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Prospect and Challenges of Criminal Procedures in Nigeria: A Review

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ABSTRACT. Criminal Justice Procedure (CJP) can be described as the collective means through which a person accused of an offence passes until the accusations have been disposed of or the assessed punishment concluded. Arguably, CJP in Nigeria took an enviable turn around with the enactment of a new principal enactment, Administration of Criminal Justice Act (ACJA) which has repositioned the CJP in Nigeria by addressing the seemingly inadequacies in Criminal Procedure Act (CPA) and Criminal Procedure Code (CPC), harmonizing the CPA and CPC, codifying most age-long judicial pronouncements on CPA and CPC and addressing human rights abuses in erstwhile applicable laws thereby catapulting the CJP in Nigeria to an enviable position in the comity of nations. Recent judicial pronouncements in Nigeria on ACJA are worrisome and questions the readiness of the Judiciary as a stakeholder in Criminal Justice System to address the menace of delay in criminal trials which the ACJA aimed to address by introducing novel provisions target towards speedy dispensation of justice in criminal trials. The research methodology used in this study is systematic review and normative, by analyzing principal and secondary enactments in Nigerian CJP with judicial interpretations. While emphasizing the prospects of the ACJA, this paper also highlighted the challenges and suggested solutions to same. Despite its defects, the ACJA is a landmark development in the Nigerian Criminal Justice Procedure and all States of the Federation are therefore enjoined to domesticate the law.

KEYWORDS. Criminal Law, Criminal Justice System, Human Rights, Criminal Procedure Law

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Introduction

Criminal procedure deals with the set of rules governing the series of proceedings through which the government enforces substantive criminal law. Criminal Justice Procedure can be described as the collective means through which a person accused of an offence passes until the accusations have been disposed of or the assessed punishment concluded. The system typically has three components i.e., law enforcement which includes police and other law enforcements institutions, the judicial process [judges, magistrates, prosecutors, defense lawyers], and correctional service centers [prison officials, probation officers, parole officers]. The importance of criminal justice to the smooth running of any society cannot be over emphasized. Indeed, an effective criminal justice system is regarded by many as fundamental to the maintenance of law and order. However, the Nigerian criminal justice procedure despite the laudable introduction of the Administration of Criminal Justice Act to replace the archaic Criminal Procedure Act and the Criminal Procedure Code hitherto is not without its own challenges cutting across all institutions in the administration of justice

The Administration of Criminal Justice Act 2015 (ACJA) was enacted at a time the Nigerian Criminal Justice Procedure had attracted so much

criticism and disdain from within and outside Nigeria.[1] Obviously, the Nigeria Police Force was regarded as inept, oppressive and constantly in violation of human rights; the Courts were poorly furnished; and the prisons were over congested. These conditions were in gross violation of the human rights guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as amended). One of the reasons why the conditions continued was that the repealed Criminal Procedure Act in the South and Criminal Procedure Code in the North, which by far pre-dated the 1999 Constitution, were obsolete, lax and out of step with regards to democratic and modern trends.[2] Consequently, the need to reform the laws was absolutely imperative. Many other jurisdictions in Africa that had colonial influence, like South Africa and Ghana, had already gone ahead with regards to reforming their Criminal Justice Procedure.

This paper does not boast of pointing out all the prospects and challenges in the Criminal Justice Procedure in Nigeria for want of time and space but would highlight only some of the mischiefs engendered by the repealed pieces of legislation. It therefore discusses the concept of criminal justice procedure and analyses the various mischiefs existing previously in the Criminal Justice Procedure which have been addressed by the ACJA including areas such as arrest, arraignment, bail, plea bargaining and sentencing. The various challenges to be weathered in the effective implementation of the legislation as well as those present in the Act itself are also examined. Consequently, recommendations in this regard were made.

Before delving into the details of the paper, it is important to state that the ACJA applies to criminal trials for offenses established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory (FCT).[3] It therefore means that the Act applies to federal courts including the Federal High Court, the High Court of the FCT and the Magistrate Court of the FCT. Whereas Lagos, Ogun, Anambra and a few

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1 Amnesty International UK, 'Nigeria: Criminal Justice System is a "Conveyor Belt of Injustice" says Amnesty'; 26 February 2008 https://www.amnesty.org.uk/press-releases/nigeria-criminal-justice-system-conveyor-belt-injustice-says-amnesty accessed January 20, 2022.

2 The Criminal Procedure Act (CPA) which was for the Southern part of Nigeria was enacted in 1902 whereas the Criminal Procedure Code (CPC) of the North was enacted in 1960.

3 Administration of Criminal Justice Act 2015 (ACJA), s. 2(1).

other States[4] have enacted an Administration of Criminal Justice Law (ACJL), all other States still make use of the CPA and CPC in criminal trials.

Statement of the Problem

Arguably, Criminal Justice Procedure in Nigeria took an enviable turn around with the enactment of a new principal enactment, ACJA which has repositioned the Criminal Justice Procedure in Nigeria by addressing the seemingly inadequacies in CPA and CPC, harmonizing the CPA and CPC, codifying most age-long judicial pronouncements on CPA and CPC and addressing human rights abuses in erstwhile applicable laws thereby catapulting the Criminal Justice Procedure in Nigeria to an enviable position in the comity of nations. Recent judicial pronouncements in Nigeria on ACJA are worrisome and questions the readiness of the Judiciary as a stakeholder in Criminal Justice System to address the menace of delay in criminal trials which the ACJA aimed to address by introducing novel provisions target towards speedy dispensation of justice in criminal trials. Of more concern is the continue practice of Holden charge now known as remand proceedings under the new Act which is nothing but abuse of court processes since a criminal procedure in offences punishable with capital punishment or offences which Magistrate Courts do not have jurisdiction can be commence summarily in the High Court, why not employ that procedure and take a bull by the horn?

Methods

The research methodology used in this study is systematic review and normative, carried out by examining or analyzing principal and secondary enactments in Nigerian Criminal Justice Procedure with judicial interpretation by exploring criminal adjectival law as a set of positive rules or norms in the statutory procedural system that regulates the Criminal Justice Procedure which is the main problem this research aimed to address. Especially by analyzing the Administration of Criminal Justice Act and other most recent enactments relevant to criminal justice administration in Nigeria.

[4] Lagos State was the first state in Nigeria to pass the Administration of Criminal Justice Law in 2007 and has recently passed the Administration of Criminal Justice (Amendment Law), 2021; Administration of Criminal Justice and other Related Matters Law, Ogun State 2017, Administration of Criminal Justice Law 2010, Anambra State.

The study also attempted a comparative study of the Criminal Justice Procedure in the People's Republic of China and Canada. The recommendations consist of what is legally permissible (legal approach) and sociological requests (socio-logical approach). The technique of tracing legal materials used document study techniques and the legal materials that have been collected were analyzed qualitatively.

What is Criminal Justice System?

The Criminal Justice system is 'an apparatus the society uses to enforce the standards of conduct necessary to protect individuals and the community'.[5] It is the sum total of society's activities to defend itself against the actions it describes as criminal.[6] It also refers to that integral fusion of machineries of government that aim to enforce law and redress crime. The machineries are the law enforcement agents which control and prevent crime. These include the Police,[7] the Chief Law Officer/Prosecutor,[8] Judiciary[9] and Correctional Service Centers.[10] Adebayo says that the Criminal Justice System is an 'institution and practices of Government whose main focus is to mitigate and deter crime, uphold social control and sanction individuals who violate the set laws of a specific state with rehabilitation and criminal penalties'.[11] Owasanoye and Ani have described the relationship between the functionaries in the CJS as a 'symbiotic relationship'.[12] Any defect at any point frustrates the whole system which has a single identity.[13] It therefore

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5 The President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (United States Government Printing Office, Washington D. C., February 1967), p. 7.

6 F. Adler, G.O.W. Mueller & W.S. Laufer, Criminal Justice: An Introduction (2nd Ed, McGraw Hill Higher Education, 2000) p.7.

7 Constitution of the Federal Republic of Nigeria 1999 (CFRN), s.214.

8 CFRN 1999, ss 174 & 211.

9 CFRN 1999, s.6.

10 Nigerian Correctional Service Act 2019 s.1.

11 A.M Adebayo, Administration of Criminal Justices System in Nigeria, (Lagos: Princeton Publishing Co, 2012), p.2.

12 B. Owasanoye & C. Ani, 'Improving Case Management Coordination Amongst the Police, Prosecution and Court' http://www.nials-nigeria.org/journals/Bolaji%20Owasanoye%20%20andchinyere.pdf accessed January 20, 2022.

13 *See also* H. Okoeguale, 'Criminal Justice in Nigeria: The Need for Administrative Dexterity' (2015) 1 ABUAD Journal of Public and International Law (AJPIL), pp. 226-227.

becomes obvious that the CJS is a machinery of government whose aim is to prevent crime by punishing same.[14]

In Nigeria, the criminal justice system is therefore the whole gamut of criminal laws (substantive and adjectival), the institutions which include the Nigeria Police Force, the Attorney-General and Minister/Commissioner for Justice including prosecuting law officers, the Judiciary and the Nigeria Correctional Service Centers. All these are required to work hand in hand to address crime. The scope of this paper is limited to the institutions aforementioned as well as the procedural aspect of the criminal law.

Theoretical Framework

One of the ways in which law can be viewed as instrument of social control is that it prescribes punishment for offences.[15] But many jurists, philosophers and theorists have argued differently on penal measures melted out on the offenders. I critically examined briefly some of these theories with a view to determining their prospects and challenges in criminal justice proceedings in Nigeria. This segment will briefly discuss the various theories that are currently being applied in most Nigerian courts ranging from retribution to deterrence, restraint doctrine and the theory of retribution or reformation.[16]

1. Retribution theory

The theory of retribution is premised on revenge. The essence of the theory is to make the offender suffer for the offence committed just like the Mosaic law of an eye for an eye.[17] The theory punishes the offender for choosing to commit the criminal act and to face the consequences. However, many scholars have criticized the theory that punishment will not bring back the victim for instance in the case of murder. The theory of retribution does not contemplate forgiveness which is enshrined as a divine mandate in the

[14] Ifeoluwa Olubiyi and Hilary Okoeguale, 'Nigeria Criminal Justice System: Prospects and Challenges of the Administration of Criminal Justice Act 2015' (2016) vol. 1 African Journal of Criminal Law and Jurisprudence p. 3.

[15] Abiola Sanni, Introduction to Nigerian Legal Method, (ed. 1999) p.34. https://ir.unilag.edu.ng/bitstream/handle/123456789/8359/INTRODUCTION%20TO%20NIGERIA%20LEGAL%20METHOD.pdf?sequence=1 accessed January 21, 2022.

[16] Bilz, Kenworthey, and John M. Darley, 'What's Wrong with Harmless Theories of Punishment', (2004) 79 Chi.-Kent L. Rev. 1215.

[17] This is the Mosaic Law mentioned in the Holy Bible (Exodus Chapter 22 verse 24) when Moses was the leader of Israelites.

Holy Bible. Retribution involves looking back at the injury caused by the offender.[18] It has an element of vengeance for paying back for what the offender has caused or done. In the view of Salmond, one may conclude that punishment is imposed in order to relieve the public's indignant feelings,[19] or to mark with what revulsion they regard the crime.[20] In its application, a more severe punishment may be imposed for an offence with a view to pay the offender what he has caused to the victim and public at large. Thus, writers seem to have criticized this theory more than other but as mentioned by Okonkwo, 'its importance should not be ignored, because it does form a substantial part of many people's beliefs about punishment in respect of many "serious" crimes.[21]

Retribution favors the principle of fair deserts. Thus, the condition for punishing an offender is when the state is convinced that he actually committed the offence though determining fairness is another issue.[22] What must be borne in mind is that the offence for which the offender is tried must be written down in a law.[23] Again, similar cases must be treated in the same way since there are different capabilities to commit crimes as well as exceptions of criminal responsibility[24] applicable to offenders.[25]

2. Deterrence theory

This theory is based on the utilitarian principle propounded by Jeremy Benthan.[26] According to him, a man is governed by two principles-pain and

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[18] Cf. Hart, Punishment and the Elimination of Responsibility (1961) Hobhouse Memorial Lecture).

[19] Cf. Salmond, Jurisprudence (11th ed.) 121.

[20] Okonkwo and Naish on Criminal Law in Nigeria, (2nd ed. Spectrum Books Limited 2002) p. 28.

[21] *Ibid* p. 29.

[22] Hart, *Op. Cit*. p. 27.

[23] CFRN s. 36(12); Aoko v Fagbemi (1961) 1 All NLR 400.

[24] Criminal Code Act Cap. C.38 LFN, 2004, s. 24-32; Penal Code Act, Cap. P3 LFN 2004, s. 51-56 contain various exceptions to criminal liability.

[25] Thus, in Maizako v Superintendent General of Police [1960] W.R.N.L.R. 188, the sentence of one accused was upheld because he had a record of burglary but that of the other was reduced because he had no previous conviction. Similarly, in Enahoro v R [1965] NMLR 265 at 283, sentence imposed on 'lieutenant' was reduced because it was heavier than that imposed on 'leader'. The court of law further held in the case of Thomas [1964] Crim. L.R. 22 that a man, who already had a conviction for a similar offence before he committed the second one, does not deserve to be treated with leniency.

[26] Bronsteen John, Christopher Buccafusco, and Jonathan Masur, 'Happiness and punishment' (2009) *The University of Chicago Law Review* pp. 1037-1082.

joy.[27] Thus, deterrence is to have an eye for the future. Although the critics of this theory believe otherwise that deterrence does not really deter in the real sense especially when passion or psychology is involved. They believe deterrence is against justice even though the court of law could glaringly increase the punishment of an offender in order to deter people. Deterrence may be general or special. A general deterrence is described as a goal of criminal law generally or of a specific conviction and sentence, to discourage people from committing crimes. On the other hand, special deterrence is where a specific conviction and sentence is used to dissuade the offender from committing crimes in the future.[28] There is no doubt that what the theory of deterrence seeks to achieve is part of the prospects and challenges of criminal procedure in Nigeria with introduction of lofty provisions in the ACJA aimed at achieving these goals. However, the ACJL is not all of deterrence. The perspective that is closely connected to it is the intention to dissuade the offender from committing crimes in the future.

3. Restraint theory

Restraint proposes that the best way to deal with an offender is to take him out of the society. Restraint emphasizes confinement, abridgement or limitation of the offender from having access to commit the crime the second time.[29] The idea is to remove an offender from society, making it physically impossible (or at least very difficult) for him or her to commit further crimes against the public while serving a sentence.[30] Restraint works as long as the offenders remain locked up. There is no question that incapacitation reduces crime rates by some unknown degree. The problem is that it is very expensive. Restraint carries high costs not only in terms of building and operating prisons, but also in terms of disrupting families when family members are locked up.[31]

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[27] J Kolber Adam, 'The Subjective Experience of Punishment' (2009) 109 *Columbia Law Review* 109 p. 182.

[28] A Brayan Garner, *Black Law Dictionary*, 5th edition, p. 514

[29] Garner Op. Cit. p. 1429.

[30] Theories of Punishment', https://www.cliffsnotes.com/study-guides/criminal-justice/sentencing/theories-of-punishment Accessed January 21 2022.

[31] S Frase Richard, 'Punishment Purposes' (2005) Stanford Law Review pp. 67-83; Robinson, Paul H, 'Ongoing Revolution in Punishment Theory: Doing Justice as Controlling Crime', (2010) 42 The Ariz. St. LJ p. 1089.

4. Rehabilitation or Reformation theory

This theory emphasizes the need to change the offender for better. It aims at re-orientating the attitude of the offender from further committing another offence. The school of thought urges the legislators to make laws that will make the prison system efficient for a proper rehabilitation and reformation. At the end of the process, the offender is better than when he/she was apprehended. Rehabilitation and reformation appear to be the aim of Nigerian legislators when the Prison Act was repealed and a new Correctional Service Centre Act was introduced with far reaching provisions aimed at rehabilitating convicts and inmates in Nigeria. Rehabilitation should involve education, re-orientation, reformation, redemption, forgiveness and transformation. Even where punishment is unavoidably imposed, the weight of such punishment should not be felt because of the way it is being measured. The accused should feel he is better at the end of the terms of sentencing.[32]

Prospects of Criminal Procedure in Nigeria

Lagos State blaze the trail in the history of criminal justice procedure in Nigeria by the introduction of the Administration of criminal Justice Law which marks the turning point in the criminal adjectival law in Nigeria.[33] Other States like Anambra follow suit and the Federal Government of Nigeria in 2015 enacted the Administration of Criminal Justice Act.[34] Although the provisions of the Criminal Procedure Act (CPA) and the Criminal Procedure Code (CPC) did not prima facie encourage human rights violations, the loopholes in the laws and indeed some of the provisions had been exploited to produce human rights abuses and associated vices in the Criminal procedures in Nigeria.[35] The ACJA was introduced to address some of these issues. It is instructive to state early that the Act has introduced the use of the expression 'defendant' for persons being prosecuted in criminal matters instead of the previous expression 'accused person'.[36] This may be in line with the general intendment of the Act which is to protect and preserve the

[32] Cullen, Francis T., and Paul Gendreau, 'Assessing correctional rehabilitation: Policy, practice, and prospects,' (2000) 3.1 Criminal Justice pp.299-370.
[33] Administration of Criminal Procedure Law of Lagos State 2007.
[34] Administration of Criminal Justice Act (ACJL).
[35] CPA s. 10 (1) (i).
[36] ACJA 2015, s.494(1). Defendant means 'any person against whom a complaint, charge or information is made'.

human dignity of the person being prosecuted. For the purpose of clarity, the discussion on the prospects and challenges of Criminal procedure in Nigeria shall be divided into the following segments: arrest; arraignment, pre-trial detention and trial; plea bargaining; bail; and sentencing/punishment.

1. Investigation / Arrest

On the issue of arrests, the Constitution provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law which includes but not limited to:

... the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence …[37]

Most often than not, the liberty of individuals was interfered with during investigation and criminal trials under the old law in Nigeria. The purpose as stated by the Constitution is to ensure that the suspect is brought to court to stand his trial. Therefore, the event by which a person suspected to have committed a criminal offence loses his liberty is referred to as arrest. Arrest has been defined by the House of Lords in the case of *Holgate Mohammed v Duke*[38] as a continuing act which starts with the arrester taking a person into custody and continues until the person restrained is either released from custody or having been brought before a Magistrate is remanded in custody by the judicial act of the Magistrate. It is trite that no person can be unlawfully arrested and detained when he has committed no offence. On the other hand, a person who has committed a criminal offence or reasonably suspected to have done so, may be arrested for the purpose of being arraigned in a Court of law.[39] Furthermore, it was stated that the lawful arrest does not merely mean taking a person into custody; the person arrested must know at the time he is being arrested or very soon thereafter (when reasonably practicable) the reason of his arrest.[40]

The Police, under the old regime, had the power to arrest with or without warrant a person whom he had reasonable grounds to believe had,

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37 CFRN 1999, s. 35 (1) (c); COP & Ors v Isaac & Ors (2018) LPELR 44879 (CA).
38 Holgate Mohammed v Duke Vol. 79 Cr. App. Report 120.
39 Okonkwo & Ors. v Anyadiegwu & Ors. (2020) LPELR – 50581 (CA).
40 Okafor & Ors v IGP, Police Force Headquarters, Abuja & Ors (2021) LCN/15498 (CA).

was about to, or was committing a crime.[41] The powers conferred on the Police to arrest also extended to instances where a person had no ostensible means of subsistence and could not give a satisfactory account of himself. The latter provision was rather arbitrary as it was significantly subjective to the discretion of the Police willing to arrest a person. This arbitrary powers donated by the repealed law to the police, led to a situation whereby arrest became a norm which then triggered investigation rather than the proper procedure of investigation leading to the arrest of suspects. Again, relatives of suspects were arbitrarily arrested.[42] To further energize the police in this regard, it was stated in the case of *Dallison v Caffrey*[43] that a police officer is not liable for false imprisonment if he arrests an individual who has not committed a crime so long as he had reasonable ground to believe that the individual committed a crime. The only legal restraint in the instance of arbitrary arrest was the constitutional provision which restricted the time frame for detaining a suspect.[44] However, this was inadequate as arbitrary arrests including the arrest of relatives of suspects continued. It was also reported that some of the suspects taken by the police were usually summarily executed and then labeled armed robbery suspects.[45] These had a far reaching effect of disrupting the criminal justice process and eventually caused severe injustice especially to innocent citizens.[46]

Thus, exploiting these enormous powers, suspects were usually arrested and if no incriminating material or information is obtained, they were forced to make confessional statements and sometimes killed extra-judicially. In some occasions, the Police demand for money from complainants or victims of crime before embarking on investigation. To curb these indiscriminate

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41 CPA s. 10 (1) & (2) and CPC s.26 which empowers the police to arrest without warrant where the crime is being committed in his presence. See also Police Act, Cap C19 Laws of the Federation of Nigeria, 2004, s.24.

42 A Nwapa, 'Building and Sustaining Change: Pretrial Detention Reform in Nigeria' in Justice Initiatives (2008 Spring, Open Society Justice Initiative) p. 88.

43 Dallison v Caffrey (1964) 2 All E.R. 1208.

44 CFRN 1999, s.35 (5).

45 Network on Police Reform in Nigeria and Open Society Justice Initiative, Criminal Force: Torture, Abuse and Extrajudicial Killings by the Nigeria Police Force (Open Society Institute, New York, U.S.A., 2010) p. 59.

46 An example is the famous 'Apo 6 killings', where the victims were tagged robbers, which statement the Police later corrected and apologized 6 months after the citizens were killed and after the Justice Goodluck's Commission recommended that all the officers be prosecuted. Ibid p. 60 – 61; see also Network on Police Reform in Nigeria, 'Criminal Force: An Interim Report On The Nigeria Police Force' http://www.noprin.org/NoprinPoliceSummary-10-Dec-07.pdf p.4 Accessed January 23 2022.

arrests which usually led to torture and sometimes death of suspects, the ACJA provides a system of accountability whereby records of arrests are documented and forwarded to the Attorney-General of the Federation (AGF) in case of Federal offences and Attorney-General of various States in case of State offences.[47] The Administration of Criminal Justice and Other Related Matters Law of Ogun State, 2017 (ACJL) approaches the issue of accountability quite differently. It provides that an officer in charge of a Police Station or an Official in charge of an Agency authorized to make arrest shall, on the last working day of every month report to the nearest Magistrate the cases of all suspects arrested without warrant within the limits of their respective stations or Agency whether the Suspects have been admitted to bail or not.[48] With this in place, it becomes compelling, at least, to ensure that suspects arrested do not get killed in custody or kept for an inordinately long period. In addition, apart from the ACJA and the ACJL prohibiting arrest in lieu,[49] s. 8 of the ACJA requires suspects to be treated with human dignity. In order to guard against torture, the ACJA provides that a legal practitioner of the suspect's choice may be present while he is being interrogated.[50]

I must also mention the swift response of the National Assembly to bring the archaic Police Act 2004 in line with Administration of Criminal Justice Act by addressing the salient loopholes which had led to human rights abuses in Nigeria with the repeal of the Police Act 2004 by the introduction of The Nigeria Police Force (Establishment) Act, 2020 ('the new Act') which came into force on the 17th of September 2020.[51] The general objective of the new Act is to provide an effective police service that is based on the principles of accountability and transparency, protection of human rights, and partnership with other security agencies. In achieving this objective, the Act did not only improve on the provisions of the erstwhile Act, it has its own novel provisions. For instance, the erstwhile Police Act was silent on the power of the police to arrest for a civil wrong, this void was abused by a lot of police officers and citizens alike as Police meddled in and even became an instrument of torment or oppression in purely civil matters. The new Act has

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47 ACJA, 2015, s.29 (1) requires the Inspector General of Police to make quarterly reports on arrests made to the Attorney-General of the Federation.

48 Administration of Criminal Justice and Other Related Matters Law of Ogun State 2017, s. 35 (1).

49 ACJL Ogun State 2017, s.9 (1) and ACJA 2015, s,7. Arrest in lieu refers to the practice of the police in arresting relatives of a suspect or defendants in place of the suspect or defendant.

50 ACJA, 2015, s.17 (2). Unfortunately, this is not a mandatory requirement.

51 The Nigeria Police Force (Establishment) Act, 2020.

specifically prohibited the Police from arresting a person merely on a civil wrong or breach of contract.[52] This is to further give effect to the provisions of Section 8(2) of the Administration of Criminal Justice Act, 2015 which has a similar provision.[53]

Furthermore, the new Police Force Act makes provisions for certain rights that accrue to a person who is arrested. With the coming into effect of the New Act, the Police officer making an arrest has a duty to inform the suspect of his/her rights to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice; consult a legal practitioner of his own choice before making, endorsing or writing any statement or answering any question put to him after the arrest; and free legal representation by the Legal Aid Council of Nigeria or other organizations where applicable.[54] While this notification of rights was often done discretionarily before now, the New Act has now made it mandatory**.** Prior to now, it was possible, in fact, it was commonplace for a person to be arrested and denied the right to inform his/her people that he has been taken into custody; but not anymore! With the new Act, when a person is arrested and is being kept in custody, the Police have a duty to inform the next of kin or any other relative of the suspect of the arrest, at no cost to the suspect.[55]

As part of ensuring that the New Act is in conformity with, and gives effect to the ACJA, 2015, the New Act has now prohibited the arrest of a person in place of a suspect.[56] Consequently, a son cannot be arrested in place of his father and a wife cannot be arrested in place of her husband where the husband is the suspect. A person who is arrested must also be granted the right to the dignity of the human person as guaranteed in the 1999 Constitution. He must not be subjected to any form of torture, cruel, inhuman, or degrading treatment.[57] This provision is also included in Section 8(1) of the Administration of Criminal Justice Act, 2015.[58]

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[52] Mezue & Anor. v Okolo & Ors. (2019) LPELR-47666 (CA); Police Force (Establishment) Act, 2020 s. 32 (2).
[53] ACJA s. 8 (2).
[54] Police Force (Establishment) Act, 2020 s. 35 (2).
[55] *Ibid* s. 35 (3).
[56] *Ibid* s. 36.
[57] *Ibid* s. 37.
[58] ACJA s. 8 (1).

2. Arraignment, Pre-Trial Detention and Trial

Arraignment is the process whereby a person alleged to have committed an offence is confronted/accused with a formal charge containing the offence he is alleged to have committed in a court of competent jurisdiction, whereupon the defendant is required to make a plea of guilty or not guilty.[59] Where the defendant pleads guilty to a charge which does not attract the capital punishment, and the presiding judge or magistrate satisfies himself that the defendant understands the charges, the court can convict and sentence him accordingly.[60] Where the charge brought upon the defendant attracts the capital punishment, a plea of 'not guilty' is entered for him even if he pleads guilty.[61] In any case, where a defendant pleads 'not guilty', he is considered to have put himself to trial.[62] Needless to say therefore, that arraignment begins the trial of a defendant, which can be done only in a court having jurisdiction; where there is no arraignment, trial cannot commence.[63]

In the celebrated case of *Shola Abu & 349 Ors v C.O.P, Lagos State,*[64] the court espoused the principle thus:

> … to demonstrate that a citizen is detained pending being brought before a court of law upon reasonable suspicion of a criminal offence, those who claim to have reasonably suspected him of the offence and apprehended him for that reason must demonstrate the reasonableness of their suspicion by arraigning him before a court of competent jurisdiction, where the reasonableness thereof will be tested within a reasonable time.

The above is a re-statement of the constitutional provision which requires a detainee to be brought before a court of law within a reasonable time for the detainee to stand his trial.[65] Where arraignment is not done within a reasonable time and the suspect is kept in detention, his continual pre-trial detention constitutes a violation of his right to personal liberty. In stating the ills of pre-trial detention, the Court stated in the case of *Hartage v Hendrick*[66] as follows:

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59 Lufadeju & Anor. v Johnson (2007) LPELR-1795 (SC).
60 ACJA 2015, s. 274 (2).
61 *Ibid* s. 274 (3).
62 CPC, ss. 187 & 188, CPA, s. 271 and the extant s. 273 of the ACJA 2015.
63 Nwadike v The State (2015) LPELR – 24550 (CA).
64 Shola Abu & 349 Ors v C.O.P, Lagos State (Unreported Suit No IKD/M/18 2003, ruling delivered on 28/07/2004 at the Lagos State High Court, Ikorodu Division).
65 CFRN 1999, s. 35 (4)
66 Hartage v Hendrick (1970) 439 PA 584 p. 601.

> ...the imprisonment of an accused person prior to the determination of guilt is a rather awesome thing: it costs tax payers tremendous sums of money; it deprives the affected individual of his most precious freedom and liberty; it deprives him of the ability to support himself and his family, it quite possibly costs him his job, it restricts his ability to participate in his own defence, it subjects him to the dehumanization of prison, it separates him from his family and without trial it casts over him the aura of criminality and guilt.

Pre-trial detention is rife in Nigeria as Amnesty International confirms that 65% of detainees in Nigeria prisons have never been convicted of any crime.[67] This situation was largely encouraged by the holding charge phenomenon. Holding charge arises when the police present a suspect before a Magistrate or Area Court for a criminal charge over which the judicial officer has no jurisdiction, and the police obtain from that judicial officer, the authority to remand the suspect even though there was no arraignment. The practice of holding charge has been grossly abused as the Police uses it as an alternative to thorough investigation. Niki Tobi (JCA, as he then was) in the case of *Onagoruwa v The State*[68] observed in relation to the practice of holding charge:

… in a good number of cases, the police in this country rush to court on what they generally refer to as 'holding charge' ever before they conduct investigation. Where investigation does not succeed in assembling the relevant evidence to prosecute the accused to secure conviction, the best thing to do is to throw in the towel.[69]

Unfortunately, in the practice of holding charge there is usually no arraignment before a suspect is remanded in prison custody, since the court which grants the remand order lacks the jurisdiction to try the matter. This appears to be condoning laxity on the part of the prosecution. It is trite law that jurisdiction is very fundamental in any proceeding in court whether criminal or civil; yet this important concept is waived by S. 306 of the Administration of Criminal Justice and Other Related Matters Law of Ogun State 2017 which provides that a Magistrate could remand a person brought before him if that person is suspected to have committed a capital offence.[70]

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67 Amnesty International UK Op. Cit. n1.
68 Onagoruwa v The State [1993] 7 NWLR (Pt 303) 49.
69 *Ibid* at p. 10,7 par. E
70 ACJL Ogun State, s. 306.

It is however incumbent on the prosecution to bring a suspect to trial within a reasonable time by arraigning the suspect before a court of competent jurisdiction so as to warrant detention. One of the reasons proffered for holding charge or remand proceedings as it presently called, is the fact that the legal advice of the Attorney-General may be required to commence prosecution; so while the defendant is being remanded, his legal advice may be prepared. This argument is not tenable because the Police Act empowers the Police to prosecute criminal cases even without legal advice and up to the Supreme Court.[71] This position has been confirmed in the case of *Federal Republic of Nigeria v Osahon*.[72]

The stance of the apex court on the issue of holding charge seems to offer no relief. In the case of *Johnson v. Lufadeju*,[73] the Court of Appeal, had declared that the provision of section 236 (3) of the Criminal Procedure Law which gives legislative impetus to Magistrates to remand suspects in prison custody while awaiting a charge as unconstitutional. This position remained until an appeal in the case of Lufadeju by the Attorney General of Lagos State went to the Supreme Court. The Supreme Court laid to rest the issue of holding charge.[74] The court's decision inter alia was that section 236 (3) of the CPL of Lagos is not unconstitutional; it complements the provisions of the Constitution and that it is designed to aid the administration of criminal justice in the country. The court also held that a remand is usually not for an indefinite time, but where a remand is too long a suspect can approach the High Court to review the remand order of the Magistrate. Recognizing the debilitating effect of holding charge but insisting on its relevance, the practice has been re-enacted in the ACJA with some modifications. section 293 of the ACJA allows an application for remand order to be made ex parte while section 294 provides that the Magistrate is empowered to make the remand order having satisfied himself that there is good cause to grant same.[75] In addition, and contrary to what was obtainable, section 295 of the ACJA empowers the Magistrate to grant bail with respect to a holding charge.[76] Again, section 296 provides a maximum period of 56 days within

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71 Police Force (Establishment) Act, 2020 s. 66.
72 (2006) 4 MJSC 1. Although the new ACJA in its s. 106 insists on legal practitioner, it may be concluded that a legal practitioner in the employment of the Police Force is eligible to prosecute albeit subject to the powers of the Attorney-General.
73 Johnson v Lufadeju [2002] 8 NWLR (Pt 768) 192.
74 Lufadeju & Anor v Johnson [2007] 8 NWLR (Pt 1037) 535.
75 ACJA ss.293 and 294.
76 *Ibid* s.295.

which a defendant may be remanded pending the filing of a proper charge.[77] If by the end of the time frame stipulated the charge is yet to be filed, the Magistrate is left with no option but to discharge the suspect.[78]

3. Plea Bargaining

As stated earlier, a plea of not guilty is considered to mean that the defendant puts himself to the trial. Accordingly, trial commences. Considering the length of time in pre-trial as stated above and the expense thereof, plea bargain has been introduced by the ACJA. This innovation creates an option for the Police who have over the years relied almost absolutely on obtaining confessional statements from suspects in order to secure a conviction but unfortunately, they only succeeded in achieving the very opposite. The nature of the plea bargain introduced by the ACJA is such that it may be heard before trial[79] or during the trial but before the defendant opens his defence.[80]

The ACJA further provides the pre-condition to entering into a plea bargain where trial has commenced which includes: where the evidence of the prosecution is insufficient to prove the offence beyond reasonable doubt; where the defendant is willing to make restitution to the victim or his representative; and where the defendant has fully cooperated with the prosecution in obtaining evidence for the prosecution of other offenders.[81] In the same vein, the prosecutor and defendant or his legal practitioner may, before the plea of the defendant is taken, enter into an agreement as to the terms of the plea bargain and a proportionate sentence to be imposed.[82] The effect or advantages of plea bargain includes speedy disposal of cases, obtaining pieces of evidence which would otherwise have been impossible to obtain, amongst others. This will go a long way in assisting the investigator in unraveling criminal organizations and specifically in this context, avoid torture and inadmissible confessional statements.

4. Bail

The segment of this paper on the sub-heading is limited to bail in capital offences. Over the years under the CPA and CPC, the courts in the execution

[77] *Ibid* s. 296.
[78] *Ibid* s. 296 (6).
[79] *Ibid* s. 270 (4).
[80] *Ibid* s. 270 (2).
[81] *Ibid* s. 270 (2) (a) – (c).
[82] *Ibid*, s. 270 (4) (a) & (b)

of their judicial powers had made repeated pronouncements as to the 'exceptional circumstances' where a defendant charged with a capital offence may be admitted to bail. The circumstances include ill health and long delay in prosecution.[83] Consequently, where a defendant fails to prove that he is so ill as to warrant medical treatment outside the prison walls, he would be unable to get an order admitting him to bail. This was the position of the Supreme Court in the case of *Abacha v The State*.[84] Although this continued to be the attitude of the courts in an application for bail, it may be said that the rule stating the exceptional circumstance where bail may be granted in a trial for capital offence was mainly a creation of the court. The innovation in this regard by the ACJA, therefore, was that the above position is now codified.[85]

The controversy as to whether women could stand as sureties in a bail application has also been laid to rest by the ACJA. Section 167(3) of the Act provides that 'no person shall be denied, prevented or restricted from entering into any recognition or standing as surety for any defendant or application on the ground only that the person is a woman'.[86] It is therefore clear that the criminal procedure does not discriminate between a man and a woman in this respect. Women can stand as sureties. This will enable suspects or defendants to be able to fulfil their bail conditions more easily. In order to further aid defendants who find it difficult for various reasons to fulfil their bail conditions, the ACJA provides for the registration of bondspersons. The Chief Judge of the High Court can make regulation for the registration and licensing of corporate bodies or persons to act as bondspersons within the jurisdiction of the court where they are registered.[87] Such person can thereafter engage in bail bond services within that jurisdiction thereby aiding in the decongestion of prisons with regard to persons already granted bail but could not fulfil the conditions.

5. Sentencing and Punishments

Previously, under the provisions of the CPA and CPC, the contemplated punishments for offences upon conviction were restricted to imprisonment,

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[83] Abacha v The State [2002] 5 NWLR (Pt. 761) 638; Bamaiyi v The State [2001] 8 NWLR (Pt 715) p. 270.
[84] *Ibid*
[85] ACJA 2015, s. 161 (2) (a) – (b).
[86] *Ibid* s. 167(3).
[87] *Ibid*, s. 187(1)

fines, caning,[88] haddi lashing[89] and death sentence.[90] The horizon of the criminal justice in terms of punishment has now been expanded by the ACJA to include probation, suspended sentence, compensation for loss occasioned by the victim, the cost of prosecution and community service.[91] It is worthy of mention here that section 452 of the ACJA now removes the procedure for trial of a child offender from the mainstream criminal procedure. The procedure to be adopted thereby is the one provided by the Child's Rights Act 2003.[92] All the new sentencing options are in line with the foregoing theories which includes preventing the convict from committing the offence in future; restraining the convict from committing more offences, rehabilitating the convict, deterring the public from committing the offence, educating the public as regards conducts that are acceptable, retribution, and compensation for the victim of the offence.[93] Furthermore, in pronouncing a sentence, the court must take the factors contained in section 416 (2) into consideration, which factors include but not limited to the merit of each case; the principles requiring the reformation of a convict; restraint from passing the maximum punishment on a first offender; the convict's antecedents.[94]

In view of the increased option for punishing convicts, it is safe to say that prison congestion would subside if these options are faithfully practiced. In addition, the ACJA provides for the establishment of a central criminal records registry by the Nigeria Police Force.[95] In order to make this feasible, there shall be established a criminal records registry at each State Police Command. The State and Federal Capital Territory Police Command are to ensure that decisions of the court in all criminal trials are transmitted to the central criminal records registry within 30 days of the judgement. This is to avoid the situation that came up in the trial of James Onanefe Ibori wherein he argued that he was not the same James Onanefe Ibori that had been

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88 CPA, s. 308 makes provision for the procedure for caning.
89 CPC, s.307.
90 CPA, s.366 provides that subject to the provision of any law stipulating a specific punishment with respect to a crime upon conviction, the provisions shall apply to death sentence, imprisonment, caning and fine. Sections 268, 269 and 270 of the CPA provide for restitution of properties to the owners but this could not be the only punishment imposed.
91 ACJL, s. 460 (2).
92 Child's Right Act, 2003.
93 *Ibid*, s. 401.
94 *Ibid*, s. 416 (2).
95 *Ibid*, s. 16.

convicted for a crime in another case and that it was a case of mistaken identity.[96]

Challenges of Criminal Procedure in Nigeria

Indeed, the enactments of ACJA, Police Force (Establishment) Act and Nigerian Correctional Service Act is a laudable development in the administration of criminal justice and Criminal procedure in Nigeria. There are, however, certain challenges that shall be encountered in their implementation as well as certain defects still existing in the principal enactment i.e. ACJA which need to be improved or ameliorated. It must be noted that the CPA and CPC were in operation as principal enactments for more than a century; this means that the stakeholders in the criminal justice system have been used to the old way of doing things. It would therefore take some time for everyone to adjust to the new law. Nevertheless, this change of orientation needs not take an eternity. There should be consistent and rigorous training on the ACJA for judges, magistrates, police officers, prison officers, lawyers, Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices Commission (ICPC) officials, National Drug Law Enforcement Agency (NDLEA) officials and every other stakeholder in the criminal justice system.

Another main challenge that may militate against the effective implementation of the ACJA is lack of adequate funds. A lot of things under the Act presuppose that funds shall be available to the police, courts, office of the AG and many others. For instance, the requirement that the statement of suspects should be recorded electronically implies that the police and other crime investigating authorities shall be provided with recording devices. The courts must also be equipped with electronic and information technology devices and those necessary to play the electronically recorded statement. Government must therefore be willing and ready to provide sufficient funds for the implementation of this Act. This is essential as it must allocate resources to ensure that the rights of the Nigerian citizen are protected via an effective implementation of the ACJA.

The creation of a criminal registry at each police command and a central criminal registry also implies that there should be constant power supply and internet service where this is to be done electronically. A manual or paper

[96] See also Agbi v Ogbeh [2003] 15 NWLR (Pt 844) 493; Agbi v Ogbeh [2005] 8 NWLR (Pt 926) 40.

central registry will definitely be cumbersome, difficult to achieve, slow and ineffective. Yet, there is epileptic power supply and the internet connection is usually unstable, unreliable and expensive to procure. Many other government agencies that have also switched to a central database like the Federal Road Safety Corp (FRSC) and the Nigerian Immigration Service (NIS) still face the challenge of slow or non-existent internet connection thereby making transactions and applications in these agencies slow. The nation cannot afford for a similar situation to plague the central criminal registry.

Utilizing Science in Criminal Investigation in Nigeria

Criminal investigation is an important part of the entire criminal justice system, such that its absence may lead to delay in the administration of justice, stalled trials, victimization of innocent citizens and encouraging the escape of offenders from paying for their misdeeds.[97] Although a defendant can be convicted on the basis of one or a combination of the three methods established by the courts over the years,[98] it is desirable from a Nigerian standpoint, that a more exhaustive process leading to convictions is maintained. This is because although a defendant may be convicted solely on his own confessional statement, for instance, it is desirable to have some evidence outside the confession that would make it probable that the confession was true.[99] This is where the issue of forensic science comes into play.[100] By the provisions of the Evidence Act,[101] when the Court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law,

[97] Imosemi & Kupoluyi, 'Ensuring an Effective Criminal Trial and Investigation by the Nigeria Police Force: Challenges and Prospects,' [2017] (5)(4) International Journal of Innovative Legal & Political Studies, 21-28.

[98] Cletus & Anor. v Nigerian Navy (2019) LPELR-49355 CA.

[99] Dinie v The State [2007] 9 NWLR PT 1038; See also Nwaebonyi v The State [1994] 5 NWLR PT 343 at 130.

[100] Mohammed Amali and Noose Nwafor-Orizu, 'Need for Forensic Science in the Criminal Investigation Process in Nigeria' https://ir.nilds.gov.ng/bitstream/handle/123456789/410/NEED%20FOR%20FORENSIC%20SCIENCE%20IN%20THE%20CRIMINAL.pdf?sequence=1 p. 185 accessed January 31, 2022.

[101] Section 68(1).

customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions are admissible.[102]

Forensic analysis is vital to criminal investigation because a person cannot be at the scene of a crime without leaving something behind, and cannot leave the scene of a crime without taking something with them.[103] Knowledge of forensic tools and services provides the investigator with the ability to recognize and seize evidence opportunities that would not otherwise be possible. Forensic analysis takes many forms namely physical matching, fingerprint matching, hair and fibre analysis, ballistic analysis, blood splatter analysis, DNA analysis, forensic pathology, chemical analysis, and forensic anthropology.[104] Other forms are forensic entomology, forensic odontology, forensic engineering, criminal profiling, geographic profiling, forensic data analysis, and forensic document analysis.

Various types of physical evidence are found at almost every crime scene, and they are the sorts of evidence that can assist an investigator by directing them to develop a sense of how the crime was committed. Tool marks where a door was forced open can indicate a point of entry, shoe prints can show a path of travel, and bloodstains can indicate an area where conflict occurred. Each of these pieces of physical evidence is a valuable exhibit capable of providing general information about spatial relationships between objects, people, and events. In addition, the application of forensic examination and analysis could turn any of these exhibits into a potential means of solving the crime. DNA analysis is another form of science that is very vital to criminal investigators. It plays a large role in advanced societies in convicting the guilty and exonerating those wrongly accused or convicted.[105] DNA evidence is a powerful tool because, with the exception of identical twins, no two people have the same DNA.[106]

Comparsion with Prospects and challenges of Criminal Justice Procedure in China

Compared with the Criminal Procedure Law adopted in 1979, solely using non-adversarial or inquisitorial controls, 1996 CPL appears to be a

[102] Okafor v Effiong [2017] LPELR-42699 (CA).
[103] Petherick, W A Forensic Criminology (Elsevier Academic Press, 2010).
[104] Mohammed Amali Op. Cit. p. 186.
[105] 'Understanding DNA Evidence: A Guide for victim service providers' <https:// www.ncjrs.gov/pdffiles/nij/bc000657.pdf> accessed January 31, 2022.
[106] *Ibid*.

milestone to China's reform on procedural systems partly because of establishing the adversarial approach to criminal justice. This seems to be a major change on the legal tradition and procedural system of the inquisitorial mode in criminal trial, though retaining non-adversarial elements to be further reformed, in such aspects as an imbalanced structure among the three parties, lacking rights guarantee of the accused without an equal role and so on. Since the shift of an adversarial approach is mainly featured with dependence on the accused and its relationship with other parties in trial, the rights to the accused in criminal litigation could be a key focus of comprehensive attention on the use of non-adversarial controls in the present legislation of Chinese criminal procedure.[107]

The CPL 1996 has improved procedural rights of the accused, especially those facing the death penalty, on the basis of the relevant provisions in the Criminal Procedure Law of the PRC in 1979. These rights could be divided into three categories in light of their nature and function on the designed structure and expected balance among the three parties in criminal procedures. The first and foremost is a series of rights concerning the defense or legal aid, which is used for the defending party to oppose the accusing one, explicitly including but not limited to the rights to appearance and cross-examination of witnesses at the core of fair trial and criminal justice. The second is the right to request that a judicial body examine, change or withdraw disadvantageous acts, decisions or judgments of another body, such as that to appeal, to present a petition, to demand withdrawals,[108] to apply for reconsideration and to file charges against judges,[109] procurators and investigators.[110] The third relates to the principles of equality before the law,[111] no conviction without a PC's sentence according to law,[112] and a public, independent and fair trial. Despite the possibility of being helpful to prevent miscarriages of criminal justice to a certain degree, the improvements seem to be limited in the sense of non-adversarial elements remained and

[107] Jiang Na, 'China's Long March towards the Adversarial System: Establishment and Development' (2014) 2 (4) Intel Prop Rights 2: 123 p. 4 doi:10.4172/2375-4516.1000123 https://www.walshmedicalmedia.com/open-access/chinas-long-march-towards-the-adversarial-system-establishment-and-development-ipr.1000123.pdf accessed January 25 2022.
[108] Criminal Procedure Law 1996 art 28.
[109] *Ibid*, art 30.
[110] *Ibid*, art 14.
[111] *Ibid*, art 6.
[112] *Ibid*, art 12.

adversarial controls used in form, potentially detrimental to the legislative intentions of rights guarantee and procedural balance.

Significant shortcomings in all procedures

The CPL 1996 provides for a system of legal aid in the process of criminal cases.[113] But this system is limited to the trial of cases only, rather than all of the stages of criminal proceedings, and compulsorily applicable to such several categories as those facing the death penalty, the blind, deaf or mute, minor defendants, without any entrusted lawyer. This is likely to undermine the protection of the interests of criminal suspects or defendants and even lead to unfair trials and misjudged cases. Moreover, there still remain some limitations to the relevant provisions, which seems to denigrate the practice of the right to a defence and even remove the balance between both parties of the accused and prosecution in several primary aspects. Firstly, there is the intervening time between when the investigation begins and when the lawyer starts.[114] During this time the advisors cannot provide the legal service in preparing the criminal defence. The criminal suspects have to defend themselves at that stage.

Secondly, defence lawyers cannot read judicial documents or technical testimonials until the PP's examination for prosecution, neither can other defenders read these documents without permission of the PP (People's Procuratorate). Accordingly, they appear not to obtain the main evidence materials, but only opinions recommending prosecution and testimonials considered important to defence. Meanwhile, the lawyers can collect the factual material concerning the alleged crimes, as other defenders can with the permission of the PC (People's Court). However, the problem is that there is no explicit provision in the laws or judicial interpretations concerned, to clearly specify what constitutes this material. This appears to prevent them from reading all the materials which might be necessary for them to have a good preparation of defence in trial of the case.

The third limitation is on required conditions for the investigation to obtain evidence. With the consent of witnesses and other units or individuals concerned, defence lawyers may obtain information from them, which inevitably means that some witnesses may refuse. This tends to go against the duty to testify of 'those who have information about a case' pursuant to

[113] *Ibid*, art 34.
[114] Jiang Na Op Cit p. 3

CPL 1996 Article 48.[115] Additionally, it is the case with the difficulties for defence lawyers in collecting information from the victim, their relatives, and witnesses provided by the victim. This lies in the fact that both their consent and the permission of the PP or PC are prerequisites. Without specific applicable conditions, the PP or PC seems arbitrarily to permit or refuse the defence lawyers' application for investigation to obtain evidence or inform witnesses about giving testimony in court. These also appear to remove the balance between the accused and the PP.

Remained problems in alternative procedures

In the procedure for second instance, as one of alternative procedures conditionally applicable to all criminal cases, the hearing approach directly influences the quality of second-instance sentences. CPL 1996 Article 187 provides for the public hearing as the primary approach and the written examination and interrogation as the secondary. Specifically, 'the people's court of second instance shall form a collegial panel and open a court session to hear the case of appeal. Where the collegial panel believes that the facts of the crime are clear after consulting case files, interrogating and questioning the parties, defenders and agents' ad litem, it may decide not to open a court session. With respect to a case against which a protest is lodged by the people's procuratorate, the people's court of second instance shall open a court session to hear the case'. The public hearing appears to favour correcting misjudged cases more than the written examination, whereas the above combination of both approaches tends not to fully ensure the right of the accused to cross-examination or to a public hearing. The procedure for review of death sentences is a special system, contributing to a fair trial in hearing capital cases, but CPL 1996 Articles 199 to 202 do not mention its specific content, approach or term, in explicitly addressing details, and thus leave much room for application of various approaches to the procedure.

As Interpretation of the SPC on Some issues in Enforcement of the CPL 1996 stipulates that the HPCs (Higher People's Courts) review death sentences with a suspension of execution by means of reviewing files without a public hearing, both the SPC and HPCs tend to review death sentences written by law or regulation. While this approach tends to improve efficiency, and saves both time and resources in reviewing death sentences, the

[115] CPL art 48.

defending party is unlikely to participate in the process or argue his or her own opinions. Inevitably in cases where there is no arraignment, there is little or no chance of the defendants exposing other criminal suspects or crimes before the court, or no legal bases for changing original sentences.

Moreover, the procedure of trial supervision, used for correction of all misjudged criminal cases, has limitations on the conditions for its initiation. The PCs that initiate this procedure are likely not to provide a fair and impartial trial for criminal judgments, but to lead to more miscarriages of justice. As a requirement for the initiation, there must be definite errors in the judgments. However, what amounts to such errors is unclear as there are no explicit provisions setting this out, consequently leaving much room for the PCs or PPs to randomly decide whether to initiate the procedure or not.[116] Moreover, the legal process of examination by the PCs or PPs appears to be another obstacle to the defending party's successful start of the retrial procedure by appeals. It tends to be difficult for this party under disadvantaged circumstances to effectively exercise such legal rights and properly start this procedure for correction of wrongful convictions.

Development of the Adversarial System

Despite no clear articulation of the presumption of innocence, the CPL 1996 amendment take a positive step to clearly place the burden of proving defendants' guilty on the prosecutor as a principle. Amended Article 48 provides that 'the onus of proof that a defendant is guilty shall be on the public prosecutor in a public prosecution case', but with an exception unspecified and open to a broad interpretation. Also, amended Article 35 removes the word 'proving' from the responsibility of the defender, whereas a new change on such wording maybe limited in its practical impact, without expression of presumed innocence or the right to silence. Furthermore, a new procedure allowing courts to call investigators to explain the legality of evidence (amended Article 56), to call on prosecutors to provide evidence of the legality of evidence (amended Article 55), and to require a witness statement to be examined and verified in court before it can serve as the basis for deciding a case (amended Article 59), is intended to safeguard the right of a defendant and his or her lawyers to apply to the court for excluding evidence illegally gathered as they allege, in amended Article 56.

[116] Jiang Na *Op. Cit* p. 4.

Criminal Justice Procedure in Canada

Judges make decisions based on evidence presented by the parties. While they can ask questions of a witness during a hearing, the judge is not permitted to descend into the fray and take on the role of counsel. The Canadian justice system is based mainly on the British adversarial system.[117] The Criminal Code, which includes infractions that could be subject to criminal prosecution, is a competence of the Parliament of Canada who alone can legislate. Law enforcement is under provincial jurisdiction; each of the 10 provinces has its own legal system. The Canadian system also follows the principles of Common Law. One of the fundamental principles of the Canadian system is the presumption of innocence. The accused is always presumed innocent until proven guilty and the burden of proof lies with the Crown prosecutor who must prove beyond all reasonable doubt that the accused has committed the crime (actus reus) and had criminal intent (mens rea).

A lawyer may choose to present a defence, but he can also seek to raise a reasonable doubt about the evidence. In most trials it is the judge who decides whether the accused is guilty, but anyone accused of an offense punishable by a prison term of 5 years or more (e.g., murder, robbery, etc.) can exercise their right to be tried by a jury of 12 people.[118] In this case, the jurors assess the evidence and the judge acts as legal advisor and explains the rules of law. In all cases, the sentencing is up to the judge who is guided by a number of principles (proportionality, harmonization and individualization of sentences and also moderation). The Criminal Code provides maximal penalties for each offense but they are rarely, if ever, imposed.[119] The Criminal Code also provides mandatory minimum sentences for a number of offenses. For offenses for which there is no mandatory sentence, judges are free to choose the type of sentence they wish to impose (imprisonment, conditional sentence, probation, fines, etc.,) provided they do not exceed the

[117] Coughlan Stephen, 'The "Adversary System": Rhetoric or Reality?(1993) Canadian journal of law and society, 8(2), 139–170.p. 142 doi:10.1017/s0829320100003203 https://sci-hub.hkvisa.net/10.1017/s0829320100003203 accessed January 25, 2022.

[118] Leclerc Charles and Jean-Francois Boivin, 'Trends in the criminal justice system in Canada (2014)', In Lowes D. & Das D. 'Trends in the Judiciary: interviews with judges from Around the World' (volume 2), Taylor & Francis Group London: CRC Press pp.281-295.

[119] Gerry Ferguson, 'A Review of the Principles and Purposes of Sentencing in Sections 718-718.21 of the Criminal Code' (2016) Department of Justice Canada https://www.justice.gc.ca/eng/rp-pr/jr/rppss-eodpa/RSD_2016-eng.pdf accessed January 25, 2022.

maximum allowed. In reality most criminal cases are settled by a guilty plea from the defendant. It is estimated that in nearly 90 % of cases there is no trial because the accused pleads guilty.[120] In most of these cases, the two parties present a single penalty recommendation to the judge. The judge's role is then to determine if the accused is un-coerced to plead guilty and if the proposed recommendation is reasonable. Judges are guided in their decision by judgments from the Appeal Court: they can only reject an agreement if it is 'unreasonable', 'against the public interest' or if it 'would bring the administration of justice into disrepute'. In the vast majority of cases, judges endorse the recommendation of the lawyers.

Conclusion

The enactment of the ACJA is indeed the greatest revolution in the Nigerian Criminal Justice Procedure and the list of areas of reform in the criminal justice procedure is in no way exhaustive. There are still many more problems that are not enumerated. What is however certain is that the general consequence of these problems has been a non-performing criminal justice procedure system leading to a denial of justice either to the defendant or the victim. These new legislations particularly the ACJA replaces the extant ones which existed for over a century. A critical examination of the provisions of the ACJA reveals that on the whole it seeks to ensure a criminal justice system which respects the dignity of accused persons, pursues restorative and not only retributive justice and speedy dispensation of criminal cases. The Act is however not free from challenges in its implementation as well as some non-laudable provisions. While analyzing the mischief the ACJA has cured, this paper has highlighted these challenges and suggested solutions to same. Despite its defects, the ACJA is a landmark development in the Nigerian Criminal Justice Procedure and all States of the Federation are therefore enjoined to enact it in their jurisdiction.

[120] Verdun-Jones and Adamira Tijerino, 'Four Models of Victim Involvement during Plea Negotiations: Bridging the Gap between Legal Reforms and Current Legal Practice' (2004) 46 Canadian Journal of Criminology pp. 471-500 DOI:10.3138/cjccj.46.4.471 https://www.researchgate.net/publication/264041606_Four_Models_of_Victim_Involvement_during_Plea_Negotiations_Bridging_the_Gap_between_Legal_Reforms_and_Current_Legal_Practice accessed January 25, 2022.

Recommendations

Even though there is a new dimension to Holden Charge following the enactment of the ACJA, and the ACJL in the states, which permits the Police and other Security Agencies to obtain court orders to detain criminal suspects for a limited period. Probably, there is nothing illegal in the new practice, but the challenge, to my mind, remains in the abuse of such powers, or impunity in its exercise. Related to that challenge is the incompetence or recklessness of some judicial workers who fail to exercise their powers judicially and judiciously in granting such detention orders. They should be able to balance the competing interests before granting applications, and especially by protecting the human rights of citizens against clear cases of abuse.

One important lesson Nigeria can take from the inquisitorial system of the People's Republic of China is the procedure of second instance whereby all cases where the People's Court imposed a death penalty are automatically sent to the Supreme People's Court by way of appeal whether or not the convict appeal against the judgment for review. This will ensure that justice is better served in such cases in Nigeria since some of those convicts are indigent who could not even afford an appeal of the decision of High Court to the Court of Appeal not to mention the decision of the Court of Appeal to the Supreme Court. Such costs are to be borne by the state.

ACJA and her counterparts in Nigeria have repositioned the CJP in Nigeria with novel and lofty provisions that seems more like utopia, but they are not utopia or cosmetic provisions if Governments at all levels in Nigeria provide funds for the implementation of those provisions and establishment of monitoring institutions or committees of the performance of the law in Nigeria. A lot also need to be done on public awareness, for the citizens to be aware of the new possibilities in the new law on one hand, and public institutions on the other hand on the need to ensure the Act and her counterparts achieved the desired overall objective of speedy dispensation of justice as justice delayed is justice denied.

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“In the criminal law [...] imprisonment should be resorted to only after the most anxious consideration.”

Pius Langa