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The Compendium of State Administration of Criminal Justice Law Analyses (Volume II) is one of the outputs under a Project that aims to facilitate the implementation of the administration of criminal justice in Nigeria by increasing understanding and awareness about the Administration of Criminal Justice Act 2015 and the various state replicas.

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Volume II

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NIALS COMPENDIUM OF STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW ANALYSES
(VOLUME II)





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NIALS COMPENDIUM OF STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW ANALYSES (VOLUME II)

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EDITOR'S NOTE

Criminal justice administration in Nigeria has been greatly enhanced since the enactment of the Administration of Criminal Justice Act (in 2015) and Administration of Criminal Justice Laws of various States. These legislations have provided the platform to tackle shortcomings such as detention of awaiting trial suspects; accused persons standing trial without legal representation, inefficient and ineffective prosecutors, as well as corruption that previously bedevilled the criminal justice system and marred its effectiveness and efficiency. Currently (as at October 31, 2020), 30 states and the FCT have enacted the relevant Administration of Criminal Justice Act and Laws.

This compendium like the earlier Volume, showcases critical analyses of the Administration of Criminal Justice State Laws. With the first Volume focusing on 13 State ACJLs, this current Volume explores 10 out of the remaining 17 relevant ACJLs. The aim of the compilation is to provide a comprehensive database for relevant stakeholders. The analyses adopt the Administration of Criminal Justice Act, 2015 as the baseline tool for assessing the various State laws, due to its closeness to the vision of an effective and efficient system, if properly implemented. The analyses identify that variances exist between the federal and state instruments. The analyses also generally reveal that innovations introduced aim at fast-tracking justice delivery, with a concerted effort at the preservation of rights of accused persons. analyses contribute to the development of Criminal justice reform in Nigeria and serves as an important guide to States in facilitating implementation of their ACJLs.

This compilation of ACJL Analyses is part of the Institute's three-year project on the Implementation of the Administration of Criminal Justice Act 2015 (ACJA) (referred to as 'The Project'), which began in 2017. The Project seeks to deepen understanding of legal instruments relating to the administration of criminal justice at federal and state levels. Another key objective of the Project is improving the management of all genres of criminal proceedings, including the prosecution of anti-corruption cases.

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

Professor Muhammed Tawfiq Ladan, PhD
November 2020

Table of Contents

EDITOR'S NOTE.....iv

Table of Statutes.....xiii

Cases.....xvi

Table and Figures.....xx

Abbreviations and Acronyms.....xxi

COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 AND ADMINISTRATION OF CRIMINAL JUSTICE LAW PLATEAU STATE, 2018.....1

1.1. General Overview of the Plateau State Administration of Criminal Justice Law, 2018.....1

1.2. The Plateau State Administration of Criminal Justice Law, 2018 and Compliance with International Best Practices.....3

1.2.1. Human Rights Compliance.....5

1.2.2. Arrest, Remand/Detention, Investigation and Interrogation Aspect....6

1.2.3. A Shift from Adversarial to Restorative Justice.....8

1.3. Comparative Analysis of ACJA and PlACJL 10

1.4. Practical Challenges with the Implementation of the ACJA/PACJL Provisions.....52

1.5. Recommendations.....56

1.6. Conclusion.....58

COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015 AND KWARA STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL)2018.....59

2.1. Overview of the Kwara State Administration of Criminal Justice Law, 2018.....**59**

2.1.1 Purpose and Extent of Application of the Law.....60

2.1.2 Innovative Provisions Under Kwara ACJL.....61

2.2 Compliance of the Law with International Best Practices.....**66**

2.2.1 Compliance with International Human Rights Standards.....66

2.2.2 Restorative Justice.....69

2.2.3 Non-Custodial sentencing.....70

2.3 Comparative Analysis between Kwara State Administration of Criminal Justice Law and Administration of Criminal Justice Act (ACJA) 2015.....**71**

2.4 Practical Challenges with the Implementation of the Kwara Administration of Criminal Justice Law Provisions.....**97**

2.5bRecommendations.....**99**

2.6 Conclusion.....**100**

COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA), 2015 AND THE ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL), 2018 OF NASARAWA STATE.....**101**

3.1. Overview of the ACJA, 2015 and the ACJL, 2018 of Nasarawa State.....**101**

3.1.1. The ACJA, 2015: Objectives, Scope and Application.....101

3.1.2. The ACJL, 2018 of Nasarawa State: Objectives, Scope and Application.....105

3.2. Compliance of the ACJA, 2015 and the ACJL, 2018 of Nasarawa State with International Best Practices.....**107**

3.3. Comparative Analysis of the ACJA, 2015 and ACJL, 2018 of Nasarawa State.....**112**

3.4. Practical Challenges with the Implementation of the ACJA, 2015 / ACJL, 2018 Provisions.....**125**

3.5. Recommendations.....**127**

3.6. Conclusion.....**128**

COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015 (ACJA) AND JIGAWA STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL) 2019.....**129**

4.1 General Overview of the Administration of Criminal Justice Act 2015 and the Jigawa State Administration of Criminal Justice Law 2019.....**129**

4.1.1 Purpose and Application of The Administration of Criminal Justice Act 2015 and The Jigawa State Administration of Criminal Justice Law 2019.....129

4.2 Compliance with International Best Practices in Criminal Justice Administration.....**131**

4.3 Comparison between ACJA and Jigawa State ACJL.....**136**

4.4 Practical Challenges with the ACJA/ Jigawa State ACJL.....**149**

4.5 Recommendations.....**151**

4.6 Conclusion.....**151**

A COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 AND ADMINISTRATION OF CRIMINAL JUSTICE LAW OF ABIA STATE 2017.....**153**

5.1. General Overview of the Administration of Criminal Justice Act 2015 and the Abia State Administration of Criminal Justice Law, 2017....**153**

5.1.1. The Administration of Criminal Justice Act 2015.....153

5.1.2. The Administration of Criminal Justice Law, Abia State 2017...154

5.2.BCompliance with International Best Practices.....**154**

5.3. Comparative Analysis of ACJA and Abia ACJL.....**156**

5.4. Practical Challenges with the implementation of the ACJA/ACJL Provisions.....**168**

5.5. Recommendations.....170

5.6. Conclusion.....**170**

A COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015 AND ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL) BAYELSA STATE, 2019....**171**

6.1. Overview of the Administration of Criminal Justice Act (ACJA) 2015 and the Administration of Criminal Justice Law (ACJ) Bayelsa State 2019.....**171**

6.1.1. Aim and Objectives of Administration of Criminal Justice Act (ACJA) 2015 and the Administration of Criminal Justice Law (ACJ) Bayelsa State 2019.....172

6.1.2. Structural Arrangement of ACJA 2015.....172

6.1.3. Structural Arrangement of Bayelsa State ACJL 2019.....174

6.2. General Comparative Overview of ACJA and ACJL Bayelsa.....**176**

6.3. Compliance with International Best Practices.....**177**

6.3.1. International best practices.....177

6.3.2. Major innovations of ACJA and ACJL, Bayelsa that conform with International standards and best practices.....180

6.4. Comparative Analysis of ACJA and ACJL Bayelsa.....**184**

6.5. Practical Challenges with the Implementation of ACJA/ACJL, Bayelsa State Provisions.....**245**

6.6. Recommendations.....**248**

6.7.Conclusion.....**250**

COMPARATIVE ANALYSIS BETWEEN THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015) EDO STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW 2016**.....252**

7.1 Introduction.....**252**

7.2 Compliance with International Best Practices.....**253**

7.3 A Comparison of the Edo State Administration of Criminal Justice Law 2016 and Administration of Criminal Justice Act 2015.....**258**

7.4 Challenges and Recommendations.....**263**

7.5 Conclusion.....**264**

A COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 AND ADMINISTRATION OF CRIMINAL JUSTICE AND OTHER RELATED MATTERS LAW OF OGUN STATE 2017.....**265**

8.1. Overview of the Administration of Criminal Justice Act (ACJA) and the Administration of Criminal Justice Law (ACJL), Ogun State.....**265**

8.2. Compliance with International Best Practices.....**265**

8.3. Comparative Analysis the Administration of Criminal Justice Act (ACJA) and the Administration of Criminal Justice Law (ACJL), Ogun State.....**266**

8.4. Practical Challenges with the Implementation of the ACJA/ACJL Provisions.....**288**

8.5 Recommendations.....**291**

8.6 Conclusion.....**292**

COMPARATIVE REVIEW AND ANALYSIS OF STATE OF OSUN ADMINISTRATION OF CRIMINAL JUSTICE LAW, 2018 AND THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015.....**294**

9.1.1 Structures of the ACJL of Osun State, 2018 and ACJA, 2015....294

9.1.2 The purpose ACJA and ACJL.....295

9.1.3 Applicability of ACJA, 2015 and ACJL, 2018.....**298**

9.1.4 Introduction of the Justice Sector Reform Team and Administration of Criminal Justice Monitoring Committee.....298

9.2 Compliance with International Best Practices.....**300**

9.2.1 Bail.....301

9.2.2 Restorative justice under ACJL and ACJA.....301

9.2.3 Speedy dispensation of criminal justice.....302

9.2.4 Respects for Human Rights.....303

9.3 Comparative Analysis of ACJA and ACJL.....**304**

9.4 Practical Challenges with the Implementation of ACJA, 2015 and ACJL, 2018 Provisions.....313

9.5 Recommendations.....316

9.6 Conclusion.....317

A COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 AND THE OYO STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW.....**319**

10.1 Overview of the Administration of Criminal Justice Act, 2015 and Oyo State Administration of Criminal Justice Law, 2017.....**319**

10.2 Compliance with International Best Practices.....**322**

10.2.1 Human Rights aspect.....324

10.2.2 Arrest, remand/detention, investigation and interrogation....324

10.2.3 A shift from adversarial to restorative justice.....326

10.3 Comparative Analysis of ACJA and ACJL.....**329**

10.4 Practical Challenges with the Implementation of the ACJA/ OYOACJL provisions.....**374**

10.5 Recommendation.....**379**

10.6 Conclusion.....**381**

Table of Statutes

Nigerian Statutes

Abia State Administration of Criminal Justice Law, 2017
Administration of Criminal Justice Act Cap. A3 Laws of the Federation of Nigeria (LFN) 2004
Administration of Criminal Justice Act, 2015
Administration of Criminal Justice Monitoring Committee, (ACJMC)
Anambra State Administration of Criminal Justice Law, 2010
Bayelsa State Administration of Criminal Justice Law, 2019
Central bank of Nigeria (CBN) Act, 2007
Child Rights Act (CRA) 2003
Constitution of the Federal Republic of Nigeria, 1999
Criminal Procedure Act (CPA) Cap 80, LFN 1990
Criminal Procedure Code (CPC) Cap C30 Laws of Northern Nigeria, 1963
Customs and Excise Management Act
Cybercrimes (Prohibition, Prevention, etc.) Act (CPPA), 2015
Edo Administration of Criminal Justice Law, 2016
EFCC Act, Cap E7, LFN 20042004
Ekiti State Administration of Criminal Justice Law, 2014
Electoral Act
Evidence Act, 2011
Interpretation Act, Cap I23, LFN 2004
Jigawa State Administration of Criminal Justice Law, 2019
Kaduna State Administration of Criminal Justice Law
Kwara State Administration of Criminal Justice Law, 2019
Lagos State Administration of Criminal Justice Law, 2011
Marriage Act, Cap M6 LFN 2004
Money Laundering Prohibition Act, 2011
Nassarawa State Administration of Criminal Justice Law, 2018
Nigeria Police Act 2018
Nigerian Anti-Torture Act, 2017
Nigerian Correctional Service Act (NCSA), 2019
Ogun State Administration of Criminal Justice Law, 2017
Osun State Administration of Criminal Justice Law, 2018

Oyo State Administration of Criminal Justice Law, 2017
Oyo State Child Rights Law (OSCRL) 2006
Penal Code Act of the Federal Capital Territory 2007
Penal Code of Plateau State, 2017
Plateau State Administration of Criminal Justice Law (PlACJL), 2018
Terrorism Prevention (Amendment) Act, 2013
Terrorism Prevention Act, 2011
Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEAA), 2015
Violence Against Persons Prohibition Act, 2015

Nigerian Rules and Regulations
EFCC (Enforcement) Regulations, 2010
FCT High Court Practice Direction, 2017

Foreign Statutes
African Charter on Human and Peoples' Rights (ACHPR), 1981
African Charter on the Rights and Welfare of the Child
Basic Principles on the Role of Lawyers, 1990
Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002
Code of Conduct of Law Enforcement Officials, 1979
Convention Against Torture (CAT), 1984
Convention on the Elimination of all Forms of Discrimination Against Women CEDAW, 1979
Convention on the Rights of the Child (CRC), 1989
Covenant on Civil and Political Rights, 1966
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
Doha Declaration, 2015
European Convention on Human Rights
European Convention on the Compensation of Victims of Violent Crimes 1983
Human Rights Standards and Practice for the Police (HRSPP), 2004

International Covenant on Civil and Political Rights (ICCPR), 1966
Kampala Declaration on Prison Conditions in Africa
Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, 2007
UN Standards Minimum Rules for the Treatment of Prisoners, 2015
United Nations Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, 1988
United Nations Declaration on the Rights of Indigenous People, 2007
United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System, 2012
United Nations Rules for the Treatment of Women Offenders ("the 'Bangkok Rules"), 2010
United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), 1990
United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 1985
Universal Declaration of Human Rights, 1948

Cases

Abacha v The State (2002) 11 NWLR (pt. 779) ---------- 67
Adamu v State (2017)7 NWLR (Pt 1565 ---------- 131
Adigwe v FRN (2015) LPELR – 24694 (SC ---------- 70
Adogo & Anor V. Tukura & Anor (2019) LPELR-47705(CA) ---------- 46
Agbi v Ibori (2004) 6 NWLR (Pt. 868) ---------- 127
Akaeze Charles v FRN (2018) LPELR-43922(CA ---------- 80, 166
Akingbola v. FRN (2012) 9 NWLR (Pt. 1306) ---------- 60
Akpan v State (2019) LPELR-48170 (CA ---------- 131
Alabi v State (1993)7 NWLR (Pt 307) ---------- 131
Alade v FRN ---------- 75
Amadi v. NNPC ---------- 20
Ankwa v The State ---------- 70
Anyebe v. The State (1986) 1 SC ---------- 191
Ariori v Elemo [1983] SCNLR ---------- 70
Awelle v People of Lagos State (2016) LPELR -41395 (CA) ---------- 66, 122
Bagudu v. FRN (2004) 1NWLR (pt. 853) ---------- 191
Barbedos Ventures Ltd v FBN Plc. [2016] 11 NWLR (Pt. 1523) ---------- 66
Borishade v. FRN (2012) 18 NWLR (PT. 1332 ---------- 182
Charles v FRN [2018] 13 NWLR (Pt. 1635) ---------- 61
Chaudhary v State (Delhi Administration) (1984) I SCC ---------- 76
Chinaka Promise v. FRN ---------- 32
Coca-Cola (Nig.) Ltd v Akinsanya [2017] 17 NWLR (Pt. 1593) ---------- 67
Danladi v Dangiri [2015] 2 NWLR (Pt.1442) ---------- 66
Dariye v FRN (2015) 10 NWLR (Pt. 1467) ---------- 19, 221, 222
Dasuki (Rtd) v. FRN (2018) LPELR-43969(CA) ---------- 40
Diamond Bank Plc v. Opara (2018) 7 NWLR (pt. 1617), ---------- 190
Domingo v. Queen (1963) 1 AII NLR ---------- 192
Dr. Dayo Olagunju v. FRN ---------- 20, 222
Ejike Okoye v Commissioner of Police ---------- 6, 19, 204, 215
Ekpo v. State (1982) 6 S.C ---------- 193
F.R.N. v. Ajudua (2006) 1 EFCL Report ---------- 193

Federal Airport Authority of Nigeria V. Wamal Express Services [Nig] Ltd (2011) LPELR-1261 (SC)----------171
Federal Republic of Nigeria v Nkechi Caroline Amadi (Alias Onyemachi Uchechi) FCT/ HC/CR/16/2018---------- 78
Federal Republic of Nigeria v Osahon (2006) 5 NWLR (Pt. 973)---- 25,68,73, 128, 132, 218
Federal Republic of Nigeria v Salihu Abdullahi FHC/BAU/25C/2016 ------ 78
Federal Republic of Nigeria v. Michael Ogun Charge No: FCT/HC/CR/ 15/14---------- 78
FRN v AVM Saliu Atawodi and 2 Ors FCT/HC/CR60/15 delivered 26 April 2017---------- 67
FRN v Awe Odessa, All States Bank Plc. and Ors FHC/ICD/143/04 -------- 69
FRN v Chinaka Promise CA/A/767c/2019 ---------- 78
FRN v Maishanu & Ors. (2019) LPELR-46380(SC). ----------128
FRN v. Babalola Borisade ----------20, 61, 222
FRN v. Cecilia Ibru FHC /L/297C/2009 ---------- 79
FRN v. Ibori ----------21, 223
FRN v. Lucky N.Igbinedion & Ors (2014) LPELR-22760 (CA). --------79,192
FRN v. Nwude (2015) LPELR – 25858 (C---------- 78
George v. FRN (2011) 10 NWLR (pt. 1254) ----------191
HadejiaJama'Are River Basin Development Authority v Chimande (Nig.) Ltd (2016) LPELR-40202(CA).----------141
Hassan v. EFCC (2014)1NWLR (pt. 1389), ----------190
Health Practitioner & 2 Ors v Medical and health Workers &Ors [2008] 1 SC (Pt. 111)---------- 66
Holgate v. Duke (1984) AC 437----------190
Ibrahim v. State (1988) 1 NWLR (pt. 18) ----------191
Igba v. State (2018) 6 NWLR (pt. 1614----------192
Ikpa v. State (2018) 4NWLR (pt. 1609),----------192
Interdrill (Nig) Ltd v UBA Plc [2017] 13 NWLR (Pt. 1581)---------- 69
Josiah v. State (1985) 1 NWLR (pt. 1), ----------183
Julius Berger (Nig.) Plc v Anizzeal Eng. Project Ltd.(2013) LPELR-20694 (CA) ----------126
Klopfer v. N.C., 386 u.s.213, 223, 226 (1967) ----------188
LASTMA v Esezobo [2017] 5 NWLR (Pt. 1559) ---------- 69

Lawrence v. FRN (2018) LPELR-44510(CA ---------- 56
Lufadeju & Anor v Johnson ---------- 75
Madukolu v. Nkemdilim (1962) SCNLR 341 ----------192
Messy v Council of the Municipality of Yass (1922) 222 SRNSW 494 -----126
Metuh v FRN ---------- 20,61,67
Michel v Baker (1800) 44 Ch D 282.----------126
Mohammad v. C.O.P. (2018) 6NWLR (pt. 1615) ----------192
Mohammed v The State (2013) LPELR – 19822 (SC)---------- 70
Mohammed v. State (2013) LPELR-20840(CA)---------- 37
Mrs. Cecilia Ibru [Unreported], Charge No. FHC/L/297C/200----------134
Mustapha v FRN (2017) LPELR-43131(CA), ---------- 67
Newswatch Communications Limited V. Alhaji Aliyu Ibrahim Atta (2006) LPELR-1986 (SC)----------171
Nganjiwa v FRN [2018] 4 NWLR (Pt. 1609) ---------- 67
Nnamdi Kanu&Ors v FRN ----------132
Nwude v FRN ----------24, 217
Ojo v FRN (2006) 9 NWLR (Pt. 984)----------128
Okotie v. C.O.P (1959) 4FSC 125----------190
Okoye v. C.O.P. (2015) AII FWLR (pt. 799), ----------192
Olaiya v State [2018] 10 NWLR (Pt. 1626) ---------- 69
Olubukola Saraki v Federal Republic of Nigeria (2016)3 NWLR (Pt 1500) SC ----------139
Omonuwa v. Oshodin (1985) 2 NWLR (Pt.10) 924---------- 67
Onwudiwe v. FRN----------26, 40, 54, 55
R. v. Fiak (2005) EWCA ----------190
Rabiu v. State (1981) 2 NCLR----------191
Rickey Tafar Mustapha (SAN) v Federal Republic of Nigeria (2017) LPELR-43131(CA)---------- 67
Sambo Dasuki v FGN(2018) LPELR-43969 (CA) ----------26, 132
Shane Edward Williams v The Queen [2009] ----------137
Shema & Ors v FRN ----------6
Shoneye v State (2015) LPELR-25862(CA ----------128
Slok Nigeria Limited v. Federal Republic of Nigeria & Ors CA/L/1043C/2018. ---------- 68
SPDCN v Anaro [2015] 12 NWLR (Pt. 1472)---------- 80

STEVE EMEKA IKE v. THE STATE OF LAGOS (2019) LPELR-47712(CA).. ----------166
Sule v. The State (2018) 10 NWLR (pt. 1628)----------192
Tafa Balogun v FRN (2005) 4 NWLR (Pt. 324)----------133
Timothy v. FRN (2008) AII FWLR (pt. 402)----------192
Tukur v. Gov, Gongola State (1988) 1NWLR (pt. 68) ----------191
U.S. v. Ewell, 383 U.S. 116, 120 (1966) ----------188
UCHBM v Morakinyo [2014] 16 NWLR (Pt. 1434)---------- 65
Ude Jones Udeogu vs Federal Republic of Nigeria & 2 Ors (unreported) Suit No. SC.622c/2019, ----------39, 41, 68,141, 174, 223, 228
Ugo-Ngadi v. FRN (2018) LPELR-43903(SC) ---------- 46
Vuyor v. State ----------183
Western Steel Works Ltd. v. Iron and Steel Workers Union (1986) 3 WNLR (pt. 30) ----------192

Table and Figures

TABLE 1: COMPARISON BETWEEN ACJA 2015 AND PLATEAU STATE ACJL 52
TABLE 2: COMPARISON BETWEEN ACJA 2015 AND KWARA STATE ACJL 97
TABLE 3: COMPARISON BETWEEN ACJA 2015 AND NASARAWA STATE ACJL 125
TABLE 4: COMPARISON BETWEEN ACJA 2015 AND JIGAWA STATE ACJL 149
TABLE 5: COMPARISON BETWEEN ACJA 2015 AND ABIA STATE ACJL.....168
TABLE 6:COMPARISON BETWEEN ACJA 2015 AND BAYELSA STATE ACJL 245
TABLE 7: LEVEL OF COMPLIANCE OF THE EDO STATE ACJL WITH INTERNATIONAL BEST STANDARDS. 258
TABLE 8: COMPARISON BETWEEN ACJA 2015 AND EDO STATE ACJL 263
TABLE 9: COMPARISON BETWEEN ACJA 2015 AND OGUN STATE ACJL 288
TABLE 10: COMPARISON BETWEEN ACJA 2015 AND OSUN STATE ACJL 313
TABLE 11: COMPARISON BETWEEN ACJA 2015 AND OYO STATE ACJL.....374

Abbreviations and Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ACJ	Administration of criminal justice
ACJA	Administration of Criminal Justice Act
ACJL	Administration of Criminal Justice Law
ACJMC	Administration of Criminal Justice Monitoring Committee
ACRWC	African Charter on the Rights and Welfare of the Child
AG	Attorney General
AGF	Attorney General of the Federation
BVN	Bank verification number
CAT	Convention Against Torture
CBN	Central Bank of Nigeria
CC	Criminal Code
CCRR	Central Criminal Records Registry
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CFRN	Constitution of the Federal Republic of Nigeria
CJ	Chief Judge
COP	Commissioner of police
CPA	Criminal Procedure Act
CPC	Criminal Procedure Code
CPPA	Cybercrimes (Prohibition, Prevention, etc.) Act x
CRA	Child Rights Act
CRC	Convention on the Rights of the Child
CRR	Criminal Records Registry
DNA	Deoxyribonucleic acid
DPP	Department of public prosecution
EA	Evidence Act
ECHR	European Convention on Human Rights
EFCC	Economic and Financial Crimes Commission
FCT	Federal Capital Territory
FHC	Federal High Court
HRSPP	Human Rights Standards and Practice for the Police

ICCPR	International Covenant on Civil and Political Rights
ICPC	Independent Corrupt Practices Commission
ICT	Information and communication technology
IGP	Inspector General of police
LACON	Legal Aid Council of Nigeria
LEAs	Law enforcement agencies.
LFN	Laws of the Federation of Nigeria
NAFDAC and Control	National Agency for food and Drug Administration
NCSA	Nigerian Correctional Service Act
NCSA	Nigerian Correctional Service Act
NDLEA	National Drug Law Enforcement Agency
NIN	National Identification number
NPF	Nigeria Police Force
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCRL	Oyo State Child Rights Law
PC	Penal Code
PEPs	Politically exposed persons
PlACJL	Plateau State Administration of Criminal Justice Law
TIPPEAA	Trafficking in Persons (Prohibition) Enforcement and Administration Act
TPA	Terrorism Prevention Act
UDHR	Universal Declaration for Human Rights
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
UNODC	United Nations Office on Drugs and Crimes
VAPPA	Violence Against Persons Prohibition Act

COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 AND ADMINISTRATION OF CRIMINAL JUSTICE LAW PLATEAU STATE, 2018*

1.1. General Overview of the Plateau State Administration of Criminal Justice Law, 2018

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

In Plateau State (like all States in Northern Nigeria), the CPC[3] guided criminal trials until the passage of the Plateau State Administration of Criminal Justice Law (PlACJL) or (ACJL) in 2018 which just like the ACJA did in s. 493,

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

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

[3] Ibid

repealed the CPC by virtue of s. 491.

On 18 September 2015 the Governors of the 19 States in Northern Nigeria, set up a Committee to review the Penal Code and the CPC with a view to producing laws that meet the modern-day challenges and realities in administration of criminal justice. The recommendations of the Committee which were adopted by the Governors of the 19 States in Northern Nigeria include domestication of the ACJA and holistic rewriting and redrafting of the Penal Code by the various States in the region taking into consideration individual State peculiarities but ensuring some degree of consistency of laws across all the 19 States in the Region. The PlACJL and the Penal Code of Plateau State (both gazetted on 24th October, 2018) were a result of the foregoing exercise.

The PlACJL bears considerable similarity in content and language with the ACJA and can be described as a rehash of same in several places. It is also aspirational in its outlook. The PlACJL adapted many robust innovations introduced by the ACJA which aims inter alia at respecting the human rights of citizens, speedy trial and decongestion of correctional facilities. For example, the law emphasised respect for the human rights of suspects, abolished arrest *in lieu,* recognizes the right of women to stand as sureties, legalised plea-bargaining, provides for frontloading especially by the Prosecution to enhance speedy trials, introduced non-custodial measures as alternatives to incarceration, provides guidelines on how to deal with child offenders, in addition to establishing institutional framework for successful implementation. The law is a shift towards crime prevention and restorative justice.

The PlACJL consists of 51 Parts and 491 sections which combine to provide a holistic mechanism for effective criminal justice administration in the state. In addition to substantive provisions, the law also contains four schedules

(described as First Schedule to Fourth Schedule) basically dealing with Forms relative to various sections of the law.

1.2. The Plateau State Administration of Criminal Justice Law, 2018 and Compliance with International Best Practices

The importance of establishing a criminal justice administration that gives greater protection to the rights of the offender and the victim and the interest of the larger society and at the same time meets generally accepted principles and standards has been a major theme in many criminal justice discourses for many years across the globe. A lot of criminal justice reforms have taken place in many countries of the world with regard to treatment of offenders from the time of arrests to the conclusion of trial and imposition of punishment. Greater emphasis is now placed on respect for the human rights of offenders and adoption of non-custodial sentencing among others. The United Nations has kept the issue of criminal justice reforms on the front burner and pushed for its actualization. In this regard, a number of norms, standards and principles have been developed to guide states in developing acceptable criminal justice administration in their respective states. Some of these standards deal with human rights and are general in nature. They include the International Covenant on Civil and Political Rights (ICCPR),[4] Convention on the Rights of the Child (CRC) [5]and the African Charter on Human and Peoples' Rights (ACHPR).[6]

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

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

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

Some other standards such as the UN Standards Minimum Rules for the Treatment of Prisoners[7] and the Human Rights Standards and Practice for the Police (HRSPP),[8] are more subject specific. The UN Standards Minimum Rules for the Treatment of Prisoners deals essentially with imprisonment; The Human Rights Standards and Practice for the Police (HRSPP) was developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR)[9] in 2004 as a standard reference guide for police operations across the world. The principle of the dignity of the human person is the crux of International human rights standards, best practices and norms. The principle emphasises two key imperatives: firstly, the obligation of law enforcement officials to protect human dignity and uphold the human rights of all persons, in addition to respecting the principles of legality, necessity, humanity and non-discrimination;[10] and secondly, the requirement for law enforcement operatives as servants of the people and the government, to be impartial in the exercise of their functions, powers and duties noting that the limitations on the enjoyment of rights and fundamental freedoms of persons shall only be those necessary to secure recognition and respect for the rights of others and for meeting the just requirements of morality, public order and the general welfare in a democratic society.[11] The ACJA and PlACJL are robust frameworks for achieving effective

[7]United Nations Doc. A/RES/45/110.
[8]Professional Training Series No. 5/Add.3
[9]As a department of the Secretariat of the UN, the OHCHR has the mandate to work towards the promotion and protection of all rights contained in the Universal Declaration of Human Rights, 1948. See more at <www.un.org> or <www.ohchr.org> accessed 12 August, 2020.
[10]See generally, UN, Overview of International Legal Framework for Disability Legislation <www.un.org> accessed 20 August, 2020. See also Article 46 of the United Nations Declaration on the Rights of Indigenous People; adopted by the UN General Assembly 13 September 2007, Doc. A/61/295.
[11]Ibid

and speedy criminal justice administration in Nigeria and Plateau State respectively. The question however is whether the provisions of both laws reflect international standards and best practices regarding effective criminal justice systems.

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

1.2.1. Human Rights Compliance

Respect for human rights has been a global agenda for many years now. To demonstrate the seriousness attached to it by the international community, some developed countries consider the human rights compliance status of a least developed or developing country as a factor in determining whether or not to grant aid to the country. The ACJA and the PlACJL reflect Nigeria's efforts at improving its human rights compliance profile. Both laws promote the principle of equality, non-discrimination and respect for the dignity of the human person. In this regard, they prohibit arbitrary arrests, arbitrary detention and torture and emphasise humane treatment of suspects and equal treatment of gender. In general, both laws promote the tenets of human rights not only by law enforcement agencies but by every critical player in the administration of criminal justice. The passage of ACJA and its adaptation by many States in the country, could therefore play a big role in bringing to an end the era of gross human rights abuse of suspects by law enforcement agencies. This means that every law enforcement agency is required to be responsive and accountable to the society in general in the discharge of its duties.

1.2.2. Arrest, Remand/Detention, Investigation and Interrogation Aspects

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

At all stages, from investigation, interviews (of suspects, witnesses, and victims), searches generally, and evidence gathering, including interception of correspondences and communications, international standards also require that consideration must be given to the following: rights to security of person, fair trial, privacy, dignity, freedom from torture and other inhuman or degrading treatment, among others. Both laws provide mechanisms to prevent extraction of evidence through torture, degrading and other inhuman treatment in line with Convention Against Torture (CAT)[12] and Nigerian Anti-Torture Act.[13] The requirement of electronic recording confessions or for such confessions to be taken in the presence of legal practitioner are not only to ensure the voluntariness of the confession but also to ensure that investigatory activities are done competently, thoroughly and their objectives achieved. Both the ACJA and PlACJL therefore developed standardised procedures for the recording of arrest, statement of suspect and the keeping of criminal records.[14]

[12] UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85

[13] Anti-Torture Act 2017

[14] Generally, ss. 15, 16, 17 ACJA and ss.36, 37, 38 PlACJL.

International standards require that where detention takes place, states are to ensure that the detainee is firstly presumed innocent until proven guilty by a court, is treated humanely, not subjected to degrading, cruel or inhuman treatment and is held in a place of detention established by law and made accessible to family and legal representatives. Measures that guarantee these rights are elaborately provided in both laws.[15]

Internationally, it is recognised that where a person is brought before a court, he shall be given fair trial and within a reasonable time. He shall also be given "adequate time and facility" to prepare his case and to defend himself and be able to examine prosecution witnesses. Both the ACJA and the PlACJL copiously promote this standard as they contain provisions which impel the prosecution to frontload evidence (ss. 300, 379 ACJA and s. 212 PlACJL). The Supreme Court has held in a number of cases such as *Ejike Okoye v Commissioner of Police*[16]and Shema *& Ors v FRN,*[17]among others that "adequate time and facility" includes "necessary hints… including the statements of the prosecution witnesses and his own written statement"; and also that "adequate time and facilities" form part of fair hearing and includes frontloading of evidence by prosecution.

The hallmark of efficient justice delivery which is recognised globally is expeditious dispensation of justice epitomised by speedy trial. The PlACJL with the impetus provided by ACJA has made laudable efforts to achieve this standard by providing for day-to-day trial until conclusion of the matter.[18]

[15] See for example, ss. 6, 14 ACJA and ss. 23- 27, 29 PlACJL.
[16] (2015) All FWLR (Pt.799) 1101 at 1126-1127
[17](2018) LPELR-43723 (SC)
[18] See s.396 ACJA and s.405(4) PlACJL

1.2.3. A Shift from Adversarial to Restorative Justice

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

Some instruments have been developed and adopted by the international community to promote a shift away from imprisonment as punishment for crime. They include: United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules);[19] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;[20] and Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.[21] Other UN instruments that advocate non-custodial measures include: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;[22] Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.[23]

[19]United Nations Doc. A/RES/45/110.
[20]United Nations Doc A/RES/40/34
[21]Adopted by the United Nations Economic and Social Council on 24 May 2002, United Nations Doc. E/2002/99.
[22]United Nations Doc A/RES/40/34
[23]Adopted by the United Nations Economic and Social Council on 24 May 2002, United Nations Doc. E/2002/99.

Although the Tokyo Rules[24] were adopted with the aim of reducing the application of imprisonment,[25] a crucial recommendation was made to the effect that non-custodial measures should form part of reductionist criminal justice policy.[26] This is due to several disadvantages associated with imprisonment, especially of low-level or minor offenders and those awaiting trial.[27] The United Nations Office on Drugs and Crimes (UNODC)[28] highlight the drawbacks of imprisonment to include overcrowding and prison congestion, human rights violations and unnecessary cost. Human rights advocates opine that it is more beneficial to punish minor offenders using "appropriate alternatives"[29] reasoning that effective implementation of "alternatives to incarceration", could result in outcomes that benefit the offender, the victim of crime and the society at large. Non-custodial sentencing also makes it easier to manage detention facilities in a way that allow states to meet their obligations to prison inmates and would save the State revenue. Additionally, prisoners have been adjudged incubators of communicable diseases such as tuberculosis and AIDS[30] which could be rapidly spread upon their release.[31] In light of the glaring benefits of alternatives to incarceration in the administration of criminal justice, Nigeria

[24] The Tokyo Rules were first discussed and adopted generally in 1986 at the Seventh Congress on Crime Prevention and Criminal Justice and were later adopted by the General Assembly on 14 December 1990.
[25]See Rule 1.5
[26]This means a justice policy that
[27]UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment* (Vienna: United Nations Office on Drugs and Crime, 2007) 3
[28] Ibid
[29] Ibid
[30]UNODC, *A Handbook ofBasic Principles and Promising Practices on Alternatives to Imprisonment* (New York, United Nations, 2007) 4-5.
[31]Ibid

innovatively introduced several non-custodial measures in ACJA 2015 which have also been adapted in the PlACJL.[32]

1.3. Comparative Analysis of ACJA and PlACJL

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

	Concept	ACJA	ACJL	Complementary Provisions	Analysis
A. PRELIMINARIES					
1	Objectives/purpose	s.1	s.19		The objectives of both laws are to inter alia achieve speedy dispensation of justice, efficient management of criminal justice institutions, protection of the society from crime as well as the protection of the rights of the suspect, the defendant and victim. This can be seen in the various provisions relative to the treatment of the suspect from the time of arrest up to

[32] See for example Part XLV, PlACJL

					trial and sentencing, day to day trial and victim compensation. These showcase a major shift from punitive to restorative justice system with emphasis on balanced justice that takes into consideration the interest of the suspect, the victim and the society.
2.	Application	s.2	s.20		The provisions of the ACJA are applicable in all federal courts, and in state courts where the offence is created by an Act of the National Assembly. The ACJL is applicable in criminal trials of offences created by laws passed by the State House of Assembly; and other offences punishable in the state. This latter part of the section simply gives impetus to the applicability of the ACJA in Plateau state courts, since offences established by it are also punishable in Plateau State.
3.	Definition of child/adult	s.4 94	s.3	a). s. 277 Child Rights Act (CRA) 2003	The ACJA, PlACJL and the Plateau State Penal Code Law

				b). s. 82 Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEAA), 2015 c). S.29 (4)(a) CFRN d). S. 2 Plateau State Penal Code Law 2017	each provides a definition to "a child" (for purposes of application of the law) as a person who has not attained the age of 18. Under s. 452 ACJA and s. 384 PlACJL the provisions of the Child Rights Act (CRA) or Child Rights Law (CRL) as the case may be shall apply in the trial of a child. This means that in regard to the trial of a child, the provisions of both the ACJA and the PlACJL are inapplicable.
B	Arrests, Bail and Preventive Justice				
4.	Right to be informed of reason(s) for the arrest and accruable rights	s. 6 s. 14	ss. 23-27	a). s. 35(2) (3) CFRN b). ss. 26, 27 c). ss. 35(6) & 36 CFRN	Both the ACJA and the ACJL contain elaborate provisions relating to arrest emphasising the power of any police to arrest and implying that persons other than the police could also arrest. Both laws impose a duty on the person making the arrest to immediately inform the person arrested of reason(s) for the arrest and the rights available to him such as the right to

					remain silent until he consults with a legal practitioner or a person of his own choice, right to legal representation by a lawyer of his or her own choice or one from the Legal Aid Council of Nigeria (LACON)
5	Treatment of arrested person	s. 8	s. 29	a). s. 34 CFRN b). s. 29 Evidence Act (EA), 2011	Both laws require a suspect to be accorded humane treatment and respect for the dignity of his person. This is in line with the Nigerian constitutional provisions and international best practices, which condemns torture, inhuman and degrading treatment of arrested person for purposes of extracting evidence. By the provision of s. 29 of the Evidence Act, evidence obtained by illegal means cannot be admitted. It is immaterial that the offence was actually committed. These provisions of both the ACJA and the ACJL can positively impact on trial in the sense that evidence obtained without torture

					would hardly fail the voluntariness test for admissibility thereby avoiding trial within trial and saving time. Note that guidelines regarding arrests generally, recording of the arrest and information of the suspect, monitoring of the arrest, etc., and whether search is necessary or required are elaborately covered under part 2 of ACJA and part 4 of PlACJL.
6.	Recording arrest	ss. 16 & 17	ss. 37 & 38		Both the ACJA and the ACJL require the recording of all arrests. While under the ACJA the recording is to be made within 48hours, under the ACJL it is to be made within 24 hours. The record shall provide details listed in s. 36(1) PlACJL, which shall be taken to the Central Criminal Record Registry, established in the State Command of Nigeria Police Force (NPF). The purpose for this requirement is to maintain a data base of all arrests and investigations for easy reference.

7.	Arrest in lieu	s. 7	s. 28	s. 35(6) CFRN	Both laws prohibit the practice of arrest of a person in the place of another thereby preserving the rights of citizens not to suffer punishment for an offence they did not commit. Arrest in lieu is a variant of unlawful arrest. Under s. 35 (6) CFRN, a person who is arrested unlawfully is entitled to compensation and public apology from the authorities. In spite of this constitutional provision, law enforcement agencies have continued to perpetrate arrest in lieu especially when they find difficulty in arresting a suspect. They do this in the belief that when a close relation is arrested in lieu, the suspect would surrender himself. Many victims of unlawful arrest, either due to ignorance or fear of repercussion from security agencies, have failed to exploit the provision of s. 35(6) of the CFRN to seek redress.

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

					offences have been retained in the Plateau State Penal Code Law, 2017 in Chapter XXVII, providing imprisonment of 1 year or twenty-five thousand-naira fine or both for certain species of "idleness". It is indeed germane to point out that these types of imprisonment have, over the years contributed to prison congestion in the country and should be limited. Even if the argument is that a fine can be imposed instead, it is also possible for the magistrate or judge to impose imprisonment since discretion can be exercised here.
9.	Interrogations, statement taking and confessionals	ss. 15, 17	s.38	ss. 20, 28 & 29 EA, 2011	This provision is aimed at addressing the problem of obtaining statements from suspects by

					duress. In taking a suspect's statement under both laws, the right of the suspect to remain silent is implied. If however he volunteers to make a statement, a duty is imposed on the police or the officer before whom the statement is made to ensure that same is recorded by electronic means. At this point it is not mandatory that a legal practitioner of the suspect's choice must be present. However, in the absence of electronic means of recording, the statement must be made in writing and in the presence of a legal practitioner of the suspect's choice or an officer of the Legal Aid Council of Nigeria (LACON), an official of the civil society or any person of his own choice. Suffice to say however, that an oral confession is admissible under ss. 15(5) ACJA and 38(10) PlACJL. The utility of this provision is to forestall statement rebuttals and the

					attendant *trial-within-trial* which delays trials. Where despite fulfillment of the requirements of this provision there is an objection to the admissibility of a statement, under the provision of s 38(9) PlACJL, the court is empowered to record the objection, continue with the trial and rule upon it while delivering judgment in the substantive case thereby obviating delay in the trial. Does this imply that a *trial-within-trial is* no more part of our criminal procedure? Although under s.29 of the Evidence Act the provision on trial within trial subsists, in the light of the foregoing provisions of ACJA and the ACJL, it is difficult to see how it can be utilized. Practice Directions, and rules etc., have been vastly recommended to address situations such as this and others that create *lacunae*. Although Chief Judges in many States in the country including Plateau State have issued Practice

					Directions, they however mostly deal with case management in general without specifically addressing the issue of trial within trial in light of the provisions of the ACJA and ACJL discussed above
11.	Remand times/ protocols	ss. 293, 295& 296	ss. 307-313	a). ss. 35 & 36 CFRN b). s. 27 TPA, 2013	Where a suspect is brought before a Magistrate Court for remand, both the ACJA and ACJL provide varied protocols regarding the proceedings for doing so. For example, while the ACJA provides for a remand period of 56 days-14 days each time, the ACJL provides for a remand period of 63 days-21 days in the first instance and subsequently 14 days each time. A remand order can be made only after the court is satisfied that there is a "probable cause". In considering this, the court may be guided by the nature and seriousness of the offence; whether there are reasonable grounds to believe the suspect's

					involvement in the alleged offence; strong likelihood that the suspect could abscond or reoffend; and any other justifiable ground. The foregoing remand protocol is applicable only where a Magistrate court has no jurisdiction to try the offence for which the suspect was arrested. The question may arise whether a Magistrate court that has no jurisdiction to try the offence for which a suspect was arrested should be donated the jurisdiction to remand the suspect in respect of that same offence albeit pending receipt of legal advice from the DPP? Also, although the suspect is not charged before the Magistrate Court, but he is brought before the Magistrate court for remand and he is held in custody at the instance of the Magistrate court can this not be said to be similar to holding charge which has on numerous occasions

					been held to be unlawful? Why should the suspect not be brought before the court that has jurisdiction to try the offence for him to be remanded pending the issuance of a legal advice? Furthermore, is the remand time protocol under the ACJL not in conflict with the provision of s.35(4) of the CFRN 1999 which prescribes a maximum period of 2 months from the time of his arrest and detention to try a person who is in custody? If this is so, the said provision of ACJL stands the risk of being declared void by virtue of the provision of s. 1(3) CFRN. The implication of ss.293, 295 and 296 of the ACJA and ss. 307 – 311 of the ACJL is that an investigating agency cannot arrest and keep a suspect in detention while conducting investigation of the crime. It must approach a Magistrate court for an order of remand

					otherwise it would be in breach of the right to personal liberty of the suspect.
12	Bail/recognisances	ss. 158-163	ss. 173, 174,176 - 180		Under the ACJA and the ACJL a suspect or Defendant is entitled to bail except for offences that carry the death penalty in which case bail can only be granted at the discretion of the judge in "exceptional circumstances" such as ill health etc and offences carrying a term of imprisonment of more than 3 years in which case bail may be denied if there is a likelihood of reoffending or involvement of the defendant actions targeted at obstruction of justice. In other cases, recognisances may be allowed.
13.	Bail pending investigation	ss. 30, 31	ss. 47-48		Except for capital offences, administrative bail may be granted under these provisions where the suspect was arrested without warrant. Here, bail is granted

					upon entering a recognisance- with or without sureties for a reasonable sum of money to appear before the court or police station on a designated date and time. This provision aims at preventing arbitrary detention of suspects in a police station without bringing them before a court. It is a nudge in the protection of the fundamental right of citizens to personal liberty.
14.	Recognisances in the case of children	ss.160& 166	ss.175,181		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 death penalty or a term of imprisonment for more than 3 years, the child should be released upon entering a recognisance by the parent or guardian of the child, undertaking to produce the child at a set date and time. Only parent or

					guardians can execute recognisances for child offenders. Execution of such recognisances requires the payment of a stipulated sum of money.
15.	Women sureties	s. 167 (3)	s. 182 (6)		The provision of s. 167 (3) ACJA and s. 182 (6) PlACJL is a radical departure from the practice where a woman could not stand as surety for an applicant for bail. This provision now recognizes the right of a woman to stand as surety thereby strengthening the principle of gender equality in the criminal landscape and protecting the constitutional right of women to non-discrimination.
16.	Professional Bondsperson	ss. 187-188	ss. 202-203		Both the ACJA and the ACJL mandates the Chief Judge to make regulations on the registration of bondsperson. In the case of the ACJA, authority is given to the Chief Judge (CJ) of the High Court of FCT or CJ of the Federal High Court (FHC) and in the case of PlACJL, the CJ of Plateau State.

					Under both laws, 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 FHC, High Court of FCT, or Plateau State as the case may be. The criteria include: unquestionable character and integrity of the person and ability to deposit sufficient amount of money (as stipulated in the regulations) with the CJ, among others. Both laws did not provide the criteria on how to determine that a bonds person is of unquestionable integrity. This would allow for speculation in some occasions which could work against the course of justice. Under the ACJA where a Defendant who is granted bail absconds and is re-arrested, he shall be surrendered to the nearest police station and taken to the appropriate court within 12 hours. This provision is the same in PlACJL

					except that under the PlACJL, he shall be taken to the appropriate court within 24 hours unless he was surrendered to the Police on a weekend or a public holiday.
C. Trial					
17.	Day-to-day trial	s. 396	s. 405	s. 36 CFRN	In order to ensure speedy dispensation of justice, and uphold the constitutional right of suspects to speedy trial, which is part of the purpose of both laws, the ACJA and the ACJL innovatively provide for day-to-day trial. If the law is to be interpreted as it is, day to day trial means that from arraignment, trial shall continue daily until its conclusion. There are however doubts whether this is achievable giving institutional and other challenges that exist in the system of adjudication in the country. In recognition of these challenges, both laws provide alternative. Under both laws, where day-to-day trial is

					impracticable, a maximum of five adjournments for each party is allowed. While under ACJA the interval between each adjournment shall not exceed 14 working days until conclusion of trial, under PlACJL the interval shall not exceed 21 working days. Upon exhaustion of the adjournments, there is room for further adjournments if trial is not concluded. Such adjournments shall not exceed 7 days including weekends. Both laws are however not clear as to at whose instance this latter adjournment should be given and how long it should last. Both laws give the court power to award punitive costs to dissuade litigants from making frivolous applications. Adjournment is an equitable relief and the grant of same is at the discretion of the judge. Thus, despite the provision of both the ACJA and the PlACJL allowing each party

					5 adjournments, these adjournments should not be granted as a matter of course but upon cogent and satisfactory reasons placed before the Judge by the applicant
18.	Trial in *absentia*	s.352	s.365		One of the problems that had bedevilled criminal trials resulting in trial delays is the absence of the Defendant in court. Once a Defendant was absent in court, trial would not proceed. Defence lawyers who for one reason or another want to stifle trial, often seek adjournments using excuses such as Defendant's absence due to "ill health" etc. Both the ACJA and the ACJL have now changed the position by making provisions dealing with the non-appearance of a Defendant in court. Both laws allow a defendant to be tried and convicted in *absentia* under s. 352 (4) ACJA and s. 365 (4) PlACJL.

					This procedure is applicable only where a Defendant had been brought to court and was granted bail but he absconds. Trial in absentia shall not proceed until after 2 adjournments. Where however, the Defendant was served summons to appear in court but he failed to do so, the court would issue a bench warrant for his arrest. The two situations must be clearly distinguished.
19.	Case management & Disclosure protocols	ss. 300 376(4) & 379	ss. 212, 314	FCT High Court Practice Direction, 2017 s. 36 CFRN	Experts have argued that case management under the ACJA "suffers from a lack of clarity and judicial guidance"[33] Despite this, it provides a pathway towards achieving speedy trials, using case management tool. One of the tools in achieving speedy trial in both the ACJA and ACJL is the provision requiring the frontloading of evidence. This is to

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

					give opportunity to the parties to prepare their case; and to encourage pretrial options where issues not in contention are agreed upon and discarded before trial for purpose of dispensing trial as quickly as possible. Frontloading is an important case management tool with potential to engender speedy dispensation of justice. The requirement of front loading under the ACJA is applicable only to the Prosecution and does not apply to the Defence. However, under the PlACJL, the Defendant is also required to front load his Defence. Frontloading complies with the provisions of the CFRN, which require the defendant to be given adequate time and facilities to prepare his or her defence, facilities being interpreted by the Supreme Court to include "disclosures" in the case of *Ejike Okoye v Commissioner of*

					Police.[34] The Supreme Court further interpreted the concept of "adequate time and facility" to include "necessary hints… including the statements of the prosecution witnesses and his own written statement" in *Shema & Ors v FRN.*[35]The pertinent questions relate to the implications of disclosures on the principles of presumption of innocence under s. 36(5) CFRN and s. 135 (1) of Evidence Act, 2011; and also witness protection measures.
20.	Interlocutory applications and Stay of proceedings	s.306	s. 319	(a) s. 20(4) Money Laundering Prohibition Act, 2011 (b) s. 40 EFCC Act, 2004 (c) s. 36(4) CFRN	One of the major problems that afflicted Nigerian criminal justice system pre-ACJA was the malaise of undue delays in justice delivery, arising from the use of interlocutory applications, such as stay of execution, stay of proceedings, injunctions and preliminary objections, particularly in cases

[34] (2015) All FWLR (Pt.799) 1101 at 1126-1127
[35](2018) LPELR-43723 (SC)

					involving politically exposed persons (PEPs).[36] Before the passing of ACJA in 2015, some anti-corruption laws in the country contain provisions which prohibit the grant of reliefs which tend to delay trials. For example, s.40 EFCC (Establishment) Act 2004 and s.20(4) of the Money Laundering (Prohibition) Act, 2011, provides that interlocutory application, such as *stay of proceedings* shall not be entertained until judgment is delivered. See also s. 36(4) CFRN. Undue delay in trials undermines public confidence in the justice system and could result in denial of justice to citizens. In *Amadi v. NNPC,*[37] the Supreme Court, cautioned against the filing of frivolous applications by lawyers which could delay trials and reiterate the cliché "justice delayed is

[36]See for example, Dariye v FRN (2015) 10 NWLR (Pt. 1467) 358.
[37](2000) NWLR (Pt. 9) 1543, @ 1543, paras D-G

					justice denied" Also, *FRN v. Babalola Borisade*[38], the Supreme Court condemned the use of interlocutory appeals to frustrate criminal trials especially those involving PEPs. In *Metuh v. FRN*[39] the Supreme Court upheld the provisions of extant statutes which prohibit the grant of stay of proceedings pending appeal in criminal trials. The introduction of measures to address undue delays and enhance speedy trials in both laws such as limiting adjournments to five, abolition of stay of proceedings,[40] reserving ruling on rebutted confessional statements till end of trial-technically clogging *trial-within-trial*, among others, is laudable. In spite of these provisions, defence counsel continues to try their luck by

[38](2015) All FWLR (Pt. 785) 227
[39] (2017) 11 NWLR (Pt. 1575) 156
[40]See OlisaMetu v. FGN ibid.

					filing applications for stay of proceedings pending appeals on interlocutory matters. In *Dr. Dayo Olagunju v. FRN;*[41] and *Joshua Dariye v. FRN*[42] the Supreme Court decried eight years delay of trial due to unnecessary interlocutory applications.
21.	Elevation or transfer of judges, trial *de novo;* and transfer of cases	s. 396(7) s. 98	s. 405(7)(8)		Transfer and elevation of judges is inevitable. This has however presented a challenge in the speedy dispensation of justice as cases often have to start all over (*de novo*) thereby contributing to congestion of cases in court. The ACJA and PlACJL make robust provisions to cure this problem by providing that where a trial judge is elevated to the Court of Appeal, he could go back to the High Court to conclude trial but such a judge is not precluded from assuming duties as a Justice of the Court of Appeal.

[41](2018) LPELR-43909 (SC)
[42](2015) 10 NWLR (Pt. 1467) 325

					The aim of this provision is to avoid situations whereby trials are delayed as a result of elevation of judges or a situation whereby a judge who is qualified for elevation would be denied such elevation simply because he is trying a case which ought to be concluded expeditiously. In *FRN v. Ibori*[43] and several others the cases suffered delays because of the movement of the judges. This was what the provisions of both laws seek to mitigate. This innovation has been challenged in court and in a ruling delivered on 8 May, 2020, the Supreme Court held that a practice where a justice of the Court of Appeal is allowed to return to Federal High Court after his elevation, to conclude trial and give judgment is unconstitutional, thereby striking down s. 396(7) of ACJA and nullifying the conviction of

[43](2014) 13 NWLR (Pt. 1423) CA 168 4

					Orji Uzor Kalu and his co-accused who took the appeal to the Supreme Court. The ACJA is silent on the transfer of judges and the status of magistrates who have been elevated to the High Court but the PlACJL expanded the provision to include the transfer of judges and magistrates.
D. Sentencing and Non-Custodial Orders					
22.	Sentencing guidelines and consequential orders	ss. 311, 401, 416	s. 324, 424-425		The provisions on sentencing under both the ACJA and the ACJL depict a major shift from punitive to restorative justice. To this effect both laws provide that in sentencing, Judges and Magistrates shall have regard to certain objectives of sentencing which include prevention, restraint, rehabilitation, deterrence, education of public, retribution and restitution. Also, the sentence to be given should take into consideration a number of factors, i.e. nature and gravity of the

					offence, age of the offender, and whether he or she is a person of unsound mind, whether it is a pregnant woman among others. Sentencing guidelines are contained in several provisions of both laws.
23.	Sentencing relating to child offenders	ss. 405, 452	ss. 414	ss. 34, 277 CRA s. 82 TIPPEAA s.33 Plateau State Penal Code Law	The Child Rights Act (CRA) and the Child Rights Laws of different States have established comprehensive child justice administration, including the establishment of Family Courts at High Court and Magistrate Court levels in ss. 149-153 CRA. Under the ACJA and PlACJL, where a child is convicted of a capital offence, a death sentence shall not be pronounced. Instead, the child can be sentenced to life imprisonment or to other term as the court may determine having regard to the principles of sentencing other than capital sentence and the CRA. The CRA also forbids death sentence for children. On its part

					the Plateau State Penal Code Law provides that no sentence of imprisonment shall be passed on a child. The rationale for this is that a child lacks the mental capacity to fully appreciate the nature and consequences of his action and to mete such actions even if capital in nature with the death penalty may not achieve the objective of punishment on the child. The Terrorism Prevention Act (TPA) makes no distinction between adults and children while prescribing punishment in relation to acts of terrorism which results in the death of a victim. In view of the problem of terrorism and its impact on the country, the question may arise whether it would be appropriate in sentencing involving a child recourse should be made to the CRA and not the mandatory penalty of death as prescribed under the TPA. It is apparent

					that acts of terrorism were not in contemplation of the CRA; the TPA also did not envisage offenders to be children, and so makes no reference to trial of child offenders. It can however be argued that since the TPA preceded the ACJA, the provisions of the ACJA in ss. 405 and 452 have in its contemplation the sentencing under the TPA when a child is involved in any act of terrorism. Another major issue is the fact that provisions governing child justice are blanket despite the uniqueness of each child. Therefore, experts are now advocating for a "juveniles are different"[44] approach in applying these guidelines, taking into consideration the circumstances and needs of each child.

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

24.	Non-custodial sentence	ss. 314, 321, 327, 453-459, 460-463, 467 & 468	Parts XLV (Probation and non-custodial alternatives); and XLVI (Parole)-ss. 448-463	a). ss. 1 (1)(2)(b)(3), 2(4), 4(2)(e); and 37-44 Nigerian Correctional Service Act (NCSA), 2019 b). S. 32 Plateau State Penal Code Law, 2017	Imprisonment has been imposed as punishment for offences for many centuries. However, over the years it became clear that there are many problems associated with imprisonment. For instance, in countries where custodial infrastructure is inadequate or weak, imprisonment results in congestion of prisons and more worrisome, it hardly meets its design of reformation of offenders as many offenders who are sent to prison become hardened while in prison. As a result of the many shortcomings of imprisonment, non-custodial measures were introduced. These measures include, probation, parole, suspended sentence, conditional release, community service and confinement in a rehabilitation centre especially in the case of children and other appropriate cases or circumstances. Therefore, the introduction of non-custodial sentencing

					is a welcome innovation in the administration of criminal justice in Nigeria.
25.	Non application of Non-Custodial measures	s. 416 (k)			Courts are mandated to apply sentencing to a term of imprisonment only in regard to serious and perpetual offenders who should be isolated from the public. This category of offenders are not entitled to non-custodial sentences
26.	Restorative justice	ss. 336, 337, 338, 342 490	s. 327; Part XXXIV (Costs, Compensation, Damages and Restitution)	a). ss. 48, 49(3) & 51(1) Trafficking in Persons (Prohibition), Enforcement and Administration Act (TIPPEAA) b). s. 49 Cybercrimes (Prohibition, Prevention, etc.) Act (CPPA), 2015 c). s. 43 CFRN	These provisions showcase a shift from punitive to restorative justice which is a system of criminal justice that focuses on repairing the harm caused by crime by promoting reconciliation between the offender on the one hand with both the victim and the society on the other hand. See *Nwude v FRN*[45] on restitution.
E. Powers of the Attorney General					

[45] (2015) LPELR-25858 (CA)

27.	Powers of the Attorney-General	ss. 104-106.	ss.119-120	ss. 174, 211 CFRN	The power of the Attorney General (AG) under the ACJA and PlACJL is anchored on the wide powers granted to him under the CFRN. These powers may be exercised by the AG in person or by proxy through a mandated law officer or agency. The powers include the power to prefer a charge, issue legal advice, request case file from police, take over and continue or discontinue a criminal trial, as well as undertake the prosecution of offences in any court. The powers of the AG must however be exercised with due regard to *public interest, the interest of justice and the need to prevent abuse of legal process* as stipulated under ss. 174 (3) and 211(3) respectively.
28.	Power to vary terms of, or cancel bail	s. 169	s. 184		Under both the ACJA and the ACJL, the AG may apply to the court to vary bail conditions or cancel bail. Where a suspect has been granted bail

					and facts emerge that would necessitate a reconsideration of the bail, the court may, on AG's application issue arrest warrant to give the suspect opportunity to be heard. The court may thereafter remand the suspect in prison to await trial or grant bail on stricter terms-mostly higher amount of money payable as bail bond.
29.	Lay prosecutors	s. 106	s. 120		Unlike the ACJA, the ACJL in the first instance permits some categories of persons other than the Attorney General to prosecute offences in a court of law. These categories of persons are: Any Agency that has prosecutorial powers, a legal practitioner, any private prosecutor and a Complainant. Apart from any Agency that has prosecutorial powers, all other persons listed above must be authorised by the Attorney General to prosecute. What this means is that the

					Attorney General may authorise a lay person who is a private prosecutor or a complainant to prosecute offences. The PlACJL also recognises the power of the police to prosecute offences triable by any Magistrate or Area Court thereby giving legislative backing to the decision of the Supreme Court in Federal *Republic of Nigeria v. Osahon,*[46] where the Court reaffirmed the powers of the police prosecutor whether qualified as a legal practitioner or not to prosecute in any court in line with section 23 of the Police Act.
F. Witness					
27.	Witness protection	s. 232	s. 247	a). s. 36(4)(a)(b) CFRN b). s. 29 TPA, 2011 as amended c). s.47 TIPPEAA	Witness protection is not a new phenomenon in Nigeria as it existed for a while (s. 36(4) CFRN). Under both the ACJA and the ACJL, it is not

[46](2006)5 NWLR (PT. 973) 361

				d). s. 17 EFCC Act, 2004 e). ss. 33, 34 TPA, 2013 f). s. 17 Anti-Torture Act, 2017	applicable in all trials but is limited to serious offences, such as sexual offences, Armed robbery, kidnappings, terrorism, economic and financial crimes and corruption etc., among others. A list of measures, which can be adopted, includes evidence via electronic means, written deposition, mask, etc. Witness protection has been criticized by defence lawyers as infringing the rights of defendants to fair hearing, particularly the right to examine witnesses against him or her as contained in s. 36 (5)(d) CFRN. However, it is useful in protecting the sanctity of criminal justice process by ensuring protection and preservation of the integrity of vulnerable witnesses. The witness protection regime in Nigeria is not robust enough to give comprehensive protection to particularly where trial involves members of

					organised criminal groups or high-profile public figures with immense connections and wealth. Witness protection measures have been applied in limited terrorism cases in Nigeria, such as the cases of *Onwudiwe v. FRN*[47] *and Sambo Dasuki v. FRN*[48].
28.	Witness expenses	ss. 251-254	ss. 265-268		Under both the ACJA and the ACJL, while a witness for the State is entitled to payment of reasonable expenses as of right, payment of similar expenses to a defence witness is left to the discretion of the trial Judge. The basis for this distinction is not clear. Many trials have suffered delays as a result of difficulty encountered to bring witnesses to court. Most of these difficulties result from inability to meet the expenses of the witnesses. Under both laws the duty is

[47] (2018) LPELR – 44499 (CA)
[48] (2018) LPELR CA/A/523C/2017

					placed on the State to pay these expenses. Despite these provisions, non-payment of witness expenses remains a challenge due to inadequate funding. Many lawyers still pay witness expenses out of their pocket, or pass the burden of paying to their clients, making it still difficult to secure the attendance of the number of witnesses that may be required.
G. Plea Bargaining					
29.	Plea-bargaining	s. 270	s.284	(a) s. 14(2) Economic and Financial Crimes Commission (EFCC) Act, 2004 (b) Paragraph 22(1) & (2) EFCC (Enforcement) Regulations, 2010	Plea bargain was not introduced in Nigeria by the ACJA as it existed under the EFCC Act and the EFCC (Enforcement) Regulations, 2010 but was limited to offences relating financial crimes. The ACJA and ACJL have however extended its application to all offences. Both laws contain expansive provisions that provide guidelines on initiation of plea bargain by prosecution. These include 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. Despite its perceived benefits as a win – win for all, in light of the way it was carried out pre-ACJA era, its application in Nigeria has been criticized. Critics of plea bargain however lose sight of the fact that under the ACJA and ACJL, it is applied only in cases where there is insufficient evidence to prove the offence charged, where the Defendant agrees to return the proceeds of the crime, where it is in the interest of justice to do so etc. It would thus appear that under the ACJA and ACJL, plea bargain is a last resort to the Prosecution to ensure that he does not return empty. The practice of plea bargain is cost effective and saves judicial time.

H. Child Offenders					
	Prosecuting child offenders	ss. 452, 371	ss. 384, 414	Part XIII- ss. 149-162 CRA	Both the ACJA and the ACJL envisage situations of child trials and provides that judicial process involving child offenders should be conducted under the CRA- in the case of ACJA and the Child Rights Law in the case of PlACJL.
I. Monitoring Mechanism					
	Monitoring mechanisms	Part 46- ss. 469-476	Part XLVII- ss.464-471		The ACJA established the Administration of Criminal Justice Monitoring Committee (s. 469(1) ACJA, and the ACJL established State Justice Sector Reform Team (s. 464(1) PlACJL) as institutional frame works for effective implementation of the laws. The Committee whose composition cuts across various criminal justice institutions such as the Judiciary, Attorney General, Police, Nigeria Correctional Service, National Human Rights Commission, Legal Aid Council, Nigerian Bar

					Association and Civil Society Organisations is responsible for ensuring the effective and efficient implementation of the laws by the relevant Agencies. One of the problems that have beset the criminal justice sector is implementation of laws. Both the ACJA and PlACJL contain robust provisions which if diligently implemented would promote efficient management of criminal justice institutions and speedy dispensation of justice. The mandate of the two committees under both laws is to ensure that both laws are implemented. If the committees are to succeed, members must work in synergy with each other as well as other criminal justice institutions. The wisdom in drawing membership of the committees from various criminal justice institutions is

					to ensure that this synergy exists.

Table 1: Comparison between ACJA 2015 and Plateau State ACJL

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

The ACJA is a piece of legislation that has changed the narrative of criminal trials in Nigeria. The provisions on day-to-day trial, prohibition of stay of proceedings and front loading amongst others have helped to prevent trial delays. Also, the provisions on recording of confessional statements of suspects through electronics means, humane treatment of suspects and prohibition of torture have improved the human rights credentials of the country in the international arena and making the ACJA a beautiful piece of State legislation. Most of the provisions of the ACJA have been adapted in the PlACJL. Despite the laudable provisions in the two laws, effective implementation has been plagued with some challenges.

(a) Unethical attitude of defence lawyers

Effective implementation both the ACJA and the ACJL would not be achieved without the cooperation of lawyers. Many lawyers still devise one tactic or the other to delay or frustrate trials in the hope that prosecution witnesses may get fatigued and refuse to come to court to testify.

(b) **Funding**

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

(c) **Lack of awareness**

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

(d) **Lack of synergy between police investigators and prosecutors**

Successful implementation of the ACJA and the PlACJL would require synergy by all institutions involved in the administration of criminal justice in the

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

(e) **Incessant transfers of police investigators**

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

(f) **Inadequate infrastructure**

Effective implementation of both the ACJA and the PlACJL would require adequate infrastructure. For example, electronic recording and storage devices would have to be provided the investigating agencies if the requirement of both laws on electronic recording of confessional statements of suspects is to be realised. Also, the recording of evidence long hand by trial judges has to be dispensed with as it prolongs trials and, in its place, electronic recording devises be installed in the court rooms. Furthermore, supply of electricity is epileptic in the country making it difficult for judges especially those in places

with hot weather to sit for log period of time. Infrastructure is not limited to electronic recording and electricity supply. It extends to the provision and adequacy of all necessary facilities and infrastructural resources, both human and material including an enabling environment that are required for effective administration and delivery of criminal justice. Infrastructure deficit in Nigeria is high.

(g) Omissions

Pre-trial mechanisms are important in achieving speedy trials as shown in election petition proceedings. The Plateau State practice direction on procedural steps for achieving speedy trial and disposal of special criminal cases[49] contain provisions on pre-hearing protocols[50] which help in speeding up criminal trials. These protocols are however not included in both laws reviewed. The ACJA and PlACJL could have been more effective in achieving the aim of speedy trial if pre-hearing protocols were expressly included in same.

(h) Conflict with other laws

Some provisions of the ACJ laws conflict with some provisions of extant laws. For example, the application of ACJA ran into troubled waters when the constitutionality of s. 376(7) was challenged in court in a case involving a former Governor of Abia State Orji Uzor Kalu. On 8th May, 2020 the Supreme Court declared that section of the law unconstitutional and struck it down.

[49] Plateau State Legal Notice No. 1, 2013
[50] Ibid Paragraph 5

Similarly, in Chinaka Promise v. FRN[51], the provision of s. 270 (18) of ACJA was challenged as being in conflict with the provision of s. 241 (1) (a) and (b) of the CFRN. In a decision delivered by the Court of Appeal, the provision of s. 270 (18) of ACJA was declared unconstitutional.

1.5. Recommendations

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

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

b) Effective prosecution largely depends on effective investigation. Without modern investigating and recording tools, some of the laudable provisions of the ACJ Laws such as provision against torture, recording of confessional statements through electronic means etc would be a mirage. Also, in order to achieve the aspiration of day-day trial, the criminal justice sector needs adequate facilities. For example, the custodial centers require enough

[51] CA/A/767C/2019

vehicles to transport inmates to court, the courts need electronic recording devices and other facilities such as standby generators to provide constant electricity etc. These would require adequate funding. In this vein, it is recommended that increased funding should be provided to the administration of criminal justice institutions to enable them provide facilities that will enhance their operation as provided under the ACJ Laws. Closely related to this is the need to improve the working conditions of operatives in the criminal justice sector in order to motivate them.

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

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

e) Although the CFRN is the grund norm, the importance of the ACJ laws to efficient criminal justice system which is important to national development does not need gain saying. In view of the recent Supreme Court pronouncement regarding s. 376(7) of ACJA, there is need to amend the provisions of the CFRN which invalidates the provision of s. 376(7) of the ACJA in order to revive the said provision of the ACJA which is important to speedy dispensation of justice.

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

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

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

1.6. Conclusion

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

COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015 AND KWARA STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL)2018*

2.1. Overview of the Kwara State Administration of Criminal Justice Law, 2018

The Nigerian criminal justice system encountered major changes with the enactment of the Administration of Criminal Justice Act (ACJA), 2015 and the recent State counterparts. Prior to the enactment of ACJA 2015, the criminal justice administration in the country was bedevilled with several challenges that signalled a conspicuous low level of compliance to human right principles and standards.[1] For instance, there was no due regard for the interests of accused persons; issues of forced or coerced confessions were rampant; there were unnecessary and prolonged remand of suspects and undue delays in conducting criminal trials. These challenges occasioned injustice and led to over congestion of prisons. ACJA reflects the merger of some provisions of the two major criminal justice legislation- the Criminal Procedure Act (CPA) and the Criminal Procedure Code (CPC); the repeal of certain sections and introduction of new provisions to enhance a humane and more efficient justice system. ACJA is popular with its paradigm shift from punitive to restorative justice among other innovative provisions. Notably, a significant number of States in the Federation,

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[1] Amnesty International, 'Nigeria: Criminal justice system is a 'conveyor belt of injustice' *Press Release*, 26 February, 2008 <https://www.amnesty.org.uk/press-releases/nigeria-criminal-justice-system-conveyor-belt-injustice-says-amnesty> accessed September 2, 2020

including Kwara State, have adopted the provisions of the Act as state laws.[2] The adoption by the States gradually plugging gaps in the broad architecture of ensuring an effective criminal justice administration which the federal law, ACJA set out to achieve.

The Kwara State Administration of Criminal Justice Law (Kwara ACJL) was passed in 2018, three years after the ACJA. It was assented to on the 3rd of December, 2018 by the then Governor, Abdulfatah Ahmed. Gazetted as No 10 Vol. 47 on 25th February, 2019, the Kwara ACJL is divided into divided into 50 parts (I – L) of 490 sections. Like s. 439 of the ACJA, section 488 of the ACJL repealed the Criminal Procedure Code Law, Cap. C23 of the Laws of Kwara State.

2.1.1 Purpose and Extent of Application of the Law

Section 1, Kwara ACJL provides that the purpose is to ensure that '*the system of administration of criminal justice in Kwara State, promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of society from crime, and protection of the rights and interests of the suspects, the defendant and the victim.'* This purpose is on all fours with ACJA, section 1 which contains a similarly worded purpose. The Law further provides for courts, law enforcement agencies and other authorities or persons involved in criminal justice administration to ensure compliance with the provisions for the realisation of the purposes.[3]

[2] As at September, 2020, 30 states and the FCT have enacted their state counterparts of the ACJA 2015.

[3] Kwara ACJL, s. 1(2)

The Kwara ACJL applies with respect to offences established by laws enacted by the Kwara State House of Assembly.[4] In addition, the law is also made applicable by the provisions of section 101, to offences that are tried by a court within the jurisdiction either because they occurred wholly or partly within the state.

2.1.2 Innovative Provisions Under Kwara ACJL

The Kwara ACJL contains several innovative provisions that highlight the extant law as one which can establish efficient and just administration of the criminal justice system. These innovative provisions include the following:

a. Division of courts – Ss. 3 – 18 ACJL

The Kwara ACJL provides for the classes and jurisdiction of criminal courts in the state.[5] It created the jurisdictions of the courts, based on the type of offence and the punishment involved. The Law in s. 4 gives the Chief Judge the power to divide the state into divisions and districts. In exercising this power, the Chief Judge is mandated to bear in mind the purpose of the Law under s. 1. The identification and division into classes of courts for the purposes of administrative convenience,[6] which improves efficiency.

[4] Kwara ACJL, s. 2
[5] Kwara ACJL, Ss 3- 18
[6] Mohammed v. State (2013) LPELR-20840(CA) 2

b. Reviewed powers of the Police – ss. 21, 22, 24, 25 (b)

The Law provides for some responsibilities of the police in the course an arrest. For instance, the police are obligated not to make an arrest in lieu.[7] The police are also obligated to inform the suspects of his rights.[8] Furthermore, a police officer in making an arrest is mandated to accord humane treatment to the suspect,[9] in line with the constitutional rights under the Constitution.[10] Under the Kwara ACJL, a suspect or defendant shall not be subject to restraints except there is reasonable apprehension of violence or attempt to escape; for the safety of the suspect or if the court orders for the suspect to be handcuffed.[11]

c. Record registry and record keeping s. 32 (2), 32 (4)

The existence of records that indicate the particulars of a suspect, the alleged offence date of arrest, and other processes which suspect is subjected, such as a discharge, acquittal or conviction are vital to the workings of the criminal justice system. The Kwara ACJL recognises the importance of such records as evidenced by the existence of the detailed sections relating to record keeping.[12] For instance, the Law provides that the State Criminal Records Registry must be maintained in both electronic and manual forms.[13] This is the records of details of all persons arrested, discharged, acquitted or convicted. Furthermore, s.32(4) mandates the police to transmit all decisions of the court in criminal trials to the central criminal records registry on monthly basis. Heads of every agency

[7] Kwara ACJL, s. 23
[8] Kwara ACJL S 22
[9] Kwara ACJL, ss. 22, 23-24
[10] Ss. 34(1)(a) and 35(2)-(4) of the 1999 Constitution
[11] Kwara ACJL, s. 21.
[12] Kwara ACJL ss 31-32
[13] Kwara ACJL, s. 32 (2)

authorised to make arrests in the state are also mandated to make monthly remittance of records of arrest to the Attorney general.[14] These records form a vital component of the broader monitoring mechanism of the criminal justice system.

d. Same gender search of an arrested suspect – s. 25 (3)

The Law provides that where it becomes necessary for a suspect to be searched, such search must be done decently and by a person of the same gender.

e. The obligation on the prosecution to adduce evidence to show voluntariness of the statement – s 31 (6)

In order reduce reliance on confessional statements obtained by the use of force, the Kwara ACJL makes it mandatory for the prosecutor who seeks to rely on a confessional statement, must adduce evidence to prove voluntariness of the statement. This requirement is in addition to mandating the recording of confessional statements of suspects. [15] This requirement

f. Protection of public property/arrest by owner of property and any person without authorisation of the owner – s. 36 (2)

Section 36 of the Kwara ACJL generally authorises a private person to arrest a suspect found causing an injury to property. This is innovative considering the rate of vandalization in recent times. Further to that, subsection empowers a servant, agent or any person to arrest in the circumstance even without the

[14] Kwara ACJL, s. 41
[15] Kwara ACJL, s. 31(4)

owner's authority. It should be noted that the ACJA requires that the owner authorises the private person before the arrest can be made.

g. Plea bargaining – section 276

The Kwara ACJL allows the prosecutor to offer, receive and consider a plea bargain.[16] The prosecutor is allowed to enter into the agreement after consultation with the investigating officer, with due regard to at least, the nature of the offence, personal circumstances and previous convictions of the defendant as well as the interests of the community and the victim.[17] The prosecutor may perform this function any time after the institution of proceedings but before the defendant pleads to the charge.[18]

h. Concluding partly-heard matters by an elevated judge

The powers of an elevated judge to sit for the purpose of concluding a partly heard matter is another key innovative provision. It reflects the need to reduce time wasting in the criminal justice system. By allowing an elevated judge to conclude the matter, the process of trial *denovo* is addressed.[19]

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[16] Kwara ACJL, s. 276
[17] Kwara ACJL, s. 276(2)
[18] Kwara ACJL, s. 276
[19] Notably, the equivalent of this section under the ACJA has sparked up controversies, particularly with respect to the practicality of its application. The recent decision of the apex court in ***Udeogu v Federal Republic of Nigeria & 2 Others*** SC622c/2019, delivered on May 8, 2020 appears to have put the matter momentarily, to rest. declared this provision as inconsistent with section 290 (1) of the 1999 Constitution. The Apex court held that the Honourable Justice having being elevated to the Court of Appeal had ceased to be a Judge of the Federal High Court and was thus deprived of the jurisdiction he had as a Judge of the Federal High Court to conclude the hearing and ultimate determination of the part-heard criminal case.

i. Protection of witness - s. 239, s. 266

ACJL provides for the protection of witnesses in certain circumstances. The Act provides that trial of certain offences, including armed robbery, kidnapping, abduction and other crimes involving the use of or threat of violence, may not be held in the public.[20] This is a security device in favour of the witnesses Although the section leaves the court with the discretion to determine its applicability, the court has, in a number of cases, applied such provisions in favour of witnesses. [21]

In such instance, the court will receive the evidence of such witness by video link, permit the witness to be screened or masked or whatever measures that the court considers appropriate. This is applicable where it is necessary to protect the identity of the victim or witness. [22] Also, where a child or young person is called as a witness in proceedings relating to an offence against decency and morality, the court may, under the Act direct certain persons to be excluded from the court during the taking of evidence of the child or young person.

These protections would ensure that the witnesses testify without fear of threats to their lives or any impairment and also protect the child witness, in line with best practices. [23]

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[20] S. 239 (4) (b) ACJL; Fatima Waziri – Azi 'Legal Framework of Witness Protection Measures During Criminal Trial in Nigeria And Emerging Practices' European Journal of Research in Social Sciences Vol. 7 No. 1, 2019 6

[21] ***Dasuki (Rtd) v. FRN*** (2018) LPELR-43969(CA) 3; ***Onwudiwe v. FRN*** (2018) LPELR-44499(CA) 2.
(2018) LPELR-44499(CA) 2;

[22] ***Onwudiwe v. FRN*** (2018) LPELR-44499(CA); ***Dasuki (Rtd) v. FRN*** (2018) LPELR-43969(CA)

[23]Article 40 (2) (b) (vii) of the Convention on the Rights of the Child; UNODC 'Special Considerations relating to the protection of child Witnesses'< https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_5-19.pdf> accessed 26 September, 2020

2.2 Compliance of the Law with International Best Practices

Since criminal justice traditionally is considered a sovereign matter, differences in the criminal administration of law systems exists globally.[24] However, generally acceptable standards and norms constituting the minimum benchmark which each system is expected to meet and by which they are evaluated remain applicable. These minimum standards determine the acceptability of the criminal justice system.

Compliance of Kwara ACJL with international best practice can be examined from the perspectives of international best practices as it relates to the protection of human rights, restorative justice and non-custodial sentencing.

2.2.1 Compliance with International Human Rights Standards.

The respect accorded to human rights globally has led to the adoption of certain minimum safeguards in the criminal justice system. These standards identify that the rights of all individuals, including the suspect, irrespective of age, gender, ethnicity, or political status require protection. For instance, *International Rules and Standards for Policing* highlights that the discretion afforded to law enforcement officials are to be exercised in compliance with the principles governing all law enforcement actions - legality, necessity, proportionality and accountability.[25] Consequently, human rights instruments such as the Declaration of Human Rights and the Covenant on Civil and Political Rights have

[24] Matti Joutsen, International Standards and Norms as Guidance in the Criminal Justice System, in *Staff Training for Correctional Leadership*, (I61 Training Course of the United nations Asia and Far East Institute for the prevention of Crime and the treatment of Offenders, 19 August -17 September, 2015)
< https://www.unafei.or.jp/publications/pdf/RS_No98/No98_VE_Joutsen.pdf>

[25] International Committee of the Red Cross, *International Rules and Standards for Policing* (ICRC 2015) 38

implications for the operations of criminal justice systems.[26] The essence of these international standards reflecting human rights being to ensure that the entire criminal justice process is as humane as possible.

Crucial areas to be considered in determining the level of compliance of Kwara ACJL with global standards with respect to human rights include arrest and interrogation, detention and bail.

i. Arrest and interrogation

International standards identify that a person arrested must be informed of the reason (s) for the arrest, the existence of the right to remain silent, and to legal representation. The person arrested by the minimum standards is also entitled to be brought to trial within a reasonable time.

The Kwara ACJL contains various paths for procedural protection of the rights of the suspect during the course of arrest conform with several fundamental rights standards. Under the Kwara ACJL, arrest can be made with or without warrant in circumstances provided under the law.[27] The law mandates the officer to respect the rights of suspects in the process of an arrest. The arrester is required to inform the suspect of the rights available to him. Where the suspect is taken into custody, he must be accorded humane treatment in accordance with his fundamental human rights.[28] These provisions conform with the general principle that a person is presumed innocent until proven guilty in accordance with applicable International and municipal laws.[29] During interrogation, a suspect

[26] Matti Joutsen, International Standards and Norms as Guidance in the Criminal Justice System, in *Staff Training for Correctional Leadership*, (I61 Training Course of the United nations Asia and Far East Institute for the prevention of Crime and the treatment of Offenders, 19 August -17 September, 2015)

[27] See generally Kwara ACJL, Ss 34, 36, 47 and 55

[28] Kwara ACJL, s. 24

[29] Universal Declaration of Human Rights, Art. 11; International Covenant on Civil and Political Rights, Art 14; 1999 Constitution (as amended) section 36.

must not be coerced to give confessional statement; and where it becomes necessary to search the suspect, it must be done decently, regard being given to his right to human person.

A significant reform in the Kwara ACJL that reflect the rights of all person, contained in the ACJL with respect to arrests is the protection against common police practices that violates the rights of persons who have not been involved in or suspected to have committed a crime. The Law in section prohibits the arrest of persons in such manner by prohibiting arrest in lieu of a suspect[30]

ii. Detention

Detention is a period of temporary custody prior to a trial, following the lawful powers of arrest by police or the decision of a judge or other legal authority. Key standards and norms covering conditions in detention and the treatment of detainees highlight that the detainee should be treated humanely. Accordingly, Article 1 of the United Nations Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment[31] provides that all persons under any form of detention or imprisonment, shall be treated in a humane manner and with respect for the inherent dignity of the human person. With particular reference to untried persons in detention, international best practice requires that such individuals be presumed innocent until proven otherwise.

The Kwara ACJL contain measure that succinctly reflect these international standards. The ACJL provides under s. 25 (3) that where it is necessary to conduct search on a person under detention, such search must be done decently and by a person of the same gender. Furthermore, to reduce the period of

[30] Kwara ACJL, s. 23.

[31] United Nations General Assembly (UNGA) Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment; Res.43/173, 1988

detention of suspects, Kwara ACJL provides for maximum number of times a party can be granted adjournment where day to day trial becomes impracticable. [32]

iii. Bail

The provisions of the Kwara ACJL reflects the position that a suspect is ordinarily entitled to bail. Even where the suspect is charged with a capital offence, the Law provides that the court will grant bail where there is extra ordinary delay for up to 2 years or on ground of confirmed ill health.

2.2.2 Restorative Justice

The concept of restorative justice features prominently in a plethora of criminal justice systems, as a means of redirecting focus from an offender- centric justice system to one that accommodates the feelings of the victim.[33] Restorative justice allows the victim to participate in the criminal justice process. The concept also allows the defendant rectify where possible, the loss suffered by the victim. In parts of Europe, persons may apply for compensation where they can prove that they are victims of a blameless crime, or have lost loved ones as a result of a violent crimes.[34]. The inclusion of provisions on of compensation by the Kwara ACJL in Part XXXIII,[35] conforms with international best practices, aims to provide victims of certain crimes real and personal justice.

[32] Kwara ACJl, s 397.
[33] Theo Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy* (European Institute for Crime Prevention and Control, 2007) 20- 25
[34] Compensation European Union <https://e-justice.europa.eu/content_if_my_claim_is_to_be_considered_in_this_country-491-sc-en.do?member=1> accessed 2 September 2020.
[35] Kwara ACJL, Ss 324- 333.

Plea bargaining under section 276 is also another avenue through which the victim is allowed to voluntarily participate in the criminal justice system and enjoy in some instances, specific benefits or services in lieu of compensation.[36]

2.2.3 Non-Custodial sentencing

Contemporary criminal justice systems identify that imprisonment especially of non-violent criminals do not constitute a panacea to either crime prevention or to the social reintegration of offenders.[37] The UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[38] as well as a host of other international documents, emphasises that a state's criminal justice system should provide diverse non-custodial measures, from pretrial to post-sentencing dispositions.[39] These non-custodial measures are aimed at addressing the rehabilitative needs of the offender, the protection of the society and, the interest of the victim who should be consulted whenever necessary. Rule 8. 2 of the Tokyo Rules contains a list of non-custodial measures which sentencing authorities are to consider.

The Kwara ACJL has made provisions for some of these measures that are restorative, rather than punitive and are in line with international principles on administration of criminal justice. The court is at liberty to adopt them, depending on the appropriateness determined on a case by case basis. The implementation of these measures provide potential gains of addressing major

[36] Kwara ACJL, s276 (2)(c)
[37] Office of the High Commissioner for Human Rights, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers (Geneva 2003) 373
[38] (Tokyo Rules, A/RES/45/110)
[39] United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Res. A/RES/40/34; Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters

challenges states face due to overcrowded and outdated facilities and the financial burden arising from the constant application of incarceration under the administration of criminal justice.

2.3 Comparative Analysis between Kwara State Administration of Criminal Justice Law and Administration of Criminal Justice Act (ACJA) 2015

The provisions of the Kwara ACJL and the ACJA 2015 are based on the same principles of improving the criminal justice system. The two legislation share several similarities. There are however several differences, which are highlighted in **Table 2.**

	CONCEPT	ACJA	ACJL	COMPLEMETARY PROVISIONS	ANALYSIS
A: Preliminary					
1.	Purpose of the legislation	s. 1	s. 1		The ACJA and ACJA have common purposes
2.	Application	s. 2	s. 2		Both legislation apply to criminal trials. ACJA is not applicable to court martial[40] ACJL on the other hand makes a criminal classification of courts with jurisdictions as to what offence to try under the Law.[41]
B: Arrest, Bail and Preventive Justice					
3.	Arrest generally	s. 3	s. 19	s. 4 Police Act; 35 (4) and (5) of the	Both legislation are applicable to arrest,

[40] S. 2 (2) ACJA
[41] Ss. 3 – 18 ACJL

				Constitution of the Federal Republic of Nigeria 1999	investigate, inquire into, try or deal with a suspect alleged to have committed an offence. While the application under the ACJA is for offences established by an Act of the National Assembly, the application under the ACJL is for offences established by a law of the State. While ACJLs of some states provide for the applicability of the ACJA in the state courts[42], s. 19 is silent on that. It would be implied into this section that the provisions of ACJA are applicable in Kwara state where the offence in question is a federal one. By section 286(3) of the Constitution, federal offence means an offence contrary to the provisions of Act of the National Assembly or any law having effect as if so enacted, and the same section gives jurisdiction to state High Courts to

[42] Section 5 of Kaduna State ACJL

					try federal offences.[43]
4.	No unnecessary restraint	s. 5	s. 21		Both legislation frown at unnecessary restraints in the course of an arrest, subject to certain conditions as recognised by the two instruments. However, while ACJA uses the word 'may', ACJL uses 'shall'. This means that while a suspect or defendant must not be handcuffed except under the conditions provided in the ACJL, the ACJA leaves the arrester with the discretion to handcuff or not even in the absence of the conditions provided. The word 'shall' has been interpreted to means 'must' or 'mandatory'.[44]
5.	Search of arrested suspect	s. 9 (3)	s. 25 (3)		Both legislation advocate for same-gender search, but while the ACJA provides a condition under which an opposite gender can carry out a search on a

[43] Ugo-Ngadi v. FRN (2018) LPELR-43903(SC) 2; s. 489 ACJL
[44] Adogo & Anor V. Tukura & Anor (2019) LPELR-47705(CA) 3

					suspect, the ACJL has no such condition. Thus, under the ACJA, in an urgent situation or in the interest of due administration of justice, where it is impracticable for the search to be carried out by a person of the same gender, a person of the opposite gender can conduct a search on a suspect. Same gender search is mandatory under ACJL.
6.	Examination of arrested suspect	s. 11	s. 27		ACJA foresees the possibility of non-compliance by the detained suspect and further provides that reasonable force can be used to ascertain such evidence. ACJL has no provisions on the use of reasonable force.
7.	Arrested suspect to be taken immediately to police station	s. 14	s. 30	s. 6 ACJA	Both legislation provide that where a suspect is arrested, with or without a warrant, he shall be taken immediately to a police station. While ACJA provides that the arrested suspect be taken immediately to a police station *or other place for*

					the reception suspect, ACJL provides that he be taken to a police station or *any other lawful place*. 'Any other place' as provided by ACJL appears vague and may be subjected to different interpretations which may cause hardship to the arrested suspect.
8.	Recording of arrest	s. 15	s. 31		Both instruments provide for the immediate recording of information and identity of the arrested suspect. ACJL is more exhaustive of the list of information to be covered, including email address, NIN, BVN, and where possible, DNA which are not expressly stated in the ACJA. It would have been more elegant for ACJL to state instances where DNA would be considered possible.

	Recording confessional statement	s. 15(4)	s. 31(4)	S. 27 Evidence Act on confessional statement	Both legislation provide for the admissibility of oral confession of an arrested suspect. However, the use of the phrase *notwithstanding the provision of subsection (4) of this section* under ACJA *appropriately* connects both subsections, unlike under ACJL, where provision on admissibility of oral confession of arrested suspect appears disjointed.
		--	31(6) & (7)	S. 27 Evidence Act on confessional statement	ACJL makes it mandatory for the prosecution to adduce evidence to show voluntariness of the confessional statement. This mandate is not provided under ACJA. Moreso, objection can be raised against the admissibility of the adduced evidence under ACJL, in which case, the court has to rule on it (ss. 7) during the delivery of the substantive suit.
9.	Record Registry	s. 16	s. 32		ACJA provides for establishment of a Central Criminal Records Registry at the Nigeria Police

					Force and a Criminal Records Registry at every State Police Command. The ACJL provides for the establishment of a state version, a State Criminal Record Registry; and at every Area Command, a Criminal Records Registry which shall keep and transmit such records to the State Criminal records registry of Kwara State and the Central Criminal Records Registry at the Police Headquarters, Abuja. While ACJL provides that the Registry should maintain both manual and electronic records of all persons arrested, discharged, acquitted or convicted in the state, ACJA has no such provision.
10.	Arrest by Police Officer with or without warrant	s. 18	s. 34		Both legislation provide that a police officer may arrest without warrant unless the law creating the offence expressly provides that the

					suspect cannot be arrested without a warrant;[45] while ACJA provides covers arrest for offence against a law of Nigeria or any other country, ACJL covers for arrest against the law of the state of any other state.
11.	Arrest by Police Officer without warrant	s. 18 (1) (j)	s. 34 (1) (j), (m)		ACJA has an extension of the authorities that can direct the officer to effect an arrest in such circumstance. Thus, while the ACJA lists four authorities including a Justice of the Peace, ACJL list four authorities excluding a Justice of the peace. Express mentioning of authorities or the use of an omnibus clause in such circumstance would have been necessary for ease of interpretation. On the other hand, ACJL extended the grounds under which a police officer may arrest without a warrant by including when there is reasonable suspicion that the

[45] This excludes where the offence is committed in the presence of the Police Officer under both legislation– s. 18 (2) ACJA; s. 34 (2) ACJL

					suspect is damaging any public property[46]. This is a good ground considering the current rate of vandalization of public property. ACJA has no provision for this.
12.	Refusal to give name and address	s. 19 (1) (4)	s. 35 (1) (4)		Both ACJA and ACJL provide that where a suspect refuse to give to give his name and residential address even before the court, that the court may deal with him as it would deal with an uncooperative witness. Going further, ACJA provides that the court in the circumstance may only deal with such suspect as provided under the Act. ACJL is silent on this. This suggests that the court under ACJL may deal with the suspect in line with general rules relating to uncooperative witness.
13.	Arrest by owner of property	s. 21; s. 50 (2)	s. 36 (2)		ACJA and ACJL authorises owner of a property or any

[46] A private person may also arrest any suspect found damaging public property – s. 22 ACJA; s. 36 (3) ACJL; s. 50 (2) ACJA provides that a police officer can on his authority intervene to prevent an injury attempted to be caused to a property.

					other person to arrest, without a warrant, a suspect found committing an offence involving injury to property. ACJA provides that the owner of the property will authorise any other person to make the arrest and ACJL is silent on the issue of authorisation. This implies that under ACJA, it will unlawful for any person to arrest a suspect found damaging a property if the person is not authorised by the owner
14.	Handing over suspect arrested by a private person	s. 23 (3)	s. 37 (3); s. 328 (1)		Where a suspect is arrested by a private person, there is a similar procedure on how the suspect would be handed over to the police and what actions the police should take. However, while ACJA provides that a suspect that refuses to cooperate with police after he is handed over, the he shall be dealt with as an uncooperative witness under s. 19,

					ACJL provides that the suspect shall be dealt with under the provisions of s. 40 (2). Meanwhile, there is no s. 40 (2) under the Law. Parts of the provisions under subsections 6 of both sections being considered makes a duplication of the provisions on re-arresting - (s. 23(2) ACJA; s. 37 (2) ACJL. Parts of subsections 4 of both sections being considered also make duplication of provisions on taking records of the private person making the arrest – s. 23 (1,4) ACJL; s. 37 (1, 4) ACJL. ACJA and ACJL both provide that the suspect be released if there is no sufficient reason to believe that he committed an office. ACJL further provides that no person shall be liable for any action carried out in good faith - (s. 37(6). This provision will protect private persons who take steps to maintain law and order in the

					society, when they are found to have acted in good faith.[47] ACJA is silent on non-liability for arrests made on good faith. This could give an open door for series of actions where no sufficient reason to believe that an arrested suspect committed the offence.
15.	Report of arrests to the Attorney-General	s. 29	s. 41		Both instruments provide for periodic report of all arrests made with or without warrant. While ACJA provides that the report be made quarterly, ACJL provides for monthly report. The monthly remittance of record under ACJL appears more practicable and more likely to ensure efficiency and control of the activities of arresting officers and persons
16.	Reporting to supervising Magistrates	s. 45 (3)	s. 33 (3)		Both instruments provide for a monthly report of all arrests made without warrant.

[47] There is a provision under both legislation where the court may award cost against Private prosecutor on acquittal of the defendant in a proceeding instituted by the private prosecutor – s. 322 ACJA; s. 327 ACJL

					The Attorney General, upon receipt of the final report and advice, upon request, is under an obligation to make the report available to the National Human Rights Commission, the Legal Aid Council of Nigeria or a Non-Governmental Organization. The Attorney General has a discretion to release the report under ACJL because of the use of the word 'may'.
17.	Routine visitation of police stations by the Chief Magistrate	s. 34	s. 46		Both legislation provide for the routine visitation of police stations and other places of detention by the Chief Magistrate at least once a month. ACJA further mandates the High Court having jurisdiction to visits such detention facilities of the Federal Government agencies for the same purpose of inspecting records, direct arraignments of suspects and where appropriate, grant bail to suspects. Under both legislation, an

					officer in charge of the detention place who fails to make necessary reports and records available to the visiting Magistrate faces disciplinary actions
C. Provisions Relating to Criminal Trials and Inquiries in General					
18.	Form of complaint	s. 89	s. 97		Both laws require that complaints made directly to the court may first be referred to the police for investigation before any action by the court. While the ACJA stops at that, ACJL goes further to provide that the referral shall include an order not to detain the suspect before or during the investigation. ACJL also stated what actions the police shall take after investigation, depending on the gravity of the offence. ACJA does not have express provision on what action the police shall take after investigation.
19.	Limitation of period for making a private complaint	s. 92	s. 100		Both legislation provide for limitation period for the making a private complaint

					for a summary conviction. The limitation period under the ACJA is six years while it is two years under the ACJL, from the time when the matter of such complaint arose and not after.
D. Place of trial or inquiry					
20.	Venue generally	s. 93	s. 101		While both laws make provisions relating to trial and jurisdiction, subsection 3 under the ACJA is clearly absent in ACJL. It mandates the Commissioner of Police to ensure that one or more armed policemen are posted to provide security during every criminal trial.
21.	Discretion in *ex parte* application	s. 120	s. 127		ACJL provides that an application for a summons under the law shall be made *ex parte* to the court or to such officer as the Chief Judge may specify from time to time. ACJA has similar provision in its side note. However, the contents of the provision do not reflect the what is on the side note. Rather, it is a word for word

					duplication of the provisions under s. 121
22.	Power to dispense with personal attendance of defendant	s. 61	s. 142 (1)		ACJL expressly provides for instances where physical appearance of defendant may be dispensed with. These include where the penalty is not more than N50, 000 or where imprisonment is not more than 6 moths. ACJA does not have an express provision on conditions where the court may grant that.
E. Bail					
23.	Release on bail of suspect arrested without warrant	s. 30 (2)	s. 42(2)	s. 35 (4) and (5) 1999 Constitution- delimits time a suspect shall remain with the Police after which he must be charged to court	ACJA and ACJL provide that the officer in charge of a police station releases the suspect on bail in his entering into a recognizance, with or without sureties. While ACJA the payment of a reasonable amount of money, ACJL includes the execution of a bond to appear at the place and time named in the recognizance. Also, where it appears to the police officer that

					the offence is of a capital nature, ACJL provides that the police officer *shall* refer the matter to the Attorney-General for legal advice. ACJA on the other hand provides that the police office *may* refer the matter to the Attorney-General for legal advice. Leaving the police officer with the discretion to refer matters to the Attorney-General may lead to likelihood of abuse of process. Lega advice from the Attorney-General sets the matter straight, reduces abuse of court processes and enhances swift trial of matters.
24.	Bail where a suspect is charged with capital offence	s. 161	s. 168 (1)		Both legislation provide for when a suspect is not entitled to bail. However, while the ACJA provides for offence punishable with death, ACJL provides for when suspect is charged with offence punishable with a term of 21 years or more, life imprisonment or

					death. In both sections of the legislation, only a Judge of the High Court can admit bail in the circumstances stated where necessary conditions are met.
25.	Bail where a suspect is charged with a capital offence; exceptional circumstances	s. 161 (2)	s. 168(2)	s. 36 (5) 1999 Constitution- presumption of innocence.	The extraordinary delay in the prosecution of a criminal case is an exception under both laws. However, while ACJA identifies extraordinary delay in the process as exceeding 1 year, Kwara ACJL identifies it as exceeding 2 years.
26.	Recognizance in respect of a child.	s. 166	s. 173		While both legislation provide for recognizance relating to a child, ACJL erroneously used the word 'charge' instead of child. Although this is not fundamental as it does not touch on the substantive provisions, the use of the wrong word in a side note will likely defeat the purpose of side note in legislation.
F. Remand/Detention Limits					
27.	Application for remand	S 293	s. 299	S 174(1)(2); s. 211(1)(2) 1999 Constitution; s. 23 Police Act	Both instruments provide for the process of application for

					remand. However, the ACJL includes a proviso that remand would only be granted if evidence exists that the original file has been transferred to the A.G for legal advice. By including this proviso, the ACJL ensures that the interest of the suspect is further protected.
28.	Time for remand orders	s. 296	s. 302	a. S. 36(5) 1999 Constitution on the presumption of innocence; b. S. 27 Terrorism Prevention (Amendment) Act as an exception to detention time limits as envisaged under the ACJA	Under ACJA, remand order is for a period not exceeding 14 days and can be extended for a second period not exceeding 14 days. Under ACJL, remand order is for a period of not exceeding 21 days in the first instance and may be extended for further period not exceeding 14 days. Both legislation also provide for a further third and final period not exceeding 14 days after which the suspect will be released, with or without conditions, if he is still not arraigned.
G. Trials generally					

29.	Non-appearance and non-representation by counsel	s. 349 (6)	s. 354(7)		Both instruments allow for the defendant to represent himself during a trial. However, the ACJA unlike the ACJL includes the conditions that a person charged with a capital offense punishable by life imprisonment will not be allowed to represent himself.
30.	Payment of a legal practitioner engaged by way of legal aid.		s. 354(6)		Payment of the legal practitioner engaged for a defendant by way of legal aid is determined by the Court under ACJL while the ACJA is silent on this
31.	Intention of legal practitioner to disengage from a matter	S. 349 (8)	s. 354 (9)		Both instruments allow for the legal practitioner to disengage from a trial. However, while the ACJA mandates such a legal practitioner to give at least 3 days' notice, the ACJL provides for a minimum of 7 days' notice.
32.	Frontloading	s. 379			the ACJA provides for a frontloading requirement on the part of the prosecution. The ACJL is silent on this.

33.	Day – to – day trial and adjournments		s. 396 (3) – (6)	s. 397 (2) – (4	In order to discourage frivolous adjournments[48], both instruments provide for specific no of adjournments between arraignment and conclusion of trial. Where day to day trial becomes impracticable, ACJA provides that a party is entitled to only a maximum of 5 adjournments from arraignment to final judgment ACJL provides that where day to day trial is not practicable, that each party is entitles to a maximum of 7 adjournments from arraignment to final judgment. The interval between each adjournment under both laws shall not exceed 14 days. The stipulation about the day to day trial is to ensure that criminal cases are expeditiously dealt with in line with the provision of the Constitution.
34	Plea bargaining	s. 270	s. 276		Under the ACJA, the defendant can

[48] S. 396 (6) ACJA

					enter into a plea-bargaining agreement before or during the presentation of the prosecution's case but before entering into his defence. Under Kwara ACJL, the defendant can only be offered before he enters his plea.
35	Procedure for trial on charge for certain offences requiring witness protection	s. 232	s. 239	s. 36 (4) of the Constitution	Both laws recognise that trial of certain offences may not be held in the public, as determined by the court. This is applicable where is necessary to protect the identity of the victim or witness.[49] The ACJA and ACJL provide instances where such protection would apply. However, while ACJL expressly include offences of armed robbery, kidnapping, abduction and other crimes involving the use of or threat

[49] The court in **Onwudiwe v. FRN** (2018) LPELR-44499 (CA) 3 described the ACJA as a special Act, *sui generis* and maintains that the application of this section was not for a secret trial as wrongly portrayed by the appellant but rather a security device in favour of the witnesses. The court affirmed the decision of the lower court that the names of the prosecution witnesses who are security operatives, be classified and appear in combinations of alphabets, and that such witnesses give their evidence behind the screen. It was also held that the s. 232 of the ACJA is not in conflict with the provisions of s. 36 of the 1999 Constitution of the Federal Republic of Nigeria.

					of violence,[50] ACJA has no express provisions covering those offences. Rather, ACJA has a clause covering any other offence in respect of which an Act of the National Assembly permits the use of such protective measures or as the Judge may consider appropriate in the circumstances.[51]
36	Penalty on witnesses refusing to attend	s. 241 s. 246	s. 247 s. 252		Both laws provide that the court may, on an application of the prosecution or defence, issue a summon or writ of subpoena on a witness requiring him to attend any court for purpose of giving evidence. Both legislation also provide for punishment where a witness, without reasonable excuse, refuses to attend court when duly summoned. Under the ACJA, where a witness refuses to attend or leaves the court premises with the leave of the court

[50] S. 239 (4) (b) ACJL

[51] S. 232 (4) (e) ACJA. The use of the word 'may' indicate that the court has discretion to consider the peculiarity of the case before it - ***Onwudiwe v. FRN*** (2018) LPELR-44499(CA) 3.

					hearing the case, such a witness is liable to a fine not exceeding N10, 000.00 or to imprisonment for a term not exceeding 2 months. ACJL on the other hand, provides that such is liable to fine not exceeding N 50, 000. 00 or to imprisonment for a term not exceeding 2 months.
37	Non-appearance and non-representation by a legal practitioner	s. 349(8)	s. 354(9)		Both legislation provide that a Legal practitioner shall notify the court of his disengagement from a matter. ACJA provides that the notification shall be given, not less than 3 days before the date fixed for hearing of while under ACJL, it is not less than 7 days before the date for hearing. Both however provide that the notice of disengagement shall be served on the court and all parties
38	Case files, Legal advice and related proceedings	s. 376 (2)	s. 381 (2)		Where an offence if is preferred against a defendant and the Magistrate's Court

					has no jurisdiction to try such offence, both legislation provide that the police shall, at the end of investigation submit the original case file to the office of the Attorney-General. Under ACJA, the Attorney-General shall within 14 days of the receipt of the case file give his legal advice. The ACJL provides for a period of 30 days within which to give legal advice indicating whether or not there is a prima facile case against the defendant.
39	Sentencing generally other than capital sentence (canning and haddi lashing)		s. 438; s. 439	s. 77 Penal Code Act of the Federal Capital Territory 2007; s. 492(1) ACJA; s. 493 ACJA; s. 488 ACJL	ACJA and ACJL have similar provisions on sentencing, both in capital and non-capital offences. They provide for different types of sentencing including death, imprisonment, fine and non-custodial sentences.[52] In determining an appropriate sentence in every case, courts are

[52] Ss. 401 ACJA, s. 402 ACJL.

					mandated, under both legislation, to have in mind the objectives to be achieved.[53] Furthermore, in exercising discretion in sentencing or review of sentence, courts are also mandated to take into consideration the principles of reformation.[54] Both laws provide that sentencing to à term of imprisonment shall only apply to offenders who should be isolated from the society and with whom other forms of punishment have failed or is likely to fail. Other forms of punishment referred to are the alternatives to imprisonment or the non-custodial punishments.[55] This is a shift from the punitive to the restorative system of justice in line with global

[53] Such objectives include prevention, restraint, rehabilitation, deterrence, education, retribution and restitution – s. 401 (2) ACJA, s. 402(2) ACJL
[54] S. 416 (2) ACJA; s. 417 (2) ACJL

[55] These are punishments given to offenders that do not involve imprisonment - Ugonna Ezekwem 'Exploring Non-Custodial Sentencing in Magistrates Courts' being 2017 Orientation Course for Newly Appointed Magistrates July 24 2017 6

					practices.[56] While ACJA is conspicuously silent on caning as a form of punishment, ACJL provides for the sentences of caning and haddi lashing[57] and the manner they should be executed.

Table 2: Comparison between ACJA 2015 and Kwara State ACJL

2.4 Practical Challenges with the Implementation of the Kwara Administration of Criminal Justice Law Provisions

a. Lack of adequate training for the users particularly the police

Most users of the Law do not have sufficient knowledge on the innovative provisions. The Police play a prominent role in the administration of the ACJL as well as the ACJA. They are the most visible face of the enforcers of Law, yet they do not work in line with the new realities. The police still implement old practices, especially regarding the issues of arrest, bail, obtaining of confessional statement and general handling of suspects There is not sufficient orientation for members of the Police on the use of this Law. On the other hand, the members of the public are generally ignorant of their rights under the law. Lack of adequate training on the use of the law will always constitute a clog on the effective implementation of the provisions of the law

[56] In ***Lawrence v. FRN*** (2018) LPELR-44510(CA) 2, the court stated (obiter) that the essence of punishment should be reformative in nature and not punitive

[57] These are punishments used mainly in the Northern Nigeria and contained in s. 77 of the Penal Code.

b. Dealing with a suspect who refuses to provide his name and address

Section 37 (3) of ACJL tend to provide for how to deal with a suspect who is believed to have committed an offence and who refuses to give details of himself. The section provides that he shall be dealt with under s. 40 (2). Meanwhile, there is no such section. This is an omission and can constitute a challenge to users on how to navigate through situations when faced with such a suspect.

c. Facilities and resources

There is a dearth of facilities and resources to support an effective implementation of the law. This challenge has become more intense with the current global pandemic. The courts have to be cautious of available and institutional resources such as probation and non-custodial centres in making decisions and directions. Although community service will appear to be more realistic where necessary, there is still the challenges of effective monitoring. There is a shortage of trained prosecutors, law enforcement agents, public defenders as well as inadequate compensation for all. There is inadequate equipment, infrastructure and lack of basic materials. Where criminal justice does not achieve the set objectives, it is most often due to weak or even dysfunctional institutions [58] There is also the problem of underfunding for the core actors in this criminal justice sector.

[58] World Bank 'Africa Regional Justice Note: A Review & Lessons Leaned 45 http://documents1.worldbank.org/curated/en/214551468009021637/pdf/579860ESW0P1121stice0pub09114110web.pdf accessed 5 September, 2020.

d. Attitudes of Prosecutors and law enforcement Agents

Most prosecutors still do not appreciate the fact that the essence of the law is to do justice as best as possible; and that it is better to acquit nine guilty men than to convict an innocent man.[59] They tend to want to secure conviction by all means, thereby frustrating the effective implementation and the core objectives of the Administration of Criminal Justice Law.

e. Poor technological equipment

There is poor technological equipment to carry out electronic investigations and recordings. This is in addition to lack of tech-savvy on majority of the supposed justice providers. Section 31 of the Law provides for the recording of arrest and includes the fingerprint impressions and DNA of the suspect. These examinations require technology which should be readily available in order not to result in unnecessary delay. However, a critical consideration of the expression 'where possible' used in s. 31 (1)(d)(v) of the Law appears to imply an acceptance of the dearth of necessary technology for the purpose stated under the section.

2.5 Recommendations

In view of the practical challenges associated with the implementation of the ACJL, several suggestions can be made to address these risks that can potentially derail the efficient administration of the criminal justice system.

The activities of the police, as always require urgent and immediate attention. Intensive training targeted at behavioural change is recommended for the member

[59] Bello v. FRN (2018) LPELR-43688(CA) 2

of the police force. They should be trained on the provisions of the ACJL and general human right principles.

Furthermore, they should also be trained on ICT to be able to cope with the electronic demands in law and modern realities on virtual activities. Students at the Police Academy should be made to undergo internship/court attachment to keep them well equipped with the provisions and principles of criminal law and the general justice administration.

There is need to introduce legal literacy programmes to members of the public who are always at the receiving end of the various abuses. Public enlightenment campaigns will contribute to ensuring that citizens know their rights and will also contribute to reducing illegal and unprofessional activities of the police and other enforcement agents.

2.6 Conclusion

An effective criminal justice system is one of the key pillars upon which the concept of the rule of law is built. This is because the criminal justice system serves as a functional mechanism to redress grievances and bring violators of social norms to justice. How well each state manages its criminal justice system affects its overall performance on the governance/performance index.

The review of the Kwara ACJL reveals that it is a progressive and timely piece of legislation that conforms largely with its federal counterpart and international best practices. The practical challenges that affects its proper implementation can be addressed to accomplish the desired intent of the law.

COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA), 2015 AND THE ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL), 2018 OF NASARAWA STATE*

3.1. Overview of the ACJA, 2015 and the ACJL, 2018 of Nasarawa State

The ACJA, 2015 and the ACJL, 2018 of Nasarawa State were enacted as desired reforms in the administration of criminal justice and related matters. The enactments provide for speedy dispensation of justice to eliminate lapses and fraught delays in the trial of cases, which led to the protracted nature of many criminal cases in court, congestion of prisons, abuse of powers by prosecution and defence practitioners etc. as well as lack of witness protection etc.

3.1.1. The ACJA, 2015: Objectives, Scope and Application

The ACJA, 2015 repealed the Criminal Procedure Act (CPA),[1] the Criminal Procedure Code (CPC) and the Administration of Criminal Justice Act Cap. A3 Laws of the Federation of Nigeria (LFN) 2004 in section 493 and, made provisions to:

a. Enhance efficient management of criminal justice institutions – section 1;[2]

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[1] ***Akingbola v. FRN*** **(2012) 9 NWLR (Pt. 1306) 511**

[2]Section1 is an indication of a deliberate shift from punishment as the primary objective of the criminal justice system to restorative justice which hinges on the needs of the society, the victims, vulnerable persons and human dignity

b. Ensure that cases are treated with utmost urgency by lawyers and stakeholders in criminal justice administration in Nigeria to achieve speedy dispensation of justice by eliminating undue delay[3] and forestalling situations where accused persons use frivolous interlocutory applications to delay trial – section 306,[4] *Olisa Metuh v. FGN*[5] and *FRN v. Babalola Borisade;*[6] and

c. Protect the society from crimes and protection of the rights and interest of the suspect, the defendant and victims in Nigeria[7]- section 1(1) and *Awelle v. People of Lagos State*[8]

The ACJA, 2015 was enacted by the National Assembly of the Federal Republic of Nigeria to commence on May 26, 2015. It is a unique and unified law with respect to offences contained in federal legislation. Its application extends to:

a. Criminal trials for offences established by laws enacted by the National Assembly – section 2 (1)

b. The courts in the Federal Capital Territory (FCT) and other Federal courts in Nigeria – section 2 (1), the long title to the Act and Order 1 HC-FCT Practice Directions 2017

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[3] Delayed trial can be attributed to a number of factors such as administrative bottlenecks, lack of diligent investigation on the part of the investigating authority, insufficient evidence to establish the guilt of the suspect, delay tactics employed by the defence to frustrate the prosecution's case, judicial corruption and lack of funds to fast track the investigation process

[4] The provisions of section 306 are expected to end the delays occasioned by interlocutory applications for stay of proceedings pending appeal on preliminary matters when the substantive issues are yet to be tried on merit

[5] [2017] 11 NWLR (Pt. 1575) 157, 176-178

[6](1983] 3 SC and Order 1 of the Practice Directions on the Implementation of the ACJA, 2015 in Courts of the Federal Capital Territory issued by Chief Judge of the FCT on 25 April, 2017 (HC-FCT Practice Directions 2017)

[7]*Charles v FRN* [2018] 13 NWLR (Pt. 1635) 50

[8] (2016) LPELR-41395 (CA)

c. All criminal trials and inquiries in Part 8 of the Act unless there are specific provisions to the contrary - section 86

d. State courts where the provisions of ACJA are adopted by the State House of Assembly.[9] The Act may also apply in very limited situations such as where the court has jurisdiction over a federal offence or where a State counsel is authorised by the Attorney General of the Federation (AGF) to prosecute a federal offence

e. It does not apply to a Court Martial.

The ACJA is divided into 48 parts and 495 sections.[10] Parts 1-11 begins with the preliminary which defines the purpose and application of the Act in sections 1 – 2, arrest, bail and preventive justice in sections 3 – 34, warrant in sections 35 – 49, prevention of offences and security for good behaviour in sections 50 –64, proceeding in all cases subsequent to order to furnish security in sections 65 –71, preventing public nuisance in sections 72 – 79, attachment where a person disobeys summons or warrant in sections 80 – 85, provisions relating to criminal trials and inquiries in general in sections 86 – 92, place of trial and inquiry in sections 93 – 103 and powers of the Attorney-General and criminal proceedings by the Attorney-General in sections 104 – 108

Parts 12-22 deal with the institution of proceedings, first information report and enforcing appearance of suspect in sections 109 – 115, issue, form and service of summons, miscellaneous provisions regarding process and

[9] A number of States have adopted the ACJA by enacting similar provisions in their Administration of Criminal Justice Law (ACJL) while some have adopted with slight alterations in their ACJL

[10] Adedeji Adekunle,"An Overview of the Administration of Criminal Justice Act 2015"@http://nji.gov.ng/images/Workshop_Papers/2016/Induction_Course/sII.pdf Accessed May 6, 2020 and Yemi Akinseye-George, "An Overview of the Administration of Criminal Justice Act 2015"http://nji.gov.ng/images/Workshop_Papers/2016/Refresher_Magistrates/so2.pdf Accessed may 6, 2020

saving, validity of process in sections 116 – 142, search warrants, bail and recognisances, property and persons in sections 143 – 192 and charge, charge alteration and amendment in sections 193 -222

Parts 23-33 provide for conviction and previous acquittals / conviction in sections 223 – 240, compelling witnesses attendance, witnesses expenses and examination etc. in sections 241 – 269, plea bargain and plea generally in sections 270 – 277, persons of unsound mind and detention time limits in sections 278 – 299, presentation of case by the parties in sections 300 – 318 and costs, compensation, damages and restitution, custody, disposal, restoration of property in sections 319-330

Parts 34-44 relate to seizure, forfeiture, confiscation and destruction of instrument of crime in sections 331 –346, summary procedure in perjury, trials and summary trials and trials by way of information in sections 347 – 400, sentence generally including sentence of death in sections 401 – 437, detention in a safe place or custody other than prison or mental asylum in section 438 and deportation, child offenders, probation and non-custodial alternatives in sections 439 – 467

Parts 45-48 provide for parole, the establishment of the Administration of Criminal Justice Monitoring Committee and its functions etc. in sections 468 – 476, trial of corporations in sections 477 – 484, appeals from Magistrate courts to the High courts, fees and miscellaneous provisions including interpretation in sections 485 – 494. Section 495 is the citation while there are 4 schedules to the Act containing several forms for criminal justice administration.

3.1.2. The ACJL, 2018 of Nasarawa State: Objectives, Scope and Application

The ACJL, 2018 of Nasarawa State is a law on criminal justice administration and related matters in the High court and Magistrate court of Nasarawa State. It was enacted by the House of Assembly of Nasarawa State to ensure that the system of administration of criminal justice promotes:

a. Efficient management of criminal justice institutions;
b. Speedy dispensation of justice; and
c. Protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victim.

The Courts, law enforcement agencies and other authorities and persons involved in criminal justice administration are mandated to ensure compliance with the provisions of the law – section 1 (2). The law repealed the Criminal Procedure Code Laws of the Northern States except Part 11, Appendix A or all other rules guiding same in section 466 and, applies to:

a. Criminal trials for offences established by the Nasarawa State House of Assembly
b. Other offences punishable in the State – sections 2 (1) and 86
c. It does not apply to a Court Martial - section 2 (2)

The ACJL provisions are divided into 47 parts subdivided into 468 sections including schedules. Parts 1-10 deal with preliminaries i.e. the purpose and application of the Law, arrest, bail and preventive justice in sections 1-34, warrants, prevention of offences and security for good behaviour in sections 35-64, proceedings in all cases subsequent to order to furnish security and public nuisance in sections 65-79, attachment where a person disobeys summons or warrant and provisions relating to criminal trials and inquiries

in general in sections 80-92, place of trial or inquiry and powers of the Attorney-General in sections 93-106.

Parts 11-20 relate to control of criminal proceeding by the Attorney-General and institution of proceedings in sections 107-111, first information report and enforcing appearance of suspect in sections112-115, issue, form and service of summons and miscellaneous provisions regarding process in sections 116-139, savings, validity and search warrants in sections 140-157 and bail and recognisance generally and property and persons in sections 158-191

Parts 21-30 contain provisions on the charge, alteration and amendment of charges in sections 192-221, conviction when charged with one of several offences or of another offence and previous acquittals or conviction in sections 222-239, witnesses, compelling attendance and taking of oath or making of affirmation and witnesses expenses in sections 240-253, examination of witnesses and plea bargain and plea generally in sections 254-276, persons of unsound mind and presentation of case by prosecution and defence counsel and conclusion of trial in sections 277-310

Parts 31-40 relate to costs, compensation, damages and restitution and custody, disposal, restoration or property in sections 311-324, seizure, forfeiture, confiscation and destruction of the instrumentality of crime and summary proceedings for perjury in sections 325-339, trials and summary trials generally and rules relating to charges in sections 340-386, provisions relating to sentence of death and procedure where a woman convicted of a capital offence is alleged to be pregnant in sections 387- 401 and sentencing generally other than capital offence and detention in a safe custody or suitable place other than prison or mental health asylum in sections 402-424

Parts 41-47 deals with child offenders, probation and non-custodial alternatives in sections 425-440, parole and the Administration of Criminal Justice Monitoring Committee in sections 441-449, trial of corporation, appeal from Magistrate Courts in sections 450-458 and fees and miscellaneous in sections 459-468 and finally, the schedules containing several forms for criminal justice administration.

3.2. Compliance of the ACJA, 2015 and the ACJL, 2018 of Nasarawa State with International Best Practices

The concept of justice denotes an innate human rights order of what is lawful, fair and equal.[11] It is recognised the world over in many laws, conventions and constitutions to provide persons with the right to fair hearing, fair trial and speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.[12] The objective is entrenching the rule of law to

[11] *UCHBM v Morakinyo* [2014] 16 NWLR (Pt. 1434) 589

[12] The Universal Declaration of Human Rights, 1948 recognise the inherent dignity, equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. It provides in Article 10 that everyone is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of their rights and obligations and of any criminal charge against them. The African Charter on Human and Peoples' Rights, 1981 in Articles 3 and 7 also recognise the equality of all humans before the law and the right to a fair hearing within a reasonable time by an impartial court or tribunal. The American Convention on Human Rights, 1969 provides in Article 8 the right of every person to a fair hearing within a reasonable time by a competent, independent and impartial tribunal in the substantiation of any accusation of a criminal nature against them. The International Covenant on Civil and Political Rights (ICCPR), 1966 in Article 14 provides that in the determination of any criminal charge, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal. Article 6 of the European Convention on Human Rights, 1950 provides for the right to fair trial and public hearing within a reasonable time by an independent and impartial tribunal in the determination of any criminal charge against a person. The right to have a dispute decided in a fair public hearing before a court or where appropriate by another independent and impartial tribunal or forum bis also supported by the Constitution of Ghana, 1992, section 33; Constitution of the Republic of South Africa, 1996, chapter 8, sections 34 and 35 and the Sixth Amendment to the United States Constitution, 1789, Article VII which provides that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State or the District

promote equity and equality and, prevent oppression of the citizen and delays in the administration of justice. Justice may be classified as distributive or remedial and must be manifestly and undoubtedly done. This ensures that proceedings are not held indefinitely leading to delayed justice and possibility of denied justice.[13]

Laws on administration of justice are instruments of social engineering to meet the demands of an egalitarian society by eliminating all forms of delay and inhuman treatment. Generally, the laws prioritise rules for equal opportunity applied within certain due process so that people of every race can live well. In relation to the administration of criminal justice, it ensures that the right accorded the suspect or defendant to speedy dispensation of justice etc. is a shield and not a weapon and is thus, granted within securing the right of public justice – the rights of the victim and the society.[14]Accordingly, the application of laws on administration of criminal justice thrives within orderly and expeditious dispensation of fair trial and, efficient management of criminal justice institutions and not merely based on speed to protect the victim and the society from crime.

The Constitution of the Federal Republic of Nigeria (CFRN), 1999 recognises the concept of justice in sections 6, 34 - 36. It establishes the courts to try cases based on fair hearing and fair trial[15]within a reasonable time by an independent and impartial adjudicator. Such trial must ensure respect for human dignity and personal liberty within due process. The provisions of the ACJA, 2015 and the ACJL 2018 of Nasarawa State on criminal justice

[13]*Danladi v Dangiri* [2015] 2 NWLR (Pt.1442) 124 and *Barbedos Ventures Ltd v FBN Plc.* [2016] 11 NWLR (Pt. 1523) 301

[14]The rights granted under sections 34 – 38 of the Constitution of the Federal Republic of Nigeria,1999 Constitution are not absolute – *Health Practitioner & 2 Ors v Medical and health Workers &Ors* [2008] 1 SC (Pt. 111) 1

[15]*Botn v State* [2018] 3 NWLR (Pt. 1607) 140

administration cover established institutions, personnel, arrest, investigation and trial, custodial matters and sentencing guidelines. The provisions can be seen as the long-awaited revolution in the criminal justice system as they display a shift from the criminal justice system of command / control punitive justice to restorative justice. Implementation of the provisions is expected to respond to the needs of the society, the victim, suspect,[16]vulnerable persons and human dignity[17] and thus, aligns to the 1999 Constitution[18] and also, complies with international best practices for the administration of efficient criminal justice system. The laws make provisions for:

a. Speedy dispensation of justice, promotion of efficient management of criminal justice institutions and protection of the society from crimes by ensuring the protection of the rights and interests of the defendant and the victim – ACJA, sections 1(1) and 306 / ACJL, section 1 (1) and (2)

b. Day to day trials which means that justice should be dispensed quickly – ACJA, section 396 (3)[19] / ACJL, sections 250-252 and 382 (3)

c. Interlocutory applications and adjournment to avoid extra day, week or month delays which clog the wheels of criminal justice in Nigeria – ACJA, sections 110, 221, 306 and 396 (2) and (4) / ACJL, sections 298 and 382 (2) and (5)[20]

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[16]*Awelle v People of Lagos State* (2016) LPELR -41395 (CA)

[17]This is evidenced in the usage of the word "suspect" or "defendant" rather than "accused" and the provisions relating to treatment of an arrested person including provisions for speedy trial, suspended sentencing to community service, parole and compensation etc.

[18]The 1999 Constitution is the supreme law of the land. What is stated in it is sacrosanct and immutable and nothing can be done but to strictly comply with it – *Coca-Cola (Nig.) Ltd v Akinsanya* [2017] 17 NWLR (Pt. 1593) 74 and *Nganjiwa v FRN* [2018] 4 NWLR (Pt. 1609) 301

[19]Section 396 (3) - Upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial. Where this is impracticable, no party shall be entitled to more than five adjournments from arraignment to final judgment…

[20] Application for stay of proceedings in respect of a criminal matter before the court shall not be entertained until judgement is delivered. Interlocutory applications in criminal trials are still entertained but the court cannot grant a stay of proceedings to entertain such an application because all applications shall be considered and judgement delivered once. Order 11 High Court of the Federal Capital Territory (FCT) Practice Directions, *Olisah Metuh v FRN* [2017] 11 NWLR (Pt.1575) 157, *Omonuwa v. Oshodin* (1985) 2 NWLR (Pt.10) 924, *Abacha v The State* (2002) 11

This promotes quick assignment of cases and issuance of notice of trial within ten working days of the assignment while objection to charges are to be considered along with the substantive issues with accompanying rulings at the time of the judgement. The reforms also aid case management by instituting costs and limiting the number of adjournments in criminal trials to five for each party.[21]

d. Prosecution of cases by lawyers to ensure that only Police men who are lawyers have the right to prosecute cases – ACJA, section 106[22]

e. Status of women sureties to increase the number/categories of persons who can undertake this duty to speed up trial of cases

f. Recording of confessional statements[23] to promote documentation and veracity of statements - ACJA, section 17 / ACJL, section 17 (2) and (3)

g. Elevation of a judge which does not bring an end to the case to start *de novo* to promote speedy disposition of cases –ACJA, section 396 (7) / ACJL, section 382 (7)[24]

NWLR (pt. 779) p. 437, section 306 ACJA, *FRN v AVM Saliu Atawodi and 2 Ors* FCT/HC/CR60/15 delivered 26 April 2017, *Mustapha v FRN* (2017) LPELR-43131(CA), *Rickey Tafar Mustapha (SAN) v Federal Republic of Nigeria* (2017) LPELR-43131(CA))

[21] Order 7 Rule 3 HC-FCT Practice Directions and *FRN v Mustapha* (2016) FHC/YL/52C/2016. Balancing the need for speedy dispensation of justice and the rights of the defence to adequate time and facilities to prepare for his defence includes provision for further adjournments after the specified 5 times. Such adjournments can only be granted within 7 days intervals and with costs – ACJA, section 396 (5)

[22]This will reduce the delay and lack of diligent prosecution by Police Officers. Does section 106 ACJA suspend section 23 of Police Act and overrule the decision in *FRN v Osahon* (2006) 5 NWLR (pt. 973)? Yes

[23]This prevents the delay occasioned by denial of written statement by defendant or allegation that statement was made under duress which leads to suspension of trial and conduct of trial within trial

[24]A High Court judge who has been elevated to the Court of Appeal shall continue to sit in the high court until he dispenses of such a pending matter, this is to avoid trial *de novo* – ACJA, section 396 (7), ACJL, Nasarawa State, section 382 (7) and *Slok Nigeria Limited v. Federal Republic of Nigeria & Ors* CA/L/1043C/2018. This provision has been declared inconsistent with section 290 (1) of the 1999 Constitution by the Supreme Court in *Udeogu v Federal Republic of Nigeria & 2 Others* SC622c/2019, delivered on May 8, 2020. The Supreme Court held that the Honourable Justice having being elevated to the Court of Appeal had ceased to

h. Arrest protecting the constitutional rights of citizens to ensure that persons arrested know the cause for arrest and their rights etc. – ACJA, sections 6 and 8 / ACJL, sections 5, 6, 7 and 8

i. Remand time to decongest prisons as some suspects are remanded at will and indefinitely – ACJA, sections 14, 293 – 299 / ACJL, sections 364

j. Compensation for victims of crime in deserving cases in addition to sentencing the guilty defendant – ACJA, sections 319 – 328 / ACJL, sections 306 and 315-317

k. Non-arrest of persons in lieu of suspects nor arrest of any person over civil wrongs and contracts- ACJA, section 7 / ACJL, section 7b

l. Plea bargain to allow the defendant and the prosecution work out a mutually acceptable disposition of the case with the consent of the victim before the presentation of the evidence of the defendant to save time and resources that may be absorbed with trial – ACJA, section 270 / ACJL, sections 267-276

m. Execution of search warrant or warrant of arrest anytime of any day and search of person on same sex basis to promote speedy disposition of cases and respect for human dignity – ACJA, sections 9, 12, 143 – 157 / ACJL, section 38

n. Application to dispense with the personal attendance of the defendant in respect of any offence for which the penalty is a fine not exceeding ten thousand naira or six months imprisonment –ACJA, section 135 / ACJL, section 135

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be a Judge of the Federal High Court and was thus deprived of the jurisdiction he had as a Judge of the Federal High Court to conclude the hearing and ultimate determination of the part-heard criminal case. The Supreme Court stated that section 396 (7) of the ACJA was set out to frontally contradict and challenge the letters, substance and spirit of section 290 (1) of the 1999 Constitution. The ACJA also provides for another judge or magistrate to read the judgment of a judge or magistrate who has written a judgment in a matter but is unavoidably absent in sections 315 and 367

o. Remedy for a suspect detained in custody – CFRN 1999, section 35 (4) / ACJA, section 32 / ACJL, section 159

p. Treating a corporation as an adult defendant who can be tried for criminal matters through its representative.[25]This promotes speedy trial and reinforces the decision in *Salomon v Salomon*[26] that Corporations are legal persons / entities that can sue and be sued– ACJA, sections 477 – 484 / ACJL, sections 450-457

q. Reformative and restorative justice to reduce prison congestion, rehabilitate prisoners by promoting productive work, community service and distancing of simple offenders from hardened criminals – ACJA, section 1 / ACJL, sections 426-440

3.3. Comparative Analysis of the ACJA, 2015 and the ACJL, 2018 of Nasarawa State

The comparative analysis ascertains the extent of implementation or adaptation of the ACJA, 2015 in ACJL, 2018 of Nasarawa State. It focuses on some salient provisions and definitions[27] such as those relating to notification of arrest and right to counsel, arrest in lieu, recording of arrest and recording of confessional statement of suspect, the central criminal record register, stay of proceedings, plea bargain, prosecution of offences, witness expenses, remand orders, humane treatment of arrested person, part heard criminal matters and

[25]In times past, the twin requirements of *mensrea* and *actusreus* placed a clog in proving charges against a corporation for a crime - *Olaiya v State* [2018] 10 NWLR (Pt. 1626) 1; *LASTMA v Esezobo* [2017] 5 NWLR (Pt. 1559) 350 and *Interdrill (Nig) Ltd v UBA Plc* [2017] 13 NWLR (Pt. 1581) 52. Now corporations are criminally liable as natural persons – *Abacha v AG Federation* [2014] 18 NWLR (Pt. 1438) 21 and *FRN v Awe Odessa, All States Bank Plc. and Ors* FHC/ICD/143/04

[26] [1877]AC 22

[27]ACJA, 2015 definition section is section 494 and ACJL, 2018 of Nasarawa State definition section
is section 467

suspect etc. References are made to complementary provisions in other laws. The comparison is presented in **Table 3.**

S/N	CONCEPT	ACJA, 2015	ACJL, 2018 of Nasarawa State	COMPLIMENTARY PROVISIONS	ANALYSIS
a.	Notification of Cause of Arrest and Right to Counsel	Section 6 (1) A person arrested shall be informed of the reason for his arrest and has the right to remain silent and entitled to legal representation etc…	Section 6 (1) and (2) Suspect shall be notified of the reason for his arrest. He has a right to remain silent until after consultation with a legal practitioner	ACJA, 2014 Ekiti State, section 3 The Constitution of the Federal Republic of Nigeria (CFRN) 1999, sections 35 (3) and 36 (5) and (6) (a) Section 135 (1) Evidence (Amendment) Act 2011 and *Osuagwu v. State*[28] Police Act 2018[29] section 33	All provisions are similar. A person arrested must be informed of the reason for arrest except where he is apprehended in the course of committing the offence – *Ankwa v The State*.[30] He is also entitled to an interpreter where he does not understand the language of the court – *Gwonto v The State*.[31] He is also entitled to legal representation by a legal practitioner of his choice.[32] The ACJA and the ACJL, 2018 of Nasarawa State provide free legal

[28] (2013) 5 NWLR (Pt 1347) 369 SC
[29]Repealed the Police Act Cap P19 Laws of the Federation of Nigeria (LFN) 2004
[30](1969) LPELR – 25460 (SC)
[31] [1983] 3 SC 1
[32]*Ariori v Elemo* [1983] SCNLR 1; *Mohammed v The State* (2013) LPELR – 19822 (SC) and *Adigwe v FRN* (2015) LPELR – 24694 (SC)

					representation by the Legal Aid Council of Nigeria where applicable while the ACJL, Ekiti State provides free legal representation from the Office of the Public Defender, Legal Aid Council or any such agency. This creates more options for legal representation for a suspect
b.	Arrest in Lieu	Section 7 Arrest of a person in place of a suspect is prohibited	Section 7 A person shall not be arrested in place of a suspect	ACJL, Ekiti State, section 4- No person shall be arrested in the place of any other person Nigeria Police Act 2018 section 34 - no person shall be arrested in place of a suspect	ACJA and ACJL and Police Act provisions are same but ACJL, Ekiti State provision appears less restrictive in the choice of any other person
c.	Recording of Arrests and Periodic Report of Arrests	Sections 15 and 29 Section 15 - Where a suspect is arrested, whether with or without warrant, and taken to the police station or any other agency effecting the arrest, the police officer making the	Sections 15 and 29 Section 15 same as ACJA. Where a suspect is arrested, whether with or without warrant, and taken to the police station or any other agency effecting the arrest, the police officer	ACJL, Ekiti State, sections 10 (3) and 20 The CoP has same duties as well as officers in charge of police stations who shall report to the nearest Magistrate and the Magistrate shall report to the Attorney General of the State	The report under ACJA and ACJL, Nasarawa State is a quarterly report while under ACJL, Ekiti State, the report is within one week of the arrest while the report from police stations shall be within three days.

		arrest or the officer in charge shall cause to be taken immediately the record of the suspect arrested. Section 29 - The Inspector General of Police (IGP) and head of every agency authorised by law to make arrests shall remit quarterly to the AGF a record of all arrests and likewise the Commissioner of Police (CoP) in the State to the AG of the State	making the arrest or the officer in charge shall cause to be taken immediately the record of the suspect arrested. Quarterly reports of arrest to the AG The CoP and head of every agency authorised by law to make an arrest within the State shall remit quarterly reports to the AG who shall establish an electronic and manual database of all records of arrest	CFRN 1999, section 36 (7) When a person is tried for any criminal offence, the court or tribunal shall keep record of proceedings. Nigeria Police Act 2018 section 43 provides for recording of arrests while section 26 provides for annual reports. Section 51 also provides for quarterly reports to the AGF by the IGP	The State report is expected to be less and requires collation and compilation at the federal level therefore the provisions are good
d.	Central Criminal Records Registry	Section 16 There shall be established a Central Criminal Records Registry (CCRR) at the Nigerian Police Force (NPF) while at every police command, there shall be kept a	Section 16 There shall be established in the State Command of the NPF, a State CRR. Every Area Command shall have a CRR which shall transmit all such records to the State CRR and	ACJL, Ekiti State does not provide for such central record at the State level Nigeria Police Act 2018 in section 27 provides for accountability of records while section 44 provides for CCRR at the Nigeria Police Force	The CCRR is a welcome provision for proper documentation and is complemented by the CRR of Nasarawa State .

		Criminal Records Registry (CRR) to transmit all such records to the CCRR	the CCRR in Abuja		
e.	Recording of Statement of Suspect	Section 17 Mandate the making of a voluntary confessional statement in writing. The statement may be recorded electronically on a retrievable video compact disc or such other audio-visual means. However, an oral confession of a suspect shall be admissible	Section 17 (3) Recording of statement shall be made and where the suspect does not understand or speak or write English language, an interpreter shall record the statement which the suspect shall endorse etc.	ACJL, Ekiti State, section 9 (3) A voluntary confessional statement shall be recorded in a video, which may be produced at the trial. In the absence of such, the statement shall be in writing in the presence of a legal practitioner of his choice. Non-compliance with this provision shall not preclude the admissibility in evidence of any confession otherwise admissible under the relevant provisions of the Evidence Act Nigeria Police Act 2018 in section 45 provides for recording of statement of suspect. It does not provide for electronic recording Evidence Act 2011 sections 28, 29, 47 and 48 makes provisions relating	In ACJA and ACJL, Ekiti State provisions, video recording is mandatory but its use in trial is voluntary. Video recording is good to showcase voluntariness therefore; it is likely to be used when voluntariness of the suspect's statement is in question. ACJL, Nasarawa does not provide for video recording of statement

				to confessional statement	
f.	Prosecution of Offences	Section 106 Persons allowed to prosecute offences are the AG, law officers in his Ministry / Department, legal practitioners authorised by him or under any Act of the National Assembly to prosecute offences	Sections 106 and 467 Section 106 – Prosecution of all offences in any court shall be undertaken by the AG or any law officer in his ministry or department, a legal practitioner authorised by the AG or a legal practitioner authorised to prosecute by this law or any other law of the Nasarawa State House of Assembly. Notwithstanding the powers of the AG, members of the Nigeria Police and other agencies of the law shall have the power to prosecute criminal cases. Section 467 - Law officer means the AG, Solicitor-General, Director of Public Prosecution	ACJL, Ekiti State, sections 76 (11) and 271 Section 76 (11) defines prosecutor as law officer within the section. Reading it along sections 70 and 271, only a law officer or a police man who is a legal practitioner may prosecute criminal cases in Ekiti State The Legal Practitioners Act Cap. L 11 LFN 2004[33] section 2 titled "Entitlement to Practice" provides that a person shall be entitled to practise as a Barrister and Solicitor if and only if, his name is on the Roll…. Nigeria Police Act 2018 section 4 provides the primary functions of the Police force which does not clearly indicate power to prosecute offences however in section 23; it provides power to conduct	From the provisions, it appears that the days of lay prosecutors are over. Therefore, only police men who are legal practitioners may prosecute criminal cases reversing the decision in *FRN v Osahon*[34] However, section 23 of the Police Act still provides any police office…probably a judicial interpretation will lay to rest the seeming controversy

[33]Repealed the Legal Practitioners Act 1962 as amended in Act No. 46 of 1988
[34] Fn 23

			and such other officer qualified by whatever name	prosecutions …any police officer may conduct in person all prosecutions before any court	
g.	Witness Expenses	Sections 251, 252 and 254 Witness expenses for the prosecution and defence shall be paid by the Registry out of the relevant vote as appropriated by the Judiciary	Sections 250 and 251 A witness payment shall be processed and paid by the Registrar of the Court out of the relevant vote appropriated by the Judiciary. By section 250, where the witness is a State witness, he shall be entitled to payment of such reasonable expenses as may be prescribed and by section 251, where the witness is for the defence, the court may in its discretion on application, order payment by the Registrar to such witness such sums of money as it may deem reasonable and sufficient to compensate the witness for the expenses he	ACJL, Ekiti State, section191 Witness expenses shall be paid out of general revenue by the Accountant General of the State	ACJA and ACJL, Nasarawa provisions are definite. The definition of general revenue in ACJL, Ekiti States may lead to discretion and insecurity of payment

			reasonably incurred in attending the court		
h.	Time and Protocols for Remand Orders	Section 296 Remand order shall be for a period not exceeding 14 days in the first instance. Extension is allowed for a further 14 days and at the expiration, there is likelihood for a final extension period not exceeding 14 days before the suspect is arraigned for trial	Section 364 The Magistrate may remand a suspect for a period not exceeding 48 hours or release him on bail	ACJL, Ekiti State, section 264 (6) An order of remand shall not exceed thirty (30) days in the first instance and at the expiration of which the Magistrate shall order the release of the person remanded or issue further remand order for a period not exceeding one month. At the expiration of one month, there is likelihood of further extension if the Magistrate is satisfied that there is good cause and that all necessary steps have been taken to arraign the person before an appropriate court or tribunal CFRN 1999 section 35 (1) and (4)	Remand order is defined in *Lufadeju & Anor v Johnson*[35] By ACJA remand proceedings, a suspect can only be remanded based on a probable or good cause because no person shall be deprived of his personal liberty except as permitted by law. This will forestall the habitual detention by police officers and the resulting congestion of prisons with pre-trial detainees – *Alade v FRN*[36] However, ACJL, Ekiti remand time may be too long

[35](2007) LPELR – 1795 (SC)

[36] Suit No. ECW/CCJ/App/05/11@ https://www.justiceinitiative.org/nigeria/alade-v-federal-republic-of-nigeria accesed Agust 27, 2020. The Community Court of Justice of the Economic Community of West African States (ECOWAS) held that nine years without trial amounted to arbitrary detention and a violation of his right under the African Charter of Human and People's Rights

					and may delay justice
i.	Stay of Proceedings and Objections	Sections 306 and 396 (2) An application for stay of proceedings in respect of a criminal matter before the court shall not be entertained. Objections shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of the judgement	Sections 298 and 382 (2) After plea, the defendant may raise any objection at any time before judgement provided that such objection shall only be considered along with the substantive case etc.	ACJL, Ekiti State, section 273 An application for stay of proceedings in respect of any criminal matter brought before the court shall not be entertained until judgement is delivered	Similar provisions with emphasis as that all applications shall be considered along with the judgement. This is good to eliminate all attempts by clients and counsel to cause delay
j.	Day –to-Day Trial and Elevation of Judge	Section 396 (3) and (7) Upon arraignment, the trial of the defendant shall proceed on a day –to-day basis and the elevation of a High Court Judge does not return the matter handled by him *de novo*	Section 382 (3) and (7) Trial shall proceed day-to-day until the conclusion of trial and the elevation of a High Court Judge to the Court of Appeal does not return the matter handled by him *de novo*	ACJL, Ekiti State, section 231 Cases shall be mentioned for hearing in the court at the date and at the place specified in the summons or warrant	Day –to-day trial is good for speedy and efficient administration of criminal justice. It helps to eliminate manoeuvrings and mischiefs that engender delay in trials.[37] ACJA and ACJL, Nasarawa State provisions are more specific and should be adopted by

[37]The Indian Case of *Chaudhary v State* (Delhi Administration) (1984) I SCC 722

					ACJL, Ekiti State
k.	Humane Treatment of Arrested Person	Section 8 A suspect shall be accorded humane treatment having regard to his right to dignity of his person and not to be subjected to any form of torture, cruel, inhuman or degrading treatment	Section 8 A suspect shall be accorded humane treatment having regard to the dignity of his person and shall not be subjected to any form of torture, cruel, inhuman or degrading treatment	ACJL, Ekiti State, section 1 (2) A person arrested shall not be handcuffed or otherwise bound or be subjected to unnecessary restraint except by order of court etc. CFRN 1999 section 34 (1) (a) Nigeria Police Act 2018 provides in sections 32 and 35 for humane treatment of an arrested person and also prohibits unnecessary restraints Evidence Act 2011 in section 29 (5) provides that torture, inhuman or degrading treatment or violence is oppression which is prohibited	These provisions help in ensuring that the police do not manhandle a person arrested. It also aligns to the fundamental human rights guaranteed by CFRN 1999 in section 34 (1) (a) Every person is entitled to respect for the dignity of his person and no person shall be subjected to torture or to inhuman or degrading treatment
l.	Monitoring Committee	Section 469 Establishes the ACJ Monitoring Committee as added institutional mechanism for efficient	Section 442 Establishes the Administration of Criminal Justice Monitoring Committee	ACJL, Ekiti State, section 348 establishes the Rehabilitation and Correctional Centre of Ekiti State The Nigeria Police Act 2018 in sections 9 and 91	Additional institutional mechanism for efficient implementation of administration of criminal justice is welcome.

		implementation of the Act		provides for the establishment of Nigeria Police Council and Police Community Forums respectively to enhance the work of the Police Force	Ekiti State Rehabilitation and Correctional Centre may establish such monitoring committee as a Department within the Centre
m.	Who is a Child Offender?	Defines young person as a person who has attained the age of 14 and has not attained the age of 17 years	A child means a person who has not attained the age of 18 years under the Child Rights Law	ACJL, Ekiti State defines Child offender as a person who has not attained the age of 18 years Nigerian Correctional Service Act, 2019[38] provides for young offenders in section 35 and defines juvenile offenders in section 46 as young offenders below the age of 18	ACJL provision is the same as in the Nigerian Correctional Service Act. ACJA may align with it. ACJA provision may be reviewed for coherence
n.	Currency	Coins, notes and other legal tender	Same definition as in ACJA	ACJL, Ekiti does not define currency The Central bank of Nigeria (CBN) Act, 2007 does not define currency. It provides in section 15 that the currency of Nigeria is Naira which shall be divided into one hundred kobo	ACJL, Ekiti should define this because of the provision on plea bargain and fines

[38]Repealed Prisons Act Cap P29 LFN 2004

o.	Open Court	Room or place in which a court sits to hear and determine a matter within its jurisdiction and to which room or place the public may have access so far as the room or space can conveniently contain them	Room or place in which court sits to hear and determine a matter within its jurisdiction and to which room or place the public may have access so far as the room or space can conveniently contain them	ACJL, Ekiti defines it as room or place in which a court sits to hear and determine a matter within its jurisdiction and to which room or place the public may have access CFRN 1999 Section 36 (3) Court is a public place	The qualification by ACJA and ACJL, Nasarawa State is commendable because there would be instances where the court room may not accommodate everyone. This definition of open court has been expanded with the validity of virtual court and remote sitting decided by the Supreme Court in the matter brought against its directives owing to COVID 19 pandemic by the Lagos State Judiciary
p.	Legal Guardian	Relates also to a young person	Guardian means the parent or other person having lawful custody of such child or young person	ACJL, Ekiti State does not provide legal guardian for a young person	ACJL, Ekiti should provide for this in cases where a person does not have parents
q.	Part-heard Criminal Matter	Trial in which the prosecution has closed its case	Trial in which the prosecution has closed its case	ACJL, Ekiti does not provide for this	ACJL, Ekiti may provide for this so that at any point, the status of pending cases is defined
r.	Plea Bargain	Process in criminal proceedings whereby the	Same definition in section 467	ACJL, Ekiti State, section 70 provides for it but does not define it	Definition should be provided in ACJL, Ekiti

		defendant and the prosecution work out a mutually acceptable disposition of the case including the plea of the defendant			Plea bargain is subject to judicial approval. It promotes restorative justice and impacts on sentencing guidelines. It helps in quicker resolution of corruption cases and has aided the prosecution of high profile corruption cases in the country[39] The provisions on plea bargain envisage a mutual agreement by all

[39]M Ladan, "The Role of the Administration of Criminal Justice Act 2015 in the Trial of Corruption Cases in Nigeria"https://papers.ssrn.com/so13/papers.cfm?Abstract_id=2814635 Accessed May 7, 2020. The concept of plea bargain introduced by section 14 (2) of the EFCC Act, 2004 is now complemented by the robust provisions in the ACJA, 2015 and ACJL, 2018 that guide practice and procedure relating to plea bargaining. Plea bargaining is illustrated by the cases of *Federal Republic of Nigeria v Nkechi Caroline Amadi (Alias Onyemachi Uchechi)* FCT/ HC/CR/16/2018. The Court posited that plea bargain agreement and repayment of moneys involved in a crime does not exonerate a convict or stand as a prison term. Plea bargain does not take the place of a prison term. It is not the intendment of the draftsmen of the Administration of Criminal Justice Act, 2015 that once a convict has repaid or restored all the money in issue, he should not be sentenced. In *Federal Republic of Nigeria v. Michael Ogun* Charge No: FCT/HC/CR/ 15/14, by section 270 (11) of the ACJA, the Court is not bound to impose the sentence agreed upon in the Plea Bargain Agreement. The Court reserves the discretion to impose a sentence considered as appropriate on the basis of the totality of the circumstances of the case and in *Federal Republic of Nigeria v Salihu Abdullahi* FHC/BAU/25C/2016, the effect of plea of guilty as contained in section 274 (2) of the ACJA is that a defendant can be convicted on his plea of guilty provided the plea is voluntary and unambiguous and by it, the defendant intends to admit the commission of all the essential ingredients of the offence. Plea bargain is also illustrated in the cases of *FRN v Chinaka Promise* CA/A/767c/2019, *FRN v. Nwude* (2015) LPELR – 25858 (CA),[39] *FRN v. Cecilia Ibru* FHC /L/297C/2009, *FRN v. Igbinedion* (2014) LPELR- 22766 and *Federal Republic of Nigeria v. Tafa Balogun* (2005) 4 NWLR (Pt. 324) 190. The value of plea bargaining in corruption cases is grounded in avoiding the time and cost of full trials, the risk of stiffer punishment and attendant publicity - Abdulkarim A. Kana, "The State of Plea Bargain in Corruption Trials in Nigeria "<http://Ijilss.thelawyerschronicle .com/wp_content/uploads/2016/11/3_THE_STATE_OF_PLEA_BARGAIN_2.pdf> Accessed August 25, 2020

					stakeholders – victim, prosecutor defendant, defence- counsel and the court and have thus provided standards to ensure the reasonableness of a plea bargain process[40]

Table 3: Comparison between ACJA 2015 and Nasarawa State ACJL

3.4. Practical Challenges with the Implementation of the ACJA, 2015 / ACJL, 2018 Provisions

a. Non-custodial measures are good for restorative justice thus; much is expected from the Administration of Criminal Justice Monitoring Committee to enforce the non-custodial measures. The query is can they?[41] Lagos State is already

[40] I. Danjuma, "The Extent of the Voluntariness in Plea Bargaining for Economic and Financial Crimes in Nigeria" 23 (3) ILUMJ 485 available online at <file:///C:/Users/Acer/Downloads/ILUMCOVERPANDJOURNALARTICLE.Pdf Accessed August 27, 2020; Alsehulert A.W: (1975) "The Defense Attorney's Role in Plea Bargaining" *The Yale Law Journal* Volume 84, Number 6**,** May 1975; A. Fynn, "Fortunately We in Victoria are not in that U.K Situation: Australian and United Kingdom Perspectives on Plea Bargain" 2011 *Deakin Law Review* 362 available @<file:///C:/Users/Acer/Downloads/107-218-1-SM%20(1).pdf> accessed 18 August 2020; Teresa Ablao; "Plea Bargaining, Purposes, Strategies and Constraints" available online at <file:///C:/Users/Acer/Downloads/081514-plea-presentation%20(1).pdf> accessed August 26, 2020; K E Kovalenko, "Some Aspects of Reasonableness in Law" *World Applied Science Journal* 29 (7) (2014) 916, available online at <<https://www.idosi.org/wasj/wasj29(7)14/15.pdf>accessed 26 August 2020; M A A Ozekhome, "Coercion to Compromise: The Imperatives of Plea bargain" in *Plea bargain in Nigeria : Law and Practice,* E Azinge and L Ani, Eds, (NIALS 2012 Lagos) 227; C C Ani, "Plea Bargain: Immunity from Punishment?" *ibid* at 267 – 301 and F Waziri, "The Paradox of Plea Bargain" *ibid* at 319 – 337

[41]With the establishment of a Monitoring Committee, the author queries the practical ability of the ACJA Committee to cover the entire country and asks if the Committee will establish State sub-counterparts with trained manpower? Also, will the State Committee collaborate

implementing Community Service in sentencing traffic offenders and Covid-19 Regulation offenders.[42]

b. ACJA sections 293 – 295 appears to give statutory flavour to holding charge wherein a suspect may be in custody for over 50 days. This appears contrary to section 35 (5) of the 1999 Constitution

c. The provision for compensation and the related offence should be defined because there are worries about the nature of compensation that can reinstate an injury such as a lost life or limb. Also, questions arise as to whether the government will be vicariously liable to ensure compensation and what happens where the convict cannot afford the compensation.

d. The practise of plea bargain has promoted the fight against corruption in the country.[43] However, the practice where a person who steals in millions gets a lesser jail by having the option to surrender some amount while a person who steals a farm produce has no option of fine is confusing to the moral mind. Is plea bargain therefore protecting white-collar criminals from serving full jail terms and is this justice?

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with all stakeholders in the administration of criminal justice? Ifeoluwa Etomilade Oduola, "The Non-Custodial Sanctions Regime under the Administration of Criminal Justice Act, 2015 in Adedeji Adekunle, EmekaNwabuzor and Susan Oyakhire (eds) *Issues in Criminal Justice Administration in Nigeria* (NIALS: Abuja, 2016) 166

[42]Such as the popular actress, Funke Akindele and her Husband who held a birthday party celebration violating the social distancing provision

[43]A concept that permits a person who is guilty of stealing to return some amount and reduce their jail term is morally wrong and may encourage people to imbibe the act of stealing especially those who believe that the end justifies the means. O. Yewande et al, "Restructuring our Criminal Justice System, Plea Bargaining, A Solution? <http://www.lawyard.ng/restructing_our_criminal_justice_plea_bargaining_a_solution_by_ojo_yewande_abolade_11_b_hons_b1_and_adefuye_adewale_isreal_11_b_hons_b1/Accessed May 6, 2020; Theresa Ablao, "Plea bargaining, Purposes, Strategies and Constraints" available online at <file:///C:/Users/Acer/Downloads/081514_plea_bargain_presentation%20(1).pdfAccessed August 27, 2020

e. The introduction of electronic recording of confessional statements[44] on a retrievable video compact disc (CD) or such other audio-visual means in the presence of certain categories of persons in section 17 ACJA is welcome and mandatory –*Akaeze Charles v FRN.*[45]However, does the tendering of the recorded statement when there is an objection to voluntariness presume that such recorded video *is ipso facto* or *res ipsa loquitor*[46]as regards proof of voluntariness? Also, tendered confessional statements must meet certain criteria and is only necessary when there is objection to voluntariness. Query is…what is the safety measure to ensure that there is no tampering with such recordings and will all police stations be equipped with necessary recording and storage equipment / gadgets?

f. The obtaining of a remand order via *exparte* application may challenge the ability of the court to know the complete picture of the condition of the person sought to be remanded and this might be prejudicial to the dispensation of substantial justice

3.5. Recommendations

From the analysis, the ACJA, 2015 and the ACJL, 2018 provisions on central criminal records registry, prosecution of offences, witness expenses, day-to-day trials, administration of criminal justice monitoring committee etc. are similar however, ACJL, 2018 provisions on time and remand order appear better while there is need to align the provisions of the ACJL, 2018 with that of ACJA, 2015 in video recording of arrests.

[44]*Kolade v State* [2017] 8 NWLR (Pt. 1566) 60. Confessional statement is the best form of evidence – *Simon v State* [2017] 8 NWLR (Pt. 1566) 119

[45] [2018] LPELR 43922 (CA)

[46]*SPDCN v Anaro* [2015] 12 NWLR (Pt. 1472) 122

Aligning ACJA, 2015 and ACJL, 2018 is necessary to create uniformity desired for efficient administration of criminal justice. Also, Judges, Prosecutors, Defence Lawyers, members of the Legal Profession and stakeholders require training to ensure speedy dispensation of justice which protects the rights of suspects, victims and the society.

3.6. Conclusion

The provisions of the ACJA, 2015 and ACJL, 2018 of Nasarawa State are elaborate to promote speedy dispensation of justice, which recognises the rights of suspects, victims and the interest of the public. Achieving this goal rests on enforcement aligned to international best practice on timely but fair resolution of criminal cases which will be expedient, reliable and affordable. As enforcement is carried on, it is hoped that practical challenges will be dealt with to grow our legal jurisprudence.

COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015 (ACJA) AND JIGAWA STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL) 2019*

4.1 General Overview of the Administration of Criminal Justice Act 2015 and the Jigawa State Administration of Criminal Justice Law 2019.

The Administration of Criminal Justice Act (ACJA) 2015 and Jigawa State Administration of Criminal Justice Law (ACJL) 2019 are both procedural laws governing the administration of criminal justice in Nigeria. The ACJA applies to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja; but does not apply to proceedings in a Court Martial. The ACJA repealed The Criminal Procedure Act CAP. C41 LFN 2004, Criminal Procedure (Northern States) Act Cap C42 LFN 2004, and the Administration of Justice Commission Act CAP A3 LFN 2004.[1]

The Jigawa State ACJL provides for the administration of criminal justice in the courts of Jigawa State and for related matters. The law applies to criminal trials for offences established by the Law of the State House of Assembly and other offences punishable in the State, except, otherwise provided by any other Law[2]

4.1.1 Purpose and Application of The Administration of Criminal Justice Act 2015 and The Jigawa State Administration of Criminal Justice Law 2019.

Section 1 of the ACJA explains the purpose of the Act thus:

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[1] Section 493 ACJA

[2] section 2 Jigawa ACJL

The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.

The provisions of the Act apply to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja[3] The ACJA has 48 parts with 495 sections.

The Jigawa State ACJL like the ACJA equally has a purpose provision. Section 1 (1) provides that the purpose of the Law is to ensure that the administration of criminal justice in Jigawa State promotes efficient management of criminal justice institutions, speedy dispensation of justice, prevention of crime in the society and protection of the rights and interests of the Suspect, the Defendant and the victim. This provision is identical to that of the ACJA and confirms that the ACJL coming later in time has incorporated the forward looking provisions of the ACJA with a view to promoting speedy dispensation of justice which is the hallmark of criminal justice, as well as incorporate best practice in the area of holistic justice, not only for the public but also for the suspect, defendant and victim. The Jigawa State ACJL also elaborately provides for classes of State criminal courts, their constitution and powers.[4] It has 51 Parts and 481 Sections

Among innovative provisions of the ACJA / ACJL are those that enhance speedy disposition of cases such as giving timelines within which cases and other procedures are to be accomplished. These include time within which to arraign a suspect; time within which to complete a trial. Provisions for day-to-day trial and awarding of costs for frivolous requests for adjournments.

[3] Section 2(1) ACJA ,2015

[4] see Part 2 of the ACJL, Sections 4- 19.

There are also provisions for non-custodial alternatives such as probation, suspended sentences and community service to decongest custodial centres and for rehabilitation of minor offenders. Others innovations to decongest the custodial centres include, recording of confessional statements, prohibition of arrests of persons who are not suspects; making bail accessible by making the conditions relative to the circumstances of the case.

The establishment of the Criminal Justice Monitoring Committee for collaboration, synergy and coordination of stakeholders in the criminal justice system for effectiveness and efficiency by both legislation is a welcomed development.

4.2 Compliance with International Best Practices in Criminal Justice Administration

Best practices in criminal justice administration hinge on provisions that respect rights of the defendant and the complainant; guarantees justice for all in criminal proceedings; promotes efficient and speedy trials; and fosters confidence in the criminal justice system. The United Nations (UN) Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly Resolution[5] makes provisions for some of these best practices. These include:

a. Access to justice and fair treatment:

The Declaration provides amongst others that victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. In line with this best practice both the ACJA and the Jigawa State ACJL provide for fair treatment of all parties to a criminal case.

Section 5 ACJA and Section 23 ACJL provides that a suspect or defendant shall not be handcuffed, bound or be subjected to restraint except it is reasonably

[5] UNGA Resolution 40/34 of November 1985

necessary. Section 6 ACJA and Section 24 ACJL provides for the suspect to be informed of the reason for his arrest and to inform him of his rights to silence, to consult a legal practitioner and or free legal representation. Section 8 ACJA and Section 26 ACJL provide for humane treatment for suspects, having regard to the right to the dignity of his person

On sentencing, Part 38 ACJA, Section 401; and Part 39 ACJL Section 397; state the objectives of sentencing as prevention, restraint, rehabilitation, deterrence, education of the public, retribution and restitution. In sentencing the court is enjoined to bear these objectives in mind and decide which is appropriate in a given case. Also, Part 40 ACJA, Section 416 (2); and Part 41, Section 412 (2) ACJL provide that in sentencing the objectives of sentencing, including principles of reformation, shall be borne in mind in sentencing a convict; not to pass the maximum sentence on a first offender; and to consider the period spent in custody awaiting or undergoing trial in computing the sentence of a convict; amongst other considerations. All these provisions relate to justice and fair treatment of offenders.

b. Restitution

Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or defendants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

Both the ACJA and the Jigawa ACJL have made provisions on costs, compensation, damages and restitution in line with these best practices. Part 32 ACJA and Part 33 Jigawa ACJL. ACJA Section 319 (1) provides: A court may, within the proceedings or while passing judgment, order the defendant or convict to pay a sum of money:

i. as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict, where substantial compensation is in the opinion of the court recoverable by civil suit;

ii. in compensating a bona fide purchaser for value without notice of the defect of the title in any property in respect of which the offence was committed and has been compelled to give it up; or

iii. in defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.

With regards to restitution the ACJA, Section 321 provides: A court after conviction may adjourn proceedings to consider and determine sentence appropriate for each convict:

i. in addition to or in lieu of any other penalty authorised 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

ii. order for the restitution or compensation for the loss or destruction of the Victim's property. In so doing the court may direct the convict:

(i) to return the property to the owner or to a 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 Jigawa ACJL makes similar provisions in Sections 322 and 324.

c. Non-Custodial sentences

The UN Standard Minimum Rules for Non-custodial measures (The Tokyo Rules)[6] provides general principles guiding non- custodial measures. In line with best practices in criminal justice, the Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society. In line with this both the ACJA and ACJL provide for non-custodial sentences in the form of probation, suspended sentences and community service.

Part 44 ACJA and Part 44 ACJL make provisions for probation and non-custodial alternatives. Section 454 ACJA provides for probation where it is expedient to release the defendant on probation. Without proceeding to conviction, the court may dismiss the charge or discharge the defendant conditionally (section 438 ACJL).

Section 460 (1) ACJA, provides for suspended sentence, where the court sees reason it may order that the sentence imposed on the convict be suspended. By sub-section (2), the convict may be ordered to perform community service. These sentences are not for offences involving use of arms, offensive weapons, sexual offences or felonies.

The court in exercising its power in this regard shall consider the need to: to reduce congestion in prison; rehabilitation of prisoners and prevent convicts who commit simple offences from mixing with hardened criminals (section 444 ACJL).

d. Collaboration and synergy

The criminal justice system is multifaceted and complex. The criminal justice process involves various public agencies and their actors, private or nonprofit organizations, and the community etc. The wide array of partnerships involved in the justice process requires collaboration and communication. Both legislation make

[6] Adopted by the UNGA Resolution 45/110 of 14 December 1990

provisions for collaboration and communication amongst stakeholders in the criminal justice system. For instance, in instituting criminal proceedings stakeholders have to collaborate to ensure speedy dispensation of trials.

Section 110 (3) ACJA and Section 121 (3) ACJL provides that trial of a charge shall commence not later than 30 days from the date of the filing of the charge and the trial of the person brought under the charge shall be completed within a reasonable time. Subsection (4) provides that where trial does not commence within 30 days of bringing the charge or trial has commenced but not completed after 180 days of arraignment, the court shall forward to the Chief Judge the particulars of the charge and reasons for failure to commence the trial or complete the trial. Subsection (5) enjoins a court seized of criminal proceedings to make quarterly returns pf the particulars of all cases, including charges, remand to the Chief Judge.

The above provisions relate to communication between the court and the Chief Judge for effective criminal justice delivery. By subsection (6) the CJ in reviewing the returns shall have regard to the need to ensure that criminal matters are speedily dealt with; congestion of cases in courts is drastically reduced; congestion of prisons is reduced to the barest minimum; and persons awaiting trial are, as far as possible, not detained in prison custody for a length of time beyond that prescribed in section 293[7] of this Act.

As part of the synergy amongst criminal justice administrators stakeholders; sub-section (7) provides that 'the Administration of Criminal Justice Monitoring Committee, shall have power to consider all returns made to the Chief Judge under subsections (4) and (5) of this section for the purpose of ensuring expeditious disposal of cases, and the National Human Rights Commission set up under the

[7] ACJA Section **293.** (1) A suspect arrested for an offence which a court has no jurisdiction to try shall, within a reasonable time of arrest, be brought before a magistrate Court for remand.

National Human Rights Commission Act shall have access to the returns on request to the Chief Judge.'

Also by Section 111 (1) ACJA and Section 122 (1) ACJL, the Comptroller-General of Prisons (now Correctional Facilities) shall make returns every 90 days to the Chief Judge of the Federal High Court, Chief Judge of the Federal Capital Territory, 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 of all persons awaiting trial held in custody in Nigerian prisons for a period beyond 180 days from the date of arraignment.

The Administration of Criminal Justice Monitoring Committee is comprised of all stakeholders in criminal justice administration and the functions of the Committee attest to the place of collaboration and synergy for effective and efficient justice system.

4.3 Comparison between ACJA and Jigawa State ACJL

Generally, the ACJA and Jigawa State ACJL contain almost identical provisions. Nonetheless, there are still some minute differences as can be seen from the table below. Some of these differences are ascribable to the penal structure of States in Northern Nigeria which incorporate some elements of Shariah Law. Examples are the limited rights accorded to women and the punishment of caning. This section highlights some of these differences. In addition to highlighting the minute differences, this section will also consider provisions in both laws that are promote best practices in criminal justice administration.

NO	CONCEPT	ACJA	ACJL	COMPARISON	ANALYSIS

1.	Preliminary issues/ purpose	Section 1(1) states purpose of the Act	Section 1(1) states the purpose of the Law	Both provisions are identical	The purpose as stated by both legislation accords with best practices in criminal justice administration
2	Constitution and powers of criminal courts	Generally, courts of the FCT and other federal courts in Nigeria	Part 2 sections 4-19 specifically provided for the courts, their constitution and powers	Both shows courts where the legislation are applicable	Jurisdiction of a court is very important in all adjudicatory proceedings
3	Arrest, Bail and Preventive Justice	Part 2 ACJA	Part 3 ACJL	Both contain similar almost identical provisions. Notably- no unnecessary restraint in course of arrests. A person shall not be arrested in place of a suspect as was hitherto the case. Suspects to be accorded humane	Record keeping is very important in criminal, investigation and management. The provision of

				treatment, having regard to their right to dignity. The creation of a Central Criminal Records Registry which made its debut in the ACJA is now part of the ACJL.	central criminal records would impact criminal justice administration
4.	Public Nuisance	Part 6 ACJA, section 75 prescribes punishment	Part 7 ACJL Section 88 prescribes punishment	Differences in monetary fines and term of imprisonment. By prescribing 12 months' imprisonment in cases where life is threatened the ACJA treats such as a misdemeanor and not a simple offence. See Section 75 (2)	The ACJA makes provision for higher fines and longer terms of imprisonment. A term of imprisonment says a lot about how an offence is perceived; the ACJA shows the seriousness of threat to life by prescribing a higher term of imprisonment
5.	Form of compliant	Part 8, Section 89 sub sections (1)-(5)	Part 9, sections 102 subsections (1)- (9)	The Jigawa State ACJL, makes further provisions where women are involved, for offences falling under chapters XXI or XXIII of the Penal	The Jigawa State ACJL, did not adopt the outlook of the ACJA that

				Code or under Sections 383-386 of the Penal Code	seeks to remove obstacles on the part of women. The ACJL still retains the cultural stance with regards to women under certain conditions
6.	Power of the Attorney-General	Prosecution of offences Section 106 ACJA	Prosecution of offences Section 117 ACJL	The ACJL has additional provisions that give the State AG power to assign a Law Officer power to investigate offences punishable with death or as specified by the Governor, in conjunction with the Police. It also creates a responsibility on the Commissioner of Police to notify the AG of the commissioner of such offences within 7 days of the commission of the offence	By making a distinction between offences punishable with death and other offences so identified and providing for higher levels of investigation creating timelines within which such offence shall be brought to the notice of the AG, the ACJL recognizes the need for more stringent conditions for heinous offences

7.	Bonds persons	Part 19, Bail and Recognizances generally. But Section 187 provides for registration of bonds persons	Part 20, Bail and Recognizances generally.	Both Parts of the ACJA and ACJL make identical provisions for bail and recognizance; while the ACJA further provides for registration of bonds persons which the Jigawa ACJL did not provide for. It is difficult to know what accounted for this in the Jigawa ACJL. Could it be that the ACJL considered this some sort of commercialization of Criminal Justice, which it is not prepared to embrace at the moment?	Registration of bonds persons is one of the innovations in the ACJA, this provision was not adopted by the Jigawa ACJL. The provision is meant to facilitate the bail process which is important in the administration of criminal justice.
8.	Persons and Property	Part 20, Persons and Property. Remedies of married women against husband and others in respect of property. Section 191 ACJA	Part 21 Persons and Property. Remedies of married women against her husband and others in respect of her person. Section 200	The ACJA recognizes rights of married women in respect of her person and property; while the ACJL recognizes rights of the married woman only in respect of her person	
9.	Plea Bargain	Part 28, Section 270 (17) provides that a person convicted and sentenced under the section 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. Sub section (18)	Part 29, Section 274 has identical provisions on plea bargain as in the ACJA, but the ACJL does not have the equivalent of sub sections (17) and (18) of the ACJA.	The ACJA appears to circumscribe the role of the courts by providing that no appeal can lie in any court against such judgment except where fraud is alleged. Though this provision of the ACJA appears to be in conflict with the general role of the courts in	The role of the courts in entertaining disputes and hearing appeals is necessary for effective justice delivery. It is also constitutio

		provides that the judgement of a court contained in subsection (10) shall be final and no appeal shall lie in any court against such judgment, except where fraud is alleged		adjudication, it may be that Plea bargains are arrived at after an agreement has been reached, hence it is more like a contractual decision which is binding on the parties and should be respected in accordance with the principle of sanctity of contracts. Accordingly, fraud vitiates this sanctity.	nally guaranteed by the Constitution of the Federal Republic of Nigeria-Section 6(6).
9.	Persons of unsound mind	Part 29, Section 292 provides for removal of a prisoner to a prison or asylum in any part of the Federation	Part 30, Section 296, provides for removal of prisoner to a prison or asylum within the State	The ACJA demonstrates it coverage as a Federal Legislation; while the ACJL maintains its application within a State	Nigeria is a federation, with Federal Laws applying in the entire federation while State Laws apply within the State
10.	Person charged with execution of a warrant of distress	Part 40, Section 436 (f)(ii) punishment in this subsection is an amount not exceeding N20,000; but liability of the person to be prosecuted and punished for extortion, or for return of the sum of money or value of the item extorted is not affected	Part 41, Section 430 (f)(ii) is the equivalent provision in the ACJL. Under the ACJL, the liability is for an amount not exceeding N20,000 or imprisonment for a term not exceeding six months. There is no further extension of liability as in the ACJA	The ACJA provides for only fine, and the possibility of further liability for extortion; while the ACJL provides for fine or imprisonment and does not provide for a further liability for extortion. The Jigawa ACJL also provides for punishment by caning (Sections 432-434) which is not provided for in the ACJA	The principle of double jeopardy is well known in Criminal trials. Could the provision of the ACJA for a further prosecution on same facts offend this principle? Punishment by caning

					has been a feature of Shariah Law which is practiced by States in Northern Nigeria.
11.	Period of Community service	Under Part 44 (Probation and Non-Custodial Alternatives); Section 462 provides for a period of not more than six months, and not more than 5 hours a day	Under Part 44 (Probation and Non-Custodial Alternatives) Section 446, provides for a period of not more than six months and not more than four hours a day	The ACJA provides for not more than five hours a day work; while the ACJL provides for not more than four hour a day work	Community service is one of the non-custodial alternatives that is recognized as best practice in modern criminal justice administration
12	Witnesses expenses	Part 26 ACJA provides for payment of reasonable expenses to witnesses of the State (S.251) witnesses of the Defence (S. 252) grant of adjournments subject to payment of witnesses' cost. (S.253)	Part 27 ACJL provides for payment of witness expenses as provided by the AG (S.255); witnesses of the Defence (S. 256) grant adjournments subject to payment of witnesses' costs (S257)	The provisions are similar. However the ACJL specifically provides that the State's witness payment is as may be prescribed by the Attorney -General. This is inline with best practice in Legislative drafting that requires a done of power to be specifically named.	Part of the delay in criminal justice administration in Nigeria is caused by inability of witnesses to attend court and give evidence due to lack of resources for transportation. This provision if faithfully implemented will take care of that

					and would aid speedy dispensation of trials by ensuring that witnesses attend. Also requiring a party who is asking for adjournment to pay for witness expenses would also forestall frivolous applications for adjournment and thereby speed up trials.
13.	Protection of children during proceeding in court	Part 27, Examination of witnesses. S.262 prohibits children from being in court during trial of other persons	Part 28, Examination of witnesses. S. 266 prohibits children from being in court during the trial of other persons	Both legislation make provisions protecting children in line with general outlook of the law in protecting the innocence of children and young persons	The Child Rights Act 2003, SS. 1,2, and 40 specifically enjoins public and private authorities to consider the best interest of the child as well as protection of the child to be its primary consideration in

					dealings with children.
14.	Detention Time Limits (ACJA) Remand Proceedings and Time Limits (ACJL)	Part 30 ACJA, S. 296 provides for an order of court to remand a suspect for an initial period of 14 days; for an extension for another period not exceeding 14 days on an application in writing for good cause and a final period of 14 days. After which the court shall discharge the suspect if he is not yet charged to court for trial.	Part 31 ACJL, S.300, provides for an order of court for an initial period of 21 days, for a further period of 14 days, and for a final period of 14 days for the suspect to be arraigned for trial at the appropriate court. Failing this the suspect shall be discharged and released from custody and no further application for remand shall be entertained	Setting time limits within which a suspect can be held in custody before trial is welcome in criminal adjudication in Nigeria. Indefinite remands account for congestion of our remand centres and works a lot of injustice on suspects, some of whom are held even beyond what the lawful sentence would have been had they been tried and convicted of the suspected crime.	Speedy trial and dispensation of justice is a hallmark of criminal justice administration. Under our jurisprudence a suspect is considered innocent until proven guilty. Thus incarcerating suspects indefinitely is a derogation of their rights granted under the Constitution and other laws as well as against best practices in criminal justice administration. These provisions on remand time limits is to ensure that the

					powers of the authorities is not abused and suspects are not victimized.
15.	Compensation to victim in judgment	Section 314 ACJA provides for commensurate compensation to a victim by the defendant or any other person or the state	Section 317 ACJL makes similar provisions	This is one of the innovative provisions in criminal justice adjudication in Nigeria in line with best practices. By these provision victims of crime are catered for by the justice system unlike what obtained before where the victim has to institute a civil suit on same facts to receive compensation	Victim remediation is one of the best practice in criminal justice adjudication, by incorporating this provision both legislation show their forward looking approach in compliance with best practice
16.	Costs, compensation, Damages, and Restitution	Part 32 ACJA S. 319, court is empowered to order payment of expenses or compensation; S. 321 power of court to order restitution	Part 33 ACJL makes similar provisions as the ACJA for costs, compensation, damages and restitution	Both legislation have keyed into victim remediation. Fines were usually ordered but now justice is not for the public good alone but also the victim who has lost something of value, suffered injury to be compensated or restored to his original position.	This is in line with the purpose of both legislation which is to protect the rights of victims and defendants in line with the principles of restorative justice.

17.	Probation and non-custodial alternatives	Part 44 ACJA SS. 453- 467. These orders are made where the offence is of a trivial nature and custodial sentence would cause more harm	Part 44 ACJL SS. 437- 451 same as in the ACJA, for trivial offences not suited for custodial sentences	Factors taken into account in granting probation or non-custodial sentence include: character, antecedents, age, health, or mental condition, trivial nature of offence, extenuating circumstances	Community service and suspended sentences are the non-custodial sentences in both legislation. Persons convicted of sexual offences, offence involving use of arms, offensive weapons or whose punishment exceeds imprisonment for three years are not eligible for suspended sentences or community service. (S. 460 ACJA, S. 444 ACJL). The philosophy behind these sentences is to reduce congestion in custodial homes, rehabilitate

					prisoners by making them undertake productive work and prevent convicts who commit simple offences from mixing with hardened criminals (s.460 (4) ACJA; S.451(2) ACJL)
18.	The Administration of Criminal Justice Monitoring Committee	Part 46 ACJA established the committee made up of various stakeholders in the administration of justice	Part 46 ACJL established similar committee with the responsibility of ensuring effective and efficient application of the ACJL by the relevant agencies	The committee in both legislation is to ensure criminal matters are speedily dealt with; drastically reduce congestion of criminal cases in courts, reduce congestion in prisons to the barest minimum etc (S.470(2) ACJA; S. 454 (2) ACJL)	In line with best practices, the committee is to ensure that the relationship between organs charged with criminal justice administration is cordial and there exists maximum cooperation amongst the organs in the administration of justice.

19.	Day to Day Trial	S. 396 ACJA	S. 392 ACJL	This is one of the innovative provisions under the ACJA, which was adopted by the ACJL, to encourage speedy trials and discourage frivolous adjournments	A hallmark of criminal justice administration is speedy trials. The day to trial l provision is to achieve that. However other factors such as congested cause list, infrastructure deficit and attitude of defence and prosecution counsel, continue to militate against speedy trials.
20.	Conclusion of part heard matter by an elevated judge	S. 396 (7) ACJA provides that a judge of the HC who has been elevated to the CA shall have dispensation to continue to sit as a HC judge only for the purpose of concluding any part heard criminal matter pending before him at the time of his elevation and shall conclude	S. 392 (8) ACJL makes similar provision	This provision was hailed as a landmark provision bearing in mind the fact that part of the reason for lengthy trials was the fact that an elevated judge leaves all part heard matters in the lower court and the case has to start afresh when taken up by a new judge. Cases sometimes stay for over 20 years as a result of such situations thereby	Following a Supreme Court decision this provision is no longer tenable (. Trials would have to start afresh once a judge that part heard it is elevated to

		same within a reasonable time		occasioning hardship and injustice.	a higher Bench. (Udeogu v. FRN SC 622C /2019)

Table 4: Comparison between ACJA 2015 and Jigawa State ACJL

There is need to draw attention to a wrong reference in the Jigawa State ACJL. Section 411(4) of the Jigawa State ACJL made reference to Section 391 of the same Law in relation to proceedings where the court finds a woman sentenced to death to be pregnant; the appropriate reference is Section 400 and not 391 as referenced in the Legislation.

4.4 Practical Challenges with the ACJA/ Jigawa State ACJL

Challenges are difficulties encountered in implementation of the legislation. There is hardly a perfect legislation. The success of any legislation would be measured by how easily its provisions are complied with and how efficiently and effectively it achieves its purpose. The ACJA and the Jigawa State ACJL both stated clearly their objective or purpose. The essence of criminal justice administration is generally as enunciated in both legislation: to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim. Though the Jigawa State ACJL is recent and may not have been tested to understand the difficulties in its implementation; it remains that Jigawa State is part of Nigeria and is not immune to general difficulties encountered in the administration of criminal justice in Nigeria.

There is a general lack of requisite infrastructure and conducive environment for speedy trials and efficient management of criminal justice institutions. A lot needs to be done in the area of infrastructure and conducive work and system environment.

Currently the system has inadequate courts both at the Magistrates and Higher courts. As shown in some reports a building may house many courts; so presiding officers just have a few hours within the working day to sit and consider cases. This greatly impacts speedy trials negatively. The courts also lack of electronic recorders. Though the ACJA and the Jigawa State ACJL provide for electronic recording of proceedings this rarely happens. Our judicial officers record proceedings in long hand thereby taking up much time that could have been used in treating many more cases. Constant power outages experienced in the country, including in the court premises that makes it difficult for judicial officers to sit or sit for long, thereby reducing time that would otherwise have been spent in hearing cases

The level of willingness and preparedness of presiding officers to apply the provisions of the Act creates challenges. For instance, the day to day trial provisions and the number of adjournments can only work if presiding officers are willing and prepared to insist on its observance. The same can also be said of counsel both of the prosecution and the defence. The criminal justice system also experiences challenges arising from the attitude of law enforcement agencies in not adhering to arrests, searches and remand provisions. These acts of non-adherence may also militate against realising the objectives of the legislation.

Lack of adequate resources may frustrate the attendance of witnesses to court proceedings. Proceedings can go on if witnesses are available to give evidence; though both legislation make provisions for payment for witnesses to attend court lack of resources may be a clog in the utilisation of this provision.

4.5 Recommendations

a. Provision of requisite infrastructure for efficient management of criminal justice. These include provision of more court rooms, constant power supply for conducive environment for hearing of cases, more judicial officers- magistrates and judges for effective disposition of congested court dockets.

b. Judicial officers would also benefit from research assistants and automated facilities for recording court proceedings.

c. Development of mechanism for effective day to day trial as envisaged under the both legislation. These would include ensuring that witnesses attend court to give evidence; funds should be made available for their expense as provided by both legislation. Frivolous adjournments should be discouraged by applying the cost provisions against the counsel asking for adjournments without reasonable cause.

d. The ACJA and the Jigawa ACJL have a number of provisions promoting cooperation and synergy among stakeholders; actual implementation is paramount in realizing the purpose of the legislation

e. Attitudinal change of all stakeholders - attitude to adjournments, remand, evidence giving by witness all geared towards realizing the objectives of the legislation cannot be overemphasized.

f. Generally funding is essential for all aspects of the Justice system, adequate is therefore an imperative for effective and efficient working of the system.

4.6 Conclusion

The criminal justice system needs to be managed efficiently and effectively to achieve its desired objectives which is to "promote efficient management of criminal justice institutions, speedy dispensation of justice, protection of the

society from crime and protection of the rights and interests of the suspect, the defendant, and the victim." Good governance wherein public resources and problems are managed effectively and efficiently in response to critical needs is key in realizing the objectives of both legislation.

Cooperation and collaboration among stakeholders are important in garnering the needed synergy for effective implementation of the provisions of the Act and Law.

Attitudinal change to justice delivery by actors in the justice system; accountability and transparency are paramount in changing the perception of the public about the justice system.

A COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 AND ADMINISTRATION OF CRIMINAL JUSTICE LAW OF ABIA STATE 2017*

5.1. General Overview of the Administration of Criminal Justice Act 2015 and the Abia State Administration of Criminal Justice Law, 2017

This section provides a general overview of the Administration of Criminal Justice Act (ACJA) 2015 and the Abia State Administration of Criminal Justice Law, (ACJL) 2017. It highlights their broad features in terms of the identified purpose and its application in the respective jurisdictions.

5.1.1. The Administration of Criminal Justice Act 2015

The Administration of Criminal Justice Act (2015) was enacted in May 2015.[1] The ACJA repeals the Criminal Procedure Act (CPA) and Criminal Procedure Code (CPC), it introduces new laws and procedure on criminal justice with the focus of ensuring that the criminal justice sector is fluid, efficient and effective. Nevertheless, the ACJA retains some of the procedures contained in the CPA and CPC.

The Act is a deliberate effort to transform the criminal justice system from a retributive justice system into a restorative justice system. The ACJA 2015 also addresses a wide range of issues which, prior to now, had slowed down the criminal justice system and resulted in a poor output in terms of number of dispensed criminal cases by the judiciary and an increased number of awaiting

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[1] In this work, ACJA 2015 and the Act will be used simultaneously to refer to the Administration of Criminal Justice Act 2015.

trial inmates.[2] In addressing these issues, the ACJA 2015 is divided into 49 parts, with each part addressing various aspects of criminal justice administration. The Administration of Criminal Justice Act 2015 is the basic procedural law guiding criminal justice institutions such as the police, the courts, the prisons service and the prosecutors/attorney-general on their mode of operation from the stage of arrest, prosecution, trial and imprisonment.[3]

5.1.2. The Administration of Criminal Justice Law, Abia State 2017

The ACJL of Abia State was enacted in 2017[4] and is made up of 48 parts and 479 sections. The purpose of the ACJL reflects that of the ACJA. The ACJL repeals the former Criminal Procedure Law, Cap 81, Volume 3, Laws of Abia State 2005. It applies to all criminal trials for offences established by a law of the State House of Assembly and other offences punishable in the state.[5]

It is important to note that the Abia State ACJL is largely a replica of the ACJA with very few variations.

5.2. Compliance with International Best Practices

In recent times, there has been the need for criminal justice administration to be in line with generally accepted principles and standards where the criminal justice system benefits the offender, victim and society. In achieving this, new legislation, standards and principles have been developed to serve as guides in developing an acceptable criminal justice administration particularly with regard

[2] Law Pavilion 'The Administration of Criminal Justice Act, 2015 (ACJA)' https://lawpavilion.com/blog/the-administration-of-criminal-justice-act-2015-acja/ accessed 5th May 2020.
[3] Guidance Notes on the Administration of Criminal Justice Act 2015 – A. Adekunle NIALS Press 2015.
[4] Hereinafter also referred to as the ACJL.
[5] Section 3 Administration of Criminal Justice Law, (ACJL) Abia State 2017.

to the treatment of offenders from the time of arrest until conclusion of trial and eventual punishment. These standards also include respect for and protection of the rights of victim as well as those of the offender. In the United Kingdom, the police can keep an arrested person for up to 24 hours, and must also ensure that the suspect gets free legal representation where the suspect is unable to afford same. This is because a suspect may refuse to be questioned without legal representation, and the police is obliged to wait for the arrival of a legal representative before questioning a suspect, except in exceptional cases, including terrorism or terrorist activities.[6] There is also the Independent Office for Police Conduct, to which complaints can be made where a suspect feels he has been poorly or inhumanely treated by the police.

The ACJL of Abia state provides for the humane treatment,[7] notification of cause of arrest as well as the rights of a suspect.[8] It also guarantees legal representation of the suspect's choice, or a witness of his choice is present when he is giving a confessional statement.[9] The ACJL is almost a mirror of the ACJA 2015 covering innovations such as bail bondsmen[10], witness expenses[11], and remand time protocol[12] amongst others. These are some of the provisions that incorporate international best practices into the ACJL of Abia State. These best practices can be found in norms, standards and principles developed by the United Nations in various instruments, including human rights instruments such as the

[6] Being Arrested: Your Rights a UK Government Publication available at https://www.gov.uk/arrested-your-rights/legal-advice-at-the-police-station accessed 2 May 2020.
[7] Section 8 ACJL Abia State 2017.
[8] Section 7 ACJL Abia State, 2017.
[9] Section 17 ACJL Abia State, 2017.
[10] Section 185 ACJL Abia State 2017.
[11] Section 248 ACJL Abia State 2017.
[12] Section 290 ACJL Abia State 2017.

United Nations Universal Declaration on Human and Peoples Rights,[13] the International Covenant on Civil and Political Rights,[14] and the Convention on the Rights of the Child[15] are instructive. The United Nations Commission for Prevention of Crime and Criminal Justice, the principal UN policy making body in this regard has developed various standards and norms to guide criminal justice systems of member states in the administration of justice.[16] These instruments cover many of the innovations introduced by the ACJA 2015 and ACJL of Abia State 2017, including protection of the rights of the suspect/ offender, protection for child offenders, as well as women and human rights.[17]

Many of these best practices are compiled in the United Nations Office on Drug and Crime. UNODC has a compendium of UN Minimum Standards and Norms in Crime Prevention and Criminal Justice.[18]

5.3. Comparative Analysis of ACJA and Abia ACJL

The core focus of both the ACJA 2015 and the ACJL of Abia State 2017 is the protection of the rights and dignity of suspects, accused, defendants and victims of crimes in Nigeria. It also focuses on providing these protections in a coherent, consistent, efficient and effective manner, hence the innovations introduced by these Laws. This comparative analysis seeks to identify and determine the various

[13] United Nations, https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf Accessed 11/05/2020.
[14] United Nations, https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf Accessed 11/05/2020.
[15] UNICEF, https://www.unicef.org/sites/default/files/2019-04/UN-Convention-Rights-Child-text.pdf Accessed 11/05/2020.
[16] See for instance, CCPCJ Working Paper on Integrated Approaches to Challenges Facing the Criminal Justice System, https://undocs.org/A/CONF.234/5 Accessed 11/05/2020.
[17] Ibid.
[18] https://www.unodc.org/documents/justice-and-prison-reform/English_book.pdf Accessed 10/05/2020.

innovations introduced by the ACJA 2015, and the variation and extent to which they have been introduced into the ACJL of Abia State 2017.

S/N	CONCEPT	ACJA	ACJL	COMPLEMENTARY PROVISIONS	ANALYSIS
1	Preliminary	a. The citation of the Act is contained in the last section - S. 495, including repeals S. 493. b. Inter pretation section is contained within the last part of the Act - S494.	a. Citation is contained in the preliminary part of the Act. b. The repeal is contained section 478 under the miscellaneous provisions part 48. c. Interpretation section is contained in the last part of the Law, S. 479.	These provisions are similar to what obtains in other relevant laws.	These preliminary provisions directly mirror the provisions of the ACJA 2015.
2	Arrest: Recording of Arrests/Confessional Statements	a. The ACJA allows the recording of a confessional statement in writing and via electronic recording on a retrievable video compact disc or other audio-visual means S. 15 (4). b. The ACJA allows the admissibility of an oral confession in evidence S.15 (4).	a. The ACJL allows the recording of a confessional statement in writing and via electronic recording on a retrievable video compact disc or other audio-visual means S. 17 (2). b. S. 17 (4) ACJL permits the admissibility of an oral confession in evidence.	Provisions pertaining to confessions in both l Statutes are similar. These provisions are in alignment with the provisions of S. 27 of the Evidence Act.	The provisions in both laws mirror each other.

3	Warrants	Contains similar provisions to the ACJL.	Contains similar provisions to the ACJA.		The ACJA clearly states that a warrant of arrest I issued by a Federal High Court sitting anywhere in Nigeria may be executed in any part of Nigeria.
4	Place of Trial or Inquiry	The ACJA sets out that the place of inquiry or trial will depend on where the offence was committed such as at sea, or on a journey. S. 93.	The ACJL, provides various scenarios which will determine the exact place of trial or investigation of offences – S. 93.	These provisions are similar to the provisions of the Criminal Code Act and the EFCC Act.	The major difference between the ACJA and the ACJL is that while the ACJA focuses on the consequences of committing a crime at sea or on a journey, the ACJL focuses on crime committed anywhere within the state.
5	Institution of Proceedings	Part 12	Part 12		The provision

					s of the ACJA and ACJL mirror each other.
6	Charge	Similar provisions relating to charges.	Similar provisions relating to charges.		The similar provisions are contained in Part 21 of the ACJA and ACJL respectively.
7	Lay Prosecutors	Vests the power to prosecute in the Attorney-General, to be undertaken by himself, or through a law officer in his Ministry or department; a legal practitioner authorised by the Attorney – General, or a legal practitioner authorised to prosecute by law - S.106.	S.104 ACJL is similar to S. 106 ACJA.		S. 104 ACJL of Abia State mirrors S.106 ACJA. They phased out the practice of prosecution by lay persons. This development is timely as it will ensure the professionalism required to effectively prosecute criminal matters and strengthe

					n the criminal justice system.
8	Sureties	Prohibits the denying or restricting a person from entering into recognizance or standing as surety for any defendant or applicant on the ground that the person is a woman - S.167 (3).	Similar provision exist in S. 164(3).		S. 164 (3) ACJL of Abia State mirrors S. 167 (3) ACJA. What these provisions do is that they effectively abolish discrimination against women when it comes to matters relating to bail. It embeds gender mainstreaming in the criminal justice system, thereby propelling the sector towards realising SDG Goal 5. It also enforces women's constitutional freedom

					from discrimination.
9	Bonds Person	S.187 – 189	S. 184- 185		The provisions in the ACJL of Abia State mirrors those of ACJA 2015. The introduction of registered bonds persons into the administration of criminal justice is a welcome development as it will reduce pressure on limited police resources. It will also facilitate private sector participation in the administration of criminal justice in Nigeria.

10	Women's right to own property.	S.189 (g).	S.189 (g).		The provision in the ACJL of Abia State mirrors the ACJA 2015. It clearly distinguishes a married woman's property from that of her spouse for the purpose of criminal prosecution. This is a welcome development as it protects a woman's constitutional right to own property.
11	Remedies of a married woman	S. 191.	S. 188.		S. 191 further supports a woman's right to property as encapsulated in S. 188 (g) by empowering her to pursue in her own name,

					remedies and redress in order to protect and secure her person and property against all persons including her husband, through criminal proceedings in her own name. This empowers and protects women and their property.
12	Women as competent and compellable witnesses.	Part 20- S. 192	Part 20- S. 189		The provisions of S. 189 ACJL of Abia mirrors S. 192 of ACJA 2015. Both provisions empower a married woman to take control of her life especially in

					domestic abuse related matters. It offers her a separate identity from her marriage or marital status. This signifies progress towards gender mainstreaming in administration of criminal justice in Nigeria.
13	Plea Bargain	S. 270 of the ACJA provides that the Prosecutor may receive, consider and offer a plea bargain to a defendant charged with an offence.	The prosecutor in Abia State may consider a plea bargain from any person charged with an offence where the offence is a simple offence or a misdemeanour. Capital offences and felonies attracting more than 10 years imprisonment are excluded from the plea bargain – Part 28.		The question is what defines simple offence in the Abia Law. The exclusion of some offences from plea bargain gives a perception that plea bargain may not provide adequate justice as certain offenders are excluded

					from opting for plea bargain.
14	Remand Order Protocol	An application for remand is made *ex parte*- S.293 (2.) Upon such application, the court may grant bail to the suspect brought before it, taking into consideration the provisions of the ACJA relating to bail - S. 295. Time protocol for remand is for an initial 14 days, and a further 14 days on consideration of an application for extension - S. 296 (1) & (2).	This provision is similar to S. 290(2) of the ACJA. The point of departure in this provision is that the ACJL goes further to provide that the police shall within 7 days after the remand of the suspect forward the case file to the office of the AG – S.292. It also gives the AG 21 days to issue a legal advice or a discharge order at the court - S. 292 and 293. The time protocol set out in the ACJL is 30 days returnable for another 30 days this brings the total possible days in remand to 90 days – S.294.		Setting a timeline within which the Police and AG must attend to a case file by these provisions is a welcome development. It will assist in reducing the number of suspects being brought before the court solely for the purpose of remand until the arresting authority has enough evidence to bring before the court.
15	Day-to-day trial and adjournments	Section 396 (3)	Section 395 (3)		The ACJA and ACJL both provide

					for the day-to-day trial of a defendant until the conclusion of the case.
16	Presentation of Case by Prosecution and Defence	Part 31 titled 'Presentation of Case by Prosecution and Defence'	Part 31 titled 'Presentation of Case by Prosecution and Defence'	All other provisions contained within these parts are similar in both Statutes.	
17	Deportation	Part 41 the ACJA, being the Federal Law, addresses issues of deportation where offences are committed by a foreign national, and clearly prohibits deportation of Nigerian Citizens.	The ACJL has no such provisions		
18	Cost, Compensation, Damages and Restitution	Part 32	Part 32		Both Statues have identical provisions. This new system of providing the victims of crimes with some form of restitution

					during a criminal trial is a welcome development.
19	Non-Custodial Alternatives	Part 44 The provisions are similar in.the ACJA and ACJL.	Part 43 The provisions are similar in the ACJA and ACJL.		Both Statues contain similar provisions relating to alternative sentencing and community service. The ACJL also indicates that it is committed to helping improve prison decongestion and rehabilitation of defendants. This also means that the state law focuses on the need for restorative justice.
20	Parole	Part 45 This provides for the early release of	Part 44 The provisions of the ACJL are	.	

		prisoners from custody upon satisfactory behaviour and having spent on third of their term in prison.	similar to the ACJA.		

Table 5: Comparison between ACJA 2015 and Abia State ACJL

5.4. Practical Challenges with the implementation of the ACJA/ACJL Provisions

The ACJA and ACJL of Abia state mirror each other, apart from a few provisions under detention time limits, deportation of foreign nationals, all other provisions are a direct reflection of the ACJA in words and intent. The ground – breaking intention of these Statutes suggest that their implementation will face some challenges, some of which include:

a. Technical and human resources

Challenges regarding a conducive implementation environment in terms of technical and human resources may mean that a number of provisions in these laws will either be implemented partially or not be implemented at all. Failure to address these challenges may make parts of the laws appear futuristic and ambitious.

b. Infrastructure Deficit

There is a huge deficit in infrastructure such as ICT facilities for electronic recording of court proceedings as well as electronic video recording of confessional statements of suspects by law enforcement agencies across the country.

c. Training and Retraining of Police and other Law Enforcement Officers

There is a need for the training and retraining of police officers and law enforcement officers on the need to conclude investigations before arrest and arraignment to prevent unnecessary use of remand.

d. Detention limits that are not in line with the goal of decongesting the Correctional facilities.

The Abia State ACJL under its detention time limits provides for 30 days returnable within the same period of 30 days making it a total of 60 days. When the 7 days given to the police to move the case file to the AG is added to the 21 days given to the AG to give its legal advice, it becomes 28 days. Making it a total of 88 days of possible remand of a suspect. This is extraneous and may not lead to the ultimate aim of prison decongestion. Accordingly, the reason stated in (c) above is particularly important if the ACJL must produce the desired results.

e. Funding

At the federal level, funding has been a challenge in implementing the ACJA 2015. For many states unable to pay staff salaries, and where state governors are more concerned with visible projects, funding the criminal justice sector may not be a priority. There are a lot of innovations in the ACJL and these innovations will mean critical adjustments to physical structures, improving facilities, procuring equipment amongst others.

5.5. Recommendations

a. There is need for continuous capacity building if the ACJA and ACJL is to be successfully implemented
b. There is need for a deliberate attempt to begin to improve the physical structures of criminal justice institutions as well as attend to their technical needs to help improve their service and justice delivery.
c. State governments must as a matter of urgency, commence training and retraining of judges and prosecutors on the ACJL. Human capacity development of its workforce is as important as passing the law. These trainings will include issues of collaboration between the state workforce and the federal workers charged with custody and law enforcement.

5.6. Conclusion

The Abia state ACJL is modelled along the ACJA 2015 in words and intent hence there are very few differences. The objectives of both laws are to ensure a more efficient criminal justice sector that provides speedy and responsive justice delivery services. Despite the highlighted challenges with the laws, they are a welcome development in the criminal justice sector because of their innovative and revolutionary nature.

A COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015 AND ADMINISTRATION OF CRIMINAL JUSTICE LAW (ACJL) BAYELSA STATE, 2019*

6.1. Overview of the Administration of Criminal Justice Act (ACJA) 2015 and the Administration of Criminal Justice Law (ACJ) Bayelsa State 2019

Before the enactment of the ACJA in 2015 and its adoption by Bayelsa State as ACJL, Bayelsa State, in 2019, the two principal legislation governing the administration of criminal justice in Nigeria were the Criminal Procedure Act (CPA),[1]enacted in 1945, and Criminal Procedure Code (CPC),[2] enacted in 1960. Though the CPA and CPC applied respectively in the Southern and Northern parts of the Country at the Federal and State levels and in all courts, they both applied in the Federal Capital Territory, Abuja. Having two different criminal laws for the North and the South of the Country was challenging. Besides, many of the provisions were obsolete and needed overhauling to mirror the intention of the Constitution and societal changes. There was also evidence of outright abuse of the provisions of the laws by the police, prosecutors and lawyers.[3] It was obvious that the criminal justice system of the Country had lost its capacity to quickly respond to the needs of the society such as checking the rising rate of crime, speedily holding

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[1]Cap C41 Laws of the Federation of Nigeria 2010

[2]Cap C39 Laws of the Federation of Nigeria 2010.

[3]Adedeji Adekunle, 'An Overview of the Administration of Criminal Justice Act 2014' <http://nji.gov.ng/images/Workshop_Papers/2016/Induction_Course/s11.pdf> accessed 23 March 2020.

criminals accountable and protecting the victims of crime. This resulted in increasing outcry for an overhauling of the laws.

6.1.1. Aim and Objectives of Administration of Criminal Justice Act (ACJA) 2015 and the Administration of Criminal Justice Law (ACJ) Bayelsa State 2019

The ACJA 2015, and the ACJL, Bayelsa State 2019 are legislation aimed at ensuring speedy dispensation of justice in the criminal justice system in federal courts and in Bayelsa State, respectively. They also aim at ensuring the efficient management of criminal justice institutions, protection of the society from crime, and protection of the rights and interest of the suspect, the defendant and the victim. With a deliberate effort to transform the criminal justice system from a retributive justice to a restorative justice system, the ACJA and ACJL, Bayelsa State, address issues which, before the coming of these legislation, decelerated the criminal justice system and resulted in a poor yield in terms of dispensed criminal cases by the judiciary and an increased number of awaiting trial inmates. Furthermore, the need to conform with international best practices as it relates to non-custodial sentencing necessitated the enactment of the legislation.

6.1.2. Structural Arrangement of ACJA 2015

In addressing the various fields of criminal justice administration, the ACJA is divided into 49 parts with 495 sections, which cut across arrest, bail and preventive justice; warrant; prevention of offences and security for good behaviour; proceeding in all cases subsequent to order to furnish security; public nuisance; attachment where a person disobeys summons or warrant; criminal trials and inquiries; place of trial or inquiry; powers of the Attorney

General; control by the Attorney-General of criminal proceeding; institution of proceedings; First Information Report; enforcing appearance of suspect; issue, form and service of summons; process; search warrant; bail and recognizance; property and persons; charges; alteration or amendment to charges; conviction when charged with one of several offences or of another offence; previous acquittals or conviction; compelling attendance and taking oath or making affirmation of witnesses; expenses of witnesses; examination of witnesses.

Others are: plea bargain and plea generally; persons of unsound mind; detention time limits; presentation of case by prosecution and defence, and conclusion of trial; cost, compensation, damages and restitution; custody, disposal, restoration of property; seizure, forfeiture, confiscation and destruction of instrumentality of crime; summary procedure in perjury; trials and summary trials generally; trials by way of information; death sentence; procedure where woman convicted of capital offence is alleged to be pregnant; sentencing other than capital sentence; detention in a safe custody or suitable place other than prison or mental health asylum; deportation; child offenders; probation and non-custodial alternatives; parole; Administration of Criminal Justice Monitoring Committee; trial of corporation, appeals from magistrate courts to high courts; and fees and miscellaneous provisions. The Act also has four schedules covering different forms.

The ACJA repeals the Criminal Procedure Act, Cap C51, Laws of the Federation of Nigeria, 2004, Criminal Procedure (Northern States) Act, Cap C42, Laws of Federation of Nigeria, 2004, and the Administration of Justice Commission Act, Cap A3, Laws of the Federation of Nigeria, 2004. These were the erstwhile legislation for criminal justice administration in Nigeria.

6.1.3. Structural Arrangement of Bayelsa State ACJL 2019

The ACJL, Bayelsa, is divided into five Chapters of 41 Parts and 373 sections. Chapter 1 headed "Preliminary, Arrest, Bail and Preventive Justice" consists of Parts 1-4. Part 1, tagged "Preliminary", provides for the purpose of the Law. Part 2, headed "Arrest" provides for arrests generally, arrest without warrant and procedure thereon, bail on arrest without warrant, general authority to issue warrants of arrest, execution of warrant, bail by order of court on execution of warrant of arrest, and execution of warrant out of division or district in which issued. Part 3 tagged "Escape and Re-arrest" addressed only that subject while Part 4 headed "Prevention of Offences" covers security for keeping the peace and for good behaviour, and proceedings in all cases subsequent to order to furnish security.

Chapter 2 headed "Provisions Relating to All Criminal Trials and Inquiries" encompasses parts 5-32, which is the bulk of the Law. Part 5 headed "Application and General" provides for application and general authority to bring persons before courts. Part 6 headed "Place of Trial" provides for place of trial, sending defendant to another magistrate, and assumption of jurisdiction. Part 7 on "Powers of the Attorney-General" covers powers of the Attorney-General, and control of criminal proceedings by State. Part 8 tagged "Plea Bargain in General" provides for only that subject. Part 9 headed "Proceedings in General" covers institution of criminal proceedings, enforcing appearance of defendant/issue of summons, forms and service of summons, and warrant issued if summons disobeyed. Part 10 headed "Miscellaneous Provisions Regarding Process" covers irregularities, and saving of validity of process. Part 11 on "Search Warrant" provides for issue and execution, and detention and disposal of articles seized. Part 12 tagged "Provisions as to Bail and Recognizance generally" provides for bails

and recognizance generally, while Parts 13, 14 and 15 provide for bringing person in custody before court; forms in respect of summons, warrants, recognizance and other similar processes; and ownership of property, description of persons, and rights of married women in respect of separate estate, respectively. Part 16 tagged "The Charge" covers forms of, and joinder of offences and persons, variation of charge, conviction of one of several offences and of offences not specifically charged, and withdrawal of remaining charges. Part 17 is on Previous acquittals while Part 18 on "Witnesses" covers enforcing attendance of witness, refractory of witnesses, expenses of witnesses and examination of witnesses. Parts 19-27 each contains only a subhead. Part 19 is on "Publicity and View, Part 20 on "Determination of Age", Part 21 on "Presence of Parties and Conduct of Trials", Part 22 is on "Recording of Plea", Part 23 is on "Persons of Unsound Mind", Part 24 is on "Trials Generally", Part 25 is on "Remand", Part 26 is on "Addresses" and Part 27 on "Procedure where Constitutional Questions Referred to Higher Court". Part 28 provides for Conclusion of trial, warrant of commitment., defects in order or warrant. Part 29 cover "Costs, Compensation and Damage", Part 30 "Seizure, Restitution, Forfeiture and Disposition of Property", Part 31 "Summary Procedure in Perjury" and Part 32 "General"

Chapter 3 is made up of Parts 33- 36 each of which also encompasses a single sub head, except Part 33 covering Capital Sentence, and Procedure where woman Convicted of Capital Offences is Alleged to be Pregnant. Part 34 covers "Imprisonment", Part 35 "Fines" and Part 36 "Deportation". Chapter 4 titled "Juvenile Offenders and Probation encompasses parts 37-39. Part 37 provides for juvenile offenders and community service, Part 38 covers Coroner's warrant, fees and forms while Part 39 covers special provisions relating to corporations. The final Chapter, 5, contains parts 40 and 41. Part

40 provides for Service and execution throughout Nigeria of the processes of the courts of the States while Part 41 provides for Repeal, Interpretation, Citation and Commencement.

Section 371 repeals the Criminal Procedure Law, Cap C15 of 2006. The Law equally has five schedules covering different forms attached to it.

6.2. General Comparative Overview of ACJA and ACJL Bayelsa

The provisions of ACJA and ACJL, Bayelsa, are substantially the same in coverage of major issues in criminal justice administration, though with certain variations. As noted earlier, the ACJA consists of 495 sections while the ACJL, Bayelsa consists of 371 sections. The difference in sections is accounted for partly by the absence of some provisions in ACJA in ACJL, Bayelsa, but largely by the fact that ACJL Bayelsa lumps together in many sections several issues, which the ACJA breaks down into more sections. Som e of the differences will be highlighted in Part 3 of this analysis.

In terms of arrangement/structure, the ACJA presentation is more user friendly and clearer to understand as it makes a more effective use of paragraphing and division into sections unlike ACJL, Bayelsa, that adopts a more solid block style of presentation. The ACJL, Bayelsa's division into Chapters and parts is very poorly presented. Most of the chapters contain just a few parts, most of which contain only one subhead, thus, rubbishing the utility of division of laws into chapters and parts. Reading through the Law, one realises that most of the divisions were arbitrarily done. The format of the headings is also unconventional.

In terms of expression, the ACJA provisions are simpler, more straightforward and clearer as opposed to the ACJL, Bayelsa, which is more archaic and winding. There are several varying terminologies in both laws.

For instance, the ACJA uses “a person”, “arrested suspect”, “defendant” “offence’’ whereas ACJL, Bayelsa, uses “no person”, “arrested person”, “accused”, defendant”, “crime” etc.

Overall, both legislation considerably preserve the existing criminal procedure system whilst introducing elaborate, innovative and revolutionary provisions. These provisions are aimed at promoting fairness, transparency, accountability and integrity of our criminal justice processes and enhancing the efficiency and credibility of the criminal justice administration system in the Country.[4] This analysis focuses mainly on the innovative and revolutionary provisions.

6.3. Compliance with International Best Practices

This segment looks at the ACJA and ACJL Bayelsa in terms of their compliance with international best practices and the major innovations they introduce in the criminal justice system in Nigeria.

6.3.1. International best practices

The following body of instruments or international legal framework codifies the rules and guidelines as best practices for the administration of criminal justice and the application of non-custodial measures. This includes: Universal Declaration of Human Rights, 1948,[5]International Covenant on Civil and

[4]Adeniyi Familoni, ‘Understanding the New Administration of Criminal Justice Act 2015’ paper presented at the 2015 Nigeria Bar Association National Conference <https://s3-eu-west-1.amazonaws.com/nba-agc/papers/Sessions_Files/ACJ_Act_Session/Familoni+Paper+UNDERSTANDING+THE+NEW+ADMINISTRATION+OF+CRIMINAL+JUSTICE+ACT+2015.pdf>1, accessed 13 November 2017.

[5] It enshrines key principles of equality before the law and the presumption of innocence as well as the right to a fair and public hearing by an independent and impartial tribunal , along with all

Political Rights, 1966,[6] Standard Minimum Rules for the Treatment of Prisoners,[7] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[8] Basic Principles on the Role of Lawyers,[9] Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, Economic and Social Council resolution 2007/24 of 26 July 2007,[10] United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System,[11] United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or

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the guarantees necessary for defence of anyone charged with a penal offence, other minimum guarantees and the entitlement to be tried without undue delay. See Resolution 217 A (III). United Nations Declaration of Human Right, 1948 <https://www.jus.uio.no/lm/en/pdf/un.universal.declaration.of.human.rights.1948.portrait.letter.pdf> accessed 28 March, 2020.

[6] Resolution 2200 A (XXI), annex, International Covenant on Civil and Political Right, 1966 <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> accessed 28 March, 2020. Article 14 states that everyone charged with a criminal offence shall be entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own choosing or assigned to him or her where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law,

[7] Resolution 663 C (XXIV) of 31 July 1957, untried prisoner, for the purposes of his or her defence, shall be allowed to receive visits from his or her legal adviser.

[8] Resolution 43/173, annex, Principle 11 of which states that a detained person shall have the right to defend himself or herself or to be assisted by counsel as prescribed by law.

[9] Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex, Principle 6 of which states that any persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

[10] Provides for international cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa,

[11] Resolution 67/187 <https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf>accessed 28 March 2020. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System recognises that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of others, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice system.

Punishment,[12] the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules),[13] African Charter on Human and Peoples Right, Declaration of Basic Principle of Justice for Victim of Crime and Abuse of Power[14] etc. codify rules and guidelines as best practices for the administration of criminal justice and the application of non-custodial measures.

Most of these principles enunciated under those instruments are reflected under the ACJA as well as the ACJL, Bayelsa State. For instance, incompliance with the Tokyo Rules, sections 453-468 of the ACJA and sections 342-350 of the ACJL, Bayelsa State, provide for probation; suspended sentence; and community sentencing; and parole as non –custodial measures that are reflected under the Tokyo Rules. They also provide for fines under sections 325-327 of ACJA and sections 320-322 of ACJL, Bayelsa State. They equally provide for restitution and compensation of victims of crime as other victim friendly approach that conforms with international best practices.

[12]Adopted by the United Nations General Assembly on 10 December 1984 (Resolution 39/46) and came into force on 26 June 1987. In honour of this Convention, 26 June has been adopted as the International Day in Support of Victims of Torture.

[13]United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), Adopted by General Assembly resolution 45/10 of 14 December 1990 < Adopted by General Assembly resolution 45/110 of 14 December 1990> accessed 2 January, 2020. It provides alternatives to incarceration.

[14] Guide for Policy Makers on the Implementation of the United Nations Declaration of Basic Principle of Justice for Victim of Crime and Abuse of Power (1999) <https://www.unodc.org/pdf/criminal_justice/UNODC_Guide_for_Policy_Makers_Victims_of_Crime_and_Abuse_of_Power.pdf> accessed 28 March, 2020.

6.3.2. Major innovations of ACJA and ACJL, Bayelsa that conform with International standards and best practices.

A major innovation of these legislation that conform to international best practice is the shifting of our criminal justice system from the retributive or punitive approach to the restorative one which considers the interest of the society, rights of a suspect, the defendant and the victim. This is reflected in the purpose of the Act and Law as seen in their section 1(1).

International guidelines such as the Guide for Policy Makers on the Implementation of the United Nations Declaration of Basic Principle of Justice for Victim of Crime and Abuse of Power require jurisdictions to review laws and practices with regard to arrest, search, interrogation and detention so as to adhere to the standard minimum rules for the treatment of prisoners and other relevant standards.[15] In line with these guidelines, the ACJA and the ACJL of Bayelsa state dealt with issues relating to arrest and bail in Part two of both legislation. Also, parts 18 and 30 of ACJA and parts 11 and 25 of ACJL, Bayelsa State, deal extensively with search, and detention time limit.

Furthermore, complying with international standards on the requirement of Legal Aid in the administration of criminal justice system in accordance with the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System, section 349 of the ACJA and section 235 of the ACJL, Bayelsa, address a situation where a defendant who appears before the court without legal appearance is required by the court to be informed of his or her right to a legal practitioner of his or her choice. The court is also required to enquire of the defendant whether he or she wishes to engage a legal practitioner of his or her choice or to have a legal practitioner

[15] Ibid. Resolution 4g.

engaged for him or her by way of legal aid. These sections conform to international best practices in this regard.

Additionally, noting the importance of protecting witnesses of crime in line with best practices the ACJA and ACJL of Bayelsa State seek to protect the identity of witnesses by providing in Part 27 of ACJA and Part 18 of ACJL, Bayelsa State, for the examination of witnesses. In fact, sections 260 and 201 of the ACJA and ACJL, respectively, provides for the protection of the identity of a child or a young person called as a witness by limiting the number of the attendees in court to members of the court or officials of the court, parties to the case or their representatives or persons directly concerned in the case. Furthermore, an innovation under these legislation that conforms to best practices relates to the witness expenses. It provides re-imbursement of any reasonable expenses borne by a witness either for the prosecution or the defence.

In line with international best practices which stress the need for fair and speedy trial, the ACJA in section 396 provides timelines for day to day trial and adjournment as well as the award of cost for frivolous adjournments in a bid to serve as a check to prolong trial and incessant adjournment which was the regime prior to the enactment of the ACJA. The ACJL, Bayelsa State, does not provide timelines for day to day trial, but provides for detention time limits in section 266.

Adhering to international standards on pre-trial detentions codified in international legal framework such as Resolution 17 on pre-trial detention adopted by Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[16] the ACJA and ACJL frown at pre-trial detention

[16] Para 2(a) and (b) emphasizes that persons suspected to have committed offences and deprived of their liberty should be brought promptly before a judge or other officer authorized

and only provide for remand in certain circumstances provided for under 296-299 and 266- 269 of the ACJA and ACJL, Bayelsa, respectively.

In a bid to curtail pre-trial detention, the ACJA put in place mechanism for monitoring arrest by requiring every police station to capture the data of any person arrested and the requirement for each state command to establish a crime register for each zonal command to catalogue arrest, conviction or acquittals. Also, the police officer is required to report to the nearest magistrate on the last day of every month the cases of all suspects arrested without warrant. The magistrate is in turn required to report to the Criminal Justice Monitoring Committee which shall analyse the report and advice the A-G of the Federation or the State as to the trends of arrest, bail and related matters.[17] More so, as a precautionary measure, the Chief Magistrate or any magistrate is required every month to conduct an inspection of police stations or other places of detention within his or her territorial jurisdiction to inspect, call for the record of arrest, direct arraignment of a suspect or grant bail. These are measures in place to curb pre-trial detention. For ACJL, Bayelsa, the Commissioner of Police or head of every law enforcement agency is required to remit a monthly record of all arrests made with or without warrant relating to State offences to the Office of the Attorney-General of the State. Failure to comply with this requirement will result in the Attorney-General reporting the default to the Police Service Commission or Command Headquarters of the Law Enforcement agencies.[18]

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by law to exercise judicial functions who should hear them and take a decision concerning pre-trial detention without delay. Also pre-trial detention may be ordered only if there are reasonable grounds to believe that the persons concerned have been involved in the commission of the alleged offences and there is a danger of their absconding or committing further serious offences, or a danger that the course of justice will be seriously interfered with, if they are left free.

[17] See section 33 of the ACJA.

[18] See section 11(3) and (4) of the ACJL, Bayelsa.

Confession and interrogation procedures are provided for under section 15 and 17 of the ACJA. These provisions put in place measures that conform with international standards in taking the statement of a suspect. They require the taking of such statement in the presence of a legal practitioner or in the presence of an officer of the Legal Aid Council of Nigeria or an Official of a Civil Society Organisation or a Justice of the Peace or any other person of suspect's choice. The sections also require the presence of an interpreter to record and read over the statement where the suspect does not understand or speak or write English. Furthermore, where the suspect is arrested with or without warrant and volunteers to make confessional statement, the section requires the police officer to ensure that the making and the taking of the statement is in writing and may be recorded electronically on a retrievable video compact disc or such other audio-visual means. The section also admits oral confession of the arrested suspect. These are measures put in place to ensure voluntariness of statement and reduce trial within trial. Incidentally, the provision of ACJL, Bayelsa, is not as elaborate as that of ACJA. It provides that where a person who is arrested with or without warrant volunteers to make a confessional statement, the police shall ensure that the making and taking of such statement is recorded on video and the said recording and copies of it may be produced at the trial, provided that, in the absence of video facility, the said statement may be in writing and shall, if at the request of the person, be taken in the presence of a legal practitioner or any other person of his choice.

6.4. Comparative Analysis of ACJA and ACJL Bayelsa

Table 6, highlights certain key concepts which the ACJA and ACJL Bayelsa have introduced into criminal justice administration in their areas of coverage.

S/N	CONCEPT	ACJA	ACJL, BAYELSA STATE	COMPLEMENTARY PROVISIONS	ANALYSIS
A.	Preliminary Matters				
1.	Purpose	Section 1	Section 1 (1), (2)	Para 2, The European Convention on the Compensation of Victims of Violent Crimes 1983; the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985.	This purpose indicates a deliberate effort at overhauling the criminal justice system in Nigeria in a way that compels the institutions that manage criminal justice to ensure the realisation of the primary goal of criminal justice, which is speedy dispensation of justice. It is also an indication of an intentional shift from punishment as the main goal of the

					criminal justice to restorative justice which pays attention to the needs of the society and the rights and dignity of victims and vulnerable persons. The legislation are, therefore, potent instruments of criminal justice administration for initiating change and restoring sanity to the criminal justice administration system in the Country, which had previously been chaotic and highly unpredictable. See *Awelle v. People of Lagos State* (2016) LPELR-41395(CA).

2.	Application	Section 2	Section 1(3)	Order 1 High Court, Federal Capital Territory Practice Directions 2017; sections 174 and 211, 1999 Constitution, as amended.	The implication of these provisions is that, in addition to non-applicability of the ACJA to Court Martial, unlike in Bayelsa State, the application of the ACJA in any of the specified cases and courts can be excluded by express contrary provisions in any other law. ACJA is also not applicable in State courts, except where it has been adopted by any State as has been done by several states, where it has become the States' laws. It is also applicable in limited situations where a state court is seised of federal offence or the Attorney-

					General of the Federation authorises a state counsel to prosecute a federal offence. See section 268(4) & (5) of ACJA
B.	Arrest, Bail and Preventive Justice/Arrest Generally				
3	Notification of cause of arrest and rights of suspect/defendant.	Section 6(1),(2); Section 14	Section 4(1), (2); section 10.	Section 35(2) and (3) and 36, 1999 Constitution, as amended; section 249 CCA, Cap C39 LFN 2010; Principle 16(1) Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.	This provision reinforces the constitutional fundamental right to fair hearing, liberty and dignity of a suspect. It ensures that the suspect is not deprived of legal representation for any reason. This facilitates the right of the suspect to bail and prompt

					trial and, by extension, enhances police and prison decongestion. It also confers on the suspect the additional benefit of having his/her next of kin or relative informed of his/her arrest at no expense to him/her. The absence of the conferment of this additional benefit on the arrested person in the ACJL, Bayelsa, is a minus for the Law. Effort should be made to include this provision in the Law at the earliest opportunity. The provisions equally deprive the police of their ability to make indiscriminate arrest on frivolous grounds as

					obtained under the now repealed section 10(1) of the CPA, where they could arrest without a warrant anyone without an ostensible means of livelihood and could not satisfactorily account for himself.
4.	Arrest in lieu prohibited	Section 7 provides that "A person shall not be arrested in place of a suspect."	Section 5 provides that "No person shall be arrested in lieu of any other person."	Section 35(6), 1999 Constitution, as amended.	The prohibition of the arrest of family and friends in lieu of the suspect as a means of compelling the suspect to submit to arrest, even when such family and friends are not connected with the alleged offence is one of the innovative provisions of these legislation. It puts an end to the common practice by the police and other

					prosecutorial agencies, like the EFCC, ICPC, NDLEA and NAFDAC, which abuse their power of arrest by detaining relatives and close associates of suspects when they find it difficult to arrest the suspect. In an attempt to compel them to produce the suspect, such relatives and close associates have often been subjected to dehumanising treatment by the police and these agencies over an offence they know nothing about. If this provision is properly implemented, it has the potential to stem such injustice and reduce prison and police

					cell congestion.
5.	Humane treatment of arrested person	Section 8(1)	Section 13(2) –.	Section 34, 1999 Constitution, as amended; Principle 1, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UNGA Resolution 43/173 of December 1988; Article 5 UDHR, 1948; Article 7 ICCPR, 1966; Article 5 ACHPR, 1981.	The Bayelsa Law only provides for this in relation to arrest by a private person. The application of this provision by the ACJL, Bayelsa, to only a private person making an arrest may have been to prevent the regularly occurring mob action against persons suspected of committing offences. The rationale for excluding the police is more difficult to understand. Could it be that the law sanctions such treatment of arrested persons by the State police officers or that the police officers in the State are so disciplined that they

					cannot subject arrested persons to such treatment? The prohibition of the arrest of suspect merely on civil wrong or breach of contract is very welcome too as it had become rampant for the police and other law enforcement and security agencies to be used to settle such matters, which are clearly outside their call of duty.
6.	Inventory of property of an arrested suspect/person.	Section 10(1)	Section 7(1)		This provision and those of the other subsections under it ensure the safety of the personal belongings and other property of an arrested suspect/person. It is a safeguard against the prevalent

					practice of such items disappearing in the process of investigation. The section, therefore, promotes transparency and accountability in the investigative process.
7.	Recording of Arrests	Section 15(1), (4)	Section 10(3); 11(3),(4)	Sections 35(2); 36(5) 1999 Constitution, (as amended); Sections 20, 28 and 29 of the Evidence Act 2011; Principles 12, 21 and 36 Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment; Article 11 UDHR	The use of the discretionary word "may" in the ACJA, instead of the mandatory ''shall'', however, creates a loophole which is susceptible to exploitation by the police and other government departments involved in recording statement of suspects, see *Messy v Council of the Municipality of Yass* (1922) 222 SRNSW 494 and *Michel v Baker* (1800) 44 Ch D 282. This is more so as the general

					position of the courts is to interpret the words of any statute in its ordinary and literal meaning once they are clear and unambiguous, except where to do so will result in absurdity, see *Julius Berger (Nig.) Plc v Anizzeal Eng. Project Ltd.*(2013) LPELR-20694 (CA). The provision of section 9(3) of the Administration of Criminal Justice Law of Lagos State, 2007, mandating the Police to ensure that confessional statements are recorded on video, and the said recording and copies filed and produced at the trial is preferable. Attendant to the challenge of electronic recording of

					suspects' confessional statement is the challenge of the timely availability and functionality of the recording equipment when needed. Incidentally, ACJA does not address this, except to provide in subsection (5) that notwithstanding the provision of section (4), "an oral confession of an arrested person shall be admissible in evidence"; a provision that significantly undermines the mischief sought to be addressed by section (4). Thankfully, ACJL, Bayelsa, like section 9(3) of the ACJL of Lagos State, preventively addresses such situation by mandating

					that the statement should be made in writing in the presence of a legal practitioner or any other person of the arrested person's choice.
8.	Central Criminal Records Registry.	Section 16	Has no equivalent provision		This provision aims to ensure the availability of critical records that will aid speedy investigation and adjudication of cases, promote coordination, control and accountability in record keeping as well as provide future references for investigation and adjudication of cases. Subsection 3, in particular, will ensure a speedy

					compilation of record of proceedings, deal with the problem of challenges attendant to obtaining record of proceedings, and, thus, aid prompt dispensation of justice. Such central criminal records registry will prevent a repeat of the embarrassing experience the Country went through regarding the prior conviction or otherwise of the former Governor of Delta State, James Onanefe Ibori, by an Upper Area Court, Bwari, in case No. CK/81/95. See *Agbi v Ibori* (2004) 6 NWLR (Pt. 868) 78.
9.	Remitting Quarterly Report for Arrested Persons	Section 29(1)	Contains no equivalent provision		The essence of this provision is to ensure accurate record of

					arrests in the affected jurisdictions. It will facilitate effective monitoring of all persons in detention in order to ascertain the Awaiting Trial Inmates (ATIs) and to ensure they are not remanded indefinitely. It will, in effect, prevent abuse of power by the arresting authorities.
10.	Releasing on Bail of Suspect/Person Arrested Without Warrant	Section 30. See also sections 19(2),31, 66-71 and 158-188.	Section 18(2) . See also sections 19, 46, 50, 111-139 and 369	Section 4, Police Act, Cap. P19 LFN 2010; section 5 Criminal Code Act, Cap C39 LFN 2010; section 35, 1999 Constitution, (as amended); Principle 39, Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment.	The rationale for this provision is to ensure that a suspect of an offence other than that punishable with death, or a serious offence is not kept in detention, without being charged to court, beyond the time stipulated by law; having regard to the suspect's right to personal

					liberty. It is also to prevent the adoption of the notorious practice of holding charge against a suspect. See *Ojo v FRN* (2006) 9 NWLR (Pt. 984) 105; *Shoneye v State* (2015) LPELR-25862(CA); *FRN v Maishanu & Ors*. (2019) LPELR-46380(SC).
C.	Powers of the Attorney-General				
11.	Prosecution of Offences	Section 106	Has no equivalent provision.	Sections 174 and 211, 1999 Constitution (as amended).	The provision of ACJA here clearly specifying that only a legal practitioner can prosecute offences in courts settles the controversy that had raged on over the years as to the power of the police to prosecute offences arising from the case of *The Federal Republic of Nigeria v*

					Osahon (2006) 5 NWLR (Pt. 973) 361 where the Supreme Court held that the Police prosecutor could prosecute whether or not he or she is qualified as a lawyer. Contrary to this, however, the ACJL, Bayelsa, provision reinforces this controversy.
D.	Property and Persons/Rights of Married Women in Respect of Separate Estate				

12.	Remedies of married woman against her husband and others in respect of her person or property.	Section 191	Section 143; Section 144	Sections 42(1) and 43, 1999 Constitution, as amended; section 36 Criminal Code Act, Cap C39 LFN 2010; sections 178, 179, 182 and 258(1), Evidence Act 2011; Articles 18(3) and 29, ACHPR; Articles 2, 5(a) and 16(1)(h), CEDAW.	This provision is almost a replication of the provisions of the repealed CPA, except that, unlike the CPA, it is not made subject to the provisions of section 36 CCA, Cap C39 LFN 2010, which precludes spouses of a Christian marriage from instituting criminal proceedings against each other while living together. On the contrary, it is made subject to the provisions of the Evidence Act, sections 178, 179 and 182, which removes the barrier against a husband or wife acting as a competent and compellable witness in respect of any action,

					including property. Note that while the Criminal Code Act recognises only marriage under the Act, section 258(1), Evidence Act defines "wife" and "husband" to "mean respectively the wife and husband of a marriage validly contracted under the Marriage Act, or under Islamic law or a Customary law applicable in Nigeria, and includes any marriage recognized as valid under the Marriage Act." This provision reinforces the progressive move towards the promotion and protection of the rights of women, who

					have been marginalised over the centuries in virtually every sphere of life, especially in marriage. They were largely regarded as being too inferior to own property of their own or inherit their "husbands' properties", even when they had contributed to or purchased those properties themselves. Often times, especially in the Eastern part of Nigeria, on the demise of their husbands, they are driven out of the family house with just a few clothing materials. Note that the ACJL, Bayelsa, omits security of "her

					person" which is contained in the ACJA. It also makes the protection it offers "subject to the provisions of any other law". The implication of this is that the law only secures the property of the woman exclusive of any danger that her person may be exposed to. Additionally, the protection it provides for her may be eroded by any other law that deprives her of such protection. In effect, this law still exposes the person and property of a married woman to the vagaries the ACJA seeks to deliver her from.
	Husband and wife competent as witnesses.	Section 192	Section 193		See the section above

E.	Conviction When Charged with One of Several Offences or Another Offence/Offences not Specifically Charged				
13.	Part 23/Part 16: Conviction when charged with one of several offences or of another offence.	Sections 223-237.	Section 159-171	Section 222 CCA, Cap C39 LFN 2010.	These provisions are in line with the established principle of criminal law that although the general rule is that an accused can only be found guilty of an offence for which he is charged, in certain circumstances, evidence adduced by the prosecution may fail to support a conviction for that particular offence, but fully establishes the commission by the accused of a kindred offence. In such circumstances, the courts can convict an accused for an offence other than the one for which he is expressly charged. See

					Akpan v State (2019) LPELR-48170 (CA), *Alabi v State* (1993)7 NWLR (Pt 307)511, *Adamu v State* (2017)7 NWLR (Pt 1565) 459.
14.	Procedure for Trial on Charges of Certain Offences (Witness Protection).	Section 232	Has no equivalent provision.	Section 36(4), 1999 Constitution, as amended; section 17, Economic and Financial Crimes Act 2004; sections 29 Terrorism Prevention Act 2011, as amended; sections 33 and 34 Terrorism Prevention Act 2013; section 17 Anti-Torture Act 2017 and section 47 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act	The elaborate provision on witness protection in the ACJA reinforces the relatively new trend in criminal justice administration, of securing the safety of victims and witnesses, especially in high risk cases like terrorism, human trafficking, and other organised crimes, where potential witnesses are terrified for their lives. The cruciality of the evidence of such witnesses to

					the success of the prosecution of such cases demands their protection. One of the arguments against witness protection, though, is that it runs counter to the right to fair hearing in section 36 of the Constitution in instances where it results in the inability of the defence to cross examine such witnesses. The fact is that even in the application of the specified protective measures, it is only in exceptional cases that the defence may be unable to cross examine witnesses. The overriding consideration should be the interest of justice which

					the judge is in a better position to determine in each case. And so, notwithstanding such arguments, witness protection measures have been used in cases like *Mohammed Sambo Dasuki v FGN*(2018) LPELR-43969 (CA) and *Nnamdi Kanu&Ors v FRN*[19] The Absence of this important provision in the ACJL, Bayelsa, in the light of modern realities does not speak well for the Law and progressive criminal justice administration in the State.
F.	Examination of Witnesses/Powers of the Attorney-General				

[19] See Evelyn Okakwu, 'Court clears Nigerian Government to bring masked witnesses in Nnamdi Kanu's trial, *Premium Time*, 7 March 2016, https://www.premiumtimesng.com/news/top-news/199703-court-clears-nigerian-govt-bring-masked-witnesses-nnamdi-kanus-trial.html

15.	General control of prosecution by the Attorney General	Section 268	Section 66		Sections 268(2), ACJA and 66 ACJL run contrary to the provisions of Sections 106 ACJA, which provides that prosecution of all offences in any court shall be undertaken by a legal practitioner. These provisions reinforce the long-standing debate over the propriety or otherwise of the Supreme Court's decision in *The Federal Republic of Nigeria v Osahon* (2006) 5 NWLR (Pt. 973) 361 where the Supreme Court held that the Police prosecutor could prosecute whether or not he or she is qualified as a lawyer.
G.	Plea Bargain and Plea Generally				

16.	Plea bargain guidelines	Section 270	Section 71, Section 72	Sections 7(1) & 14(2) EFCC Act; section 36, 1999 Constitution, as amended.	These sections, especially that of the ACJA, make elaborate provisions on the guidelines for entering into a plea bargain between a prosecutor and a defendant. The ACJA provisions are more victim friendly as they make the involvement of the victims or representatives of relevant offences in the process of plea bargain mandatory as against the ACJL provisions which require their involvement only when it is feasible. Unlike the ACJL, ACJA also provides for court order for the transfer of the forfeited money, asset or property to the victim or his/her

					representative and mandates the prosecutor to ensure that the transfer is made, and penalises anyone who obstructs the process. In addition, the ACJA provides for the factors to be considered in determining the public interest element in plea bargains. This is commendable as public interest is, ordinarily, a highly subjective concept. It appears that the essence of a plea bargain under the provisions of both legislation is to ensure that justice is done both in the interest of the State and the victim. Its processes in Nigeria have, however, been widely

					criticised over the years. The criticisms included its limited and arbitrary application to graft cases, see *Tafa Balogun v FRN* (2005) 4 NWLR (Pt. 324) 190, *FRNv Mrs. Cecilia Ibru* [Unreported], Charge No. FHC/L/297C /200. The plea bargain provisions, especially those of ACJA, have thus accomplished the following, among others – 1. Extension of its scope beyond corruption offences (1)(b); 2. Introduction of restorative justice and protection of the right of the victim, who must now participate in the process of

					the agreement and be duly compensated, subsections (2) and (6); 3. Introduction of social justice – public interest and public policy – content, subsection (3); 4. Non-discrimination in its application to beneficiaries – ordinary citizens and high-ranking politicians as subsection (5)(i)-(ix) outlines the prosecutorial standards to which the prosecutor must adhere; 5. Forestalls violation of the defendant's right through overcharging and coercion to plea bargain, subsections (7), (9), (10)(a) and (b); 6. An end to the use of plea bargain

					as an instrument of unreasonable sentencing as the judge can now review such sentences, subsection (11). However, other than the express exclusion of offences with the death penalty, the provisions fail to delimit the scope of the offences to which plea bargain applies. Again, though both legislation accord certain rights to victims, including compensation , they failed to define who a victim is. Furthermore, there are cross referencing errors in the ACJA provisions: subsections (5), (7), and (8) refer to

					subsection (3) instead of subsection (4), while subsection (10)(b) refers to subsection (6) instead of subsection (7). Subsection (11) refers to subsection (9)(a) instead of subsection (10)(a) while subsection (17) refers to subsection (1) instead of subsection (10)(a). These are significant errors that need to be timely addressed for a seamless interpretation and implementation of the Act.
H.	Detention Time Limits/Remand				
17.	Detention time limits/	Sections 293-299	Section 266, 295-296. Section 266 of ACJL, Bayelsa lumps together in one section several of the issues separated into different section under	Sections 35, 36(1) and 41, 1999 Constitution, as amended; section 27 Terrorism Prevention Act, 2013.	. There are inconsistencies in the duration of detention time limits provided in various laws. ACJA and ACJL, Bayelsa, provide a maximum limit of 56

			different marginal notes in ACJA. Section 295 - 297		and 44 days respectively. The proviso to section 35(1)(f) of the Constitution says that a person detained in lawful custody, awaiting trial, shall not be detained for a period longer than the maximum period of imprisonment for the offence. It further provides in subsection (4) for the trial of a detained person within a reasonable time from the date of arrest – two months for a person in custody and three months for a suspect released on bail. A reasonable time according to subsection (5) is one or two days depending on the circumstance s. These time

					limits are, however, not applicable to suspects of capital offence, and members of the armed forces and the Police Force – subsection (7). Again, section 27 of the Terrorism Prevention Act (TPA) 2013 provides for three instalments of 90 days detention for suspects of terrorist offences. Notwithstanding these inconsistencies, the gravity of the offence in the TPA and the complexity surrounding its investigation and prosecution may justify the time limit provided by the Act. The concern with the 56- and 44-days maximum time limit in the ACJA and

					ACJL, Bayelsa, respectively, is the fact that in between the various stages of the court processes for the extension of the time limits, several other days or weeks may have been lost. This, in reality, means that the maximum time a suspect spends in detention may far exceed the prescribed 56 or 44 days. The ACJA and ACJL, Bayelsa, provisions as well as the courts in their implementation of those provisions may often run contrary to the proviso to section 35(1)(f) that detention should not exceed the maximum period of imprisonment prescribed for an offence.

I.	Presentation of Case by Defence and Prosecution and Conclusion of Trial/Stay of Proceedings				
18.	Stay of proceedings	Section 306	Section 275	Section 36(4) 1999 Constitution; Section 40 EFCC Act, 2004; Article 9(3) ICCPR	This provision is critical to forestalling delays and ensuring speedy trial, which is the main trust of the ACJA and ACJL, Bayelsa. It is an unprecedented positive development. Interlocutory applications for stay of proceedings pending appeal on preliminary matters even when substantive issues had not been addressed on merit had been a major bane of speedy trials in the criminal justice system. See *Shane Edward Williams v The Queen* [2009][20] where the New Zealand Supreme

[20] NZSC 41 (15 May 2009)

					Court reduced the sentence imposed on the defendant by the lower court by 18 months on the ground that the delay between his arrest and trial – almost 5 years – could not be justified.
19.	Sentence and sentencing hearing	Sections 311(2), 401, 416	Section 280.	Section 239 and 240 ACJ; section 349 ACJL. Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016;	From the sentencing process outlined in ACJA and ACJL, Bayelsa, it is clear that unlike in the repealed CPA and CPC provisions, where the conventional punishment generally imposed was imprisonment, and or fine, room has now been expressly made for the imposition of non-custodial sentence provisions as alternatives to imprisonment. The framework for the

					selection of non-custodial features in section 311(2)(c) of the ACJA, (regrettably the ACJL, Bayelsa provision is not as encompassing) is a commendable proactive approach that highlights the interest of the victim who was, prior to these laws, precluded from obtaining justice through the criminal process. Besides, judges can now exercise substantial judicial discretion during the sentencing process. Good enough for this process, the High Court of the FCT has introduced sentencing guidelines to assist judges in ensuring uniformity in

					sentencing. In imposing sentences, including non-custodial sentence, the court must bear in mind the objectives outlined in sections 401(2) of ACJA (ACJL, Bayelsa, has no equivalent provision). The most critical of these objectives would be rehabilitation, which is vital to assisting the offender psychologically and gainfully reintegrate him or her into the society due to the training and skill meant to be acquired in the process of detention. Sadly, the poor, inhumane and degrading condition in the prisons

					virtually renders this objective impossible to accomplish.
20.	Conviction on other charges pending	Section 313(1), (2)	Section 281 (1), (2).		The utility of this provision, which is similar to consolidation in civil suits, is that it is a time saving procedure which will eventually reduce the criminal cases in the docket of the courts. The language of subsection (1) of both the ACJA and ACJL, Bayelsa, are,

					however, slightly different. While the ACJA uses "may", the ACJL uses "shall" thus rendering the ACJA requirement discretionary and the ACJL's mandatory.
J.	Trials and Summary Trials Generally				
21.	Notes of evidence to be recorded electronically or in writing (ACJA)/Note of evidence to be taken (ACJL, Bayelsa).	Section 364(1)	Section 247 (1), (2)		Electronic recording of court proceedings is one of the processes aimed at easing the onerous burden of hand written notes on judges during trial. It is, therefore, surprising that this requirement is not made mandatory, thereby perpetuating the problem of delay attendant to long hand note writing by judges. Indeed, ACJL, Bayelsa mandates

					handwriting of notes as a first option while making electronic recording a discretionary second option. This does not tally with modern reality.
K.	Trials by Way of Information/Trials Generally				
22.	Time for raising certain objections	Section 396(2)	Section 262(2)		This provision was aimed at ending the attitude of the courts in adhering to the age long practice of staying proceedings pending the determination of the issue of jurisdiction and other issues which can be raised at any time in a trial. This practice was a major clog in the wheels of progress towards achieving speedy disposal of criminal cases. Incidentally, contrary to the provisions of section 1(2) ACJA

					and ACJL, Bayelsa, mandating persons involved in criminal justice administration, chief among which are judicial officers, to ensure compliance with the provisions of the Act, the courts have not been faithful in applying the provisions of section 396(2) as seen in the case of *Olubukola Saraki v Federal Republic of Nigeria* (2016)3 NWLR (Pt 1500) SC 531. There were series of interlocutory rulings relating to the case at the Federal High Court, Court of Appeal and Supreme Court during the pendency of the matter at the Code of

					Conduct Tribunal leading to series of adjournments that constituted undue delay in the trial.
23.	Day-to-day trial	Section 396(3)	Does not contain this useful and innovative provision.	Section 36, 1999 Constitution, as amended.	Incessant, and often avoidable, adjournments have been the bane of timely criminal trials in Nigeria. A strict adherence to the provisions of this section will remarkably speed up criminal justice administration. The flip side of this provision, however, is that it could result in the maintenance of status quo, especially with a judge that is not disciplined enough to take proper control of proceedings in his or her court, since the provision

					on additional adjournments does not peg the number of such adjournments. Again, it could result in criminal matters being struck out for want of diligent prosecution because of the frequently shoddy way prosecution is conducted by some prosecutors who rush to court without proper investigation and preparation. This often leads to unjustified requests for further adjournments.[21]

[21] See Monday O Ubani, "We need to save Nigeria from the criminal justice sector", Opinion, Gavel International <https://thegavel.com.ng/2020/02/26/8300/> accessed 23 March 2020.

24.	Award of cost in order to discourage frivolous adjournments.	Section 396(6)	Does not provide for this.		Ordinarily, award of cost should not be punitive.[22] However, this provision is a welcome development as it will assist in reducing the incidence of unwarranted requests for adjournments which has been a significant drawback on speedy dispensation of justice in Nigeria.

[22] *HadejiaJama'Are River Basin Development Authority v Chimande (Nig.) Ltd* (2016) LPELR-40202(CA).

25.	Elevation of High Court Judge to Court of Appeal	Section 396(7) of the ACJA relates to the elevation of a judge of the High Court to the Court of Appeal	Does not provide for this		This offers a great relief to the parties to such cases as it mitigates the waste of efforts, time and resources suffered when such elevation occurred in the past and the case had to be transferred to another judge to start it afresh. The practice of having such cases commence *de novo* before a new judge, contributed to the prolonged duration of many criminal cases in the courts. Incidentally, this provision has recently been nullified for being inconsistent with section 290(1) of the 1999 Constitution (as amended) by the Supreme Court in *Ude Jones Udeogu*

					v Federal Republic of Nigeria & 2 Ors, Suit No. SC. 622[c]/2019. This has grave implications for the utility of the provision and the problem it aimed to solve.
L.	Provisions Relating to Sentence of Death				

26.	Sentencing in the case of pregnancy	Section 404	Section 304(2) See section 313 on procedure for determining the question as to whether or not such a convict is pregnant.	Section 33, 1999 Constitution, as amended; sections 39(2) and 319(3) Criminal Code Act Cap 39 LFN 2010; Article 3, Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty; Principle 5(2), Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment	The ACJA provision is in line with the constitutional provision on the sanctity and protection of life provision to which even an unborn baby, who is completely innocent of the mother's offence is entitled. The ACJL, Bayelsa, provision, like that of some other states such as Adamawa and Anambra, constitutes an exception to the general prescription of death sentence for a suspect convicted of a capital offence. Pregnancy, in this instance, thus, constitutes a mitigating factor.
27.	Convict may send request to committee on prerogative of mercy.	Section 409	Confers no right of request for review on a convict.	Sections 175 and 212, 1999 Constitution, as amended	These provisions provide the procedure for the initiation

					of the exercise of the constitutional provisions on the prerogative of mercy. It does not, however, specify whether the request is to be in writing, but the assumption is that it is intended to be in writing, especially with the use of the word "forward".
28.	State at which the President/Governor is to consider report	Section 410(1)	Section 310(1)(b)	Section 175 and 212, 1999 Constitution, as amended.	These provisions, along with those in sections 409 and 310 of ACJA and ACJL, Bayelsa, respectively, are in furtherance of the procedure on the constitutional provisions on the prerogative of mercy in deserving cases by the President of the Federation and

					Governors of states. This procedure is obviously aimed at ensuring fairness and lack of arbitrariness in the exercise of this prerogative that has serious implication on the well-being of the society. The reference in subsection (2) ACJA to "in relation to any person sentenced to death" regarding the advice of the Council of State to the President is, however, unnecessary since the request for review only applies to death sentence convicts, which is the only focus of the sections 409 and 410.
M.	Probation and Non-Custodial Alternatives/Juvenile Offenders				

29.	Probation and Non-Custodial Alternatives	Sections 453-459 – empower the courts to make probation order in specified cases and the circumstances under which it should operate.	Sections 342-348 are generally the same as the ACJA.	Sections 1, 2, 4, 37-44 Nigerian Correctional Service Act 2019	The title of this Part of the laws should have read "Probation and Other Non-Custodial Alternatives". Probation order is made after the charge has been proved, but prior to conviction and sentence as opposed to other non-custodial alternatives, which are sentences imposed after
		Sections 460-466 – provide for community service and the conditions under which it operates.	Sections 349 provides for community service and the conditions under which it operates, though in a less elaborate way than the ACJA		

		Section 467 provides for confinement in Rehabilitation and Correctional Centre.	Section 350 provides in same terms as the ACJA.		conviction. Thus, under section 459 and 348 of ACJA and ACJL, Bayelsa, respectively, where the court, subsequently becomes satisfied that the Defendant has flouted a condition of his recognizance, the Court may proceed to convict and sentence the probationer for the original offence without further proof of his guilt. Non-custodial punishment is a form of criminal sentence that does not require a prison term. It is effectively, a rehabilitative form of criminal sentence. The provisions in focus provide for probation, community service and

					confinement in Rehabilitation and Correctional Centre. The provisions of the ACJA and ACJL, Bayelsa, to a reasonable extent take into consideration international best practices such as the principles enunciated in the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), but fall short in certain aspects such as sentencing dispositions, post sentencing dispositions, staffing, treatment process and public participation. The problem, however, is that the structures needed for the effective

					implementation of these sentencing alternatives are hardly in place, thus making it difficult for the courts to impose these sentences as they should.
N.	Administration of Criminal Justice Monitoring Committee				
30.	Administration of Criminal Justice Monitoring Committee	Section 469--476 provide for the functions, funding and other relevant issues affecting the	Has no equivalent provisions		The establishment of a monitoring committee for the ACJA is an indication of the

		functionality of the Committee.			premium that has been placed on the need for its successful implementation. It is also an indictment on the approach of the Nigerian society, often including personnel of criminal justice administration, to law enforcement, which has been significantly abysmal. The expectation is that through the activities of these Committees, the ACJA will bring to fruition the goal of the government and non-governmental stakeholders for a reformed system of criminal justice administration in Nigeria. Note, however, that the provision of sections 469(2)(i) of

					the ACJA is ambiguous. It provides for the appointment of "a representative of the Civil Society working on human rights and access to justice or women['s] rights to be appointed by the Committee to serve for a period of two years only" without more. Is this a one-off appointment that terminates the inclusion of such a representative in the Committee after the first two years of the existence of the Committee, or will another representative be appointed on a rotational basis as the tenure of each incumbent lapses? It is also thought

					that it would have been best to provide for a representative of women's human rights interest in the Committee on a continuous basis rather than make it an alternative to a person "working on human rights or access to justice". This may result in a situation where there might end up never being a person on the Committee at any point in time who represents the human rights interest of women. Again, there is no provision for any of the members of the Committee to be specifically a woman. This perpetuates the marginalisation of women in total disregard of the

					recognised affirmative action principle in Nigeria. This is one of the aspects of the law that should be reviewed.
O.	Fees and Miscellaneous Provisions				
31.	Power to Make Rules of Court.	Section 490	Section 355		The provision under ACJA is not the most appropriate way of conferring a duty. Without a proper understanding among the various judicial officers on whom this duty is alternatively imposed, there could, at one extreme, either be rivalry among them, or, at the other extreme, a total dereliction of duty by each of them in the expectation that either of the other officers will execute the duty. The provision

					should have been specific as to who should discharge the duty it creates.
32.	Non-compliance	Section 491	Does not provide for this.		This is a provision that places premium on effective discharge of responsibilities by relevant persons. The failure to provide specific general sanction for such failure here implies that each case will be dealt with according to the prevailing rules by specific appropriate authorities.
33.	Interpretation of courts	Section 494	Section 2	Section 1(1) Criminal Code Act, Cap C39, LFN 2010; section 258(1) Evidence Act 2011.	The definition of court in the two legislation is open ended making room for the application of the laws to any other court(s) that may be deemed appropriate by any other law to apply

					its provisions. There is, however, an error in the phrase "a Magistrates' Court" in the ACJL, Bayelsa. It should have read "a Magistrate's court". Again, "provided", highlighted here in the ACJA provision, is erroneously used in place of "presided over''. Furthermore, the use of initial capital for the defined word, "Court" and all other defined words in ACJL, Bayelsa, is improper. They should have been in lower caps since court and all the others are not generally used as "Court" etc. in the Law. The only exception to

					this is when a word is uniformly used with an initial capital throughout the Law. Note that while ACJA and ACJL, Bayelsa define court in terms of the structural designation, the Evidence Act defines it in terms of the offices, i.e. "judge", "magistrate" section 258(1) while the Criminal Code defines it in terms of both structural designation and offices, i.e. "High Court" "Judge" etc. section 1(1).

Table 6:Comparison between ACJA 2015 and Bayelsa State ACJL

6.5. Practical Challenges with the Implementation of ACJA/ACJL, Bayelsa State Provisions

The following are the practical challenges with the implementation of the ACJA/ACJL, Bayelsa State provisions:

i. Challenges faced by the judiciary such as: low level of transparency and accountability on such matters as appointment, assignment and management of cases, promotion, discipline etc.; Abysmal pay and retirement benefits,

poor state of physical infrastructure; inefficient filing systems and case management; old fashioned mode (longhand) of taking evidence; inadequate continuing judicial education; congested court dockets etc. impede day to day trial and any other form of time bound trial, thereby encouraging incessant adjournments, which impacts negatively on speedy trial – the ultimate goal of the legislation.

ii. Trial processes and other tactics adopted by defendants to frustrate criminal trials such as trial within trial, especially in courts where the judges are not firm enough to strictly implement the provisions of ACJA and ACJL, Bayelsa, extensive and gruesome cross-examination of prosecution witnesses; intimidation of hard working and uncompromising judges and magistrates through petition-writing etc.

iii. Poor remuneration for prosecutors, excessive workload, limited training and capacity building, lack of witnesses or resources to ensure the presence of witnesses in court and other requirements for speedy trial, and poor knowledge of the ACJA and ACJL provisions.

iv. The use of the discretionary word "may" instead of the mandatory "shall'', in relation to the requirement for electronic recording of suspect's confessional statement in section 15(4) of the ACJA creates a loophole which is susceptible to exploitation by the police and other government departments involved in recording statement of suspects. Additionally, the likelihood of the non-provision of this electronic device may continue to perpetuate the necessity for trial within trial and the problem of delay in trial.

v. The challenge of refusal or failure of invited witnesses to come to police stations to make statements or attend court sessions, despite the provisions of the law requiring their mandatory attendance and payment of allowance for

legitimate expenses, trouble, and loss of time incurred as a result; and penalty for failure/refusal to do.

vi. The abolition of lay prosecution by the ACJA will result in the unavailability of sufficient lawyers to prosecute cases.

vii. By virtue of section 270(3) and (5), virtually every criminal charge can be subjected to plea bargaining as the window has been left completely wide open by the conditions for qualification for consideration provided there. This reinforces the criticism that the concept promotes inefficiency in investigation on the part of relevant prosecutorial agencies, which continues to hinder societal acceptance of the concept.

viii. Lack of physical and other complementary structures for the operation of the non-custodial sentencing provisions of the laws as convicts serving non-custodial sentences and the under aged are expected to be kept in reform institutions or rehabilitation centres and not in the prisons.

ix. Absence of a monitoring team or committee on the implementation of the ACJL, Bayelsa, and penalty for non-compliance with the provisions of the law by relevant stakeholders as contained in the ACJA, will most likely impede the effective implementation of the Law.

x. The nullification, by the Supreme Court, of the provision of section 396(7) of the ACJA empowering a judge elevated to the Court of Appeal to continue and complete a part heard matter within a reasonable time reinforces the mischief the provision was meant to cure. This is also a lesson for our legislators to be more painstaking when enacting laws to ensure that they do not make laws that breach constitutional provisions.

6.6. Recommendations

i. Adequate infrastructural and training provisions should be made for judges, magistrates and relevant judicial staff in order to enhance their capacity to meet the requirement of the provisions of the legislation for speedy trial.

ii. As much as possible, judicial officers should be uncompromising in enforcing the time lines provided in the ACJA/ACJL and stiffer penalties should be provided to sufficiently deter the defence team from frustrating the course of justice through the adoption of tactics that impede speedy trial.

iii. Sections 270, and 71 and 72 of the ACJA and ACJL, Bayelsa, respectively, should be amended to resolve the problem of the scope of offences to which the plea bargain can apply. There are cases to which it should not apply on grounds on public interest and morality. ACJA and ACJL, Bayelsa can borrow a leaf from section 167 (2)-(4) of the Anambra State ACJL 2010, which provides that plea bargaining shall not apply to any offence involving grievous violence or sexual assault, or to persons charged with capital offences, or any offence involving the use of violence, or persons who had in the last ten years been convicted and sentenced for any such similar offence. The Indian Criminal Law (Amendment) Act, 2005[23] also disallows plea bargaining for cases already pending in court, offences punishable by death, life imprisonment, or imprisonment for more than 7 years, offence against women, offences affecting the socioeconomic condition of the country and offences against children below the age of 14.

iv. Provision should equally be made in the legislation for penalties against the prosecutor or judge who fails to comply with any of the rights accorded the victim in relation to plea bargaining in sections 270 and 72 of the ACJA and

[23] Chapter XXIA, 2005, s 265A, 1(b).

ACJL, Bayelsa, respectively, and also for the remedy available to the victim in such instances.

v. Though the two legislation provide for rights of the victim in sections 270 and 72, respectively, none of them defines who a victim or his/her representative is. It is necessary that this be clearly defined to avoid unintended outcomes.

vi. Relevant physical and other complementary structures for the operation of the non-custodial sentencing provisions of the laws should be adequately provided for as a matter of urgency in order to encourage judicial officers who are willing to adopt such measures to freely do so and hasten the realisation of the goal of the provisions.

vii. In view of the abolition of lay prosecutors by the ACJA, funding should be made available for the employment of more lawyers to prosecute cases. Failure to timeously do this might impede the effective implementation and realisation of the primary goal of the Act.

viii. The ACJL, Bayelsa, should be amended to provide for day-to-day trial, a more holistic witness protection measures, a monitoring committee for the Law and penalty for non-compliance with the provisions of the Law in order to aid its more effective implementation. It should also provide for the responsibility of the authority in custody of the suspect/arrested person to notify the suspect's/arrested person's next of kin or relative of the arrest at no cost to the suspect/arrested person.

ix. All syntactic and legislative expression gaps in both laws should be addressed to avoid unintended outcomes.

x. The language of the ACJL, Bayelsa, should be simplified. The solid block provisions should be broken into more sections and paragraphing effectively deployed for clarity and better understanding. The heading format of the Law should equally be revisited to make it more conventional.

6.7. Conclusion

The ACJA 2015 and ACJL, Bayelsa State, 2019, have introduced innovations that are aimed at transforming the administration of the criminal justice system within their spheres of operation. These innovations as outlined in this analysis include: a clear intentional shift from punishment as the main goal of the criminal justice to restorative justice which pays attention to the needs of the society and the rights and dignity of victims and vulnerable persons in line with international best practice; the prohibition of the arrest of family and friends in lieu of the suspect as a means of compelling the suspect to submit to arrest; electronic recording of statement of suspect as a way of checkmating the use of violence in securing indicting confessional statements from suspects; removing the barrier against a husband or wife acting as a competent and compellable witness in respect of any action, including property, thus enhancing a wife's chances of obtaining remedy in respect of her property in marriage; elaborate plea bargain guidelines setting standards and limits of its application; detention time limits and mandatory day to day trial, among others. In effect, these innovations indicate a deliberate effort at overhauling the criminal justice system in Nigeria in a way that compels the institutions that manage criminal justice to ensure the realisation of the primary goal of criminal justice, which is speedy dispensation of justice.

As indicated in sections 1(1) of both legislation, the objective of the legislation is to ensure that the system of administration of criminal justice in Nigeria and Bayelsa State, respectively, promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim. Subsection (2) of each legislation also mandates all persons involved in criminal justice administration to ensure compliance

with the provisions of the Law for the realisation of its purposes. Clearly, barring some of the identified gaps in the legislation, the contents of each legislation meet this objective. The challenge is more with regards to the mandate in subsection (2).

A lot of effort and resources have gone into sensitisation and other forms of training at different levels in order to enhance the appreciation and implementation of the legislation by the various stakeholders. Without doubt, their implementation has brought an appreciable measure of improvement and speed in the criminal justice system. This notwithstanding, it is apparent that the path to the full realisation of the goal of the legislation is still thorny and the destination is not yet in sight. A combination of factors is responsible for this – pitfalls in the provisions of the laws and other external challenges highlighted in this analysis. A timely attendance to these issues will ease and correct the pitfalls thereby hastening the realisation of their goals.

COMPARATIVE ANALYSIS BETWEEN THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015 AND EDO STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW 2016*

7.1 Introduction

Beginning with the Lagos State Administration of Criminal Justice Law 2007, followed by the Anambra State Administration of Criminal Justice Law 2011, there has been the push to revamp the Nigerian criminal justice system to ensure efficient access and delivery of justice. In 2015, the President Goodluck Jonathan, assented to the Administration of Criminal Justice Act 2015. As explicitly stated in its explanatory memorandum, the Act

> … provides for the administration of criminal justice system which promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crimes and protection of the rights and interest of the suspect, the defendant and victims in Nigeria.

Presently, thirty (30) states out of the thirty-six (36) states of the federation have adopted administration of criminal justice laws.[1] In fulfilment of its mandate to undertake and disseminate research in all areas of law, the Nigerian Institute of Advanced Legal Studies (NIALS) funded by the MacArthur Foundation is carrying out an analysis of all the existing states administration of criminal justice laws. The objective is to provide a one-stop resource material where potential users can immediately access comparative

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[1] Parnters West Africa Nigeria, ACJL Tracker < https://www.partnersnigeria.org/acjl-tracker/> last accessed 30 October 2020.

analyses of the existing states ACJLs which in turn might influence the structure and content which the remaining nine (9) states can choose to adopt. In view of the above, this article provides an analysis of the Edo State Administration of Criminal Justice Law 2016, within the following parameters: (i) compliance with international best practices, (i)i similarities and dissimilarities with the ACJA 2015 and (iii) challenges and recommendations.

7.2 Compliance with International Best Practices

Given the national approach to criminal justice standards, there are no universal norms and standards. However, the United Nations has developed several soft laws with the objective of providing guidelines that states can adopt in promoting fair and effective criminal justice system. Even though they are soft laws, the ***United Nations Standards and Norms Related to Crime Prevention and Criminal Justice*** "represent 'best practices' that can be adapted by states to meet national needs."

As earlier stated, the ACJA 2015 came into existence to "ensure that the administration of justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim." The ESACJL 2016 has the same purpose. The pertinent question then is, to what extent does the ESACJL 2016 in fulfilling its objective comply with recognised international best practices, namely, the UN standards and norms? Undertaking a review of the UN standards and norms, it is evident that the ESACJL 2016 reflects several principles espoused. **Table 7** provides a detailed overview.

Subject matter	*UN Standards and Norms*	*ESACJL 2016*
Arrest	**Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment**	
	Principle 1: "All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person"	See section 8 (a): "A suspect shall- be accorded humane treatment having regard to his right to the dignity of his person."
	Principle 2: "Arrest…shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose."	See section 3: "A suspect or a defendant …shall be arrested …according to the provisions of this Law, except otherwise provided under this Law."
	Principle 6: "No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."	See section 8 (b): "A suspect shall – not be subjected to any form of torture, cruel, inhuman or degrading treatment."
	Principle 10: "Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him"	See section 6(1): "…police officer or other persons making the arrest shall inform the suspect immediately of the reason for the arrest."
	Principle 12(1): "There shall be duly recorded (a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as	See section 15(1): "Where a suspect is arrested…the police officer making the arrest

	well as that of his first appearance before a judicial or other authority; (c) The identity of the law enforcement officials concerned; (d) Precise information concerning the place of custody."	or the officer in charge shall cause to be taken immediately …the following record of the suspect arrested: (a) the alleged offence(s); (b) the date and circumstances of his arrest…"
	Principle 13: "Any person shall, at the moment of arrest … be provided by the authority responsible for his arrest…with information on and an explanation of his rights and how to avail himself of such rights."	See section 6(2) (a)(b)(c): the police office or the person making the arrest is mandated to inform the suspect of his right to remain silent, consulting a legal practitioner of choice, free representation.
	Principle 14: "A person who does not adequately understand of speak the language use by the authorities responsible for his arrest…is entitled to receive promptly in a language he understands the information …and to have the assistance free of charge…of an interpreter…"	See section 17 (4)
	Principle 17: "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it."	See section 6(2)(b)(c)
	Principle 29: "In order to supervise the strict observance of relevant laws, and regulations, places of	See section 34(1)(2)

	detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of administration of place of detention or imprisonment."-	
	Principle 39: "Except in special cases provided for by law, a person detained on a criminal charge shall be entitled unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. such authority shall keep the necessity of detention under review."	See section 158.
	Code of Conduct of Law Enforcement Officials	
	Article 2: "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."	See section 8 (a) and (b)
	Article 3: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."	See section 5
	Basic Principles on the Role of Lawyers	
	1. Access to lawyers and legal services: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and defend them in all stages of criminal proceedings"	See section 6(2)(b)(c)
	2. Special safeguards in criminal justice matters:	

	"Government shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."	
	United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems	
	Principle 1: "…States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where appliable, in the constitution."	See section 6(2)(c)
	Principle 8: "States should ensure that, prior to any questioning and at the time of deprivation of liberty, persons are informed of their right to legal aid and other procedural safeguards as well as of the potential consequences of voluntarily waiving those rights."	See sections 6(2)(a)(b)(c) and 17(3)
Non-custodial Alternatives	**Kampala Declaration on Prison Conditions in Africa**	
	Alternative sentencing, paragraph 5: "That community service and other non-custodial measures should, if possible, be preferred to imprisonment;"	See sections 420, 453-468.
	United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)	
	Rule 1.5: "Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the	See sections 420, 453-468.

	requirements of social justice and the rehabilitation needs of the offender."	
	Kadoma Declaration on Community Service and recommendations of the seminar entitled "Criminal justice: the challenge of prison overcrowding" held in San José from 3 to 7 February 1997	
	Paragraph 4: "Community service should be effectively implemented and supervised and should involve a programme of work in which the offender is required to carry out a number of hours of voluntary work for the benefit of the community in his or her own time;"	See sections 461 and 462(1)(2).
Juvenile Offender	**United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)**	
	Paragraph 2.3: "Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules, and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:"	See section 452
Compensation and Restitution	**United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)**	
	Paragraph 8.2 (f): "Sentencing authorities may dispose of cases in the following ways: …Restitution to the victim or a compensation order."	See section 321.

Table 7: Level of Compliance of the Edo State ACJL with International Best Standards.

7.3 A Comparison of the Edo State Administration of Criminal Justice Law 2016 and Administration of Criminal Justice Act 2015

Enacted by the Edo State House of Assembly in 2016, the Edo State Administration of Criminal Justice Law (ESACJL) was signed on the 20th of

March 2018, signifying its commencement date. Given that the ACJA 2015 provides the blueprint for the states to adopt, it is no surprise that the ESACJL 2016 mirrors the ACJA 2015, however, there are few differences. Given that the ESACJL 2016 is a replica of the ACJA 2015, the objective of this section is to highlight the areas where there are divergences.

Item	ESACJL 2016	ACJA 2015
Structure	Both share similar structure and headings. However, while ACJA 2015 has forty-nine (49) parts and 495 sections, the ESACJL 2016 has forty-eight (48) parts and 494 sections	
Interpretation of terms	Terms present in the ESACJL 2016 but absent in ACJA 2015 are: - Attorney General: defined as the Attorney General of Edo State - Definition of Chief Judge as specifically Chief Judge of Edo State - Definition of Commissioner of Police as specifically Commissioner of Police, Edo State - Court specifically excludes federal courts - State law - Judge specifically refers to Judge of a High Court and President of an Area Customary Court - State Counsel	Terms present in the ACJA 2015 but absent in ESACJL 2016 are: - Currency - Court is defined to include federal courts - Federation - Federal law - Part-heard criminal matter - Reasonable time
Part 1	Section 2(3) makes it mandatory for a court to adopt a procedure which in its opinion will result in substantial justice in the matter where the ESACJL 2016 is silent on the matter	Section 492 (3) makes it discretionary for the court to apply any procedure that will meet the justice of the case where there are no

		express provisions in the Act.
Part 2	Section 6(3) adds "Provided that where the suspect refuses to disclose the name or address or other means of reaching his next of kin or relative, the Authority having custody of him shall be discharged from this responsibility"	Absent
	Section15(2) amends the provision to state "not exceeding twenty-four (24) hours"	Section 15(2) states "not exceeding 48 hours"
	Section 16(3) amends it to reflect the Edo State Police Command	
	Section 17(2) adds "or such other person" to qualify the "any other person of his choice"	Absent
	Section 17(3) is different from Section 17 (3) ACJA 2015. The provision explicitly makes it the responsibility of the officer recording the statement to bring to the attention of the arrested suspect his right under the subsection. However, it is the responsibility of the suspect to choose and decide on the person who shall witness the recording of his statement. Where the suspect chooses not to decide, the subsection makes it discretionary for his statement to be taken in that circumstance	Absent

	Section 29, ESACJL takes cognisance that it is a state law and as such does away with the Inspector of General of Police. It has four (4) subsections in contrast with ACJA 2015 five (5) subsections. A review of section 29 ACJA 2015 and section 29 ESACJL 2016 highlights something that is likely to cause problem in the future. The ACJA 2015 mandates the Attorney-General of the Federation to establish electronic and manual database of all records at the Federal and State level. The Attorney General of Edo State is mandated by the ESACJL 2016 to carry out same function. This raises a fundamental question, which is where the Attorney General Edo State establishes this database in Edo State, would he be encroaching on the powers of the Attorney General of the Federation?	
	A review of sections 32 and 33 ACJA 2015 and sections 32 and 33 ESACJL 2016 shows this fundamental error. Subsections (2)-(5) that originally should be in section 33 ESACJL 2016, was mistakenly placed in section 32. This leaves the original subsections (2) –(3) which are critical provisions to remedying situations where the suspect is taken into custody for non-capital offence and is not released on bail after 24 hours. The import of this error is that a suspect in Edo State might be left without the appropriate remedy should such occur. There is the urgent need to amend the ESACJL 2016 to correct this error.	
	The difference between section 34(2) ACJA 2015 and section 34(2) ESACJL 2016 is that while ESACJL makes it mandatory the functions the Magistrate is to perform during a visit to the police station, ACJA 2015, makes them discretionary.	
	Section 34 (4) ACJA 2015 makes reference to other federal government agencies. This is absent in ESACJL 2016.	
Part 9	Section 94 ESACJL 2016 cross references to section 94 ACJA 2015 on offences at sea.	
Part 10	Section 106(d) includes a police officer as persons with the authority to prosecute all offences in any court in Edo State	Absent

Part 13	Section 112(10) gives the Magistrate the discretion to consider granting bail to the suspect. This provision is different and absent from the ACJA 2015.	Section 112 (10) gives the Magistrate the mandate to frame a charge where he /she is of the opinion that there is ground that the suspect committed an offence. This provision is different and absent from the ESACJL 2016.
	Section 112(11) modifies it to reflect the bail provision in clause 112(10)	No mention of bail.
Part 23	Section 232(4) removes offences under the Terrorism (Prevention) (Amendment) Act and the Economic and Financial Crimes. Adds provisions under the Criminal Code or Act.	
Part 28	Section 270(1) states "Subject to the provisions…"	Section 270(1) states "Notwithstanding anything…"
	Section 270(15)-(17) is different from what is in ACJA.	
Part 36		Section 376 (7) is absent in ESACJL
	Section 396(4) is subject to ss(5)	Absent
Part 40	Section 420(1) gives the court discretion to impose fine in lieu of imprisonment	Absent
Part 46	Section 473 (1) adds "and the Attorney General shall forward	Absent

	same to the Executive Council for deliberation and approval."	
Part 47	Although the contents of section 485ACJA and section 485 ESAJL are similar, there is difference in presentation. Subsections (8) – (11) is depicted as (i-iv) in section 485. Subsection (9) in section 485 is subsection (12) in section 485.	

Table 8: Comparison between ACJA 2015 and Edo State ACJL

7.4 Challenges and Recommendations

The past section shows that the ESACJL 2016 has sought to adhere to international best practices and as such introduces several innovative provisions. These innovative provisions include: introducing bonds person; maintaining crime records registry; submission of the following reports and records to the Magistrate (i) suspects arrested without warrants and (ii) arrest and bail; inspection of police stations by Magistrate; electronic recording of statement; the Administration of Criminal Justice Monitoring Committee (ACJMC); compensation of victims; and so on.

As laudable as the innovative provisions of the ESACJL 2016 are, several factors are critical to ensuring its success and they include: funding, infrastructure, sustainable energy access, political will. As long as these factors persist, the journey towards ensuring effective administration of criminal justice system in Edo State might be a slow one. It is imperative to state that these challenges are national and not state specific.

This article recommends the following in addressing the identified challenges:

i. Continued capacity development of the critical justice stakeholders.

ii. Community Awareness creation to inform the public on the new ethos contained in the ESACJL

iii. Collaboration with private and international agencies to establish requisite infrastructure

iv. Proactive approach on the part of the judiciary in interpreting the innovative provisions.

v. Improved funding of the criminal justice system to enable criminal justice actors discharge their responsibilities effectively and efficiently.

7.5 Conclusion

The article has sought to examine the ESACJL 2016 to tease out its similarities and differences with the ACJA 2015, and to evaluate whether its provisions adhere to international best practices. The article finds that even though the ESACJL 2016 extensively mirrors the ACJA 2015, however, the drafters took cognisance of the peculiarities of the state and reflected these in the Law. The article finds also that the identified challenges, unless swiftly resolved, might continue to be a clog in the wheel of realising effective administration of justice in Edo State.

A COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 AND ADMINISTRATION OF CRIMINAL JUSTICE AND OTHER RELATED MATTERS LAW *OF OGUN STATE 2017.*

8.1. Overview of the Administration of Criminal Justice Act (ACJA) and the Administration of Criminal Justice Law (ACJL), Ogun State

The Administration of Criminal Justice Law of Ogun State is cited as the Administration of Criminal Justice and Other Related Matters Law of Ogun State 2017 (hereinafter ACJL) and it came into force on the 29th day of May 2018. The Law is made up of Five Hundred and Twenty-Three (523) sections, divided into Fifty (53) parts. The Law repeals the hitherto existing Criminal Procedure Law of Ogun State 2006.

Generally speaking, the Law is a substantial reproduction of the Administration of Criminal Justice Act 2015. Being a legislation that came after the ACJA 2015, the Law has made some additions, which have added value to its overall content. This analysis also shows that in some areas, the law differs with the ACJA 2015 in a way that does not compliment the Constitution of the Federal Republic of Nigeria 1999 as amended.

8.2. Compliance with International Best Practices

Before the advent of the Administration of Criminal Justice Law and Other Related Matters Law of Ogun State 2017, the applicable law in the State was the Criminal Procedure Law of Ogun State 2006. This Law was characterised with shortcomings. Over the many years of its existence, the criminal justice sector suffered many concerns ranging from poor and undue delay in justice delivery, poor case management system, corruption, human rights abuses, and lack of legal framework incorporating the modern information technology. There had

been poor coordination and cooperation amongst criminal justice institutions. The advent of the Administration of Criminal Justice Law and Other Related Matters Law of Ogun State 2017 with lots of changes and novel provisions no doubt has given the State's criminal justice system a face lift.

Like the ACJA 2015, the ACJL 2017 of Ogun State has revolutionised the criminal justice system through the incorporation of innovative provisions. Some of these provisions relate to arrest, case management, day-to-day trial, provision of central criminal records registry, witness protection policy, detention time limits, electronic recording of court proceedings, video recording of confessional statements, front loading by prosecution and disclosure requirements. The Law also emphasises a paradigm shift from punishment of offenders as the main goal of criminal justice system to restorative justice. To this extent, it has provisions dealing copiously with non-custodial sentencing measures.

These provisions, amongst many others indeed reflect compliance with international best practices. The world over, the international best practice has been emphasis on observance and protection of human rights, speedy and efficient justice delivery as well as prison reforms. This is exactly what is covered in section 3 as the purpose of the Law. The detailed provisions of the point evidently to this assertion.

8.3. Comparative Analysis the Administration of Criminal Justice Act (ACJA) and the Administration of Criminal Justice Law (ACJL), Ogun State

As stated earlier, the ACJL of Ogun State 2017 bears much resemblance with the ACJA 2015. The general overview to the two enactments is as presented in **Table 9**.

S/N	CONCEPT	ACJA 2015	Ogun State ACJL 2017	Complementary Provisions	ANALYSIS
1	Purpose.	Section 1	Section 3	Sections 34, 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 (As amended) - (CFRN)	Understanding the purpose of these laws is very germane. The emphasis on efficiency, speedy dispensation of justice and the interests to be protected being the society from crime, the rights of the suspect, the defendant as well as the victim is in tune with international best practice. The two legislation recognise this philosophy and accordingly have incorporated same in the body of the law.
2	PROHIBITION OF Arrest in lieu	Section 6	Section 9		Section 6 ACJA 2015 prohibits the arrest of a person in place of a suspect. Section 9 (1) of Ogun State ACJL 2017 however makes it more elaborate. The section adds that such person cannot be arrested to secure the apprehension of another person. However, this will not apply to a

					surety. This is given the fact that as a surety, you are usually under a bond or obligation by your undertaking to produce a suspect. Thus, where such a suspect jumps bail, your bail bond is forfeited. Under those circumstances, a person can be arrested albeit on account of the suspects unavailability. Section 9(2) of ACJL 2017 Ogun State further provides for consequential action in the form of a remedy for a person if wrongly arrested in lieu of another person/suspect. Upon an application on notice, the court can order the immediate release of such a person and proceed summarily to award damages for such wrongful arrest or apprehension. This is proactive and progressive provision, which makes it a step

					ahead of the ACJA 2015.
3	Recording of arrest especially with regard confessional statement	Section 15 (4) (5)	Section 17 (4)(5)	Section 28 and 29 (1)(2) & (3) of the Evidence Act	Subsections (4) of section 15 ACJA 2015 & section 17 ACJL Ogun State both allow the video recording of a confessional statement of a suspect, which could be used in court against a defendant. The language adopted by both legislation is "may". In practice, this has created serious problem of interpretation as to whether "may" as used therein is permissive or mandatory. While in the case of Akaeze Charles v. Federal Republic of Nigeria (2018) LPELR-43922(CA). the Court of Appeal held the view that "MAY" as used in ACJA 2015 should be construed as mandatory, in the case of STEVE EMEKA IKE v. THE STATE OF LAGOS (2019) LPELR-47712(CA).. the Court of Appeal held that "MAY" as used in the ACJL 2009 of Lagos is permissive.

					The implication of the above is that it makes the admissibility status of a confessional statement unclear, especially where the requirement of video recording was not complied with. This is notwithstanding the fact that under ACJA 2015 for instance, subsection (5) of section 15 provides that "notwithstanding the provision of subsection (4) of this section, an oral confession of an arrested suspect shall be admissible in evidence" However, the Ogun State ACJL 2017 somewhat extends the provision of section 17(4) to the effect that the arrested suspect who volunteers a statement, if so desires, will make the confessional statement in the presence of a Legal Practitioner of his choice. The Law contains a proviso to the effect that non-compliance with

					any requirement of the section shall preclude the admissibility in evidence of any confession otherwise admissible under the relevant provisions of the Evidence Act. The point of divergence here between the ACJL of Ogun State and the ACJA 2015 is in the former's emphasis on the Evidence Act, which is the principal Act dealing with matters of evidence. By section 29 of the Evidence Act, a confessional statement, whether written, video recorded or oral, being a confessional statement must satisfy the standard laid down in subsection (2)(a)(b). This removes any doubt as to whether being an oral confessional statement, it is exempted from the admissibility requirements as to voluntariness or otherwise.

					Subsection 5 of the Ogun State ACJL further makes a mandatory provision. That where at the point of taking the confessional statement, if the option of recording it on a video was exercised, then the video must be tendered in the court at the point of trial.
4	Recording of arrest and Central Criminal Records Registry	Sections 15 (1) & Section 16	Section 17(1) & section 18		These sections, which are innovative in our criminal justice system are wholly identical in both pieces of legislation. The aim, amongst other reasons, is to build a forensic nexus between a suspect, defendant and an alleged ex-convict. The Ogun State ACJL has however covered gap noticeable in the ACJA 2015. This is with regard to the transmission by the Attorney General of the State to the Central Criminal Records Registry, Court of Appeal and Supreme Court decisions on criminal appeals

					emanating from Ogun State. This is not so obviously addressed by the ACJA 2015
5	Recording of statement of suspect	Section 17	Section 19		These sections are similar to some extent. They have to do with recording a volunteered statement of a suspect. The two pieces of legislation require that such statement be recorded in the presence of a Legal practitioner (amongst others) of the choice of the suspect Here, ACJA does not require the process to be video recorded. The Ogun State ACJL in subsection 3 permits the suspect's legal practitioner or such other person to video record the process. The video record shall be processed in the presence of the police officer and a copy given to him. Such video recorded statement may be tendered in court.

					In the event of non-compliance with this process, the suspect can complain to the court and if the court finds that there was no compliance, declare that the statement be inadmissible.
6	Report of arrest to the Attorney General	Section 29 (2)	Section 31(1)		These legislation provide for the obligation to report to the Attorney General of the State, record of arrest within certain time line. While the ACJA provides for quarterly remittance, the Ogun State ACJL provide for monthly time line. There is therefore a clear conflict of time line for remittance of the record of arrest here.
7	Remedy of suspect detained in custody in respect of non-capital offence and not released for more than 24 hours	Section32(1)	Section 34(1)(b)	Section 35 CFRN 1999	Both the ACJA and the ACJL provide that a detained suspect for non-capital offence more than 24 hours upon being notified, the court can inquire into the circumstance of his continued detention and

					admit the suspect to bail. While the ACJA 2015 makes this provision with regard only to detention in non-capital offence, the Ogun State ACJL permits the same procedure to follow in circumstance where a suspect is detained for more than 24 hours with respect to contract or civil wrong.
8	Prosecution of offences.	Section 106	Section 113		The two legislation have moved away from the era of lay prosecutors by providing for those who can prosecute, which are only qualified lawyers. The restriction on persons to prosecute to only qualified lawyers no doubt ushers in an era where competent hands will handle prosecution and it in turn erased the era where otherwise good cases were lost on account of incompetent and ill-qualified lay prosecutors.
9	Witness expense	Section 251 & 252	Section 263		The two legislation provide for the need to take care

					of the reasonable expenses of a witness who attends court to testify. The good thing about this provision is that it addresses the challenges that sometimes confront witnesses in transporting themselves to court different at adjourned dates to ensure efficient and expeditious determination of cases. ACJA 2015 in section 252 even extends such gesture to witnesses for the defence. However, the Ogun State have such accommodation for witnesses for the defence. In fact, even the prosecution witness, it is only the witness summoned by the court that is entitled to such payment.
10	Stay of proceedings	Section 306	319(1)	Section 36(1)(2)(a) CFRN 1999	Section 306 provides that "An application for stay of proceedings in respect of a criminal matter before the court shall not be entertained"

					The rationale behind this provision is noble as it aims at effective case management by doing away with delay since justice delayed is justice denied. This section is however liable to offend the constitutional provisions of fair hearing as enshrined under section 36 (1)(2)(a) of the CFRN 1999. The language used in this provision is that such application shall not be entertained at all. This raises a fair hearing issue, which dictates that an application, no matter how frivolous, downright, stupid, reckless, or unmeritorious, must be heard and determined one way or the other. See the cases of Newswatch Communications Limited V. Alhaji Aliyu Ibrahim Atta (2006) LPELR-1986 (SC); Federal Airport Authority of Nigeria V. Wamal Express Services [Nig] Ltd

					(2011) LPELR-1261 (SC) & Elizabeth Monday Sambo & Ors. V. Solomon Etim Ekon & Ors (2013) LPELR-20394 (CA). Apparently, mindful of the potential fate of this provision the way it is couched for likely conflicting with and contravening the constitutional provisions, the Ogun State ACJL equivalence of this provision is drafted differently. Thus, section 319(1) of the Law provides that "Subject to the provisions of the Constitution of the Federal Republic of Nigeria, an application for stay of proceedings in respect of a criminal matter before the court shall not be entertained until judgment is delivered" The implication here is that the operation of the section is not absolute but subject to the dictates of the constitutional

					provisions as to fair hearing. In other words, on the strength of judicial pronouncements and constitutional provisions, an application for stay of proceedings may possibly be entertained as a safeguard of an applicant's fair hearing. Whether or not same will be granted will be a different thing.
11	Detention time limits	Section 296	Section 309	Section 35 (4) CFRN 1999	By Section 296 of ACJA 2015, the detention time limits is upon a court's order for 14 days and not exceeding 4 of such orders cumulatively amounting to a maximum of 56 days. However, in the case of the ACJL 2017 of Ogun State, the court's detention orders, which must also not exceed 4 times is segmented into 60 days, plus 14 days plus 14 days, plus 14 days. Cumulatively translating to 102 days. The difference in days between the ACJA and the

					ACJL of Ogun State is 46 days. This is huge. Section 296 (56 days) approximates to what is provided by the CFRN 1999 in section 35(40(a)(b), which is two months. Section 35(4) of the constitution aims to safe guard the right to personal liberty of a suspect as much as possible. To this extent, the ACJA and the CFRN 1999 are complementary. However, the ACJL 2017 of Ogun State, which provides for a cumulative detention period of 102 days runs afoul of the intent and spirit of the Constitution of the Federal Republic of Nigeria (CFRN), the *groundnorm*.
1 2	Content of information, proof of evidence. (Front loading Requirements)	Section 379	Section 392	Section 36 (6)(b) CFRN 1999	The two legislation are identical in content. Both legislation impose an obligation upon the prosecution to as much as possible make its case available to the defendant to enable the later prepare its defence.

					This is a practice, which in civil litigation is popularly referred to as front loading. But unlike in civil ligation, in both legislation, there is no such corresponding disclosure duty on the part of the defence owed to the prosecution While it is desirable that similar obligation be placed on the defence, it may be argued that unlike in civil litigation, in criminal litigation, a defendant is presumed innocent until proved guilty. The duty is therefore on the prosecution to establish the guilt of the defendant.
13	Electronic recording of deposition of a technical, professional, or expert for use in court as evidence	Sections 362 (1) & 363 (1)	Sections 375(1) & 376 (1)	Section 46 of the Evidence Act	The sections under reference in both legislation empower the court to grant leave for the deposition of a technical, professional or expert to be taken either in writing or electronically. Such deposition, assumed to be non-contentious and thus requiring no cross examination may

					later be used in court in the trial of a defendant. Both legislation however subject the said evidence to section 46 of the Evidence Act. Meanwhile section 46 (1)(b) of the Evidence Act makes it a condition that such evidence is admissible only on the condition that it is subjected to cross examination. There is an apparent contradiction here, which remains unresolved by both legislation. The contradiction lies in the fact that the recorded evidence per section 362(1)/375(1)-ACJA/ACJL and used later in court per section 363(1)/376(1) ACJA/ACJL is considered non contentious hence requiring no cross examination. This is however certainly not in agreement with the requirement of section 46(1)(b) of the Evidence Act.

14	Day-to-day trial and adjournments	Section 396 (3)	Section 410 (3)	Section 15 (3) of the Interpretation Act	To ensure effective case management, both legislation have provided for day-to-day trial of the defendant upon arraignment until the conclusion. See section 396(3) ACJA 2015 and 410(3) of the Ogun State ACJL 2017. The issue of interpretation created by these sections is whether such day-to-day trial until conclusion is without regard to non-working days or public holidays. Section 15(3) of the Interpretation Act provides that: "Where by an enactment any act is authorised or required to be done on a particular day and that day is a holiday, it shall be deemed to be duly done if it is done on the next following day which is not a holiday."
15	Dispensation to continue to sit as a High Court Judge to conclude any criminal	Section 396 (7)	Section 410(4)	Section 253 CFRN 1999	This provision of the ACJA/ACJL is quite innovative and well-intended to make for effective case

	matter in which evidence has been concluded at the time of elevation to Court of Appeal				management. It aims to address the problem of having to start a case *de novo* where a judge who was hearing a matter almost to conclusion was elevated to a Court of Appeal. The popular cliché is justice delayed is justice denied. However, as good and well-intended as the provision may be, it appears to be inconsistent with the CFRN 1999 as to the proper coram of the court. This speaks to the question of jurisdiction and the status of the judge having been elevated to the Court of Appeal, comes back to conclude the matter in the High Court, giving judgment and signing same. The recent decision of the Supreme Court in the case of Ude Jones Udeogu vs Federal Republic of Nigeria & 2 Ors (unreported) Suit No. SC.622c/2019, delivered on May 8th 2020 held that Section 396 (7) of

					ACJA (same with section 410 (4) of the Ogun State 2017) is in conflict with section 253 of the CFRN 1999 dealing with coram of the Federal High Court. To that extent, it means that these sections are null and void.
16	Procedure for trial on charge for certain offences- witness protection policy	Section 232(4)	Section 239(4)	Section 38 (4) of VAPPA 2015: Section 238 of the Ogun State ACJL 2017; Section 29 Terrorism Prevention Act 2011; Section 33 & 34 of the Terrorism (Prevention)(Amendment) Act 2013; Section 17 of the Economic and Financial Crimes Act, Section 47 of the Trafficking in persons (Prohibition) Enforcement and Administration Act 2015;	Both legislation have incorporated the regime of witness protection policy. This is largely in tandem with various subject specific legislation that also promote witness protection policy, which also reflect the international best practice. In particular, the ACJA in section 232 (4) identifies the legislation which it applies to as the Terrorism (Prevention)(Amendment) Act; the EFCC Act and the Trafficking in Persons and related offences: any other Act of the National Assembly permitting such protection policy. The Ogun State ACJL 2017 also

					makes similar provisions.
17	Plea Bargain	Section 270	Section 283		Both legislation have made identical provisions regarding plea bargain. As an innovative direct and comprehensive provision on the subject of plea bargain, it is highly commendable given its high case management potential. Section 270(18) ACJA 2015 and 283(18) of the Ogun State ACJL 2017 both provide as to the finality without appeal, a judgment entered pursuant to subsection 10(a) under the sections. These provisions have however been interpreted and held to contravene the litigant's constitutional right to appeal.
18	Non-custodial sentencing measures	Sections 453-463 467 & 468	Sections 469-483 484,		Both legislation have made provisions for non-custodial sentencing measures. These provisions are a marked departure from the hitherto existing regime which was

					largely imprisonment that led to a serious congestion of prisons amongst many other vices. These non-custodial measures relate to probation orders, suspended sentence and community service, confinement in a rehabilitation or correctional facility and parole sentence. This is no doubt in tune with global best practice.
19	Cost, Compensation, Damages and Restitution	Sections 319-328	Sections 332-341I		On this subject matter too, the two legislation have identical provisions. It had been the practice often times that victims of crimes were left unattended to, even where the offenders were found guilty of the crime. The victims only had a chance of remedy if they initiated an independent civil action. The story is now different. By these provisions, victims of crime have a measure of

					compensation under the law.

Table 9: Comparison between ACJA 2015 and Ogun State ACJL

8.4. Practical Challenges with the Implementation of the ACJA/ACJL Provisions

Although the ACJA/ACJL are well intended and revolutionary in nature going by the numerous innovative provisions, there is no doubt that its implementations is still fraught with problems and challenges. Some of these challenges are stated below:

a. The challenge of resources.

The legislation are so ambitious as they assume that the agencies are well equipped and adequately funded. Going by the new way of doing things under these legislation, there is no doubt that serious funding is required for the security or law enforcement agencies to acquire requisite facilities for doing the work. For example, security gadgets and other Information and Communication Technology (ICT) facilities for electronic recording of court proceedings as well as electronic video recording of confessional statements of suspects by law enforcement agencies across the country are now inevitable. The provisions of the legislation requiring video recording of the confessional statements of suspects by law enforcement agencies mean that all the necessary gadgets to make this possible must be adequately provided all law enforcement agencies. Similarly, to achieve effective case management though day-today trial, courts must move away from taking evidence and proceedings in long hand. Courts, be they inferior or superior courts of records, must be fully equipped with the

requisite gadgets for electronic recording of proceedings. All these require funding, training and political will.

b. Need for skilled and effective investigation before arrest.

The introduction of detention time lines under the legislation implies that as much as possible, suspects should no longer be made to suffer long detentions pending protracted and unending investigations. However, the truth remains that in Nigeria, police arrest to investigate and not investigate to arrest. This cannot be far from the fact that the security agents lack requisite investigative skills. Even where the skills exist, our law enforcement agencies must move away from analogue to digital investigative techniques. The use of technology today in investigation is inevitable. CCTV cameras for example can be very helpful in crime investigation. To achieve the objective of these legislation, investigators must be properly trained and retrained, supported with requisite technological tools with which to operate.

c. Clarity with regards the real intent of the legislation with particular reference to Section 15(4) ACJA 2015 and 17 (4)(5) ACJL 2017 of Ogun State

Section 15(4) ACJA 2015 and 17 (4)(5) ACJL 2017 of Ogun State create a problem of understanding the real intent of the legislature with regard to the interpretation of the word "MAY" in those sections. The challenge posed by these sections is elaborately discussed in roll serial number three (3) above. What this means is that pending the final pronouncement of the Supreme Court on this, there is bound to be problem of ascertaining the exact intention of the legislature with regard to this provision.

d. Detention limits in the Ogun State ACJL that are not reflective of the intent of curtailing awaiting trials detentions

The Ogun State ACJL 2017 under its detention time limits in section 309 provides for 60 days plus 14 days plus 14 days plus 14 day translating to 102 days. This is not in tandem with the spirit and intent of section 35(4) of the CFRN 1999 (as amended). Section 35(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for two months. This can approximate to maximum of 62 days. Under the section 15(4) of the ACJA 2015, the maximum period approximate to 56 days. 102 days is a marked departure from 56 days provided by the Constitution.

e. Inconsistency of some provisions with the Nigerian Constitution

A review of these legislation also show that some of the provisions, although well intended, are already being stuck down for being inconsistent and in conflict with the Constitution of the Federal Republic of Nigeria 1999 as amended. For example, Section 396(7) ACJA 2015 and Section 410 (4) of the Ogun State ACJL 2017 with regard to dispensation to hear to conclusion, a part heard matter to judgment by a judge elevated to Court of Appeal. (see analysis in column 15 above) See also analysis in columns 10 and 17 above.

f. Prosecution gap created by abolishing the era of lay prosecutors.

Sections 106 ACJA 2015 and 113 Ogun State ACJL have abolished the era of lay prosecutors. This means police who are not lawyer no longer prosecute. While this is good, a trend is being observed. Many magistrates across the

country share a common experience that since the passage of ACJA or ACJL in their States, their dockets have significantly dropped. What could be responsible for this remains a subject of further research. Could it be that crime rate has dropped? This is doubtful. In the meantime, some of these magistrates share the view that this is likely attributable to the removal of police prosecutors who are non-lawyers. The strong view expressed is that consequent upon the removal of police prosecutors who are non-lawyers from prosecuting, the police tend to settle most of the cases at the police station. Hence the reduced numbers of First Information Reports (FIRs) coming to the courts. If this is a true reflection of the situation, this will portend a major challenge in the application of the law.

8.5 Recommendations

a. There is need for increased political will on the part of the government for the implementation of the legislation.

b. There should be training and retraining of law enforcement agencies and law officers with regards to investigative techniques, Information and Communication Technology compliance etc

c. There must be Adequate funding to provide for infrastructure and other relevant equipment

d. Although the legislation are very young, they nevertheless suffer some drafting challenges as pointed out with sections 15(4) ACJA 2015 and 17(4) ACJL 2017. These need to be amended to make for certainty regarding the intent of the legislature in the provisions.

e. In light if the foregoing analysis, it is hereby suggested that Section 309 of the Ogun State ACJL 2017 be amended to reduce the cumulative detention days from 102 days to a total number of days not more than two months. This will accord and be complementary with the Section 35 of the CFRN 1999

f. The two legislation may both be considered for a possible review in the future to impose a corresponding front loading or disclosure obligation on the defence. This is notwithstanding the fact that a suspect/defendant is presumed innocent until proved guilty, the duty in which case rests on the prosecution. Accordingly, it is suggested that the legislation could be reviewed to provide that where a defence chooses to enter its defence after the closure of the case of the prosecution, it should front load its defence to the prosecution to study before opening same.

8.6 Conclusion

Notwithstanding the few limitations as pointed out with the legislation, these do not in any way take away from the innovative and reformative value of the legislation and the prospects of an improved criminal justice system in Ogun State. There is no gainsaying the fact that the ACJA 2015 and the ACJL 2017 of Ogun State have come to stay and with massive innovative provisions as contained in the laws, the criminal justice system in the country will not remain the same again.

This comparative analysis has attempted to take the reader through the innovative provisions of the two legislation, highlighting their positive impact on the administration of criminal justice in Nigeria. Attempt is also made benchmark the the identified provisions against other existing Statutes, especially the Constitution of the Federal Republic of Nigeria 1999 with a view to ascertain whether they are complimentary or conflicting.

While both legislation have far reaching provisions that are good for the criminal justice system in the country, a few provisions may need to be amended as

pointed out in this analysis. The Ogun State Law is particularly a good improvement over the ACJA 2015 in several respects and this is commendable.

COMPARATIVE REVIEW AND ANALYSIS OF STATE OF OSUN ADMINISTRATION OF CRIMINAL JUSTICE LAW, 2018 AND THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

9.1 Overview of the Osun State Administration of Criminal Justice Law (ACJL) 2018 and the Administration of Criminal Justice Act (ACJA) 2015

9.1.1 Structures of the ACJL of Osun State, 2018 and ACJA, 2015

Structurally, the ACJL, 2018 of Osun State is divided into sections with no parts. It is a clear departure from ACJA, 2015. The ACJL comprises four hundred and ninety-one sections (491) with Schedules comprising different types of forms such as General Form for the Title of Proceedings, Summons to Defendant, Search Warrant, Forms for Remand Proceedings, Forfeiture on Conviction to be signed for by the Magistrates, Judges and the Governor (especially Order for execution and the Order for Communication of sentence).

The ACJA, on the other hand, is divided into 48 parts with 495 sections, various Schedules and forms to be signed by the Magistrates, Judges and the President in case of Order for conviction. The purpose of State of Osun Administration of Criminal Justice Law is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victim.[1]

The Administration of Criminal Justice Act, 2015 was passed in 2015 and it is one of Nigeria's latest legislation introduced mechanisms in the Nigeria's

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[1] ACJL, section 2 (1)

criminal justice framework. It is applicable to Federal Courts and federal offences as the case may be. As anticipated, various states in Nigeria are directed to enact and domesticate the provisions of ACJA. It invalidated the Criminal Procedure Act,[2] Criminal Procedure (Northern States) Act,[3] and the Administration of Criminal Justice Act.[4] However, the State of Osun House of Assembly passed the Osun State Administration of Criminal Justice Law in 2018. It provides for the administration of criminal justice in the High Courts, Magistrate Courts and other Courts in the State and for other connected purposes. It is hereinafter referred to as "ACJL", 2018.

ACJA, 2015, has 49 Parts and a total of 495 sections. The ACJL, 2018, just like the ACJA brought into practice many innovations designed at fast-tracking justice delivery with the attempt of protecting the rights of accused persons who are now referred to as defendants. It is made up of 491sections and three Schedules.

9.1.2 The purpose ACJA and ACJL

The purpose of the Act from the provision of section 1 is to ensure that the system of administration of criminal justice in Nigeria promotes-

i. Efficient management of criminal justice institutions.

Section 33 of the Act makes provision for the direct inspection and supervision of police activities by the Chief Magistrates. Also, section 469 of the Act establishes the Administration of Criminal Justice Monitoring Committee in ensuring among other functions, the decongestion of prisons and reduction of criminal cases in the courts. Furthermore, sections 33 and 34 of the Act are

[2] Cap. C1, LFN, 2004
[3] Cap. C42, LFN, 2004
[4] Cap. A3, LFN 2004

designed to overhaul the criminal investigation process and promote efficient management of the pre-trial criminal justice.

ii. Speedy dispensation of justice

Some provisions and procedure under the Act are set out for expeditious adjudication in criminal matters. These are application for stay of proceedings in a criminal matter not to be entertained[5], electronic recording of confession[6], non-entertainment of frivolous preliminary objections[7], power to take deposition in certain cases[8], day to day trial of defendant upon arraignment[9] and the empowerment of the Chief Judges to create rules of court[10]

iii. Protection of the society from crimes

Part 4 of the Act provides for the police empowerment to prevent the commission of offences by making arrests where necessary. Also, the Magistrate is empowered to require execution of recognizance for keeping peace or take security for good behaviour for suspected persons and habitual offenders. There is also the provision of forfeiture to the state in criminal proceedings.[11]

iv. Protection of the rights and interests of the suspect/defendant

Section 6 of the Act makes provisions against unlawful arrest and detention in line with section 35 (6) of the 1999 Constitution. Hence, the accused has the right to remain silent right from the time of his arrest and trial processes[12].

[5]See section 306, ACJA, 2015 and section 36 (1), CFRN, 1999 (as amended) and *Metu v. FRN* (2017) 11 NWLR (pt. 1575), p. 157

[6] See section 15 (4), ACJA, 2015; see also *Borishade v. FRN* (2012) 18 NWLR (PT. 1332), P. 347

[7] See sections 221 and 396 (2), ACJA, 2015; also, see *Ikomi v. State* (1986) 3 NWLR (pt. 28), p. 340; *Abacha v State* (2002) 11 NWLR (pt. 779), p. 457

[8] See section 362, ACJA, 2015; *Aregbesola v. Oyinlola* (2011) 9 NWLR (pt. 1253), p. 458

[9] See section 396 (3), ACJA, 2015

[10] See section 490, ACJA, 2015 and *Fidelity Bank Ltd v. Monye* (2012) 10 NWLR (pt. 1307), p. 1

[11] See *Nwude v. FRN* (2015) NWLR (pt. 1506), p. 471

[12] See *State v. Salawu* (2011) 8 NWLR (pt. 1279), p. 56; see also section 17 of thge Act.

Section 8 (1) of the Act provides for the humane treatment having regard to his right to the dignity of his person, and he is not subjected to any form of torture, cruel, inhuman or degrading treatment.

v. Protection of the rights and interests of the victim

In line with section 1 (1) of the Act, section 321 of the Act provides for the power of court to order restitution or compensation to the victim of crime or to his estate[13]. This provision is in line with the decision in the case of *Vuyor v. State*[14], where it was held that justice is neither one- or two-way traffic but a three-way traffic i.e. justice for the victim of a crime, the defendant as well as the society.

The ACJA has therefore brought succor to victims of crime by broadening the powers of the court to award commensurate compensation in deserving cases to victims of crime.[15]

Section 2 (1) of the ACJL, 2018, aptly explains the purpose of the Law as in ACJA thus: the purpose of this law is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal injustice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victim.

[13] See also section 314 of the Act.; see also *Nwude v. FRN*, op. cit

[14] (2014) 2 NWLR (pt. 1390), p. 196; se also *Josiah v. State* (1985) 1 NWLR (pt. 1), p. 125

[15] LawPavilion, The Administration of Criminal Justice ACT, 2015 (ACJA); also available at https://lawpavilion.com/blog/the-administration-of-criminal-justice-a...accessed 5 October 2020

9.1.3 Applicability of ACJA, 2015 and ACJL, 2018

ACJA applies to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja.[16] On the other hand, the provisions of ACJL applies to criminal trials for offences established by a law of the House of Assembly and other offences punishable in Osun State. It provides for the administration of criminal justice in the High Courts, Magistrate Courts and other courts in the State of Osun and for other relevant purposes.[17] The provisions of the Osun State Law shall not apply to a Court Martial[18]. Just like the provisions under ACJL, 2018, ACJA provisions do not apply to a Court-Martial.[19] Hence, the application of ACJA is very circumscribed. Nevertheless, section 2 (1) of ACJA provides for the application of the Act to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. Moreover, section 494 of the ACJA interprets "court" to include Federal courts, the Magistrates' Courts and the Federal Capital Territory Courts presided over by Legal practitioners. Nonetheless, where there are no provisions in the Act, the courts are empowered to apply a procedure that will meet the justice of the case.

9.1.4 Introduction of the Justice Sector Reform Team and Administration of Criminal Justice Monitoring Committee

While the Osun State ACJL has established the Administration of Criminal Justice Monitoring Committee[20], (ACJMC), the ACJA established the

[16] Section 2 (1), ACJA, 2015
[17] ACJL, section 3 (1)
[18] Ibid, section 3 (2)
[19] Section 2 (2), Ibid
[20] Section 464

Administration of Criminal Justice Monitoring Committee.[21] The ACJMC under the ACJL comprises 9 members with the Chief Judge of Osun as the Chairman. By virtue of section 465, the functions of the Committee are laid out. The functions include:

i. responsibility of ensuring effective and efficient application of the Law;
ii. criminal matters are speedily dealt with;
iii. congestion of criminal cases in courts is drastically reduced;
iv. congestion in the prison is reduced to the barest minimum;
v. persons awaiting trial are, as far as possible, not detained in prison custody;
vi. the relationship between the organs with the responsibility for all aspects of the administration of justice is cordial and there exists maximum co-operation amongst the organs in the administration of justice in Nigeria;
vii. collate, analyze and publish information in relation to the administration of criminal justice sector in Nigeria, and
viii. submit quarterly report to the Chief Justice of Nigeria to keep him abreast of development towards improved criminal justice delivery and for necessary action, and
ix. carry out such activities as are necessary for the effective and efficient administration of criminal justice.

Nonetheless, by virtue of section 470 of ACJA, the Committee has the obligation of ensuring effective and efficient application of the Act by the relevant agencies. The Committee shall among other things assure that criminal matters are speedily dealt with, congestion of criminal cases in courts is drastically reduced and persons awaiting trial are, as far as possible, not detained in prison custody. Section 471 of the ACJA establishes the secretariat for the Committee; fund for

[21] Section 469, ACJA, 2015

the Committee is established under section 472, ACJA and section 476 of ACJA provides for proceedings and quorum of the Committee. By this establishment, the ACJA is the first legislation in the Nigerian administration of criminal justice framework to establish a body charged with the responsibility of ensuring effective application of the Act.[22]

ACJL, Osun State sections 464 to 471, concern the Administration of Criminal Justice Monitoring Committee while Part 46 of ACJA deals with the Administration of Criminal Justice Monitoring Committee.

9.2 Compliance with International Best Practices

The Osun ACL although is not divided into parts, not the less the information contained in the various sections have far reaching effects for efficient management, speedy trial as well as advocating for adequate protection of the interest of the suspects and the victims of crime and protection of the interest of witnesses. The essential features of the ACJA and the ACJL is their shift from punishments as the main goal of the criminal justice to restorative justice which pays serious attention to the needs of the society, the victims, vulnerable persons and human dignity generally. Also, the general tone of the laws puts human dignity in the fore, from the adoption of the word defendant instead of accused. In view of this, the undermentioned briefly analysed some innovations contained both in the ACJA, 2015 and the ACJL, 2018 that reflect compliance with international best practices.

[22] Abajuo, R.E. (2016) An Appraisal of the Administration of Criminal Justice Act, 2015, available at http://ssrn.com/abstract=2665611 accessed on the 16 August 2020

9.2.1 Bail

As a result of the repercussions of detention before conviction that is is a serious curtailment on the rights of defendants, ACJA, sections 31 and 32 and ACJL, section 7, provide remedy to a person detained in custody. Arrest is also a "severe infringement of the right to liberty and security of person" guaranteed in Article 9 of the ICCPR and Article 5 of the ECHR, hence, Article 9 of the ICCPR prohibits forbids "arbitrary arrest or detention." Consequently, by subsection (1), section 30, ACJA, 2015, a suspect detained without a warrant shall be released on bail on his entering into a recognizance with or without sureties for a reasonable amount of money to appear later as specified in the recognizance where the offence is not a capital offence. However, where a suspect is charged with capital offence, the Judge of the High Court of State of Osun can exercise his discretion to grant bail under exceptional circumstances[23]. Consequently, the general provisions of bail and recognizance under sections 30-32, ACJA, 2015 and sections 153-184, ACJL, 2018, and section 35 of the Constitution of the Federal Republic of Nigeria, 1999, significantly comply with international best practices regarding the principles underlying bail under criminal justice administration. The laws therefore comply with article 9 of ICCPR and article 50 of ECHR.

9.2.2 Restorative justice under ACJL and ACJA

ACJL and ACJA provide for the concepts of reconciliation, restitution, reintegration and restoration that are the key values of restorative justice. The provisions are in harmony with international framework chronicling restorative justice like the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2000. Besides, the United Nations Declaration

[23] ACJL, 2018, section 156 (1) and (2)

of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1989 underlines the value of informal dispute resolution processes to enhance conciliation and redress. Provisions under sections 452-468, ACJA, 2015 and sections 316-318; 335-336; 455-462 of ACJL 2018 of State of Osun are also as mirrored in different United Nations documents, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the 'Beijing Rules', 1985; the United Nations Standard Minimum Rules for Non-custodial Measures (the 'Tokyo Rules"), 1990 and the United Nations Rules for the Treatment of Women Offenders ("the 'Bangkok Rules"), 2010. Furthermore, the recent 2015 Doha Declaration (GA Resolution 70/174) stresses the significance of restorative justice in the determination of social conflict through dialogue and mechanisms of community participation, as well as in the area of prisoner reintegration (article 5(1) and 10 (d).[24]

9.2.3 Speedy dispensation of criminal justice

The speedy trial right has "its roots at the very foundation of the English law heritage".[25] In the direction of the defendant, speedy trial "is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself.[26] The right to speedy trial has been supported in almost all relevant International Charters and Conventions, most notably the ICCPR.

The right to a fair hearing, in both criminal and non-criminal proceedings concerns the right to a trial 'without delay' or 'within a reasonable time'. The

[24] See also Council of Europe (CoE) Recommendation, 2018, and the European Union Victims' Rights Directive, 2012
[25] *Klopfer v. N.C.*, 386 u.s.213, 223, 226 (1967)
[26] U.S. v. Ewell, 383 U.S. 116, 120 (1966)

right to a timely hearing includes the right to a timely judgment. Consequently, both ACJA, 2015[27] and ACJL, 2018[28], stipulate among others that application for stay of proceedings in criminal matters shall not be entertained. Furthermore, section 36 (4), CFRN, 1999 (as amended) stressed that the trial shall be within a reasonable time by a court or a tribunal.

9.2.4 Respects for Human Rights

Provisions under the ACJA[29] and ACJL, 2018[30], especially in the aspect of humane treatment of arrested person, have accorded respect to human rights. This is due to the adoption of minimum legal safeguards and certain mechanisms in these criminal legislation where they have been previously absent and inconsistently recognized. The legislation have provided respect for human rights that has been recognized as promoting effective crime prevention and control nationally. The legislation are in harmony with the 1948 Universal Declaration of Human Rights and the 1966 Covenant on Civil and Political Rights.[31]

In the United States of America, Due Process Clause of the Fourteenth Amendment and the Sixth Amendment to the United States Constitution is the primary source of law guaranteeing a defendant charged with a felony the right to a timely prosecution and a speedy trial. The provisions under ACJA and ACJL are in tandem with the United States' Due Process Clause.

The above and others are the friendly innovations built into the new criminal justice administration both at federal and state level in Nigeria that conform with

[27] Section 306
[28] Section 301
[29] Section 8
[30] Section 9
[31] Sections 1, 3, 4, 5, 8, 9-11, ACJA and chapters 2, 3, ACJL, 2017 clearly point to respect for human rights in Nigeria

international best practices. These are departure from the traditional norms that were retributive.

9.3 Comparative Analysis of ACJA and ACJL

Table 10 provides an analysis of key provisions of the ACJA 2015 and Osun State ACJL.

	Concept	ACJA,2015	ACJL,2018	Complementary Provisions	Analysis
TABLE 1: ARREST					
1.	Prohibition of arrest in lieu	Sections 3-34	Sections 4-51	section 34, 35 (1), 1999 Constitution; (as amended); section 38 CPC, sections 5 and 10, CPL.[32]	Arrest connotes a seizure or forcible restraint or an exercise of the power to deprive a person of his liberty, consequent upon or sequel to a criminal charge. The aim of arrest is to bring the person arrested before a court. A suspect shall not however be handcuffed, otherwise bound or be

[32] See also *Diamond Bank Plc v. Opara* (2018) 7 NWLR (pt. 1617), 92; *Hassan v. EFCC* (2014)1NWLR (pt. 1389),607; *Okotie v. C.O.P* (1959) 4FSC 125; Contrast the cases to *Holgate v. Duke* (1984) AC 437, where the court held that an arrest takes place when a person is taken into custody and words or actions restrain the person from going anywhere beyond the control of the person effecting the arrest. See also, the English case of *R. v. Fiak* (2005) EWCA, where it was held that mere words of caution would not amount to arrest.

					subjected to unnecessary restraint unless on the order of the court or unless there is reasonable apprehension of violence or an attempt to escape or if the restraint is considered necessary for the safety of the person arrested. Arrest properly made by the police cannot amount to a breach of fundamental rights. Arrest is made where there is reasonable ground for suspicion of guilt. Any trespass to the person, however slight, gives a right of action to recover any nominal damages. The police, judge, magistrate, justice of the peace and private person can arrest without a warrant.

TABLE 2: SEARCHES					
	Search of arrested suspect and property and admissibility of evidence obtained illegally.	Sections 9 - 12	Sections 10, 13	Sections 28,29, Police Act, Section 6 (1), CPL; section 44, CPC; section 5 (10, ACJL, 2011; section 150 (1) Customs and Excise Management Act; section 32 of the National Drug Law Enforcement Act; section 82, CPC; sections 37 and 45 (1) of the 1999 Constitution as amended.[33]	Both the ACJL and ACJA recognize the observation of the rule of decency in the conduct of search of persons. Unlike the ACJA, CPL, CPC and ACJL are silent on the question of urgency of having search done by a person of the same sex. Also, strip search may be necessary and ultimately, x-ray machines are to be used to be sure of the location of contraband in the body of the suspect.
TABLE 3 : BAIL					
	Introduction, nature, types of bail, factors guiding the grant of bail and conditions	Sections 158-188	Sections 30, 153-183	Section 35 & 36, 1999 Constitution; section 17,118, CPA; section341(2), CPC; section 115, ACJL, 2011-141[34]	The law of bail is an integral component of the criminal law procedure

[33] *Haruna v. A.G, Federation* (2012) 9NWLR (pt. 1306), p. 419; *Hassan v. E.F.C.C* (2014) 1 NWLR (pt. 1389) 607; Nwabuaku v. Onwordi (2006) AII FWLR (pt. 331) 1236, *Fawehinmi v. NBA* (No. 2) (1989) 2NWLR (pt. 105) 558, and BON v. Sale (1999) 9 NWLR (pt. 618) 331

[34] see: *Akano v. F.R.N* (2016) 10 NWLR (pt. 1519), p. 17; *Adeniyi v. F.R.N.* (2012) 21 NWLR, 284; *Bameiyi v. State* (2001) 8 NWLR (pt. 715), 270; *Abacha v. State* (2002) 3 NWLR (pt. 761, 638;

	warranting granting of bail.				and the right to bail is subject to statutory stipulation. Every person shall be entitled to his personal liberty and no one should be deprived of such liberty except as permitted by law; Basically, bail pending trial is a constitutional right; right to freedom of movement, right to presumption of innocence, and right to fair trial. basically, there are some criteria that provide guidelines to trial courts in the exercise of their discretion on matters of bail pending appeal. Generally, bail is granted by the police, by the court and bail

Bolakale v. State (2006)1NWLR (pt. 962), 507; *Dokubo-Asari v. FRN* (2007) AII FWLR (pt. 375), 588

					pending appeal, and the application should be by way of originating motion.
TABLE 4 : POWERS OF THE ATTORNEY-GENERAL IN CRIMINAL PROCEEDINGS					
	Powers of the Attorney-General	Sections 104-108	Sections 104-105	Sections 69-74, ACJL, 2011; Sections 150, 211, 174, 1999 CFRN; Section 253 (2), CPC; *Rabiu v. State* (1981) 2 NCLR 293, *George v. FRN* (2011) 10 NWLR (pt. 1254) 1, *Ibrahim v. State* (1988) 1 NWLR (pt. 18) 650, *Bagudu v. FRN* (2004) 1NWLR (pt. 853)182, *Tukur v. Gov, Gongola State* (1988) 1NWLR (pt. 68) 39; *Anyebe v. The State* (1986) 1 SC 87	The power of the AG of the Federation to institute criminal proceedings is entrenched in the 1999 Constitution. The AG can also brief legal practitioners to prosecute matters on his behalf. The power of the AG under section 174, CFRN, is discretionary and is not open to court to question the exercise of such discretion. The AG cannot institute any proceedings in matters outside his legal limits, and in situation whereby the office of the

					AG is vacant no other officer can act for him or his behalf.
TABLE 5 : PLEA BARGAIN					
	Conditions for plea bargain; the essence of plea bargain; practice and procedure of plea bargain	Sections 270-277, section 494	Section 265	Sections 36 (5), 174 (1), CFRN; section 135, Evidence Act, 2011; section 187, CPC; sections 180, 215, CPA; Part 8 (sections 75-76); section 13(2), EFCC Act, 2004; Guidelines set out by Presidential Advisory Committee Against Corruption (PACAC), 2016; section 76 (1), ACJL, 2011, section 76 (8), ACJL, 2011.[35]	The object of plea bargaining introduced by ACJA and ACJL, 2018, is to discourage litigation and persuade the parties to compromise and agree for a sentence for a less heinous offence than the one committed by the accused. It implies an active negotiation process whereby an offender is allowed to confess his guilt before the court (if he so desires) in exchange for a lighter punishment that would have been given for such an offence.

[35] FRN v. Nwude & Ors (2016) 5 NWLR (pt. 1506) 471; PML (Nig) Ltd v. FRN (2017) LPELR-438480 (SC); FRN v. Lucky N.Igbinedion & Ors (2014) LPELR-22760 (CA).

					The practice of plea bargaining appears to be gaining traction in Nigeria, even though it is a new concept to the country's criminal justice system. Both the Act and the Law have not only broadened the application of the practice, but have also introduced some stringent measures to ensure effective and efficient application of the concept. Some important areas of plea bargaining include types, nature of it, constitutionality of it, commencement of it and the role of the courts in the plea bargain procedures. The plea bargain process may be initiated by

					the prosecution or the defendant.
TABLE 6 : CHARGE					
	Form and contents of a Charge.	Sections 193-215	Sections 107, 190-195	Section 36 (6) (12), CFRN, 1999; sections 146-172, ACJL, 2011; sections 2, 153, 155-161, CPA, sections 221-216, CPC.[36]	The whole idea of charges is hinged on the constitutional provision that an accused person shall be informed of the offence against him/her. Definition of charges under CPL and ACJL, 2017 very similar and restrictive unlike the meaning under the ACJA and ACJL, 2011. Form and content of the charge, content of the charge, particulars of offences, rules of drafting charges, amendments of charges are some obvious

[36] *Domingo v. Queen* (1963) 1 AII NLR 81-84; Western *Steel Works Ltd. v. Iron and Steel Workers Union* (1986) 3 WNLR (pt. 30) 617; *Okoye v. C.O.P.* (2015) AII FWLR (pt. 799)**,** 1102; *Timothy v. FRN* (2008) AII FWLR (pt. 402), 1136; *Madukolu v. Nkemdilim* (1962) SCNLR 341; *Igba v. State* (2018) 6 NWLR (pt. 1614), 44; *Mohammad v. C.O.P.* (2018) 6NWLR (pt. 1615), 289; Ikpa v. State (2018) 4NWLR (pt. 1609), 175; Sule v. The State (2018) 10 NWLR (pt. 1628), 545

					aspects of charges.
TABLE 7 : RESTORATIVE JUSTICE					
	Suspended Sentence, Community Service, Probation, Compensation, Restitution and Rehabilitation	Sections 461, 460-466, 453-458, 454, 270, 401, 467 and 468	Sections 316-318, 335-336, and 455-462	36 (12), CFRN, 1999; UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002.[37]	This concept is a problem-solving concept. It emphasis repairing the harm caused by the criminal behavior of the offender. The emphasis of this concept is on restoration of the offender in respecting himself, restoration of the relationship between the offender and victims, and also restoration of both the offenders and the victims in the community. Restorative justice models are based on several principles, e.g. from conflict to reconciliation and active participation of the victims, offenders and

[37] See F.R.N. v. Ajudua (2006) 1 EFCL Report ratio 5; Ekpo v. State (1982) 6 S.C 120;

					the communities in which they live. The goal therefore is to achieve reconciliation, restitution, reintegration and restoration.

Table 10: Comparison between ACJA 2015 and Osun State ACJL

From the above comparative analysis, the various innovations as contained in ACJA provisions which are also found under ACJL include: arrest and trial of suspects with humane approaches, protection of the rights of suspects and innocent citizens and their property; provision for central criminal records registry for the proper management of cases; provisions for the protection of witnesses and reduction of detention for a specific period for suspects electronic recording of court proceedings and video recording of confessional statements of suspects and compensation to victims of crimes. However, only selected few concepts were chosen and analysed.

9.4 Practical Challenges with the Implementation of ACJA, 2015 and ACJL, 2018 Provisions

Both the ACJA and ACJL, just like any other human endeavours, have some shortcomings. These include the following:

i. Lack of capacity building for investigators and prosecutors

Training that is necessary to address various operational challenges faced by investigators, prosecutors performing their functions within the criminal justice system in Nigeria that affect speedy dispensation of justice is almost absent. Hence, it leads to the challenge of full implementation of the legislation.

ii. Absence of modern infrastructure-

One of the basic challenges confronting the implementation of the ACJL and ACJA is lack of modern infrastructure. Hence, there exists ill equipped police stations and Law Courts. In addition, inadequate funding of correctional centres by federal government of Nigeria constitutes an impediment to effective administration of Nigeria prisons, lack of correctional facilities /equipment challenge of inadequate work facilities, particularly vehicles for conveying inmates to the court for trial. for the rehabilitation of offenders in Nigeria prisons leads to the increase of recidivism. Governments should therefore ensure that the judiciary and police are adequately funded otherwise the purpose of enacting the Act and the Law may not be fully realized.

iii. Lack of staff training-

Inadequate training of staff is likely to experience poor job performance and increased levels of work-related stress.

iv. Underfunding

Lack of adequate funding of relevant institutions and stakeholders. Adequate funds is a main challenge that militate against the effective implementation of the ACJA and ACJL. So many things under the ACJA and ACJL presuppose that funds must be made available to the police, courts, office of the AG and others. The courts must also be equipped with electronic and information technology devices. Therefore, governments both at the federal and state levels must make adequate funds available for the implementation of both the Act and the Law.

Despite the advancement caused by the promulgation of ACJA and ACJL, the development would hardly be harnessed by the ordinary man if urgent steps are not taken to address the challenges that are currently facing its implementation. It is understood that courts and police that are authorized to guarantee compliance with provisions of the laws for the realization of the purposes of the laws are grossly under equipped due to lack of funding. Therefore, the purpose of ACJA, 2015 and ACJL, 2018 as outlined in the laws will not be achieved or realized. Hence, except the issues of funding is addressed, achieving the objectives of the new innovations as contained in ACJA and ACJL are likely to remain a mirage.

9.5 Recommendations

As a result of what has been captured in the review of both the ACJL, 2018 and ACJA, 2015, the following recommendations are suggested:

i. The ACJA and ACJL have provided for the adoption of ICT modalities in Nigerian criminal court proceedings. Where fully utilized, the ICT tools are capable of providing short- and long-term solutions to the challenges that continue to plague the Nigerian criminal justice system. This will also be a way out in relying heavily on physical administration of criminal justice as being compelled by the Covid-19 pandemic to fully adopt ICT for justice administration. Nigeria cannot afford to operate its criminal justice system manually in such circumstances either.

ii. Adequate funding of the judiciary and the police, coupled with a transparent and independent judiciary will do away with some of the implementation and funding problems mentioned above.

iii. In view of the persistent limited funding that affect the operative and practical implementation of the ACJA and ACJL by the relevant criminal agencies, it is therefore imperative that in order to succeed in the implementation of the laws, ample investment and budgetary provisions, in terms of human and material resources be made available by both the Federal and Osun State;

iv. Relevant institutions and their officers who are saddled with effective implementation of the new legislation must strive towards arriving at the intention of the legislature in providing an avenue for a speedy dispensation and conclusion of criminal trials in Nigeria

v. The immediate need to review the number of judges, welfare package for judicial officers and increased provision of facilities for the realisation of the new legislation.

9.6 Conclusion

This work has attempted a review of the provisions of the ACJA, 2015 and ACJL, 2018. They have also shown the innovations introduced by the legislation to make for speedy disposal of criminal cases and protection of the rights of citizens that are affected by the criminal justice procedure. The work has also pointed out the similarities and the differences that exist between ACJA, 2015 and ACJL, 2018 and also has exposed some challenges confronting them.

It is also observed that ACJA has come a long way to be reckoned with by various states in Nigeria. As a result, many states have made deliberate efforts at domesticating and putting into consideration the new innovations as contained in the ACJA; in order to reflect the international best practices. However, it will be understatement to allude to the fact that implementation remains a herculean

task in both the ACJA and ACJL of Osun State. The stakeholders must strive to overcome all challenges to make ACJA and ACJL worthwhile in Nigeria.

A COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 AND THE OYO STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW*

10.1 Overview of the Administration of Criminal Justice Act, 2015 and Oyo State Administration of Criminal Justice Law, 2017

Before the enactment of the Administration of Criminal Justice Act (ACJA) in 2015; and the eventual passage of the Oyo State Administration of Criminal Justice Law (OyoACJL) 2017, the Nigerian criminal justice system relied mainly on the Criminal Procedure Act (CPA)[1] and Criminal Procedure Code[2] at the federal level; and the Criminal Procedure Law Cap 39, Volume II Laws of Oyo State in Oyo State. The CPA, along with two other enactments were repealed by virtue of s. 493 of ACJA while the Criminal Procedure Law of Oyo State was repealed vide s. 481 of OyoACJL.

Failure of these laws to significantly impact the criminal justice system in Nigeria generally, and Oyo State specifically, necessitated these repeals. There is no gainsaying the fact that limitations inherent in these laws orchestrated and promoted a reprehensible criminal justice system that was not only backward and stagnant, but one that perpetuate injustice and became a burden to every sector of the economy. Indeed, Lawyers, especially defence lawyers recognised the lapses in the system and exploited then to the advantage of clients in an

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

[2]The Criminal Procedure Code was enacted by the Northern Region of Nigeria in 1960 and applied only to the Northern Region and later when states were created, to all the` Northern States of Nigeria.

embarrassing manner. This led to calls for criminal justice reforms that culminated in the enactment of the ACJA. Hence the law became a new bride, accepted by all.

The OyoACJL was passed barely one year after the ACJA. Most of its provisions are adopted verbatim from the ACJA. This law repealed the Criminal Procedure Law Cap 39, Volume II Laws of Oyo State; and established a criminal justice administration law that governs criminal justice delivery in Oyo State. The law is an outcome of extensive legislative work, which included public hearings during which memos were received and deliberated for purposes of feeling the pulse of the people of Oyo State who would be affected by the law, when it is passed. The law was eventually passed and assented to by the governor on 23 January 2017.

Like the ACJA, the OyoACJL contains extensive provisions which seek to address the anomalies inherent in the existing criminal justice system; and situations of blatant violation of human rights. Both laws introduced innovative provisions, with focus on delivering justice appropriately to every category of persons-offender, victim and the society. In particular, the laws provide guidelines regarding justice delivery to child offenders, persons of unsound mind, and pregnant women, among others. Additionally, both laws emphasise respect for the human rights of suspects throughout the criminal justice process from arrest to trial, conviction, and punishment or release. The laws also upheld the right of women to stand as sureties, introduced non-custodial measures as alternatives to incarceration, legalised plea-bargaining, abolished arrest *in lieu,* and emphasised *frontloading* to enhance speedy trials. More crucially, the ACJA and the OyoACJL provides for the ACJL Monitoring Committee in Part 44-ss.457-464. The Committee is saddled with the responsibility of ensuring that (a) the law is effectively and efficiently applied by the relevant agencies, (b) criminal

matters are speedily concluded, (c) congestion of criminal cases in court is reduced, (d) prison congestion is eliminated, (e) detention of people awaiting trial is curbed; and (f) there is synergy between all agencies among other duties.

The OyoACJL has 47 Parts and 481 sections that address sundry criminal justice issues, including *interpretation of terms*, *savings* and *repeals*. These provisions afford a holistic mechanism for effective criminal justice administration in the state. The law also contains supplementary materials to help criminal justice practitioners in the state to apply the law correctly. The materials, which are mostly forms are categorised under different Schedules. The *First Schedule* is a list of precedent forms numbered Form No.1 up to *Form* No. 21. Each form deals with a particular issue relating to the provisions of the law and highlight forms that should be used in the Magistrate Court and those that are to be used in the High Court of Oyo State. The *Second Schedule* lists archetype of Charges under the Criminal Code, such as "Charges with One Head", "Charges with Two Heads" as well as "Other Forms of Charge". The *Third Schedule* is "Information Precedent" for application of s. 379(s), OyoACJL. Basically, the "Information Precedent" is sample *Statement of Offence* for different types of offences, such as murder, accessory after the fact of murder, manslaughter, stealing, and robbery, etc. the *Fourth Schedule* contain sample forms relating to *Endorsement on Warrant of Arrest*. Labelled Form A, Form B, Form C down to Form M, this schedule provides the necessary tools to assist criminal justice practitioners in obtaining the right endorsement(s) from the appropriate authority. This is to eliminate confusion and make filing processes seamless.

10.2 Compliance with International Best Practices

For several years, the international community emphasised and worked towards achieving an acceptable criminal justice system in which citizens and residents of each state can feel protected; and apply generally accepted principles and standards. The result is the development and adoption of a variety of standards, principles and norms upon which states can build and/or expand in their bid to revamp their criminal justice options, especially as it relates to the treatment of suspects from the time of arrest until conclusion of trial and eventual punishment. This is crucial in situations that involve imprisonment or any other form of confinement. The principles and standards also emphasise respect for and protection of the human rights of *all persons* including the suspect. In recent years, the focus has been on encouraging states to adopt imprisonment/incarceration as a last option; and to push towards alternatives to imprisonment.

An important thing to note is that standards, principles and norms do not possess the same characteristics, as some are more general and deal mainly with human rights issues while others are specific. Examples of more general standards and principles relating to human rights are the International Covenant on Civil and Political Rights (ICCPR),[3]Convention on the Rights of the Child (CRC)[4] and the African Charter on Human and Peoples' Rights (ACHPR),[5] etc. They also include the UN Standards Minimum Rules for the Treatment of

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

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

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

Prisoners,[6] which deals essentially with imprisonment; and the *Human Rights Standards and Practice for the Police* (HRSPP),[7] which was developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR)[8] in 2004 as a standard reference guide for police operations across the world. Although the HRSPP is designed to guide police operations as first responders to crimes, procedures enshrined therein can be applied by other law enforcement agencies (LEAs).

A very crucial aspect of international standards, norms and principles-general or specific, that need to be highlighted is the fact that they all emphasis respect for and promotion of the human rights of persons. This arises from the need to uphold-at all times, the principle of the *dignity of the human person,* as the bedrock of human rights standards. The implication of this is that law enforcement operatives owe a duty to protect *human dignity* and uphold the human rights of all persons, in addition to respecting the principles of *legality, necessity, humanity and non-discrimination*.[9] It also means that *impartiality* must be decipherable when law enforcement officials exercise their functions, powers and duties; and they must also remember that their responsibility regarding the limitations on the enjoyment of rights and fundamental freedoms of persons shall only be applied as stipulated by law, i.e. where it secure the safety of others and meets the requirements of *public morality*, *public order and the general welfare in a democratic society*.[10] It is undeniable that Nigeria now has a criminal justice

[6]United Nations Doc. A/RES/45/110.
[7]Professional Training Series No. 5/Add.3
[8]As a department of the Secretariat of the UN, the OHCHR has the mandate to work towards the promotion and protection of all rights contained in the Universal Declaration of Human Rights, 1948. See more at <www.un.org> or <www.ohchr.org> accessed 12 April 2020.
[9]See generally, UN, Overview of International Legal Framework for Disability Legislation <www.un.org> accessed 20 April 2020. See also Article 46 of the United Nations Declaration on the Rights of Indigenous People; adopted by the UN General Assembly 13 September 2007, Doc. A/61/295.
[10]Ibid

that is robust and peppy despite some challenges. The extent to which the system has been able to conform to international best practices is analysed below.

10.2.1 Human Rights aspects

The ACJA and OyoACJL contain provisions that promote the principle of *dignity of the human person, equality* of persons, and non-discriminatory practices in law enforcement practices. Both laws preclude law enforcers from discriminating against anyone on the basis of gender, sex, race, ethnicity, property, political status, language, religion, birth, etc. The requirement therefore is for law enforcement operatives to be representative of, responsive and accountable to the society in general. This type of responsive and accountable justice system is elaborately provided for under both laws. Notably, the principle of community involvement in criminal justice processes, which reinforces the notion of responsive and accountable justice system is well covered by provisions that require community participation in the entire justice process from pre-trial to post-conviction. These provisions also spell out the role that each person or group would have to play to make the entire criminal justice process successful and effective.

10.2.2 Arrest, remand/detention, investigation and interrogation.

Explicit procedures regarding arrest, remand or detention, investigation and interrogation, among others, have been established by international standards. The purpose is to ensure that the entire criminal justice process is as humane as possible. With regards to arrest, the requirement is for the arrested person to be informed of the reason (s) for the arrest, his or her rights to remain silent, and to legal representation-paid or free, etc. That a person who has been arrested on

suspicion of committing an offence is brought to trial within a reasonable time, and given fair hearing is accepted as international best practice.

In terms of investigations, the requirement is that the entire process of investigations, interviews (of suspects, witnesses, and victims), searches generally, and evidence gathering, including interception of correspondences and communications, should follow due process. Good practice entail respect for the following rights: fair trial, security and dignity of the persons, privacy, dignity, freedom from torture and other inhuman or degrading treatment, among others. To prevent allegations of extraction of evidence through torture, degrading and other inhuman treatment in line with CAT and Nigeria anti-Torture Act, both laws engrain mechanisms that aim to eliminate the illicit practice of torture. For example, to ensure that investigatory activities are done competently, thoroughly, promptly, impartially; and not overly intrusive, both laws developed uniform procedures for the recording of information during investigations and keeping detailed record of all interviews concluded.[11] To this end, both laws require that the process of interviewing, interrogating and taking confessions of a suspect must be video recorded; and in the presence of a legal practitioner.

On detention, pre-trial detention is generally frowned upon. Accordingly, states have, over the years, been advised as follows: (a) to consider and apply detention as last resort; and (b) where detention takes place, internationally accepted guidelines on the treatment of detainees should be complied with. The guidelines demand that the detainee is treated humanely, and presumed innocent until proven guilty by a court of competent jurisdiction. The detainee must be protected against torture or degrading, cruel or inhuman treatment. He or she must also be held in a place of detention established by law and known to the

[11] ss. 15, 16, 17 ACJA, and ss.17, 18 OyoACJL.

family of the detainee and not without contact. Measures that guarantee these rights are succinctly provided for in both laws.[12]

In the case of trial, the requirement is for the defendant to be given fair trial by affording him "adequate time and facility" to prepare his case and to defend himself and be able to examine and cross-examine prosecution witnesses. Happily, both laws take seriously the need to protect the constitutional right to fair hearing by imposing a duty on the prosecution to frontload evidence under ss. 300, 379 ACJA, and 299, 377 OyoACJL. The meaning of "adequate time and facility" in the context of fair hearing has been adjudicated on by the Supreme Court in a number of cases such as *Ejike Okoye v Commissioner of Police*[13]and Shema *& Ors v FRN,*[14]among others. In these cases, the apex court ruled that "adequate time and facility" includes "necessary hints... including the statements of the prosecution witnesses and his own written statement"; and also that "adequate time and facilities" form part of fair hearing and includes frontloading of evidence by prosecution. More importantly, to ensure speedy trials, ss. 396 ACJA and 397 OyoACJL provides for day-to-day trial until conclusion of the matter, with limited adjournments. This is to promote speedy dispensation of justice as required by international standards.

10.2.3 A shift from adversarial to restorative justice

For decades, the need to move away from punitive justice system that focuses more on incarceration has been strongly advocated. The question is move away from punitive justice system to what and why?

[12] See for example, ss. 6, 8, 14 ACJA and ss. 8, 10, 16 OyoACJL.
[13] (2015) All FWLR (Pt.799) 1101 at 1126-1127
[14](2018) LPELR-43723 (SC)

To answer the "to what" aspect of the question, the emphasis is to shift towards alternative measures in place of incarceration, and restorative justice. The simple answer to the "why" part of the question is that there is no proof that the long years of application of imprisonment enhanced public safety or that it improved the criminal justice system of any country. The need to shift towards alternative measures and restorative justice arises from the ability of this system to protect the society from crime, especially the vulnerable groups such as women, children, and the mentally ill. Protection for these groups comes from non- or limited incarceration since these people are the ones who often suffer more adverse consequences of imprisonment. The advocacy does not recommend that incarceration or imprisonment should be abandoned, as it remains an essential form of punishment and a crucial aspect of criminal justice administration. Instead, reliance on imprisonment should be reduced because of its counterproductive nature. In particular, rather than rehabilitate and reintegrate petty offenders, imprisonment has done more damage to their wellbeing according to research findings.[15]

The shift from imprisonment developed and adopted by the international community are contained in a number of documents, such as the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules);[16] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;[17] and Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters,[18] among others. Other UN instruments that advocate non-custodial measures include: Declaration of Basic Principles of Justice for Victims

[15] UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment* (Vienna: United Nations Office on Drugs and Crime, 2007) 3-9.
[16]United Nations Doc. A/RES/45/110.
[17]United Nations Doc A/RES/40/34
[18]Adopted by the United Nations Economic and Social Council on 24 May 2002, United Nations Doc. E/2002/99.

of Crime and Abuse of Power;[19] Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, among others.[20]

The Tokyo Rules[21] were adopted for purposes of curbing over reliance on incarceration;[22] and so recommend that states should adopt non-custodial measures as part of reductionist criminal justice policy[23] due to inherent disadvantages of incarceration, especially its adverse effects on petty offenders and those awaiting trial[24] as already noted. The UNODC[25] underscore the disadvantages as overcrowding and prison congestion globally, human rights violations, and unnecessary cost, among others. For human rights advocates, it is more beneficial to punish minor offenders using "appropriate alternatives".[26]

It is advantageous to adopt and implement "alternatives to incarceration" because of their ability to bring about results that benefit not only the victim of crime and the society, but also the offender. For example, alternatives to imprisonment have the potential to eliminate or reduce overcrowding of detention facilities; makes it easier to manage such facilities in a way that allow states to meet their obligations to prisoners in their care; and reduces cost, as imprisonment is very expensive. Again, prisoners have been adjudged "incubators of diseases such as tuberculosis and AIDS"[27] which they often readily

[19]United Nations Doc A/RES/40/34
[20]Adopted by the United Nations Economic and Social Council on 24 May 2002, United Nations Doc. E/2002/99.
[21] The Tokyo Rules were first discussed and adopted generally in 1986 at the Seventh Congress on Crime Prevention and Criminal Justice and were later adopted by the General Assembly on 14 December 1990.
[22]See Rule 1.5
[23]This means a justice policy that
[24]UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment* (Vienna: United Nations Office on Drugs and Crime, 2007) 3
[25] Ibid
[26] Ibid
[27]UNODC, *A Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment* (New York, United Nations, 2007) 4-5.

spread upon their release.[28] Agreeing that alternatives to incarceration could be more effective in achieving the objectives of imprisonment; states, including Nigeria began consider other options. Before the ACJ Laws introduced alternative measures to imprisonment, the story of Nigerian criminal justice system was characterised by all the enumerated evils of incarceration, which caused national embarrassment. Provisions relating to non-custodial measures/sentences and restorative justice are elaborate in both laws. [29]

10.3 Comparative Analysis of ACJA and ACJL

Like the ACJA, the OyoACJL introduced innovative concepts, which have been highlighted and comparatively analysed in the table below. The analysis presented in Table 11 underscores the relationship between the provisions of both laws, in terms of similarities and contradictions (if any), and other relevant provisions, including the Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended.

	CONCEPT	ACJA	ACJL	COMPLEMENTARY PROVISIONS	ANALYSIS
	Objectives /purpose	s. 1	s.3		Like the ACJA, the purpose of the OyoACJL is to engender speedy dispensation of justice, protect the society from crime, uphold and protect the "rights and interests of the

[28]Ibid

[29] See for example ss. 314, 321, 327, 453-459, 460-463, 467 & 468 ACJA and Parts 42 (Probation and non-custodial alternatives), SS. 441-455; and 43 (Parole)-ss. 446-456 of OyoACJL.

					defendant and the victim". What this means is that both laws seek to entrench a justice system that complies with international best practices and engender public confidence.
2.	Application	s.2	s.4		s.2 of the ACJA limits its application to all federal courts, and state courts in limited circumstances, particularly where the offence is a federal offence being prosecuted by a federal agent or state prosecutor prosecuting a federal offence under the AGF fiat. The OyoACJL applies to criminal trials and other criminal proceedings in "courts and tribunals established by a law of the House of Assembly or the constitution of the Federal Republic of Nigeria".
3.	Definition of child/adult	s.494	s.2	s. 277 Child's Rights Act (CRA) 2003; s. 82 Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEAA), 2015	Both laws define "adult" as a person who has attained the age of eighteen years and above. In the case of a "child", while the ACJA defines a

				S.29 (4)(a) CFRN S. 2 Oyo State Child Rights Law (OSCRL) 2006	child as a person under the age of eighteen, the OyoACJL defines a child as a "person who has attained the age of seven years and is under the age of fourteen years". This definition contradicts itself and several other laws, including the Oyo State Child Rights Law, 2006. For example, by defining an adult as someone above the age of 18 years and a child as someone above 7 but below 14 years, a *lacunae* is created with respect to persons that fall within the 14 and 17 years age bracket who are neither considered as children nor adults. The definition also contradict other laws like the ACJA, TIPPEAA, CRA, CFRN, and the Oyo State Child Rights Law, 2006 which defines a "child" as a "person under the age of eighteen years"; and the "age of majority" as "the age at which a person attains the age of eighteen years".

					This is a clear departure from who is deemed to be a child under the ACJL. The implication of defining a child as someone between the age of eight and fourteen years is that a person (between fifteen and seventeen in this context) who would otherwise be tried as a child under the relevant child rights provisions would be subjected to criminal prosecution as if he or she were an adult under the OyoACJL. This position contradicts not only international best practices as represented by the Convention on the Rights Convention (CRC), African Charter on the Rights and Welfare of the Child (ACRWC), but also the CFRN, the CRA and the Oyo State Child Rights Law.
	Arrest				
4.	Right to be informed of reason(s) for the arrest and accruable rights	s. 6 s. 14	s. 8 s.16	. 35(2) (3) CFRN ss. 26, 27 ss. 35(6) & 36 CFRN	Like the ACJA, the OyoACJL impose a duty on arresting officer to *immediately* inform the suspect of the

					reason for the arrest. This duty is discharged if the circumstance of arrest is as stipulated in subsection (1) of s.8 to wit: (a) when the *arrested person is in the actual course of the commission of an offence,* (b) suspect is *pursued immediately after the commission of an offence*; and (c) the suspect escaped *from lawful custody*. The ACJL further impose a responsibility on the arresting officer to inform the suspect of the various rights that accrue to him or her such as the right to remain silent, right to consult legal practitioner of his or her choice as well as the right to *free legal representation* by the Legal Aid Council of Nigeria (LACON) or any *other agency providing such services where applicable*. These provisions are laudable as they promote and protect the rights of

					suspects, particularly, the rights to be presumed innocent until tried and proven guilty by a court of competent jurisdiction.
5.	Treatment of arrested person	s. 8	s. 10	s. 34 CFRN s. 29 Evidence Act (EA), 2011	Both laws require a person arrested to be treated humanely, with emphasis on respect for the *dignity of the person*. This is in line with the provisions of the CFRN and international best practices, which condemns torture, inhuman and degrading treatment of arrested person for purposes of extracting evidence. Note that consequences of treating arrested persons inhumanely are far reaching; and may impact negatively on the outcome of trial because, evidence obtained by illegal means cannot be admitted as stipulated under s. 29 of Evidence Act irrespective of whether the offence was actually committed.

6.	Recording arrest	s.15 s. 17	s. 17 s. 18		Both laws require details of arrest to be recorded. This requirement also extends to statements and confession(s) of the arrested person; and to all types of arrests-with or without warrant. The format for recording the arrest is also prescribed in the law. Guidelines regarding arrests generally, including monitoring of the arrest, quarterly report of arrest, etc., and whether search is necessary or required are elaborately covered under both laws, particularly ss. 13-30 of OyoACJL. S. 13 specifically require an inventory of the property of the arrested person to be taken and kept properly for accountability.
7.	Arrest in lieu	s. 7	s. 9	s. 35(6) CFRN	Both laws abolished the practice of arrest in lieu; thereby affirming the principle of non-culpability under which disallows a person to be punished for an

					offence he or she did not commit. Indeed, unlawful arrest is prohibited under s. 35 (6) CFRN that entitles a person who is arrested unlawfully, to compensation and public apology from the authorities. Arrest in lieu is a form of unlawful arrest, yet victims never really took advantage of this provision-perhaps out of fear or ignorance.
8.	Preventive Justice	Part 4-ss. 50-64	Part 4-ss. 51-65	Chapter 24, Criminal Code (CC)	The OyoACJL provisions in part 4 relating to preventive justice are verbatim replication of the provisions of ACJA, also in Part 4. Under the provisions, a police officer and other law enforcement officials, including a judge, magistrate, etc. have a duty to ensure that (a) crime is prevent and (b) security in the community is guaranteed, even if it means arresting a person. The problem with these provisions relate to personal perception(s). For

					example, actions of other persons are normally coloured by bias, prejudice or misconception by others. Therefore, apart from where a crime is obviously being committed, the standard for concluding that a person is about to commit a crime is unclear, especially where a subordinate police official- who may be acting out of bias, hatred, etc. informs his boss of his suspicion that a crime is likely to be committed. Strict enforcement of these provisions may derail the ACJ laws resolve to engender humaneness in criminal justice administration and foster a departure from the practice under the Criminal Code (CC) and the Penal Code (PC) where certain category of people were often molested by law enforcement officials for being "idle and disorderly"; "rogues and vagabonds". It is therefore important

					to provide clarity in that respect, particularly circumstances under which a law enforcement official can safely conclude that a crime is about to be committed.
9.	Interrogations, statement taking and confessionals	s. 17	s.18	ss. 20, 28 & 29 EA, 2011	In taking a suspect statement under both laws, 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 ss. 15(5) ACJA and 18(3) OyoACJL. 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. So what happens where there is an objection to the admissibility of a statement?

					This would normally not stall trial under both laws as the court is empowered to record the statement, continue with the trial and rule upon it while delivering judgment in the substantive case. This raises the question as to whether *trial-within-trial* is technically abolished. This move is to discourage-as much as possible, trial delays and encourage case management, using pre-trial hearings/conferences, particularly in complex cases, to trash out issues in contention before going to trial. As a result, subsidiary legislation, regulation, Practice Directions, and rules etc., have been vastly recommended to address situations such as this and others that create *lacunae*. The FCT High Court Practice Directions emphasizes case management, and High Courts of states are

					encouraged to tow that part.
10.	Central Criminal Records Registry and Criminal Records Registry	s.16	s. 18(3)		The disparity between the OyoACJL and the ACJA relates to the place where the Central Criminal Records Registry (CCRR) is to be domiciled. Under the ACJA, the CCRR is to be established at the Nigerian Police Force and a Criminal Records Registry (CRR) at every state police command, which *shall keep and transmit all such records to the* CCRR. Under the OyoACJL however, the CCRR shall be established at the High Court for purposes of registering all judgments in criminal cases. There is no corresponding provision relating to the establishment of a subsidiary CRR under the ACJL. This may be as a result of the state's lack of power to give directives to the Police, which happen to be a federal

					establishment; and it shows that states that have reenacted the ACJA simply adapt provisions that suit their context in terms of enforcement.
11	Remand protocols	ss. 293, 295& 296	ss. 292, 293, 296	ss. 35 & 36 CFRN s. 27 TPA, 2013	The concept of *remand* is central and its application crucial in criminal justice administration. The way and manner remand process is executed highlights a country's respect for human rights and its compliance with international best practices. Prior to the enactment of ACJA and eventual passage of OyoACJL, our criminal justice operation was replete with the practice where suspects were often remanded without following due process. To avoid such pitfalls, the ACJ Laws introduced protocols to regulate the process and timelines for remand. Both the ACJA and OyoACJL allow 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 –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 reoffend; and any other justifiable ground.
	Bail				
12.	Bail/ recognisances	ss. 158-163	ss. 157-162		Under both laws, bail can be granted in all offences. However, in capital offences, conditions for securing bail are quite stringent as bail can only be granted by a "Judge of the High Court, under exceptional circumstance" and at the discretion of the judge under s. 160 of OyoACJL and s.160 of ACJA.
13.	Bail pending investigation	ss. 30, 31	s. 31, 32		Apart from where a person is arrested on suspicion of committing a capital offence,

					both laws allow administrative bail to be 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.
14	Recognisances in the case of children	ss.160& 166	ss.159, 165		Under both laws, except where a child is arrested for a capital offence that carry the death penalty or a term of imprisonment for more than 3years on conviction, a child who has been arrested for an offence shall be taken to the police if he or she cannot be taken to court immediately. Where this happens, the police officer in charge of the police station that the child is taken, has a responsibility to examine, and release the child on condition that the parent or guardian of the child enters a recognisance, undertaking to

					produce the child at a set date and time. The provisions restrict those who can execute recognisances for child offenders to parents or guardians to the exclusion of all other persons. Execution of recognizance for the child requires the payment of stipulated sum of money.
15.	Women sureties	s. 167 (3)	s. 166(3)		s. 166(3) of OyoACJL is a verbatim replication of s.167 (3) ACJA. The section provides that "a person shall not be denied, prevented or restricted from entering into any recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman". This provision has two implications, i.e. eradication of gender discriminatory practice that precludes women from standing as sureties; effectively changed the criminal justice landscape that strengthens the

					principle of equality and respect for the rule of law and in furtherance of Sustainable Development Goal (SDG) No. 5 which seeks to eliminate gender inequality.
16.	Professional Bondsperson	ss. 187-188	ss. 186-187		Both laws provide- in similar terms and wordings for the registration of bondspersons for purposes of offering professional services in that respect. The only point of variation relates to the authority to make regulations on the registration of bondsperson. While the ACJA vide s. 187(1) gives the authority to make regulations for the registration and licensing of bondspersons to the Chief Judge of the Federal High Court or of the High Court of FCT, that responsibility is to be exercised by the Chief Judge of Oyo State vide s. 186 (1) of OyoACJL. This is not surprising since both laws apply in different contexts. In both laws however, a person

					or corporate body seeking to be registered and licensed as bondsperson must possess unquestionable character, impeccable integrity and have the ability to deposit sufficient amount of money (as stipulated in the regulations) with the CJ, among others. Considering that Nigeria lacks the capacity to track people and records, how would the integrity of a proposed bondsperson be verified and what procedure would be followed? It is therefore suggested that guidelines for ascertaining the integrity of a proposed bondservant should be well spelt out in the CJs regulations.
	Trial				
17	Day-to-day trial	s. 396	s. 397	s. 36 CFRN	One of the innovative provisions in the ACJA and indeed the OyoACJL is the introduction of the concept of da-to-day trial, which aims to ensure speedy

					dispensation of justice, and uphold the constitutional right of suspects to speedy trial. Although this innovation is laudable, lawyers have argued that the phrase: day-to-day is ambiguous. For them, it is unclear whether day-to-day means everyday until conclusion of trial, or every other day. They have also argued that giving institutional and other challenges that exist in the court system, conducting trial daily may be impracticable. Drafters of both laws must have also taken these issues into consideration, hence they provide alternative, by stating: where day-to-day trial is "impracticable" a maximum of five adjournments-each adjournment not exceeding 14 days, until conclusion of trial. Upon exhaustion of the adjournments, there is also a leeway for further adjournments if trial is not concluded. Such

					adjournments shall not exceed 7 days including weekends. The court can also award punitive costs to discourage frivolous applications. In addition to the stipulated measures seeking to entrench speedy dispensation of justice, it is important to address institutional challenges inherent in the court system that militate against day-to-day trial in Nigeria.
18	Trial in *absentia*	s. 352			The concept of trial in *absentia* is not considered in the OyoACJL. S. 352(4) of the ACJA allow a defendant to be tried and convicted in *absentia* to eliminate the practice where lawyers, particularly defence lawyers, make all manner of excuses for their clients who fail to attend court in a bid to delay justice. Often, they seek adjournments using excuses such as "my client's absence is due to ill

					health" etc. as device to delay trial.
19	Case management & Disclosure protocols	ss. 300 376(4) & 379	ss. 299, 377	FCT High Court Practice Direction, 2017 s. 36 CFRN	One of the aspirations of the ACJ Laws is to establish a culture of quick justice delivery. One way through which both laws hope to achieve this is case management. Thus, both laws provide for frontloading of evidence at Magistrate and High Court levels. However, it has been contended that the provisions relating to case management under the ACJA, and replicated in the OyoACJL, "suffers from a lack of clarity and judicial guidance."[30]

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

					Be that as it may, frontloading affords the defence ample opportunity to prepare his/her case. It also stimulates pretrial options where issues not in contention are agreed upon and discarded before trial for purpose of dispensing trial as quickly as possible. Under the provisions, there is no obligation on the part of the defence to disclose or frontload evidence. However, FCT High Court Practice Direction recommends that all parties should disclose. Also, in line with Rule 37 of the Rules of Professional Conduct Legal Practitioners, 2007, which enjoin legal practitioners to see themselves as ministers in the temple of justice, it is important for lawyers to understand that they have a responsibility to ensure that justice is done, and not to secure offenders' release *by all means*.

					Frontloading also push further the objectives of the CFRN, to the effect that a defendant should be given adequate time and facilities to prepare his or her defence. In *Ejike Okoye v Commissioner of Police*.[31] The Supreme Court interpreted facilities to include "disclosures"; and the concept of "adequate time and facility" to include "necessary hints... including the statements of the prosecution witnesses and his own written statement" in *Shema & Ors v FRN.*[32]The issue for consideration is the implications of disclosures on the principles of *witness protection;* and the presumption *of innocence* under s. 36(5) CFRN and s. 135 (1) of Evidence Act, 2011.
	Sentencing				
20	sentencing guidelines and consequential orders	ss. 311, 401, 416	s. 312, 402, 417		Sentences and sentencing are recognised as essential

[31] (2015) All FWLR (Pt.799) 1101 at 1126-1127
[32](2018) LPELR-43723 (SC)

					components of criminal justice administration in Nigeria generally, and Oyo State specifically. Therefore, guidelines are provided to regulate the courts' sentencing procedures; and to ensure that sentences are given towards achieving the objectives of sentencing and sentences. Both laws specify in very significant terms that sentence to be given must be in consideration of factors, such as the nature and gravity of the offence, age of the offender, and whether he or she is a person of unsound mind, a pregnant woman, etc. In all situations, the objectives of sentencing- prevention, restraint, rehabilitation, deterrence, education of public, retribution and restitution must form the benchmark.
21	Sentencing relating to child offenders	ss. 452, 405	ss. 440, 406,	ss. 34, 277 CRA s. 82 TIPPEAA	Both laws consider sentencing and sentences in cases

				ss. 203, 205, 213 Oyo State Child Rights Law, 2006	involving children very seriously; and so provide unique sentencing guidelines for that purpose. Both laws recommend that subjecting children to formal criminal justice apparatus should be a last resort. Where a child comes into conflict with the law, the ACJ Laws provide that the child should be tried and sentenced under the Oyo State Child Rights Law or CRA, as the case may be. This is important, as both laws have established comprehensive child justice administration, including the establishment of Family Courts at High Court and Magistrate Court levels. To give effect to the provisions of the Child Rights Law, the Governor of Oyo State, Seyi Makinde commissioned the Family Court on 9 July 2020. This is commendable even though this is coming more than 3 years after the law became

					effective. On the issue of death sentence, both laws forbid the pronouncement of death sentence on a child offender. But what happens if a child is charged with the offence of terrorism under the Terrorism Prevention Act (TPA), which does not make reference to the CRA and also allow a sentence of death to be pronounced on an offender where an act of terrorism results in death of the victims. In this regard, experts have recommended that rather than try children as terrorism offenders, they should be treated as victims who need rehabilitation and reformation. This should be made subject to situation where the child offender fully understand his or her action and is willing to take responsibility. Beyond this, a major problem relates to the fact that provisions on child justice are general in nature and fail to take

					cognisance of the uniqueness of each child. Hence, the current advocacy for a "juveniles are different"[33] approach in the application of laws, principles and guidelines. This approach promotes the need to take the specific context and circumstances of each child into consideration during the process of justice application.
22	Non-custodial sentence/punishment	ss. 314, 321, 327, 453-459, 460-	Parts 42 (Probation and non-custodial alternatives), SS. 441-455; and 43 (Parole)-ss. 446-456	a). ss. 1 (1)(2)(b)(3), 2(4), 4(2)(e); and 37-44 Nigerian Correctional Service Act (NCSA), 2019	As already discussed under the sub theme: *Compliance with International Best Practices* above, the fact that incarceration, over the years, failed to add the required value to criminal justice administration led to calls to make use of incarceration only as last resort. As a result, alternative punishment, which applies alternative methods of punishment, popularly tagged, non-custodial punishment/measures have been

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

					adopted. Both laws innovatively introduced a variety of non-custodial measures, which can be applied. They include, fines, probation, parole, suspended sentence, conditional release, community service and confinement in a rehabilitation centre especially in the case of children.
23	Non application of Non-Custodial measures	s. 416 (k)	s. 417 (2)(h)(iii)		Under the ACJ Laws, offenders who should be sentenced to imprisonment; and are therefore not entitled to alternative punishment are serious offenders who need to be isolated from the society. They also include those "with whom other forms of punishment have failed or is likely to fail.
24	Restorative justice	ss. 336, 337, 338, 342 490	s. 337; Part 31(Costs, Compensation, Damages and Restitution)	a). ss. 48, 49(3) & 51(1) TIPPEAA b). s. 49 Cybercrimes (Prohibition, Prevention, etc.) Act (CPPA), 2015 c). s. 43 CFRN	Hitherto, Nigeria's criminal justice administration had focused more on punishment. This has been serially condemned both by criminal justice experts in Nigeria and the

					international community. These provisions demonstrate a shift from adversarial justice system to restorative justice, which seeks to entrench egalitarian society where offenders, victims and the society at large benefit from the justice administration. See *Nwude v FRN*[34] on restitution.
	Powers of the Attorney-General				
25	Powers of the Attorney-General	ss. 104-106.	ss.105-107	s. 174 CFRN	Like the ACJA, the OyoACJL gives enormous powers to the Attorney General (AG), which may be exercised in person or through an authorised law officer or agency. These powers include the power to prefer a charge, issue legal advice, request case file from police, take over and continue or discontinue a criminal trial, as well as undertake the prosecution of offences in any court. The powers given to the AG are exercisable in

[34] (2015) LPELR-25858 (CA)

					furtherance of his or her constitutional powers under s. 174(3) CFRN, as amended which enjoin the AG to exercise these powers with due regard to *public interest, the interest of justice and the need to prevent abuse of legal process*.
26	Power to vary terms of, or cancel bail	s. 169	s. 168		Under both laws the powers of the AG extend to varying bail conditions or cancelling bail. Where a suspect has been granted bail and facts emerge that render the bail undesirable, the court may, on AG's application issue 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 amount of money payable.
27	Lay prosecutors	s. 106	s. 107		The provisions of ACJA and OyoACJL lists the AG, a legal

					practitioner authorised by the AG, and a legal practitioner authorised to prosecute by both laws *or any other Act of National Assembly* as persons who can prosecute *all offences in any court*. The OyoACJL however adds *a police officer who is a legal practitioner* to the list. There are two implications associated with these provisions: (a) elimination of lay prosecutors; and (b) jettisoning of the Supreme Court ruling in Federal *Republic of Nigeria v. Osahon,*[35] where the Court reaffirmed the powers of the police prosecutor whether qualified as a legal practitioner or not to prosecute in any court in line with section 23 of the Police Act.
	Witness				

[35](2006)5 NWLR (PT. 973) 361

28	Witness protection	s. 232	s. 231	a). s. 36(4)(a)(b) CFRN b). s. 29 TPA, 2011 as amended c). s.47 TIPPEAA d). s. 17 EFCC Act, 2004 e). ss. 33, 34 TPA, 2013 f). s. 17 Anti-Torture Act, 2017	The only difference between the provisions of ACJA and OyoACJL relating to witness protection is s. 231 (4)(b)(e) of ACJA, which is missing in the OyoACJL. The subsection provides: under subsection (b) *offences under the Terrorism (Prevention)(Prevention)* and *any other offence in respect of which an Act of the National Assembly permits the use of such protective measures as the judge may consider appropriate in the circumstances* under subsection (e). This shows that the concept of witness protection had wider application under the ACJA than the OyoACJL. Although witness protection measures are designed to provide security and ensure seamless trial, particularly in serious crimes and offences that affect the dignity of victims, it has been criticised by lawyers who feel

					that it violate the defendant's constitutionally guaranteed right to fair hearing, in particular the right of the defendant to examine and/or cross examine witnesses against him or her under s. 36 (5)(d) CFRN. Rather than violate the right of the defendant to fair hearing, the concept offers protection for vulnerable victims and witnesses; and also preserve their integrity and dignity. The categories of offences and types of measures to be adopted are spelt out in the laws. For example, serious offences, such as sexual offences, financial crimes-money laundering, and corruption and terrorism, etc. are listed as offences for which witness protection measures can be applied. In the same vein, protection measures which can be applied includes evidence via video link, written deposition of expert evidence,

					and screen or mask, etc. The law also allow judges the discretion to apply *any other measure that the court considers appropriate in the circumstance* under s. 232 (4)(e) ACJA and s. 231 (3)(d) Oyo ACJL. Under s. 36(4) CFRN relating to "hearing in private", application of measures must be done in the interest of defence, public safety, public order, welfare and protection of minors as well as protection of lives of parties. While the laws have catered to the issue of witness protection measures, Nigeria still lacks a robust witness protection programme under which various types of measures can be managed. In Nigeria, witness protection measures have been applied in limited terrorism cases, such as the cases of *Aminu Oguche v. FGN; kabiru Umar v. FGN; Mohammed Nazeef Yunus v.*

					FGN; and Sambo Dasuki v. FGN.
29	Witness expenses	Ss. 251-255	ss. 250-253		The sections of the OyoACJL relating to witness expenses are exact reproduction of the provisions of ACJA. Generally, witnesses are entitled to "reasonable expenses" as of right. However, the judge has discretion to approve payment of witness expenses on application. Despite these provisions, non-payment of witness expenses remains a challenge due to inadequate funding. Therefore, lawyers have had to pay witness expenses out of their pocket, or pass the burden of paying to clients; and this accounts for the inability of lawyers to secure the attendance of witnesses for important hearings.
30	Plea-bargaining	s. 270	s.269	s. 14(2) Economic and Financial Crimes Commission (EFCC) Act, 2004. s. 167, Anambra State Administration	An elaborate plea bargain regime was established in 2015 under the ACJA, and replicated in the 2016 OyoACJL. Hitherto, the

				of Criminal Justice Law, 2010. s.75 Lagos State Administration of Criminal Justice Law, 2011. ss. 24, 241 (1) CFRN	application of the concept was limited to few states such as Anambra and Lagos; and to the operations of the EFCC at the federal level under the EFCC Act, which did not expressly provide for plea bargain but allow its application through the practice of compounding offences under s. 14 (2). Although the application of plea bargain has been condemned and dismissed as an avenue for high profile suspects in corruption cases to escape justice, its application can benefit the offender, the victim(s) of crime and the justice system. Both laws contain expansive sections that provide guidelines on the procedure and conditions for initiating and negotiating plea bargain agreement. The provisions also stipulate the role of the judge or magistrate in the plea bargain agreement, which is limited to accepting or

					rejecting the plea bargain agreement; and ensuring that due process was followed, particularly with regards to protecting the rights of the defendant and ensuring the victim's full participation and consent. A crucial aspect of plea bargain agreement as contained in both laws relate to ss. 270 (18) ACJA and 269 (18) OyoACJL respectively all of which precludes parties to the agreement from going on appeal once the judge or magistrate has ruled on the agreement. However, in 2020, the Court of Appeal held that s. 270 (18) ACJA contradicts the provisions of ss. 240 and 241 (1) of CFRN, 1999, as amended, particularly s. 241 (1) that guarantee the right of appeal to litigants. The case was an appeal (Appeal No: CA/A/767/2019) filed by Barrister Chikaosolu

					Ojukwu on behalf of his client, Chinaka Chijioke Promise against the EFCC challenging his conviction and sentencing by the FCT High Court presided over by Justice M.B. Idris based on plea bargain agreement. The court held that 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.
31	Interlocutory applications and Stay of proceedings	s.306	s. 307	s. 40 EFCC Act, 2004 s. 36(4) CFRN	The main focus of the ACJ Laws is to deliver criminal justice options that are viable, transparent, accountable and beneficial. One way of achieving this is to have in place a criminal justice system that is capable of delivering justice, speedily and timely. Hitherto, the Nigerian criminal justice

					system was fraught with undue delays in justice delivery due to frivolous applications known as interlocutory applications. Few examples are *stay of execution, stay of proceedings* and *preliminary objections*. These applications were effectively utilised by lawyers, especially in high profile cases involving politically exposed persons[36] to delay trial, frustrate the case and consequently let their clients off the hook. The fact that several of anti-corruption cases were tried under the EFCC Act, which provides that interlocutory application, such as *stay of proceedings* shall not be entertained until judgment is delivered in s. 40 did not dissuade lawyers from making and getting these applications. The result of this well-established tactic of delaying justice through interlocutory

[36]See for example, Dariye v FRN (2015) 10 NWLR (Pt. 1467) 358.

					applications was (a) frustration on the part of the judges, (b) lost of public confidence in the justice system, (c) denial of justice to citizens (in some cases); and (d) constitutes a setback for s. 36(4) CFRN. In *Amadi v. NNPC,*[37] the Supreme Court, succinctly aired its frustration at delays caused by counsel's frivolous applications by admonishing 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). Also, in *FRN v. Babalola Borisade*[38], a case involving a former Minister of Education prosecuted by ICPC, Nweze, JSC

[37](2000) NWLR (Pt. 9) 1543, @ 1543, paras D-G
[38](2015) All FWLR (Pt. 785) 227

					condemned the use of interlocutory appeals to frustrate criminal trials especially those involving politically exposed or highly placed defendants. The introduction of measures to address undue delays and enhance speedy trials in both laws such as limiting adjournments to five, abolition of stay of proceedings,[39] reserving ruling on rebutted confessional statements till end of trial-technically clogging *trial-within-trial*, among others, is good spirited. Inspite of these provisions, counsel continue to approach the courts with interlocutory applications. Attitude of lawyers, particularly senior lawyers in that regard, have been publicly condemned at different fora as well as by the Supreme Court as the court did in *Dr. Dayo Olagunju v.*

[39]See *Olisa Metu v. FGN* [2017] 11NWLR (Pt. 1575) 156 at 176-178.

					FRN;[40]and *Joshua Dariye v. FRN*[41]where the Supreme Court derided eight years delay of trial due to uncanny interposition for interlocutory applications.
32	Prosecuting child offenders	ss. 452, 371	ss. 440, 372	Part XIII- ss. 149-162 CRA Oyo State Child Rights Law (CRL), 2006	The ACJ Laws acknowledge that child justice is well articulated in the CRA, and allow child offenders to be tried under the CRA and CRL respectively. The only exception relates to bail. Under s. 452(2) ACJA and s. 440 (2), provisions of both laws relating to bail shall apply to bail proceedings of a child offender. This brings into focus the situation of a child who is between the age of 15 and 18 years in Oyo State. It means a child offender who is within this age bracket will be tried under the ACJL since the law only recognise a person who is between the age of 7 and 14 as a child under s. 2. This is not good enough. It

[40](2018) LPELR-43909 (SC)
[41](2015) 10 NWLR (Pt. 1467) 325

					is important that the definition of a child under the OyoACJL is revisited to bring it in tandem with other laws that define a child as a person below the age of 18.
33	Elevation of judges, trial *de novo;* and transfer of cases	s. 396(7) s. 98	s. 397(7) s. 99		One of the ways that the ACJ Laws intend to achieve a system of speedy justice is to prevent *trial de novo* or stalling of trial on account of the elevation or transfer of the presiding judge. Both laws specify that the Chief Judge (CJ) may transfer a case from one court to another where prosecution has not yet called witnesses whenever the need arises. Under both laws, where a judge of the High Court has been elevated to the Court of Appeal while presiding over a case, he or she shall have dispensation to return to the High Court to conclude the case while remaining as a Justice of the Court of Appeal, so as to prevent a reoccurrence of the

					situation in *FRN v. Ibori*[42] and several others, in terms of delays. This provision was recently put to the test in the case of *Ude Jones Udeogu v FRN*,[43] where a trial judge, Justice M. B. Idris who has been elevated to the Court of Appeal was given a fiat by the President, Court of Appeal (pursuant to s. 396(7) ACJA), to return to the High Court to conclude a part-heard corruption matter involving the appellant and others, including the former governor of Abia State, Orji Uzor Kalu. The appellant was subsequently convicted, hence the appeal. In a judgement delivered on 8 may 2020, the Supreme Court held that s. 396 (7) set out "to frontally contradict and challenge the letters, substance and spirit" of some provisions of CFRN, 1999 as amended; and that by operation of s.1

[42](2014) 13 NWLR (Pt. 1423) CA 168 **4**

[43] (SC.622C/2019)

					(3) of CFRN, s. 396(7) is to the extent of its inconsistency with the CFRN void. This principally stifled the aspirations of the ACJA to establish a regime of speedy dispensation of justice through the elimination of *de novo* trials.
34	Monitoring mechanisms	Part 46-ss. 469-476	Part 44-ss.457-464		Both laws establish institutional framework for effective implementation of the laws, i.e. the *Administration of Criminal Justice Monitoring Committee* under s. 469(1) ACJA; and s. 457(1) OyoACJL. It is important to highlight the fact that the provisions of OyoACJL relating to monitoring mechanism are the same with those of the ACJA. Both laws impose a duty on the Committee to ensure that both laws are effectively and efficiently implementation. To motivate and commit members, the law provides for their remuneration. The Committees have

					been established pursuant to both laws. What is important now, is for government at federal and state levels to ensure that members are provided with the necessary tools and facilities required to actualise their mandate under the law. On their part, Committee members are enjoined not to work in isolation, but in collaboration with relevant criminal justice institutions and relevant stakeholders to push forward the agenda of the ACJ Laws.

Table 11: Comparison between ACJA 2015 and Oyo State ACJL

10.4 Practical Challenges with the Implementation of the ACJA/OYOACJL Provisions

The introduction of the ACJA was highly welcomed by criminal justice practitioners due to its tendency to establish a robust criminal justice system in the country. This may account for why most of its provisions are duplicated in the OyoACJL. Both laws introduced innovations that can potentially eradicate delays in justice delivery; and also entrench an egalitarian society where everybody is a beneficiary. As beautiful as these laws are, implementation is bedevilled with practical challenges. Some of the challenges are examined below.

a) Funding

A major challenge facing the implementation of the ACJ Laws is lack of or inadequate funding. This problem has existed for decades and accounts for the inability of the entire justice system to work effectively and seamlessly. Indeed, every aspect of our criminal justice system, particularly the institutions- police, courts, and correctional service, etc. are grossly underfunded, making it near impossible to carry out their functions. Even the basic requirement of witness expenses is not being met due to paucity of funds. Underfunding affects investigations, witness expenses programme and facilities for recording arrests, and taking statements, etc.

b) Ineffective Application of Information Communication Technology (ICT)

The coronavirus or COVID-19 pandemic that ravaged the whole world, including Nigeria and its attendant response measures such as lockdowns and other protocols exposed the inadequacies of our justice sector. As already noted, the cardinal objective of the ACJ Laws is access to justice through speedy and efficient justice delivery. This is why the laws provide for the use of technology in the entire justice process beginning from arrest. During the lockdowns, most courts in Nigeria could not sit and trials were stalled while courts continue to sit virtually in some other climes. The result was the issuance of Practice Directions from the CJN, CJs of states and the FCT, on Virtual Hearing. The virtual hearings that took place were ineffective due to defective and inadequate ICT infrastructure, shortage of trained personnel and lack of optimal ICT facilities, among others. This makes it difficult to effectively implement the laws.

c) Attitude of defence lawyers

A major problem relates to the disturbing manner in which some defence lawyers handle litigation. In desperation to free clients *by all means possible,* they employ all manner of unwholesome strategies to delay trial. Sadly, many lawyers fail to comply with the provisions of the ACJ Laws.

d) Lack of awareness

There is a high level of ignorance of the provisions of the ACJ laws among the Nigerian populace, which makes their participation in their enforcement non-existent. For example, many people are unaware of the rights they have to arrest an offender or monitor a convict's compliance with sentence such as community service, etc. in the same vein, many people are still unaware of the rights of women to stand as sureties or that they can engage the services of registered bondsperson.

e) Lack of synergy between police investigators and prosecutors

The long existing inter-agency rivalry is one of the banes of the ACJ Laws in the country. The police and the office of the DPP of some states usually work at cross-purposes, with police investigators being accused of hoarding information, withholding investigation outcomes, refusing to stand as witnesses and not doing the needful by complying with provisions of the ACJ Laws on arrests, interrogation and remand procedures. Police investigators on their part have also accused the office of the DPP of undermining their work by delaying the issuance of Advice etc.

f) Incessant transfers of police investigators

Generally, police officers are prone to transfers. Thus, when a police investigator is transferred out of jurisdiction, investigations being handled by the affected officer(s) are stalled. This is mitigated where police investigators work in a team of two or three and anyone of them is not transferred. Even if the transferred office hands over the investigation file and properly brief another office, time would still be lost as the new office needs time to study the file and adjust to the situation. This can affect evidence gathering particularly where the evidence is fragile and needs to be gathered very quickly and effectively.

g) Abolition of lay prosecutors

Before now, it is common practice for non-lawyers in the police to prosecute cases at the magistrate court level. With the abolition of this practice, a retinue of cases hitherto handled by lay prosecutors are now being handled by lawyers, leading to piles of cases in the dockets of magistrates and judges, and engenders delay, which the ACJ Laws seek to address.

h) Concurrent application of ACJA and ACJL in the courts

The concurrent application of both laws in some state courts is likely to cause confusion, especially, where there are variations.

i) Omissions

The provisions relating to disclosures impose obligation on prosecution to frontload evidence but fail to impose similar obligations on defence. The laws

also lack provision for pre-trial measures as effective case management tools. While it is true that courts, such as the FCT High Court have come up with practice directions that address these issues, they are unlikely to have the same effect as if they were included expressly in the laws. This is because practice directions do not have the force of law.

j) Conflict with other substantive provisions

s. 2 of the OyoACJL that defines a child as a person who is below the above the age of 7 but below the age of 14 years conflicts with several provisions of the law including the CFRN and the Oyo State Child Rights Law, 2006, among others. At the federal level, the Court of Appeal, Abuja Division and the Supreme Court have held that some provisions of the ACJA conflict with provisions of the CFRN. In the case of *Ude Jones Udeogu v FRN*,[44] (facts already given in the analysis table), the Supreme Court held that s. 396 (7) set out "to frontally contradict and challenge the letters, substance and spirit" of some provisions of CFRN, 1999 as amended; and that by operation of s.1 (3) of CFRN, s. 396(7) is to the extent of its inconsistency with the CFRN void. Also, in a ruling on Appeal No: CA/A/767/2019, relating to plea bargain agreement, the Court of Appeal held that s. 270 (18) ACJA contradicts the provisions of ss. 240 and 241 (1) of CFRN, 1999, as amended, particularly s. 241 (1) that guarantee 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.

[44] (SC.622C/2019)

10.5 Recommendations

The challenges identified above need to be addressed. Therefore, the following recommendations are proffered:

a) Increased funding- the need to increase funding for the justice sector cannot be overemphasised. This is so because, criminal justice institutions need funds to provide facilities, train personnel and collaborate with justice sector of other jurisdictions. To be ready for emergencies such as the unexpected COVID-19, the justice sector must be ready in the ICT age. To do that, adequate funding is required. Staff welfare and better working conditions is paramount in effective justice delivery and require funding too.

b) Attitudinal change- lawyers, particularly the defence lawyers need to change their attitude. This is central to effectively implementation of these laws. it is important for defence lawyers to recognise their role as *ministers in the temple of justice*, whose primary role is to ensure justice is done, irrespective of whether or not it is favourable to their clients. Attitude of lawyers that focus on freeing clients even where they are aware of the guild of the client is unacceptable, and need to change. The implication of that defence lawyers need to embrace *disclosures* as a duty for all criminal justice practitioners and not hold tightly to the principle of *he who alleges proves,* to discharge their responsibility to disclose. Against the efforts of ACJA and OyoACJL to entrench speedy dispensation of justices, lawyers, especially the senior ones continue to make frivolous applications and requests for adjournments in order to delay trial. This needs to stop.

c) There is need to increase awareness of the public on these laws. Where necessary, this can be done by translating the provisions into local languages such as Hausa, Yoruba, and Igbo etc.

d) There is also need for training and retraining of implementers of ACJA/ACJL on different aspects of the law.

e) The ACJ Laws should also be amended to expressly provide for uniform definition of a child, pre-trial options, impose obligation on the defence to disclose and address other prevailing shortcomings, such as areas of conflict with other criminal provisions. Amendment(s) should clarify concepts and guidelines that are ambiguous and open to perceptions. This must however be in consideration of the principles of law relating to *alleging and proving of crimes*. In view of the recent Supreme Court pronouncement regarding s. 376(7) of ACJA, and that of the Court of Appeal on s. 280(18) ACJA, there is need to revisit these provisions and others similar provisions for purposes of harmonising the ACJ Laws with the CFRN. Alternatively, the CFRN could be revisited to give effect to the provisions of the ACJ Laws that seek to enhance justice in our country. Whichever option is taken, it must be in furtherance of achieving speedy dispensation of justice in criminal trials; and elimination of delays, which the ACJ Laws seeks to achieve. This should also be addressed as quickly as possible to prevent criminals from escaping justice as was the case before the ACJ Laws.

f) There is also need for improved working relationship between investigators and prosecutors. This can be achieved through capacity building for investigators and prosecutors.

g) It is important to ensure that police officers undertaking investigations are not transferred until they conclude their investigations. To achieve this, the office of the DPP must work hand in gloves with police formation in their jurisdictions.

10.6 Conclusion

As stated in the purpose/objective of the ACJ Laws, the desire to force a shift from a weak, slow and ineffective criminal justice system to a more robust one that enables speedy justice delivery occasioned the enactment of the ACJA and eventually, the KadACJL. This is clearly stated in the purpose/objective section of both laws. To achieve their stated objectives, several innovations, such as plea bargain, non-custodial measures and restorative justice, among others were introduced. Laudable as these laws are however, they are bedevilled with severe challenges, mostly in the area of funding and attitude of some criminal justice practitioners. In that regard, several recommendations have been made. By and large, there is good sense in appreciating the fact that these provisions have changed the criminal justice situation in Nigeria.

A

adjudicator 67

B

Bayelsa v, 112, 113, 114, 116, 117, 118, 119, 120, 121, 123, 125, 127, 128, 130, 132, 135, 137, 138, 139, 142, 143, 146, 147, 148, 149, 150, 151
bond 25, 52, 165
Bondsperson 16, 212

C

Chief Judge 16, 37, 52, 62, 88, 89, 158, 185, 212, 223
correctional service 29, 225
Court Martial 62, 64, 83, 123, 184
criminal justice vii, 1, 2, 4, 7, 8, 19, 24, 26, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 41, 43, 44, 45, 58, 59, 60, 61, 64, 66, 67, 68, 76, 77, 80, 82, 83, 84, 85, 87, 88, 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 105, 106, 107, 111, 112, 113, 114, 116, 117, 118, 119, 121, 122, 131, 132, 137, 139, 140, 144, 151, 153, 154, 156, 157, 161, 163, 164, 167, 180, 181, 182, 184, 185, 186, 187, 188, 190, 192, 194, 196, 197, 198, 199, 200, 202, 204, 205, 206, 209, 211, 212, 215, 216, 217, 221, 224, 225, 228, 229
criminal trials 1, 9, 18, 20, 29, 31, 35, 38, 45, 62, 63, 65, 68, 83, 84, 101, 113, 140, 148, 184, 196, 207, 222, 229

E

elevated judge 39, 96

F

fair hearing 5, 6, 26, 66, 67, 123, 131, 170, 171, 189, 202, 203, 219
foreign nationals 109

G

Governors 1, 142

H

human rights 2, 3, 4, 7, 29, 41, 42, 66, 77, 102, 145, 156, 157, 163, 164, 189, 199, 200, 201, 205, 211
humane treatment 4, 10, 29, 37, 42, 70, 77, 85, 90, 102, 154, 183, 189

I

incarceration 2, 7, 45, 118, 188, 199, 200, 204, 205, 216
instruments 7, 41, 46, 47, 51, 53, 54, 66, 102, 117, 118, 122, 205

J

Jigawa iv, 83, 84, 85, 86, 87, 89, 90, 91, 93, 96, 97, 98
jurisprudence 82, 94

K

Kwara iii, iv, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 48, 53, 55, 57, 60

L

lay prosecutors 73, 150, 169, 170, 178, 218, 226, 227

legal advice 14, 24, 30, 52, 53, 56, 107, 110, 217
lethargy 30
litigation 172, 192, 225

M

mental asylum 63
monitoring committee 77, 82, 144, 150

O

Ogun vi, 79, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 174, 175, 176, 177, 178, 179, 180
Osun vi, 181, 182, 184, 185, 186, 187, 188, 190, 193, 196, 197
Oyo vii, 198, 199, 200, 207, 212, 215, 219, 222, 224, 227

P

plethora 43
proceedings 14, 19, 20, 29, 31, 39, 40, 56, 62, 63, 65, 66, 68, 70, 72, 75, 76, 79, 83, 85, 86, 88, 90, 96, 97, 98, 107, 110, 113, 114, 127, 129, 136, 137, 139, 140, 156, 164, 170, 171, 177, 182, 183, 186, 189, 191, 193, 195, 207, 221, 222

R

restitution 22, 24, 56, 63, 65, 85, 86, 94, 109, 113, 118, 183, 187, 193, 215, 217
restorative justice vii, 2, 6, 9, 22, 24, 34, 35, 41, 43, 61, 67, 70, 79, 80, 95, 100, 109, 113, 122, 134, 151, 164, 186, 187, 204, 206, 217, 230

S

Shariah Law 89, 93

T

Tokyo 7, 44, 87, 118, 143, 157, 188, 205

U

United Kingdom 80, 101
United Nations 3, 4, 5, 7, 8, 43, 44, 85, 102, 117, 118, 119, 120, 122, 143, 154, 156, 157, 188, 201, 205, 206

V

virtual hearings 225