

**NIALS/MACARTHUR FOUNDATION PROJECT ON  
IMPLEMENTATION OF THE ADMINISTRATION OF  
CRIMINAL JUSTICE ACT 2015**

**REPORT OF A TRAINING**

**WORKSHOP FOR JUDGES AND LAWYERS ON THE  
IMPLEMENTATION OF THE ADMINISTRATION OF  
CRIMINAL JUSTICE  
ACT, 2015**

**REPORT**

**6TH-7TH AUGUST, 2018**



**NIGERIAN INSTITUTE OF  
ADVANCED LEGAL STUDIES**

**MACARTHUR  
FOUNDATION**

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AND LAWYERS ON THE IMPLEMENTATION  
OF THE ADMINISTRATION OF CRIMINAL  
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## 1.0. Introduction

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The Administration of Criminal Justice Act (ACJA) which was passed into law in 2015 has been described as being revolutionary by stakeholders in the criminal justice sector in Nigeria. The purpose of the Act is to ensure the efficient and effective management of Criminal justice institutions to provide a seamless justice sector, protect the interests of the suspect, the defendant, the victim and the society.

In recognition of the crucial role judges and lawyers play in the criminal justice sector, the Nigerian Institute of Advanced Legal Studies (NIALS) with the support of the Macarthur Foundation organised a two day training workshop for judges and lawyers from Kaduna, Kano and Jigawa States at ASAA Pyramid Hotels Kaduna from the 6<sup>th</sup> to 7<sup>th</sup> August 2018. This was to deepen understanding of the reform provisions under the ACJA, find out the steps taken by these states to domesticate the ACJ law and also ascertain the level of implementation. The workshop had in attendance the Director General of NIALS, Professor Adedeji Adekunle, SAN, Attorney General of Kaduna State represented by the Solicitor General of Kaduna State, Mr. Christopher Umar, a representative of the Macarthur Foundation, Mrs. Amina Salihu, Attorneys General of Jigawa and Kano states, Hon Justice Darius Kobo, the chairman, Justice Sector Reform Committee, Kaduna State, Judges of the State High Courts, Chairmen and members of the NBA branches of Kaduna(including the Zaria and Barnawa branches), Jigawa and Kano States, state counsels from the ministry of justice of these respective states where also in attendance. Mr. Chino Obiagwu (resource person), Dr. Ibe Ifeakandu (NIALS, resource person), Mr. Austin Emumejakpor Esq. (resource person), Tajudeen Ladoja Esq. and research fellows from the institute made up the faculty for the workshop. The workshop also featured robust discussions on topics ranging from Overview of the ACJ law, Arrest, Remand and Bail proceedings, Interlocutory applications,



Adjournments and Timelines under the ACJA, Disclosure Protocols under the ACJA, Witness Management and Protection and Plea bargains and Non-prosecution Agreements. Also, there were syndicate sessions in which the participants were divided into three groups to brainstorm and address some of the contentious issues under the ACJ Law on bail, detention and remand, mechanisms for case management, implications of stay of proceedings as well training and capacity building for judges and lawyers.

The DG, NIALS in his opening remarks welcomed everyone to the workshop and pointed out that the training was essentially geared towards deepening understanding of the reforms in the criminal justice legal framework using the ACJA, 2015 and developments from Kaduna, Kano and Jigawa States. He stated that this has been done by looking at zonal hubs and that a similar event was held for judicial officers from Kogi and Niger States in Abuja. The Primark, he noted, has been the support received from Macarthur Foundation and the need to efficiently use legal framework of the ACJA to expedite trial of corruption cases. He further explained that the combined training of judges and lawyers was borne out of the need to achieve robust discussions on the emerging trends under the ACJ Law.

In carrying out the project, he stated that the first step taken was to produce a manual with slight variations for Judges and thereafter hoped that at the end of the workshop, the objectives of the training would have been achieved.

The representative of Macarthur Foundation welcomed everyone on behalf of Macarthur Foundation and stated that the foundation has been in Nigeria for the past 34 years but did not start working on justice related issues until 4 years ago. Also, she pointed out that ACJA is not exactly an anti-corruption Law but could go a long way in the trial of corruption cases and expressed the foundation's interest in the accountability provisions in the ACJA

e.g. the requirement of a monitoring committee (which has not been activated by most states). In her concluding remarks, she thanked NIALS for collaborating with the foundation by providing the required human resources for the project.

There were also goodwill messages and felicitations from the representative of the AG, Kaduna State, chairmen, NBA Kaduna and Kano branches.

## **1.0. ISSUES (SUMMARY)**

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1. In the ACJA 2015, there is a deliberate effort to transform the criminal justice system from its present state of retributive justice into a restorative justice system.
2. NIALS introduced the manuals for lawyers and the judiciary. The primary source of the modules is the ACJA; the only difference is that the modules in the manuals have been designed to speak to the peculiar duties of relevant stakeholders in the implementation of the ACJA.
3. Unfamiliarity with the new law on the part of key stakeholders such as lawyers, judges and support staff (paralegals) has led to frustrating results in the application of the ACJA.
4. There are variations in the laws of the various states from the ACJA, but it is important to note that the principles are the same.
5. The magistrate shall forward reports for arrest to the Criminal Justice Monitoring Committee which after analyzing the reports is required to advise the Attorney General on the trend of arrests and related matters.
6. Plea bargain is one of the tools employed in the criminal justice system. It helps the Court and State to manage caseloads.
7. Section 232 of the ACJA permits witnesses to some offences to give evidence with some protection measures. These include: sexual related offences, Terrorism offences, offences relating to Economic and Financial Crimes and Trafficking in Persons and related offences.
8. Interactions with prison officers indicate that regardless of the provisions of the Act, prison reforms are far from being achieved.
9. The architecture of the ACJA promotes restorative justice, by seeking to repair harm, circumstances of the victim and the need to ensure speedy dispensation of justice.



10. The ACJA did not repeal the CPC but some states have adopted a system where they expressly preserve or adopt relevant and peculiar provisions of the CPC.
11. It is important to restate that the electronic recording of confessional statements is not compulsory.
12. The ACJA has adopted the provisions of the Child rights Act 2003 and the Children and young people law when prosecuting children.
13. The ACJA incorporates the provisions of the law that deal with humane treatment of suspects, including the right to life, prohibition of torture, cruel and inhuman and degrading treatments.
14. The ACJA has given the magistrates power to order an arrest even when the crime was not committed in his presence. The powers also include; visit to detention and holding facilities except the Prison, to determine whether or not the persons in these facilities may be released on bail.
15. Order 5 of FCT high court Guidelines re-emphasizes the provisions of section 36 (6(b) of the CFRN with regards to availability of “adequate time and facility” for an accused person to prepare his defence.
16. The ACJA provides for the prosecution to disclose to the defence, all relevant materials, information, proof of evidence etc., he intends to rely on at trial.
17. The Nigerian prosecutor is not given the discretion to decide whether or not to charge because of the element of compromise.
18. There have been widespread and deliberate efforts by persons with deep pockets to stall criminal trials particularly in criminal cases, hence the introduction of section 306 of the ACJA prohibiting stay of proceedings.
19. Implementation of a law is from the date of commencement, but up till recently, there has been some delay or a lack of awareness by practitioners.
20. There are no specified sanctions in the ACJA for delays or not complying with time standards. The payment of cost may not be practicable particularly where it is awarded against the state.

21. Interlocutory applications can be oral or written depending on the nature of order sought and the Rules of Court or Practice Directions. Where such applications are governed by Law and Rules of Court, they should be followed.
22. The foregoing point was made clear in *Okoro v. Okoro* (1998) 3NWLR (Pt 540) 65- held that a court, trial or appellate, must hear a court process before it, including a motion. A refusal to hear process or motion is a breach of the constitutional right to fair hearing and this contravenes the provision of Section 33(1) of the 1979 constitution (now section 36 of the 1999) Constitution.
23. Inherent powers of the court is not a blank cheque. It can be found in the powers given to courts in Section 6 of the Constitution and Part II of ACJL or any other enabling laws.
24. Most criminal trials in Nigeria are bugged down by frivolous and unnecessary interlocutory applications. Interlocutory applications are granted to remedy minor wrongs or provide temporary reliefs in the course of a proceeding.
25. The rot which had afflicted the Nigerian criminal justice system through Stay of Proceedings and Interlocutory Appeals has been terminated by section 306 of the Administration of Criminal Justice Act, 2015 by amplifying the provisions of the Constitution to ensure speedy dispensation of justice.
26. Where day-to-day trial is impracticable, the Act provides that parties shall be entitled to only five adjournments each. The interval between each adjournment, according to the Act, shall not exceed two weeks each. Where the trial is still not concluded, the interval for adjournments will be reduced to seven days each.
27. The main purpose of disclosure is to engender speedy trials in accordance with the aspiration of the ACJA and sustain equality of arms for parties in litigation
28. Front loading has the potential to address issues surrounding speedy dispensation of justice.
29. There is no obligation on the defence to disclose in criminal matters.
30. The prosecutor is to make available all proof of evidence they intend to rely on available to the defendant to prepare for his case, including additional evidence which must be presented with such before the defence.



31. Factors to be considered in plea bargain include; the strength of evidence, availability of witnesses, effect of case on victim/witnesses (can they stand the stress of full trial, could they be bought over, is there the possibility of a settlement between the parties?, safety of witnesses, repeat offender, high level of profit by defendant, Impact of crime on victims or community, amount of proceeds of crime recovered, the role of the defendant and co-operation given by defendant to investigators or prosecution.
32. States may not necessarily repeat provisions that relate to the Police or other federal agencies.
33. The provision to section 17 of the ACJA is irrelevant as it defeats the aim of section 35 in terms of the right to legal representation. Hence how do we define the line in terms of interference and a lawyer informing his client he has the right to remain silent.

### **3.0 INTERACTIVE SESSION ( SUMMARY OF POINTS RAISED)**

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1. There is need to address the issues concerning law enforcement agencies e.g. the use of FIR with bogus claims or frivolous prosecution in it with the sole purpose of getting a remand order to hold a defendant. What measures are in place to limit or contain the abuse of process by the police?
2. Law enforcement agencies are not complying with the provisions of the ACJA and ACJL.
3. The issues around trial within trial in the ACJA, where the defence has to wait till Judgement for the court to address issues around the voluntariness or otherwise of the confessional statement.
4. There are issues surrounding the oath taken by judicial officers as it affects elevation of judges who may have reason to attend to pending criminal trials.
5. Lawyers should challenge the provisions of the law in court in order to test the veracity of the provisions and ensure that the courts reinforce the provision or give proper interpretation of the law.
6. There is no provision for bail pending appeal in the ACJA. A review of the law is necessary to give respite to persons who might have been wrongly convicted.

7. Every Judge is a master of his court and should take charge especially with respect to applications for adjournments.
8. The practicability of day to day trial is in doubt. Efforts should therefore be made to ensure it is enforceable.
9. There are issues surrounding cross examination as regards confessional statements particularly where such confessional statement is in writing. This means that it becomes a documentary evidence upon which a defence counsel has the right to cross examine the documentary evidence.
10. From the angle of a prosecutor, the award of cost for frivolous adjournment has been awarded by courts in Lagos and some other states, hence it is practicable. The effect has also been that cases have moved speedily.
11. What sanctions can be imposed on counsel especially as regards frivolous applications generally other than costs? Are there sanctions which Judges in the court can issue to deter delays?
12. The issue of appearance fee must be in looked into and how it affects delay in criminal trials.
13. There is need to also interrogate the issue of transfer of police officers or investigative police officers, who are key prosecution witnesses, and ensure their availability at criminal trials.
14. The court of appeal rules and special circumstances if properly applied can ensure that the court grants bail pending appeal.
15. Prosecutors insist that the defendant should be made to disclose and there is the argument as to whether the disclosure by the defence would amount to helping the prosecutor to prove his case against the controversial issues.
16. The missing link between disclosure and the FCT practice direction and the ACJA is that there is no provision in the law that allows for pretrial session in criminal trial.
17. Disclosure on the part of the defence is contrary to the Nigerian system of adversarial criminal trial and the need for the prosecution to prove his case beyond reasonable doubt.



18. Disclosure before High courts is relevant and achievable. However, with respect to Magistrate courts and other courts where trials are commenced by FIR, there may be challenges with regard to the production of documents by the prosecution and issues of funding.
19. The issue of disclosure on the defence is the attitude, acceptance and conscience of the defence as to whether or not they intend to conclude the case.
20. With respect to a defendant to be taken into custody and the requirement of having a lawyer by his side in the course of statement taking under the ACJA and ACJL Kaduna, there is non-compliance with those provisions. How can this be dealt with? Also the provision which requires Magistrates to monitor police stations close to their jurisdictions has not been activated.
21. It was noted that the police ought to be part of the training workshop.
22. On the issue of the police bringing trump charges against the suspect who is remanded in custody, there should be compensation for such unlawful detention.
23. Drafters of the ACJ Law were more concerned with timelines thus leaving out an important aspect-what happens after judgments e.g. bail pending appeal. There should be a holistic approach to the problems bedeviling administration of criminal justice in NIGERIA.
24. The provision on conclusion of trial within 180 days and requirement of a report and reasons for failure to conclude trial within the estimated time to the CJ did not take into account the next possible steps to be taken.
25. It was recommended that judges should give bench rulings to applications pending before them.
26. On the issue of adjournments, the judges should ensure strict compliance with the provisions on cost to discourage frivolous and unnecessary adjournments.
27. Judges should not only condemn frivolous applications for adjournments but should also impose sanctions on erring lawyers in the form of award of costs or reports to the Disciplinary committee.
28. Lawyers are critical stakeholders in the administration of criminal justice especially



private practitioners who are super critical stakeholders. Plea bargain cases can serve as a clog to career progression for lawyers aspiring to the position of judges or SANs. Since they are uncontested cases. There should be a review of the guidelines /rules to accommodate lawyers who have worked on several plea bargain cases.

29. On the issue of reassigning a plea bargain case to a new judge where the defendant does not agree with the terms of the bargain, this will pose serious challenges because the new judge will be seised of all the facts of the case including the plea agreement.

## 4.0 Recommendations

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1. In adopting the ACJA, states should not adopt provisions of federal agencies like the police, because it is not within their competence.
2. The state of resources of any particular state should be considered in order to make provisions that can be implemented easily and effectively.
3. The defence and prosecution lawyers should have a common goal of achieving justice, hence the need to avoid issues around delays and engage in professional presentations of the cases.
4. The police should have a law department that would prosecute criminal cases in order to avoid the continuous use of lay prosecutors.
5. In a remand proceeding, magistrates should be satisfied that there is a probable cause or an offence has been committed and should utilise his discretion by either releasing the suspect or remanding same for the period as provided for in the relevant laws.
6. For there to be a truly reformed criminal justice system, there has to be a review of the Police Act and Prisons Act and this includes a total reform of the mode of operations of these organisations.
7. Case management strategies should be adopted by the prosecution to determine if there is a prima facie case against the suspect before the prosecutors go to court. Prosecutors are encouraged to enforce their rights to use their discretion as to whether or not to prosecute a case.
8. Lawyers in practice should be made to make returns on cases concluded the way the Judges are required to do so.
9. There should be use of pretrial conferences in criminal cases in order to make speedy trial conference.

10. Prosecutors should be willing to disclose materials and facts as they are in as much as the essence is to secure a just end.
11. Judges should apply the stick where the need arises and report erring counsel to NBA.
12. The NJC should not only timeously dismiss frivolous complaints against Judges but should also report erring counsel to NBA.
13. A template incorporating the schedule of Magistrates in respect of visits to police stations should be developed.
14. Practice direction with respect to bail bonds persons should be developed by the Chief Judge.
15. There should be continued education and advocacy on the provisions of the ACJ Law to ensure commitment and effective implementation.
16. Synergy between all criminal justice stakeholders to guarantee effective operation of the ACJ Law should be encouraged.
17. In order to deal with delays in trials, a practical solution may be to overhaul the Practice Direction of the Court of Appeal in order to deal with interlocutory criminal appeals from cases within the purview of section 306. Such may be called Fast Track Criminal Appeals.
18. There is need to institutionalize a plea bargain system and build the integrity of the system to boost public confidence with regards to achieving justice.
19. In plea bargain arrangements, the judge should be firm and in control of the process once the agreement is presented, consistent in his decision, be fair and listen to all sides, reduce his judgment into writing giving reasons for his decision as is done in full trials, make clear what aggravating and mitigating features were considered in reaching his decision and where sentencing guideline is followed, he should state the range or bracket the sentence falls under and application of upward or down ward review.

## 5.0 Conclusion

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The workshop was generally interactive and participants showed a deep understanding of the issues and proffered solutions that could be termed proactive. The mixture of participants from both sides of divide provided an avenue to share experiences that may further the cause in terms of efficient dispensation of justice in Nigeria.

Over all, the participants were totally appreciative of the event and expressed deep gratitude to the Director General of NIALS, Prof Adedeji Adekunle, SAN and the sponsors of the workshop, the Macarthur Foundation for the opportunity to acquire new skills and knowledge in criminal justice administration in NIGERIA





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