respect of the same subject matter, the amount paid as compensation in the criminal trial shall be taken into consideration in assessing any compensation to be paid. The informed reasoning behind this provision is the need to avoid double or excessive compensation as the law guards against it **(*Mekwunye v. Emirates Airlines [2019] 9 NWLR [Pt. 1677] 191 at 203)*.**

8.4.3. Compensation in Cases of False and Vexatious Accusation

The provision of s. 323 of the Act seeks to guard against false and vexatious accusations resulting in unwarranted arrest and charge of a defendant. Under sub-section (1) of the section, where a person causes the arrest or the arrest and charge of a defendant and it appears that there was no sufficient grounds for causing the arrest or that the accusation is false, vexatious or frivolous, the court may for reasons to be recorded, order the person to pay reasonable compensation to the defendant arrested and

charged. Before the court makes an order for compensation under this sub-section, it must be apparent that:

(i) The person against whom the order to pay compensation was made causes the arrest or arrest and detention of the defendant,
(ii) There was no sufficient ground for causing the arrest, or
(iii) the accusation is false, vexatious or frivolous.

Even where the person believes in the truthfulness of his accusation but it turns out to be false or frivolous, an order may be made against him to pay reasonable compensation to the defendant. Prior to the enactment of the ACJA, 2015, the remedy available to a defendant in a situation such as this is an action in tort for damages for unlawful arrest. Under the foregoing provision however, the court may in *limine* order the person who caused the arrest or the arrest and detention of the defendant to pay compensation to the defendant. The provision of this sub-section draws inspiration from the provision of s.35(1) and (6) CFRN which protects the rights of citizens to their personal liberty and provides for compensation against unlawful arrest and detention.

Sub-section (2) of the section empowers the court to award a term of imprisonment on the person against whom the order was made or sentence him to community service in accordance with s. 462 of the Act where he defaults in the payment of such compensation or any part thereof. Where the court sentences the person to a term of imprisonment under the sub-section, the term must not exceed the term prescribed in respect of a like sum in the

scale of imprisonment set out in the Act. By making provision for compensation to the victim of this type of unlawful arrest under the section before prescribing imprisonment to the offender in default of payment of the compensation, it is apparent that the ACJA, 2015 prioritises restorative justice approach over and above retributive justice in dealing with certain criminal conducts.

Where the person against whom an order to pay compensation under the section was made is aggrieved by the order, he may appeal against same as if he had been convicted after trial by the court that issued the order.

While the provision of sub-section (1) of s. 323 of the Act demonstrates how the ACJA, 2015 promotes the protection of the fundamental rights of citizens, the provision of sub-section (3) recognizes and protects the rights of citizens who feel aggrieved by an order of the court to seek redress by way of an appeal.

8.4.4. Right of Injured Person to Refuse to Accept Compensation

Although, in various sections of the Act, the court is empowered to award compensation in different circumstances, a person to whom compensation is awarded may refuse to accept the compensation **(s.324(1)).** Where the person receives the compensation or where the person against whom the order for compensation was made suffers imprisonment for default in payment, the receipt of the compensation or the undergoing of the imprisonment as the case may be, shall act as a bar to any further action for the same injury

(s.324(2)). The option given to a person to whom compensation was awarded to refuse to accept same under sub-section (1) of s.324 appears aimed at enabling such a person to exercise his right of choice whether or not to pursue further action for the same injury. This is because the Act provides under sub-section (2) that where a person in whose favour an order of compensation was made accepts the compensation or the person against whom the order was made serves a term of imprisonment in default of payment of the compensation, the person to whom the compensation is awarded shall have no right to a further action in respect of the same injury. The implication is that where the person in whose favour the order of compensation was made refuses to accept the compensation and the person against whom the order was made did not serve a term of imprisonment in default of payment of the compensation, the person in whose favour the order of compensation was made shall have the right to a further action in respect of the same injury. This provision which appears to align with established principle of law which guards against double compensation and double jeopardy is in conflict with the provision of sections 319(1)(a) and 320(1) of the Act which recognise the right of further action for compensation where a sum had been paid in compensation in an earlier trial. One of the factors that weaken the efficacy of legislation is inconsistency. In order to achieve its desired outcome, the entire provisions of the Act must be consistent with one another.

Before the court makes any order for compensation under the Act, it shall explain to the person to whom the compensation is payable, the full effect of the provision of

s.324 i.e. the court shall explain to such person the implication of receiving the compensation *vis-a-vi*s his right to pursue any further action for the same injury. This is to enable such person to make informed decision whether or not to accept the compensation.

8.4.5. Power of Court to Order Restitution

Restitution is the act of making good or giving equivalent for any loss, damage or injury **(Black's Law Dictionary Special Deluxe Fifth Edition).** In torts, it is the measure of damages a person is ordered to pay for the injury his action caused another person.

Under s.321 of the ACJA, 2015, after conviction, in determining the sentence appropriate for each convict, the court may:

(a) either in addition to or in lieu of any other penalty prescribed by law, order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted or to the victim's estate; or

(b) order for the restitution or compensation for the loss or destruction of the victim's property and in so doing the court may direct the convict:
   (i) to return the property to the owner or to any person designated by the owner
   (ii) where the return of the property is impossible or impracticable, to pay an amount equal to the value of the property, or
   (iii) where the property to be returned is inadequate or insufficient, to pay an amount equal to the property calculated on the basis of what is fair and just.

The order for restitution under this section is made:
(i) Only after conviction,
(ii) In addition to or *in lieu* of any other punishment authorised by law,
(iii) To any victim of the crime for which the offender was convicted or to the victim's estate.

The aim of the order of restitution under the section is to restore the victim of the offence to the position he was before the offence was committed. Therefore, even where it is impossible or impracticable to return the property to the victim for instance in situations where the property has perished or is lost, an amount equal to the value of the property shall be paid to the victim.

8.5. Award of Damages

Where a charge punishable by law has been proved against a defendant but the court is of the opinion that having regard to the character, antecedents, age, health or mental condition of the defendant, the trivial nature of the offence or the extenuating circumstances under which the offence was committed it is expedient to order only nominal punishment or to release the defendant on probation rather than inflict the punishment prescribed for the offence, it may without proceeding to conviction make an order dismissing the charge or discharging the defendant conditionally upon his entering into a recognizance to be of good behaviour and to appear at any time during a period not exceeding three (3) years **(s.454(1) (2)).** The court may in addition to the foregoing, order the defendant to pay damages for injury or compensation for any loss suffered by any person as a result of the conduct or omission of the defendant and to

also pay such cost of the proceedings as the court may think reasonable **(s.454(3)(a)).** The dismissal of the charge or discharge of the defendant under this section is not one done on the merit but for some mitigating factors stated in the section. Where the charge is dismissed, it has the same effect as acquittal and the defendant can plead *autrefois acquit* in any subsequent proceedings in respect of the same offence. The damages the court may order the defendant to pay under this section must not be seen as alternative to conviction or punishment but may serve as substitute for same. It is not open to the defendant to challenge the order of payment of damages merely on the ground that the charge against him has been dismissed or that he has been discharged. This is because as stated earlier, the dismissal of the charge against the defendant or his discharge under this section is not one done on the merit. It must be emphasized however, that the order for damages, compensation or costs under the section is discretionary to the trial judge. When a judge is called upon to exercise discretion, such discretion must always be exercised both judicially and judiciously **(*Zakirai v. Muhammad [2017] 17 NWLR [Pt. 1594] 181 at 192; Baba v. Iyeghe [2019] LPELR – 46933 (CA)*).** Where the court exercises its discretion under the section to dismiss the charge against the defendant or to discharge him for the mitigating factors enumerated in the section, it is advisable for the court to make the order for payment of damages, compensation or costs for any injury or loss suffered by any person in consequence of the conduct or omission of the defendant so that the victim does not return empty despite the offence having been proved against the defendant. It will be inequitable to dismiss a proven charge against a defendant and allow

the victim of his criminal conduct return home empty without some form of restitution to assuage his losses. Where the defendant who is ordered to pay damages, compensation or cost under paragraph (a) of sub-section (3) has not attained the age of eighteen (18) years, his parent or guardian shall pay the damages, compensation or cost where it appears to the court that they conduced to the commission of the offence. A person who has not attained the age of eighteen (18) years is defined as a child under the Act [s. 494]. By the provision of s. 452 of the Act, the provisions of the Child's Right Act shall apply in the trial of a child. This means that in the trial of a child, the provisions of the ACJA, 2015 are inapplicable. This being the case, the entire provision of s. 454 becomes spent as it affects a child. Thus, the utility of s. 454(3)(b) is lost.

8.6. Learning Outcomes

At this end of this chapter, the user should be able to:

- Explain the concept of restorative justice, its objectives and outcomes,
- Identify and explain the various restorative justice mechanisms contained within the framework of the ACJA, 2015 and their application.

8.7. Further Reading Materials

- Handbook of Restorative Justice Programme, United Nations, New York, 2006.
- J. Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press Inc 2002).
- Cori Shaff *et al, Restorative Justice at Colorado, Colorado (2017) 16 State University Journal, Journal of Students Affairs.*

- Mark S. Umbreit and Jean Greenwood, Guidelines for Victim-Sensitive-Victims-Offender Mediation.
- Restorative Justice Through Dialogue, Office for Victims of Crime, St. Paul Minnesota.
- Ani Comfort Chinyere, Restorative Justice: Victim-Offender Mediation Accessed at https://legalpediaonline.com/restorative-justice/
- Ann Skelton, 'Restorative Justice & Human Rights' In Stephen Parmentier, Elmar G.M; Weitekamp and Mathieu Deflem (eds.) 'Crime and Human Rights' *(Sociology of Crime Law and Deviance Vol. 9,* Emerald Group Publishing Ltd, 2007) 171.
- Odoh Ben Uruchi, 'Creative Approaches to Crime: The Case for Alternative Dispute Resolution (ADR) in the Magistracy in Nigeria', *36 Journal of Law, Policy and Globalization,* 2015 92 – 99 Accessed at http://www:uste.org/Journals/index.php/JLPG/article/download/21717/21908.

CHAPTER 9

ADMINISTRATIVE MECHANISMS FOR THE IMPLEMENTATION OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015

9.1. Learning Objectives

This chapter discusses the various administrative measures put in place by the ACJA, 2015 for the effective implementation of its provisions and for the achievement of its purpose. At the end of the chapter, the user should be able to:

- Become familiar with the administrative mechanisms responsible for ensuring effective and efficient implementation of the ACJA, 2015 by relevant agencies,
- Understand the role of the Chief Magistrate or such other designated magistrates in supervising the police or other agencies empowered to effect arrest within its area of Jurisdiction,
- Understand the composition and functions of the Criminal Justice Monitoring Committee (Committee),
- Understand specific steps outlined in the ACJA, 2015 towards ensuring availability of criminal records in Nigeria,
- Understand specific measures outlined in the ACJA, 2015, 2015 towards ensuring availability of records of all arrests made in Nigeria.

9.2. Administration of Criminal Justice Monitoring Committee

The administration of criminal justice involves many critical institutions and stake holders. The lack of co-

operation, coordination and synergy among these different participants was one of the major reasons for the malfunction of the sector in Nigeria **(Professor Adedeji Adekunle, *'Overview of the Administration of Criminal Justice Act 2015'*NIALS, P.9)**. The key purpose of the ACJA, 2015 is ensuring that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, defendant and the victim (s.1(1)).To realise the foregoing purpose, the Act mandates the courts of law, law enforcement agencies and other authorities and/or persons involved in criminal justice administration to ensure compliance with its provisions (s.1(2)). The bodies identified in s.1(2) of the Act are separate and independent entities which makes it difficult for them to muster the synergy for a coordinated and seamless service delivery. It is common to see criminal cases adjourned because suspects or defendants could not be produced in court by the Police or Correctional service. This affects the efficient dispensation of justice by causing undue delays in trials. To achieve its purpose as stated in s.1(1), the Act has created roles and duties for different agencies and persons. For instance, the Act makes provisions on humane treatment of arrested suspect (s.8), recording of arrests (ss. 15 – 17), time protocols for remand orders (s. 296), recording of statements of suspects (s.17), day to day trial (s.396), sentencing guidelines (ss. 311, 401 and 416) etc. These roles and duties cannot be performed efficiently without proper coordination and monitoring. In realization of the foregoing, the ACJA, 2015 created the Administration of

Criminal Justice Monitoring Committee (s.469). The committee consists of:

(a) The Chief Judge of the FCT who is the chairman,
(b) Attorney General of the Federation or his representative not below the rank of a Director in the Ministry,
(c) A Judge of the Federal High Court,
(d) The Inspector General of Police or his representative not below the rank of Commissioner of Police,
(e) The Comptroller General of the Nigerian Correctional Service or his representative not below the rank of Comptroller of Correctional Service,
(f) The Executive Secretary of the National Human Rights Commission or his representative not below the rank of Director,
(g) The Chairman of any of the local branches of the Nigerian Bar Association in the FCT to serve for two years only,
(h) The Director General of the Legal Aid Council of Nigeria or his representative not below the rank of Director; and
(i) A representative of the Civil Society working on Human Rights and access to justice or women rights to be appointed by the committee to serve for a period of two years only (s.469 (2)(a) – (i)).

The primary function of the committee is ensuring effective and efficient application of the Act by the relevant agencies (s. 470(1)). Without prejudice to this function, the Act provides that the committee shall ensure that:

(a) Criminal matters are speedily dealt with,
(b) Congestion of criminal cases in court is drastically reduced,

(c) Congestion in correctional centres is reduced to the barest minimum,
(d) Persons awaiting trial are as far as possible not detained in prison custody,
(e) The relationship between the organs charged with the responsibility for all aspects of the administration of justice is cordial and there exists maximum cooperation amongst the organs in the administration of justice in Nigeria,
(f) Collate, analyse and publish information in relation to the administration of criminal justice sector in Nigeria;
(g) Submit quarterly report to the Chief Justice of Nigeria to keep him abreast of developments towards improved criminal justice delivery and for necessary action; and
(h) Carry out such other activities as are necessary for the effective and efficient administration of criminal justice (s. 47(2)(a) – (h)).

The foregoing functions of the Committee are quite elaborate and involve oversight of the activities of several criminal justice institutions as it relates to their roles under the Act. In view of this and the human rights friendly posture of the Act, it became necessary that membership of the committee cuts across a large spectrum of these criminal justice institutions as well as human rights institutions and civil society organizations. Nothing can be achieved in an organization or institution without the involvement of that organization or institution. Since most of the organizations and institutions reflected in the composition of the committee are key stakeholders in the administration of criminal justice in the country, their

involvement in the committee ought to harness the necessary synergy to achieve the purpose of the Act.

9.3. Central Criminal Registry

One of the problems affecting the criminal justice sector in Nigeria is poor record keeping. The country lacks adequate and reliable records of criminal investigations and trials. This problem came to fore in ***Agbi & Anor v. Ogbeh & Ors [2006] 11 NWLR [Pt. 990] 65*** when the identity of a certain James Onanefe Ibori became an issue. The then Governor of Delta State James Onanefe Ibori was alleged to have been convicted of theft by an Area Court in Bwari, Abuja and was thus not qualified to contest the seat of Governor. The then Governor denied being the James Onanefe Ibori that was convicted. The question thus was who was that James Onanefe Ibori? It took a long trial with many witnesses called including the magistrate who conducted the trial to determine that the then Governor was not the convicted James Onanefe Ibori. That protracted trial could have been avoided if there were reliable criminal records kept comprising the profile and identity of the convicted James Onanefe Ibori. Furthermore, in many instances, investigation of a crime gets stalled when there are no more leads to follow at a particular time. In the future however, new leads may come up that would assist in the investigation. If however, records of the previous investigation are not kept, the case becomes moribund in spite of the new leads. The ACJA, 2015 seeks to ensure availability of records of criminal investigations and trials at all times and to achieve this it creates at the Nigeria Police Force a Central Criminal Records Registry (s.16(1)). Although not expressly stated but by implication, this registry is

domiciled at the Force Headquarters. The Central Criminal Records Registry shall be a repository of records of criminal investigations and trials in Nigeria. To ensure that the Central Criminal Records Registry receives criminal records, the Act also created in each state Police Command a Criminal Records Registry which shall keep and transmit all such criminal records from their areas of jurisdiction to the Central Criminal Records Registry (s.16(2)). The State or Federal Capital Territory (FCT) Police command shall ensure that decisions of the court in all criminal trials are transmitted to the Central Criminal Records Registry within 30 days of pronouncement (s.16(3)). Having a Central Criminal Records Registry makes it easy to obtain any criminal record in Nigeria, it will also ensure availability of accurate and reliable data on criminal trials in the country which may be beneficial to researchers, policy makers and for plan of action by the criminal justice sector.

9.4. Monthly Report by Police to Supervising Magistrate

The ACJA, 2015 makes it a duty for an officer in charge of a police station or an official in charge of an agency authorized to make arrest to report on the last working day of every month to the nearest magistrate, the cases of all suspects arrested without warrant within the limits of their respective stations or agency, whether the suspects have been admitted to bail or not and stating in the report the particulars of the suspects arrested as prescribed in s. 15 of the Act (s. 33(1), (2)). Upon receipt of the report, the Magistrate shall forward same to the Criminal Justice Monitoring Committee which shall analyse same and advise the Attorney General of the Federation as to the

trends of arrests, bail and related matters (s.33(3)). The Attorney General of the Federation shall make available the report to the National Human Rights Commission, Legal Aid Council of Nigeria or a Non-Governmental Organisation upon request made by them [s.33(4)]. Where however no report was made in accordance with the provision of sub-section (1) of section 33, the Magistrate shall make a report to the Chief Judge of the State and the Attorney General of the State and in the case of the FCT the report shall be made to the Chief Judge of the FCT and the Attorney General of the Federation for remedial action (s.33(5), (6)).

The entire provision of s.33 of the Act seeks to ensure that reports of all arrests made without warrant in all police stations in the country are made. Apart from the aim of having records of these arrests, the provision also aims at ensuring that arbitrary arrests are exposed and as best possibly, eliminated. An officer of a police station who knows that he has a duty to report all cases of arrests made without warrant in his station and stating *inter alia* the alleged offence and the date and circumstances of the arrest as required by s.15 (1) of the Act and that his failure to make such report may attract remedial action, would be cautious not to engage in arbitrary arrests. This provision is a nudge on the protection of human rights of citizens.

9.5. Quarterly Reports of Arrests to Attorney General

The ACJA, 2015 creates a duty for the Inspector General of Police and the head of every agency empowered by law to make arrest to remit quarterly to the Attorney General of the Federation a record of all arrests made with or without warrant in relation to federal offences

within Nigeria (s.29(1)). A similar duty is imposed on the Commissioner of Police in a state and the head of every agency empowered by law to make arrest within a state to remit quarterly to the Attorney General of the State, a record of all arrests made with or without warrant in relation to state offences within the state (s.29(2)). The report shall contain the full particulars of the suspect arrested as required by s.15 of the Act (s. 29(3)). Apart from the foregoing duties, the Act requires a register of arrest containing the particulars prescribed in s.15 of the Act to be kept in the prescribed form at every police station or agency authorised by law to make arrests into which every arrest made whether with or without a warrant within the local limits of the police station or agency or within the FCT shall be entered by the officer in charge of the police station or official of the agency as soon as the arrested suspect is brought to the station or agency (s.29(4)). The Attorney General of the Federation is required to establish both electronic and manual data base of all records of arrests at the Federal and State levels (s. 29(5)). This provision has the same utility as the provision of s.33 of the Act but it expands on the frontier of arrests whose record is to be remitted. Whereas under s.33 only arrests made without warrant are to be reported, under s. 29, records of all arrests whether made with or without warrant are to be remitted. The provision of s. 29 which covers all classes of arrests would go a long way in solving the problem of disappearance of suspects from custody since every suspect arrested whether with or without a warrant is accounted for in the record remitted. Nigeria has in the past witnessed instances in which security agencies arrested suspects but failed to account for them and in some cases they arrested and detained

suspects but denied that the suspects were in their custody. **[Amnesty International Press Release, 'Nigerian Government must end enforced disappearance' (30 August, 2021) (Premium Times) www.premiumtimesng.com; Aljazeera, 'Gone: The lost victims of Nigeria's most brutal police station' www.ajazeera.com]**.

9.6. Inspection Visits to Detention Facilities

Under the Act, the Chief Magistrate or where there is no Chief Magistrate within the police division, any other magistrate designated by the Chief Judge, is mandated to at least every month conduct an inspection of police stations or other places of detention other than a correctional centre (s.34(1)). During the visit, the magistrate may:

(a) Call for, and inspect, records of arrests,
(b) Direct the arraignment of suspect,
(c) Where bail has been refused, grant bail to any suspect where appropriate if the offence for which the suspect is held is within the jurisdiction of the magistrate. [s.34(1)].

An officer of the police station or official in charge of an agency authorised to make an arrest shall avail to the visiting magistrate the following:

(a) The full record of arrest and record of bail,
(b) Applications and decisions on bail made within the period; and
(c) Any other facility the magistrate requires to exercise his powers under sub-section (1) of the Act (s. 34(3)).

Default by an officer of a police station or official of an agency empowered by law to arrest to comply with the provision of sub-section (3) of the section shall be treated as a misconduct and dealt with in accordance with the relevant Police Regulation under the Police Act or to any other disciplinary procedure prescribed by any provision regulating the conduct of the officer or official of the agency (s. 34(5)).

The purpose of the provision of s. 34 of the Act is to:

(a) Ensure that every police station keeps register of arrests in compliance with the provision of s. 29(4) of the Act,
(b) Enable the magistrate verify the entries in the register of arrests,
(c) Ensure that no suspect is kept in detention unduly.

The power of the magistrate to grant bail to a suspect under this section is exercisable only where it is appropriate. Thus, the power is not given at large. Where the offence for which the suspect is held is not within the jurisdiction of the magistrate, the power to grant him bail cannot be exercised. The only remedies open to such suspect is to file an application in a court of competent jurisdiction to produce his body in court for the purpose of granting him bail or to file a suit for enforcement of his fundamental right to personal liberty. The Act views default by an officer of the police station or an official of an agency authorized to make arrest to co-operate with a magistrate as a misconduct which will attract disciplinary action. This underscores the seriousness the Act attaches to cases of undue detention. The provision of s.34 of the

Act is therefore a plus to protection of human rights by the Act.

9.7. Learning Outcomes

At the end of this chapter, the user should be able to:

- Understand the composition and functions of the Administration of Criminal Justice Monitoring Committee,
- Appreciate the importance of the Central Criminal Registry,
- Appreciate why it is important for heads of police and other agencies authorized to make arrests at different levels to make periodic reports of all arrests made at their various facilities,
- Appreciate the importance of the Chief Magistrate or such other magistrates making monthly inspection of detention facilities.

9.8. Further Reading Materials

- Professor Yemi Akinseye-George, SAN, *Administration of Criminal Justice Act [ACJA, 2015] with Explanatory Notes & Cases* (Centre for Socio-Legal Studies, 2017),
- Professor Adedeji Adekunle, An Overview of the Administration of Criminal Justice Act, 2015 https://nji.gov.ng/images/Workshop_Papers/2016/induction_Course/s11.pdf,
- Adesola Otulana, Implementation Strategies for the Administration of Criminal Justice Act, 2015, https://censolegs.org/publications/2.pdf.

CHAPTER 10

THE ROLE OF LEGAL EDUCATION IN PROMOTING ADMINISTRATION OF CRIMINAL JUSTICE AND COMBATTING CORRUPTION

10.1. Learning Objectives

It is expected that at the end of this chapter, the user is able to:

- Understand the nature and scope of Administration of Criminal Justice in Nigeria,
- Understand the nature and meaning of corruption,
- appreciate the strategies aimed at preventing corruption tend to be more complicated, prevention is still a better option in the long run and that legal education can play an effective role in that regard,
- Understand the impact of corruption on individuals and the society at large, as well as anti-corruption measures that have been adopted and implemented.

10.2. Nature and Scope of Criminal Justice Administration in Nigeria: The Role of Legal Education

Administration of criminal justice simply means performance of activities directly involving the detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage and dissemination of criminal record information. Simply put, it is the totality of administering justice to people accused of committing crimes, the society and victims. The task of administering criminal justice rests on criminal justice

institutions comprising of the law enforcement agencies, the judiciary, the Bar, and correctional institutions, among others. Some of the goals of criminal justice administration include crime prevention, support for victims and rehabilitation of offenders as well as the protection of society from criminals.

Administration of criminal justice in Nigeria is unarguably a complex one as it involves applying statutory, and Islamic laws side by side; and follows procedures mostly defined by English law as introduced by British colonial government. After independence on 1 October 1960, Nigeria continued a dual system of criminal justice administration that was inherited from the colonial administration.

Criminal justice is administered at state and federal levels. Currently, the ACJA, 2015 applies only in Federal Courts while the ACJL applies in States where they have been enacted. This is however different with law enforcement, which enforces law at all levels. For example, the Nigeria Police Force (NPF) exercises exclusive right to police enforcement in the same way the Nigerian Correctional Service operates exclusively in respect of correctional services, among others. By and large, the mode of administering criminal justice in Nigeria is defined by the Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended. Under the *Second Schedule of the Constitution*, prisons, police and other government security services are within the exclusive preserve of the federal legislature (***see items 38 45, 48, Exclusive Legislative List, Part I, Second Schedule, CFRN***),

which means law enforcement by these agencies remain a federal government prerogative.

The Nigerian criminal justice administration makes use of substantive criminal provisions as well as procedural (adjectival) rules. Substantive criminal provisions define conducts that constitute crimes and prescribe punishment for them while the procedural law administers the substantive criminal provisions, providing procedures for enforcing them. Prior to the enactment of the ACJA, 2015, the Criminal Procedure Code (CPC) and Criminal Procedure Act (CPA) governed criminal justice administration as the main statutes, together with substantive provisions such as the Codes (Penal and Criminal) as well as a myriad of other provisions that enable criminal justice institutions to function. A very salient point to note is that every criminal justice institution is backed by enabling law, which defines its mandate, powers as well as functions; and delineate their areas of operations, so as to avoid friction with other law enforcement agencies **(see for example, *the Nigerian Correctional Service Act, 2019, the Economic and Financial Crimes Commission Act,2004, the Nigeria Police Act, 2020, Chapter VII, the Judicature-CFRN, amongst others*).**

However, functions of law enforcement agencies sometimes, overlap and this may cause conflict among them. For instance, in 2019, there was clash between National Drug Law Enforcement Agency (NDLEA) and the Police over alleged arrest of tramadol.

Procedure of administration of criminal justice in Nigeria is divided into three stages namely investigation (pre-trial), trial and post-trial. Before the **ACJA 2015**, the **CPA** and CPC provided for the procedure to be followed for the investigation and trial offences. This goes to say that all criminal matters must necessarily pass through the named stages after which judgement is pronounced. Although criminal justice process appears simple and plain on paper, it is, in practical terms, cumbersome, time consuming and costly. However, the **ACJA, 2015** has come to the rescue, offering fair, effective and expeditious justice, albeit not without challenges. Surmounting the challenges bedeviling the **ACJA, 2015** and indeed the entire criminal justice administration requires the commitment of all stakeholders, and legal education can play an important role in ensuring effective criminal justice delivery in the country.

Generally, education is a tool for national, personal and communal development as referenced in the 2004 ***National Policy on Education*** **(*Federal Republic of Nigeria, National Policy on Education, Abuja, Federal Government Press, 2004, p. 3*);** and the National Economic Empowerment Development Strategies **(*National Planning Commission, Review of Needs and Development of Needs, 2007, Abuja, Federal Government Press*).** Access to quality education, particularly legal education is therefore fundamental in achieving a just and safe society capable of occasioning development. Legal Education, which is a special kind of education, *inter alia,* (a) equips people to participate fully and effectively in legal, social and economic development of the Country, (b) imbues students and lawyers with

techniques, skills and competences as well as basic philosophies, ideologies, appraisals, and instrumentalities, which are needed in creating and maintaining a just society. Its importance stems from its ability to shape the quality of the rule of law; and its capacity to not only build strong characters and but also to orchestrate a system that challenges individuals, organisations and different organs of government when they are in default of the law. Because of the obligation to study the structure of government and the organization of courts of law, including the system of appeals and other adjudicating bodies, students and lawyers understand law in its social, economic, political, and scientific contexts

Hitherto, administration of criminal justice in Nigeria has been derided for its laxity, stagnation, and inability to dispense justice fairly, equitably and expeditiously, which is why the ACJA, 2015 (and ACJLs of various states) came into existence to address those inherent shortcomings. For the *status quo* to change and effective criminal justice administration entrenched, there must be attitudinal change, in terms of character of lawyers, law enforcers and all criminal justice actors. Instilling philosophical and ideological discipline in lawyers and law students can potentially move Nigeria's criminal justice administration to an enviable position.

10.3 Meaning and Nature of Corruption

At the international level, the **United Nations Convention against Corruption (UNCAC) (A/RES/58/422** adopted 31 October 2003: came into force 14 December 2005) did not define the term corruption. Rather, UNCAC (a) lists specific acts of corruption such as bribery, fraud,

embezzlement, money laundering, concealment and obstruction of justice; (b) specifies who may be considered participants in corruption, (c) adopts a functional approach to defining "public servant" in relation to who may be considered participants in corruption; and (d) makes reference to the criminalisation of corruption under Article 7 of the **United Nations Convention against Transnational Organised Crime (UNCTOC) (A/RES/55/25**; adopted 15 November, 2000: came into force 29 September 2003). The United Nations (UN) has explained that there is no comprehensive, universally accepted definition of corruption because attempts to develop a more precise definition encountered legal, criminological, and in some states, political problems **(UN, United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators (UN 2004).** The *Travaux préparatoires* to UNCAC (United Nations Office on Drugs and Crime (UNODC), *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Corruption* (United Nations 2010)) lent credence to UN explanation regarding the absence of a definition of the term in the UNCAC by stating that, corruption was not defined because delegates failed to agree on a universally accepted definition during negotiations. Instead, a functional definition of "public official" was adopted in which case, delegates agreed that the definition of corruption should not only be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded and or accepted.

At the African regional level, the African Union Convention on Preventing and Combating Corruption (AUCPCC) (adopted in Maputo on 11 July 2003; entered into force 5 August 2006 <http://au.int/files/treaties> accessed 12 August 2021) makes reference to corruption by stating it to be "the acts and practices including related offences proscribed in this Convention;" and listed acts and practices which constitutes corruption in Article 4. Under the Article, the solicitation or acceptance of gratification, illicitly obtaining benefits for themselves while in office, diversion of public funds for personal use, amongst others represent corruption and are therefore proscribed in the Convention.

In the absence of a universal definition, various definitions have been proffered. For example, a number of organisations, including UNODC, World Bank, and Council of Europe, among others have proffered definition of corruption from the socio-economic angle. According to UNODC, corruption is a "complex social, political and economic phenomenon that affects every nation" (UNODC's Action against Corruption and Economic Crimes; https://www.unodc.org/unodc/en/corruption/). The Council of Europe **(Council of Europe, *Education against Corruption:* *A Manual for Teachers*, 2012)** defines corruption generally as "the misuse of entrusted public power or function for private benefit"; and makes the following postulations:

a) Corruption is embedded in social relations involving exchanges whereby people involved give and take,
b) It is much more complex than expressed in legal definitions since people may, sometimes, get involved

in corrupt practices not out of their free will but may have been forced by their superiors,

c) Corruption may be driven by culture, particularly where behavioural norms and practices justify and reinforce or tolerate it.

For the World Bank, corruption is a major barrier to economic development; and it affects every single country, making it imperative for every country to adopt, improve and strengthen policies, strategies, institutional and legal frameworks. The organisation also recommends that efforts to prevent and combat corruption must be concrete, sustainable and formidable **(World Bank, Combating Corruption, <http://www.worldbank.org> accessed 20 August 2021).**

Black's Law Dictionary adopts a descriptive approach in explaining the word corruption. It describes it as "depravity, perversion, or taint" or "impairment of integrity, virtue or moral principles"; ***(see also the literal definition of corruption in Collins English Dictionary & Thesaurus, 2nd Edition, HarperCollins 2000, 257).***

In Nigeria, the Nigerian Corrupt Practices and Other Related Offences Act, 2000 towed the line of UNCAC by simply listing acts of corruption as *bribery, fraud and other related offences* under section 2. However, the courts have described corruption as a devise or strategy usually employed to sway people away from the right course of action, duty or conduct either in the performance of their official duties or in activities relating to economic, political and social matters. In ***Attorney General of Ondo State v. Attorney General of the Federation and 35 others***

(2002) (2002) 9 NWLR, PT 772, PP. 222, 337-339, Ogwuegbu JSC described corruption as a virus, which has landed Nigeria in the economic quagmire, in which the country finds itself (Attorney General of Ondo, *supra, p. 347).* Mohammed JSC opined in the same case that corruption in Nigeria is not just local any more but that it has gone international. In view of the ills caused by corruption therefore, it could be regarded as perhaps the most debilitating of the social and economic ills plaguing Nigeria. For some, it is pervasive as it is endemic. Yet for others, as corruption becomes prevalent, those in positions of responsibility lose the ability to implement policy as is the case with Nigeria ***(J.M Elegido, Fighting Corruption in Nigeria (1999), Modus International and Business Law Quarterly, Vol. 4, No. 1, pp. 84-86.).***

Corruption is criminal in nature. However, it stands out among other socio-economic offences because unlike other offences such as causing physical injury to one victim, corruption is extremely pervasive, it affects the nation generally, eating deep into its fabric and everyone in the society is a victim.

Nigeria's experience with corruption shows that it is fundamentally characterised by a destructive nature that weakens democratic institutions, deliberately slows down economic development and contributes to governmental instability. As a foundational problem, it attacks the very root of democratic institutions by perverting not only electoral processes but also the rule of law. In the same vein, it has created and sustained a bureaucracy that does nothing other than to provide a leeway for the soliciting of bribes. The complexities of corruption are

many and its impact on Nigeria is unquantifiable **(Report of the Bureau of the Second Pan-African National Anti-Corruption Bodies Meeting, August 13, 2008).**

10.4. Impact of Corruption

There is no doubt that corruption has negatively affected the fabric of the society. The impact of corruption is palpable, and has earned Nigeria nothing but a grave image of indecency, attracting the most humiliating and unkind ratings, which have in turn hindered the inflow of foreign direct investments (FDIs) into the country, thereby crippling socio-economic development of the country. Over the years, Nigeria has fared badly in the Transparency International's (TI) annual Corruption Perception Index (CPI). In the 2020 CPI, Nigeria scored twenty five (25) points and was ranked 149th out of a total of one hundred and eighty (180) countries. Although, the ranking is based on *perception* and Nigeria has consistently argued this to be so-mere perception, a conjecture while questioning the integrity of the ranking, there are indicators of the pervasiveness of corruption in the country.

In 2019, the National Bureau of Statistics of Nigeria (NBSN) in partnership with UNODC and with the support of the United Kingdom launched the report on the Second Survey on Corruption in Nigeria (**UNODC, Corruption in Nigeria: Patterns and Trends (Vienna: UNODC, 2019**)). The report attests to the continuous existence of corruption; and its severe impact on virtually every sector of the economy. Also, in January 2021, Price Waterhouse Coopers (PWC) released a research report, which highlights the impact of corruption on every single sector

of the Nigerian economy (**PWC, Impact of Corruption on Nigeria's Economy, <https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf> accessed 16 August 2021**).

Generally, some of the impact of corruption underscored in the research include the following:

a) Business in Nigeria continue to experience barriers in doing successful businesses, as bigger companies are able to access public goods by leveraging their balance sheets, including access to stable electricity and water pipes among others. Because smaller and medium scale businesses (SMEs) are unable to afford these, they rely on the government for provision but corruption weakens public fund management and public goods provision. Therefore, it makes it more difficult for SMEs to compete.
b) There is presently limited investment, especially Foreign Direct Investment (FDI). This is because of corruption's undue threat to property rights, which discourages investment that requires high capital expenditure, as businesses are unwilling to place high capital at risk.
c) Noticeable decline in technological transfers as foreign companies are unable to protect intellectual property.
d) Average standard of living has become extremely low. As countries across the world are still struggling to overcome the impact of COVID-19 (currently in its 3rd wave), Nigeria seems to struggle more due to mismanagement of resources arising from bad

governance. In the same vein, inequality is further entrenched.

e) Critical stakeholders such as academics and medical and health workers continue to embark on strikes to force government to do the needful. This has continuously eroded the health and education sectors, further increasing brain drain.
f) Level and quality of education continue to spiral downward.
g) Bad governance in Nigeria remains rooted in the system as a result of compromised electoral processes.

Suffice it to state that the impact of corruption is far reaching; and cuts across the economic, political and social spheres among others. Economically, it impacts negatively on the business community that must necessarily use their resources to service corruption instead of reinvesting. This in turn reduces investment and the Gross National Product (GNP).

It is also true that as a consequence competition is being stifled, resulting in the production of lower quality goods and services, as well as diminishing revenues generally (PWC, *Ibid*).

Indeed, the impact of corruption is reflected in the level of insecurity facing the country now- insurgency, kidnapping and banditry, farmer/herders' clashes and secessionist agitations, all of which have been blamed on corruption and bad governance. This is as allegations of mismanagement or misappropriation of funds meant to fight insecurity endure.

The outbreak of the coronavirus (COVID-19) across the world in 2019 and its eventual penetration into Nigeria in February 2020 exposed the rot inherent in the Nigerian health sector. It is not a secret that Nigeria's responses, including lockdowns were met with vehement resistance by the public due largely to lack of trust. Public reactions that resulted in the looting of palliatives, etc. was unfortunate. As the government continues to make promises to combat and conquer corruption, we can only hope that its actions are matched with words.

10.5. Measures to Prevent and Combat Corruption

10.5.1 Legislative/Legal Measures

Anti-corruption measures in Nigeria have been many and sundry. Successive governments in Nigeria-military, interim and democratically elected, recognise corruption as the bane of Nigeria's development. Accordingly, legal, institutional, administrative and policy, etc. measures have been adopted to combat corruption.

The legal measures are quite robust and ambitious, covering official, economic, political, etc corruption, including grand and petty corruption. Some of them, along with the institutions they established gave effect to the UNCAC, which the country signed on 9 December, 2003 and ratified on 24 October 2004. Some anti-corruption laws include: the Code of Conduct Bureau and Tribunal Act, 1991, National Drug Law Enforcement Agency (Establishment) (NDLEA) Act, 1999, Independent Corrupt Practices and other Related Offences Act, 2000, Economic and Financial Crimes Commission (EFCC) (Establishment), Act, 2004, Money Laundering (Prohibition) Act, Nigeria Financial Intelligence Act, 2018,

Advance Fee Fraud and Other Fraud Related Offences Act, 2006, Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, Public Procurement Act, 2007, Criminal Code (CC)- section 98, Penal Code (PC)- section115-122; and the Administration of Criminal Justice Act, 2015, which was passed to strengthen anti-corruption efforts by providing mechanisms for speedy dispensation of criminal trials, especially high profile corruption cases. Others are the CBN Regulations 2013- Insurance Commission AML/CFT Regulations, 2013, Terrorism Prevention Regulations, Securities and Exchange Commission (Capital Market Operations AML/CFT) Regulations, 2013 made to reduce corrupt practices in the finance sector. Most of the provisions of these laws play the dual roles of criminalising and punishing corruption and providing the institutional framework for their effective enforcement. By so doing, they fulfil the aspirations of UNCAC, UNCTOC and AUCPCC, all of which enjoin state parties to adopt measures to criminalise and punish corruption and corrupt practices within their jurisdictions.

The point to note is that some earlier anti-corruption provisions are extremely limited in application. For example, the CC and PC dealt with corruption as a concept that applies solely to government officials, hence a holistic examination of the concept became difficult as the private sector also play an important role in the spread of corruption. This makes it imperative to update the laws.

10.5.2 Institutional Measures

Majority of the laws referred to above and many others established institutions, which they empower to enforce their provisions. These include:

- The EFCC-established by section 1 of the EFCC Act to exercise powers and functions outlined in Part II-sections 6-8.
- The Independent Corrupt Practices and Other Related Offences Commission (ICPC) - established under section 3 of the ICPC Act and mandated to exercise all the powers listed in section 5; and to perform "general duties" covered under section 6.
- The Code of Conduct Bureau and Tribunal-established under section 1 of the CCB Act, 1991 to perform functions listed in section 3. Section 2 highlights the goals of the Act, i.e. establishment of a body to maintain high standards of morality in the conduct of government business and to ensure the actions and behaviour of public officers conform to the highest standards.
- The Nigeria Financial Intelligence Unit (NFIU) was previously established vide section 1(2) of the EFCC Act, 2004. The Nigerian Financial Intelligence Unit Act, 2018 was passed to give the Unit autonomy, which it needs to effectively combat financial crimes independent of the EFCC. Section 2 of the NFIU Act established an independent Unit to be domiciled in the CBN. The Unit is also to serve as secretariat to the Inter-Ministerial Committee on Anti-Money Laundering (AML) or Counter- Financing Terrorism (CFT). Its functions are stipulated in section 3.
- The Bureau of Public Procurement (BPP)- established under section 1 of the BPP Act to perform functions

listed in section 5 and exercise powers listed in section 6.

- In addition to the above, a myriad of other institutions exists in Nigeria with the mandate, among others to combat corruption. They include the Nigeria Police Force (NPF), the Directorate of State Security (DSS) and other law enforcement agencies, the courts, the media as well as the National Assembly (NASS), among others.

10.5.3 Administrative and Policy Measures

In its effort to effectively combat corruption, the Nigerian government takes into consideration the fact that the multidimensional and multifaceted nature of corruption requires the adoption of multidisciplinary, multipurpose and integrated actions, which are not only proactive, but also targeted. Therefore, it continues to introduce varied administrative and policy options. These include:

- ***The Whistleblowing Policy, 2016***. According to the then Minister of Finance, Kemi Adeosun, the policy needed to be embraced due to its many advantages to wit: prospects of attracting increased accountability and transparency in the management of public funds, and the possibility that more funds would be recovered, which could in turn be channelled to infrastructure deficit financing. Although the policy showed some signs of success initially, it very quickly began to face challenges, which stalled its effectiveness.
- ***Open Government Partnership Initiative (OGP)*** The OGP is to *inter alia,* ensure that Nigeria's 2020 Anti-Corruption Strategy is efficiently implemented. **(Open Government**

Partnership<http://www.opengovernmentpartnership.org> accessed 20 August 2021)

- ***The Open Government Initiative.*** This produced the National Action Plan (NAP) 2019-2022 **(NAP, *<https://www.opengovpartnership.org/wp-content/uploads/2020/01/Nigeria_Action-Plan_2019-2022_Revised.pdf> accessed 17 August 2021)***. The purpose of the NAP is to deepen and mainstream transparency mechanisms and citizens' engagement in the management of public resources across all sectors. It focuses on seven thematic areas - fiscal transparency, extractive transparency, anti-corruption, access to information, citizens' engagement and empowerment and inclusiveness and service delivery. Furthermore, it is to commit to taking appropriate actions in the coordination of activities that would improve integrity, transparency and accountability in the country; and further ensure improved compliance of public institutions with established anti-corruption standards.
- ***The Integrated Payroll (IPPIS), Bank Verification Number (BVN).*** Introduced to combat public sector corruption.
- ***The National Identity Number (NIN)*** introduced and managed by the National Identity Management Commission (NIMC) pursuant to sections 6 and 7 of the National Identity Management Commission Act, No. 23, 2007. This is for purposes of maintaining and operating a national identity database as is done across the world. This will contribute to fighting corruption and other crimes, through easy identification and tracing of criminals.

- ***Treasury Single Account (TSA):*** A policy recommended by the World Bank, partially implemented in Nigeria in 2012 for the effective management of national cash assets by ensuring that all government payments and revenue collections are managed through a single bank account or set of linked accounts, which promotes accountability and transparency in the management of public funds.

10.5. The Role of Legal Education in Preventing Corruption

The most effective way of combating corruption is to prevent it. However, it is a notorious fact that anti-corruption prevention measures are far more complicated mainly because they involve good governance practices such as (a) setting up, empowering and strengthening strong anti-corruption institutions, procedures and systems, (b) addressing factors that make corruption to thrive; and (c) increasing incentives that motivate people to distance themselves from corruption, among others. Legal education can play an important role in preventing corruption. Legal education generally prepares individuals for the practice of law at various branches of the legal profession, private or public sector, academia or the judiciary as the case may be. The length and rigours associated with it: (a) normally foster strong legal personalities with legal skills which are needed to contribute to governance, contribute to the debate on Nigerian nationhood, and to bravely defend the society against crime, including corruption using the instrumentality of the law; and (b) provide balance and the linkage between academic and theoretical knowledge on topical issues and core competences in areas such as

leadership and legal practice-the Bar and the academic etc. (**Council of Europe, *Education against Corruption: A Manual for Teachers,* Starsbourg 2012)**.

As a result, it is important for legal education to focus on training that produces law students and lawyers capable of showing leadership in anti-corruption advocacy and negotiation skills. This is important because legal education is key to achieving sustainable education as recognised by Goal 4: Quality Education **(UNDP, Sustainable Development Goals <http://www.undp.org> accessed 18 August 2021)**.

Generally, law faculties of the various universities and the Nigerian Law School can play a fundamental role in the context of preventing corruption because students, who have a holistic understanding of corruption and counter measures- legal, institutional and other frameworks, are more likely to effectually withstand the pressures that push people into corruption. Also, awareness of anti-corruption mechanisms *vis-à-vis* their rights and interests, arms students/lawyers with the capacity to overcome the temptation of giving and receiving bribes; and the idea that citizens have that awareness can potentially discourage officials from soliciting bribes. Awareness, which makes students conscious of the effects of corruption on the society and on them as individuals is highly effective among law students and teachers who understand the nature of rights and responsibilities attached to such rights.

When law students finish from the university and law school with the belief that rejection of corruption goes

beyond their own interests; and they are used to considering bribery and similar practices as incompatible with their public role as citizens or officials, they become insurmountable obstacles against corruption. This can potentially reduce the incidence of corruption, which is extremely harmful to the Nigerian society.

Since legal education builds values and develops knowledge, skills and attitudes necessary to shape students' legal and civic stance against corruption, it can structure them to be aware of the threats that corruption poses to public welfare and safety, and become more willing to fight it.

Law students who imbibe (through teaching) values such as respect for democratic values, honesty, responsibility for theirs and others' actions and behaviour, continuous self-improvement, and enrichment of knowledge and social and cultural skills, etc. can effectively prevent corruption through their actions; hence the need for legal education bordering on anti-corruption.
To achieve effective anti-corruption content, themes and measures in legal education, the following steps can be taken:

- Inclusion of the fight against corruption in the learning objectives of the compulsory and optional curriculum of legal education.
- It can form part of the cross- and extra-curricular activities, which may take place in the classroom-, school- and community-level education (moot trials, civic campaigns, conferences, youth activities, etc.)
- Anti-corruption measures will need to be taught in the context of real-life situations that demonstrate specific

socio-economic, historical, cultural and psychological situations. Example is examining nepotism in the context of psychology or culture.

- Teaching must effectively provide information for analysis, critical review and decision making in the area of adopting positions against corruption generally.

- Knowledge of Nigerian legislation on issues dealing with corruption, including ACJA, 2015, its types, nature, and other ramifications is crucial.
- It is also important for law faculties and the Nigerian law school to be constantly updated with the right information about corruption and legislation, etc.

The creation of anti-corruption measures notwithstanding, corruption remains rife in the country mainly because corruption is rooted in attitudes. This means that they can only be effective if they are accompanied by behavioural change, which depends largely on education generally, including legal education. From the foregoing, there is no doubt that the Guidebook for integrating the teaching of ACJA in the criminal law and procedure curriculum of Law Faculties as part of the training or preparation of prospective lawyers will go a long way in supporting the role of legal education in combating corruption in Nigeria.

10.6. Learning Outcome

At the end of this Chapter, the user should be able to:

- understand the nature and Scope of Administration of Criminal Justice in Nigeria,
- Understand the meaning, nature and impact of corruption in Nigeria,

- Comprehend anti-corruption measures in Nigeria and the importance of engaging preventive measures in spite of their intricate nature,
- Understand the role of legal education in preventing corruption.

10.7. Further Reading Materials

- UNODC, *Corruption in Nigeria: Patterns and Trends.* (UNODC Second Survey on Corruption as Experienced by the Population 2019).
- Enrico Carloni with Diletta Paoletti (Eds.), *Preventing Corruption through Administrative Measures: A Handbook* (Morlacchim 2019).
- Jay Albanese, *Transnational Crime and the 21st Century: Criminal Enterprise, Corruption and Opportunity* (Oxford University Press 2020).
- UNODC, *Travaux Preparatoires of the Negotiations for the Elaboration of the United Nations Convention against Corruption* (United Nations 2010).
- *(Encyclopaedia Britannica, Legal Education,* <https://www.britannica.com/topic/legal-education>.