REPORT ON THE TRAINING WORKSHOP ON ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015 FOR LAWYERS

August 2018

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1.0 Introduction

1.1 The Nigerian Criminal Justice System and ACJA 2015

The Nigerian criminal justice system has in recent past been fraught with several challenges such as the issues of forced or coerced confessions, unnecessarily prolonged remand of suspects and undue delays in conducting criminal trials. Apart from disrupting the efficiency of the system, these challenges created a dent in justice delivery and the protection of the interest of the society, the suspect, defendant as well as the victim. The Administration of Criminal Justice Act (ACJA) was passed into law in 2015 to introduce radical changes to criminal justice administration in Nigeria.

Described as being revolutionary by stakeholders in the criminal justice sector, ACJA is expected to yield positive results in terms of speeding justice delivery while protecting the rights of detainees and suspects as well as the interest of the society and the victim. The purpose of the Act is to ensure the efficient and effective management of Criminal justice institutions to provide a seamless justice sector. The provisions of the Act which expressly applies to the FCT courts and Federal High Court is gradually gaining grounds in the states through enactment of respective state laws.

1.2 The NIALS Training

NIALS identifies that unfamiliarity with the provisions of the law on the part of key stakeholders frustrates the desired results which the Act is meant to achieve. Hence, the institute, in collaboration with MacArthur Foundation in its commitment to improving implementation and compliance with ACJA is engaged in organising series of training workshop for relevant stakeholders. The Institute with funding from the MacArthur Foundation and in collaboration with the Nigerian Bar Association, orgainsed a two-day Training workshop on Administration of Criminal Justice Act (ACJA) 2015, on the 13th and 14th of August, 2018 for the legal practitioners. The event held at Statement Suites and Hotels, Ahmadu Bello Way, Abuja.

In attendance were 75 participants from various establishments including the the Federal Ministry of Justice, Abuja, State Ministry of Justice Nasarawa state, officials from the Nigerian Bar Association (Unity Bar) and private law firms.

1.3 Objectives of the Training

The primary objective of the training is to deepen understanding of the reform provisions under the ACJA among practicing lawyers both from the private bar and government offices so as to improve the level of adherence. As an ancillary objective, the training also seeks to identify hitches in the implementation of the provisions of the legislation and proffer recommendations on how these challenges can be addressed.

1.4 Expected Outcome.

It is expected that training would;

a) equip participants with an improved understanding of the innovative provisions of the ACJA that help to fulfil the objectives of the legislation as identified in 1.1 above;
b) equip participants with an improved understanding of how the innovative provisions of ACJA would improve the Nigerian criminal justice system
c) provide a platform for the exchange of ideas on how to address practical challenges in the implementation of ACJA

1.5 Training Team.

The training team for the 2 day workshop comprised of the following persons:

a) Moderators.

i. Prof Paul Idornigie SAN
ii. Professor Ameze Guobadia
iii. Professor Emily Alemika

b) Resource Persons

i. Professor Adedeji Adekunle SAN
ii. Professor Lanre Onadeko-
iii. Dr Ibeh Ifeakandu
iv. Dr Habila Arzard

v. Mr David Oluwagbami
vi. Mr Austin Emumejakpor
vii. Mr O.M Ayotebi

2.0 Summary of Proceedings.

2.1 Opening Preliminaries.

In his opening remarks, the Director General of the Institute, **Professor Adedeji Adekunle SAN** identified the event as part of the wider initiative of the MacArthur Foundation to improve the justice sector in Nigeria. The Institute identifies that proper implementation of the Act has the potential of improving the criminal justice administration in Nigeria. However, proper implementation is unachievable in the absence of familiarity with the legislation by key stakeholders of the criminal justice system. Hence with the support of the Mac Arthur Foundation, NIALS project on the implementation of ACJA has at its core, the training of key stakeholders such as judicial officers, members of the private and public bar who operate within the criminal justice system. As part of improving the implementation initiative, the institute developed the NIALS training manuals for the different stakeholders The Manuals provide a guide to trainers, on the various principles contained in the ACJ Legislation including relevant court decisions.

The Director Africa, MacArthur Foundation, **Mr Kole Shetimma** explained that speedy dispensation of justice remains one of the core goals of the Foundation in Nigeria. The Foundation thus views the dissemination of knowledge to the operators of the Act as key to its effective implementation.

The President of the Nigerian Bar Association, **Mr A.B Mahmmud SAN**, represented by the Unity Branch Chairman **Mr Kayode Abimbola** thanked the Institute and MacArthur Foundation for investing resources in improving the understanding of ACJ Legislation among lawyers.

A total of **…..** participants registered for the training workshop.

2.2 Working Sessions.

The Training workshop comprised of three working sessions conducted within a two-day period.

2.2.1 Day One.

The 1st Working Session tagged 'Overview of ACJA' consisted of three presentations. In the 1st presentation titled 'An Overview of ACJ Legislation', **Professor Adedeji Adekunle** described the ACJA 2015 as a deliberate effort to transform the Nigerian criminal justice system from its present state of retributive justice into a restorative justice system. The ACJ legislation has several objectives including speeding up trials by eliminating undue delays and ensuring that criminal justice administration in Nigeria runs efficiently while protecting the interests of suspects. The ACJ Legislation achieves these objectives through the limitation of adjournments, limitations on stay of proceedings, timelines in the hearing of cases and stipulating an elaborate process of record keeping.

ACJA 2015, as a federal legislation applies to FCT courts and all the Federal High Courts. In line with the federal structure in Nigeria, 14 States out of the 36 states in Nigeria have enacted their own versions of ACJ legislation, fashioned along similar principles in the federal legislation. Prof Adekunle explained that while ACJA repealed the Criminal Procedure Act, it does not repeal the Criminal Procedure Code because the CPC is a state law. States operating CPC, insert the part 2 where Magistrate courts derive their powers into their respective state versions of the ACJ legislation before repealing the state CPC. (See e.g. Part II Kaduna ACJL 2017 and also proposed Kano and Jigawa ACJLs).

ACJ legislation provides innovations capable of enhancing criminal justice administration. These innovations include the arrest, and remand protocols (s. 6 ACJA, s. 28 Kaduna ACJL; S. 24 Jigawa ACJL); bail application procedures; speedy trials and timelines (s.396 ACJA) and abolition of stay of proceedings (sec 306 ACJA). While ACJ legislation provide these innovations, they still require elaboration. For instance, an ambiguity exists as to what amounts to interference in section 17 proviso which prohibits the lawyer from interfering during interrogation. In the same vein, the provision bothering on precluding

the courts from ruling on objections to a charge until the time of delivery of judgement is unclear. Apart from a high court decision, no authority from the apex court currently exists on the issue.

In engaging the provisions of ACJ legislation in criminal justice system, Prof Adekunle reminded participants that counsel as an officer of court must ensure that justice is done, irrespective of whether the practitioner is a prosecutor or a defence lawyer. The prosecutor must exercise discretions in the interest of the public and justice. Similarly, defence counsel must realise that justice goes beyond defence of client. He must not mislead the court or falsify evidence to get an acquittal. In concluding his presentation, Professor Adekunle noted that ACJ legislation creates an opportunity for harmonising criminal justice administration. He strongly recommended extant state and federal criminal justice stakeholders to coordinate strategies geared towards streamlining criminal justice processes and reducing administrative bottlenecks.

Mr David Oluwagbami in his presentation titled 'Arrest, Remand and Bail proceedings', highlighted that Nigerian constitutional provisions indicate an entitlement of every individual to fundamental human rights, which includes the freedom of movement. This fundamental right to liberty can be taken away in certain circumstances including during detention for alleged offences. ACJA in several section such as 30 to 32, 158- 160 and 188 streamlines how the liberty of a suspect can be restored through the process of bail. Although bail is at the discretion of the Court, section 165 of the ACJA enjoins the discretion to be exercised judiciously and based on certain considerations. Unlike the previous criminal procedure regime, capital offences are now bailable but it is based on the discretion of the judge.

It has been the nature of our criminal justice system to detain suspects for extended periods, sometimes without opportunity to apply for bail. ACJA by the provisions of section 296 on remand time limits ensures that a person arrested is not unduly detained. Mr. Oluwagbami concluded by stating that ACJA has been applauded for plugging several gaps in our criminal justice

system, including the challenge of persons awaiting trial. He enjoined lawyers to be abreast with bail considerations and remand protocols as stipulated by ACJA.

The panel of the working session entertained questions, observations and interventions from participants. The Chair of the session, Professor Paul Obo-Idornigie rounded up the session and expressed gratitude to everyone for their active participation.

The 2nd working session themed Proceedings and Case Management under the Administration of Criminal Justice Act and Practice Direction, began with a joint presentation by Professor Adekunle and Mr. O.M Ayotebi on 'Prosecutorial Discretion and ACJA'. As the the principal representative of the state in all matters related to the adjudication of criminal offences, prosecutors have broad discretion following a referral from law enforcement agencies for framing possible criminal charges. The prosecutor may choose to prosecute, drop charges during the course of the trial or engage the plea bargain process. Mr. Atoyebi explained that the decision to prosecute is determined on several factors including the sufficiency of evidence, seriousness of the offence, defendant's culpability and the willingness of the defendant to cooperate with the investigation or the prosecution of other suspects. The need for example setting due to the frequency of the crime may also be considered.

During the course of a trial, the prosecutor in the interest of justice or the interest of the public can reduce charges or enter a *nolle prosequi*. According to Professor Adekunle, due to the effect of discharging rather than acquitting an accused, it is argued in some quarters that entering a *nolle prosequi* is an abuse of discretion. Prodessor Adekunle stressed that the judgement of the prosecutor in exercising his discretion at any of the identified instances should be independent and free from political and social/cultural interference. The re-occurring clamour on the need to separate the office of the Attorney-General from the Minister of Justice hinges on the perceived political influence in weighing evidence for the

purpose of exercising prosecutor discretion. While identifying the potentials of provisions in ACJA and the various state replica to aid in streamlining prosecutorial discretion, Professor Adekunle stressed the need to introduce and adopt standards in line with international best practices to guide prosecutors in exercising prosecutorial discretion. He recommended further that defence lawyers should be willing to raise allegations of abuse of prosecutorial discretion in the Chambers of the Attorneys-Generals of States or the Federation as well as engage the disciplinary channels of the Bar.

The 2nd presentation titled 'Interlocutory Application, Adjournments and Timelines under ACJA' centred on the reasoning behind and effect of ACJA provisions on interlocutory applications and adjournments. Mr Austin Emumejakpor noted that interlocutory applications as requests made during the course of a criminal trial to deal with issues that are incidental to the substantive case, are more often than not, utilised as veritable instruments of frustrating cases. Similarly, requests for adjournments are also sometimes engaged as a ploy to stall criminal trials. The courts in several cases including Dariye v. FRN, Alex v. FRN (2018) LPELR - 43709 (SC) and Dr. Dayo Olagunju v. FRN (2018) LPELR - 43909 (SC), affirm that incessant misuse of these applications make nonsense of delivery of justice.

In line with recognizing the need to reduce delays and ensure substantial justice is done, ACJA puts in place some measures such as prescribed timelines for trial (), stated period for ruling on an objection to a charge (s. 221, 396 ACJA); day to day trial (s 403 ACJA); and non-entertainment of stay of proceedings in criminal trials (s. 306 ACJA). These measures have the potential to curtail the abuse of interlocutory applications and adjournments. Accordingly, the speaker recommended that for the innovations in ACJA to be effective among others, counsel must appreciate their duty to their clients and a higher duty to course of justice. Judges should also assert their positions judicially and judiciously and take control of their courts

The last presentation for the session tagged 'Disclosure Protocols under the ACJA' was presented by Dr Ibe Ifeakandu. The paper identified that the regime of disclosure in Nigeria is implied from Constitutional provisions requiring that an accused be afforded adequate time and facilities to prepare his defence. It is also expressly provided for under ACJA under sections 300 and 379 and supplemented by disclosure guidelines provided under the FCT High Court Direction. The speaker noted that in the context of criminal trials generally, disclosures consists of preliminary and full disclosures. Preliminary disclosures are made at the commencement of the trial to enable the defendant know the nature of the allegation. On the other hand, full disclosure requires that all materials relevant to the proof of prosecution case are furnished, subsequently during the course of the trial ACJA, section 379(3) mandates Prosecution to serve the defendant/counsel with information filed as well as all accompanying processes. Prosecution is also responsible for serving the defence with any additional evidence filed during the course of the trial. The Practice Direction of the FCT High Court contains similar directive in Order 5. Failure to disclose on the part of the prosecution amounts to a violation of the principles of fair hearing

The speaker pointed out that while from the outset, prosecution must state the evidence he intends to rely on to prove his case under ACJA, no corresponding obligation is placed on the defendant. This is in line with the principle of of presumption of innocence entrenched in several legal provisions such as section 36 (5) of CFRN and section 135 (1) of the Evidence Act 2011. Dr Ifeakandu opined that notwithstanding the absence of an obligation on the part of the defence, disclosure by both parties could aid effective case management by ensuring that issues not in contention are promptly identified and discarded. Furthermore, the absence of a disclosure obligation does not negate the burden placed on the defence counsel by the Rule 37(3), Professional Conduct, not to offer evidence inconsistent with the facts disclosed to him by his client that clearly and credibly indicate his guilt.

Witness protection entails adopting measures for the protection of witnesses in criminal trials of serious crimes, including some elements of non-disclosure. The seeming conflict between protection of witnesses which is provided for by law and the obligation to disclose all relevant information is resolved by considering the overriding interest for need for fairness as well as justice to be done and be seen to be done. In conclusion, the paper recommended that engaging procedures that promote disclosures such as pre-trial conferences and scheduling in the conduct of criminal trial would engender speedy trials in accordance with the aspirations of ACJA.

An interactive session took place, during which the participants offered their observations, questions and interventions. The moderator of the session Professor Emily Alemika rounded up expressing her appreciation to the presenters and participants.

2.2.2 Day Two

In the 1st presentation of the 3rd working session on 'Witness Management and Protection', Professor Lanre Onadeko identified that ACJA 2015, section 232 includes several innovations which were absent from previous procedural legislation on criminal administration, for the protection of witness, especially in sensitive trials such as those relating to rape, terrorism, trafficking of persons. These innovations enhance the willingness of witnesses to attend the trials to give his testimony. The issue of catering for witness travelling expenses is also provided for under ACJA. Section 241 specifies where the prosecutor is not a public officer, the person to whom a summons is addressed is not bound to attend unless his traveling expenses are paid to him. By section 251, where a person attends court as a state witness, he shall be entitled to payment of such reasonable expenses as may be prescribed. Professor Onadeko explained further that a witness for the defense may on application and at the discretion of the court, be paid such sum by the Registrar, In both cases, the Registrar shall pay the witnesses out of the relevant vote as appropriated by the Judiciary.

ACJA expects that the examination of witnesses are in accordance with the provisions of the Evidence Act. In discussing the nature of examination of witnesses as well as the scope of the various types of witness examination, Professor Onadeko noted that efficient and effective witness handling are key elements that every lawyer should master as it enables the achievement of the intended results.

Dr Habila Ardzard in last presentation for the 3rd working session titled 'Plea Bargaining and Non-Prosecution Agreements' identified that plea bargain referred to a process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case. Dr Ardzard stated that the concept of plea bargain as distinct from an agreement to compound a case, reared its head in Nigerian criminal justice system with the passing of the EFCC (Enforcement) Regulations, 2010. He however noted the reasoning in some quarters that the root of plea bargain in Nigeria is the constitutional powers of the Attorney General to institute, take over or discontinue any criminal proceedings before any court of law in Nigeria other than a court martial.

ACJA by virtue of providing explicitly for plea bargaining process has now rested the issue of the applicability of the concept in Nigerian Criminal Justice System. The Act in section 270 stipulates that a plea bargain can occur before a charge is entered, before a plea is taken or at the close of the case for the prosecution but before defence is opened. Dr Ardzard highlighted the procedures and considerations that apply for the various instances of a plea bargain. He further identified the express requirement of a plea bargain agreement before a charge only to be reduced into writing as an issue arising from the provisions on plea bargaining. In considering whether the absence of an express writing requirement inferred that the other categories of plea bargain agreements need not be reduced into writing, Dr Ardzard asserted that that inconsistency and ambiguities in the provisions of any legislation on the same issue affects its effectiveness. Other issues which he raised included the rationale for making a heavier review of

plea bargain sentence by a presiding judge or magistrate to annihilate a plea bargain agreement; and whether the concept of plea bargain not derogate or even negate notion of punishment in Nigeria.

He concluded by indicating the usefulness of plea bargaining in contributing to solving the prison congestion menace as well as challenge of state resources wastage.

An interactive session took place after the presentation. The moderator of the session Professor Amenze Guobadia rounded up expressing her appreciation to the presenters and participants.

3.0 Summary of the Interactive Sessions.

Each working session was followed by an opportunity for the audience to participate in an interactive session, through questions, exchange of ideas, and discussions with the panellists.

Participants were keen on understanding how the innovations in ACJA improved investigations, bail processes as well as the speedy dispensation of trials. Professor Adekunle explained that the discretionary powers of the court are enhanced by the provisions of the Act to exclude prejudicial evidence.

Several comments and questions bothered on the provisions of timelines and contained in section 293 of ACJA as well as the measures put in place by the act to curb undue delays. The discussions and questions aided in identifying specifically how the exclusion of stay of proceedings and addressing an objection to the validity of a charge at the time of delivering judgement on the substantive suit were beneficial to the criminal justice system. The unwillingness of lawyers to adhere to these timelines were highlighted as a major challenge to the implementation of ACJA.

Participants and panellists also discussed the concept of prosecutorial discretion and how excesses of the prosecutor are managed. Administrative controls, discipline by the Nigerian Bar and award of costs by the court were highlighted as important control measures.

With respect to plea bargaining as punishment within the criminal justice system, several participants expressed their misgivings as to the appropriateness of this form of punishment especially in cases involving the elites of the society. Other participants highlighted the benefits of the process to the criminal justice system. It was suggested that the process would gain more popularity if offences such as financial crimes were excluded from its purview.

Finally, it emerged that constant orientation of all stakeholders including the prosecution and defence counsels on the importance of the implementation of the Act was necessary.

A detailed interactive session manuscript is attached as an Appendix

4.0 Summary of Syndicate Session

Participants were involved in break-out syndicate sessions that afforded them the opportunity to discuss in more detail, the application of several provisions of the ACJA to pre-determined situations. At the end of the discussion a representative of each break-out group presented the decisions of the group to all participants for further discussions. Members of the training team supervised the syndicate sessions.

A detailed manuscript for the syndicate session is attached as an Appendix.

5.0 Recommendations

Recommendations flowing from the presentations by the speakers, the interactive sessions as well as the syndicate sessions were as follows:

1. During the course of investigation, a defence lawyer should always engage the Police by laying certain ground rules before interrogation of a suspect occurs. This would ensure that the notion of interference as provided for under the proviso of ACJA section 17 is properly addressed.
2. The wordings of ACJA s.396(2) on time of delivering judgement on an objection must be giving a strict construction – the objection should go to the charge or the counts on the charge and not other matters that touch on the trial such as jurisdiction.
3. There is need to introduce and adopt standards in line with international best practices to guide prosecutors in exercising prosecutorial discretion are very important.
4. Defence lawyers should be willing to raise allegations of abuse of prosecutorial discretion in the Chambers of the Attorneys-Generals of state or the federation as well as engage the disciplinary channels of the Bar.
5. The machineries to sanction erring prosecutors should be applied cautiously to accommodate errors in judgment that are not malicious.
6. Since the Criminal Justice System functions as a chain, it is essential that all the authorities, institutions and persons involved in Criminal Justice Administration be familiar with their respective roles as well as the role of other agencies that they are required to work with so as to ensure the effectiveness of the entire system.
7. The innovations in ACJA and the state equivalent would enhance the use of interlocutory applications only if
    a. counsel appreciate their duty to their clients and a higher duty to course of justice;
    b. Judges assert their positions and take control of their courts by applying their discretionary powers judiciously and judicially;
    c. Judges award wasted costs where the need arises and report erring counsel to NBA.
8. Stakeholders must ensure that practice relating to disclosure entrenches justice and is done in good faith.
9. Engaging procedures that promote disclosures such as pre-trial conferences and scheduling in the conduct of criminal trial would engender speedy trials in accordance with the aspirations of ACJA

10. Efficient and effective witness handling are key elements that every lawyer should master as it enables the achievement of the intended results.
11. The inconsistency in the writing requirement for plea bargaining should be clarified as ambiguities in the provisions of any legislation on the same issue affects its effectiveness.
12. In other to ensure that the concept of plea bargaining does not derogate the notion of punishment, offences involving financial crimes and homicide can be excluded.
13. The Nigerian Bar needs to do more to re-orientate the defence counsel to improve speedy trials.
14. Both prosecution and defence counsel should be encouraged to engage the plea bargaining process, irrespective of the financial status of the suspect/accused.
15. All criminal justice stakeholders must collaborate to ensure the improvement of the criminal justice system through the implementation of ACJA
16. As a means of improving case management under the criminal justice system,
    a) There is a need to appoint more judges to allow for quick dispensation of cases.
    b) Strict application of cost regime should be applied against counsel. Furthermore, counsel should be denied a right of audience till any default in payment of cost is remedied.
    c) The use of stenographers are required to reduce the number of hours judges spend in taking down notes.
17. The Act should be amended to include a sanction where a prosecutor fails to disclose in line with the requirements of the Act.
18. Instead of a blanket provision extinguishing stay of proceedings in criminal trial, there should instead be a stay of proceeding timeline protocol which would also address the mischief which section 306 seeks to tackle. There may be cogent reasons for a stay.
19. To overcome the challenges in the implementation of section 296 relating to arrest remand and bail, the group suggests:

a) an amendment of the remand provisions of ACJA;
b) the need to organise seminars and workshops for judges and other officers of the court, law enforcement officers as well as members of the private bar to sensitise them on how synergy among stakeholders can reduce administrative bottlenecks;

c) the issuance of practice directions by the court with respect to remand proceedings has the potential of improving the practicality of the provision.
d) monitoring and evaluation of court will also help to improve the workings of the court generally.

6.0 Conclusion

The training workshop was well attended by participants who discussed and exchanged ideas on the provisions of ACJA and how its implementation can be improved. The mix of both defence and prosecutors provided the opportunity for an exchange of diverse experiences in the implementation of ACJA that aided an appreciation of the challenges that confront legal practitioners as members of the Bar.

Overall, the participants were appreciative of the training workshop and thanked the Director General of NIALS, the funders of the event as well as the Nigerian Bar for giving them the opportunity to improve their knowledge and understanding of the Nigerian Criminal Justice System.