Overview of the Administration of Criminal Justice Act, 2015 on the Fundamental Rights of Defendants

Babatunde Victor SAMUEL
Matric No: LCU/PG/003833

08156387435
Sammomotun@gmail.com

Supervised by:

Prof. Foluke O. Abimbola,
Dean, Faculty of Law,
Lead City University.

Being a Master of Law Thesis Submitted to the Postgraduate College, Lead University, Ibadan, Nigeria, In Partial Fulfilment of the Requirements for the Award of the Degree of Master of Laws (LL.M).

LL.M (MASTERS OF LAW)

2024

DECLARATION

I **Babatunde Victor SAMUEL** hereby declare that this thesis titled '**Overview of the Administration of Criminal Justice Act, 2015 on the Fundamental Rights of Defendants**', was performed by me in the Faculty of Law, Lead City University, Ibadan, under the supervision of Prof. Foluke O. Abimbola. The information on the literature has been fully referenced and no part of this work has been presented for another degree in any institution.

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Babatunde Victor SAMUEL **DATE**

CERTIFICATION

I certify that this research was carried out by **Babatunde Victor SAMUEL**, with Matriculation number, **LCU/PG/003833** in the Faculty of Law, Lead City University, Ibadan during the 2023/2024 academic session under my supervision.

_____ _____

Prof. F.O. Abimbola DATE
SUPERVISOR

APPROVAL

This research titled ‘‘**Overview of the Administration of Criminal Justice Act, 2015 on the Fundamental Rights of Defendants**’’ written by Babatunde Victor SAMUEL has been read and approved as meeting the standards of the Faculty of Law, Lead City University, in partial fulfilment of the requirement for the award of Masters of Law (LL.M HONS) Degree of Lead City University, Ibadan.

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Prof. F.O. ABIMBOLA DATE
SUPERVISOR

DEDICATION

This thesis is dedicated to almighty God.

ACKNOWLEDGEMENT

I acknowledge the Master of the Universe, God Almighty, for seeing me through my LL.M programme. At the same time, I am sincerely grateful to my supervisor, Prof. F.O. Abimbola, who supported me throughout the period of this thesis without stress. I thank her sincerely for her advice, suggestion, constructive criticism, reviews and for seeing me through this thesis.

Also, I am highly obliged in taking the opportunity to sincerely thank my lovely parents, Mr. andf Mrs. Oluwole and Dorcas Samuel, my amazing heart rob, Mrs, Olamide Samuel and my wonderful daughter, Miss. Ademide Samuel for their generous attitude and friendly behaviour towards the success of this work.

And last but not the least, I am thankful to all my lecturers – Dr. Yewande Fatoki; AP. Olu Ojedokun; AP. Ola Oni; Dr. Olutayo; Dr. Olanike S. Adelakun; AP. Aderonke Adegbite; Mrs. Adedoyin Chukwuemeka; Mr. Oyekanmi Samuel Oluyato; and others who I may have omitted inadvertently and also my friends, colleagues at work and mentors, Mr. Durosaro Dapo Eeedris; Mr. Ojo Olaotan; Rev'd Canon Oredein Opeoluwa; Prof. Afolakemi Oredein; Miss. Ifeoluwa Samson; Mr. Adekunle Fagbile; Miss. Ayoade Favour; and others who are too numerous to mention and who have been always helping and encouraging me throughout the year. I have no valuable words to express my thanks, but my heart is still full of the favours received from every person for seeing me through my LL.M programme.

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TABLE OF ABBREVIATIONS

Aer:	All England Report
AFWLR:	All Federation Weekly Law Report
CA:	Court of Appeal
CAP:	Chapter
FCT:	Federal capital Territory
FCA:	Federation Weekly Law Report
KB:	Law Report King Bench Division
LFN:	Law of the Federation of Nigeria
NWLR:	Nigerian Weekly Law Report
CFRN:	Constitution of the Federal Republic of Nigeria
SC:	Supreme Court

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Abstract

This study is to evaluate the difficulties and projections of the Administration of Criminal Justice Act in relation to the protection and enforcement of the rights of the defendants particularly as to whether it effectively guarantees access to justice, rule of law, humane treatment and dignity of defendants in Nigeria. Over the years, it has been established that the rights of a suspect or a defendant cannot be taken away from him as a result of the presumption of innocence as guaranteed by the Constitution, and this position has been supported by a plethora of judicial authorities in Nigeria. Other rights available to a suspect includes right to bail, right to humane treatment among others. As sacrosanct as these rights are, it has been observed that the security agencies do not observe the relevant provisions of the law in relation to the protection of the rights of the defendants and they breach same with impunity. It is against this backdrop that this study will protect the rights and interests of the suspects and the defendants; and provide how stakeholders in the administration of justice can comply with the relevant provisions of the law in relation to the rights of a suspect and a defendant. The aim of this work is to appraise the importance of the provisions of the Administration of Criminal Justice Act and other extant laws in the protection and enforcement of the rights of defendants while the specific objective is to identify the loopholes in the legal and institutional framework of human right protection in Nigeria. The methodology adopted and explored in this research work is qualitative i.e. library oriented research. This study therefore recommends that the National Assembly should amend the relevant provisions of the Act as at when due so that legislations can meet up with modern day realities while the executive should ensure that the laws are properly enforced. Against this backdrop, this study finds out that the delay in the administration of justice has not come to an end notwithstanding the prospects brought by the Administration of Criminal Justice Act, 2015.

Keywords: Fundamental rights, Justice, Criminal, court, law, police and correctional centre

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The Administration of Criminal Justice Act is the principal enactment that governs criminal proceedings principally in the High Courts of the Federal Capital Territory, Abuja and Federal High Court. The journey to the emergence of the Act[1] dates back to 2005 when the then Honourable Attorney- General of the Federation, Akin Olujimi, SAN, constituted the National Working Group on the Reform of criminal justice in Nigeria. After many lethargic starts, the National Assembly finally passed it into law as the Administration of Criminal Justice Act, 2015 popularly referred to as 'ACJA' 2015 passed by the Senate and the House of Representatives on the 23rd April, 2015 and 22nd April 2015 respectively and same was assented to by the President on the 13th May, 2015. Without a specific date of commencement in the Act, it is trite that the Act is deemed to come into operation when the President gives his assent. Suffice to say that the Act came into operation on the 13th of May, 2015.

The preoccupation of this study is to evaluate the relevant provisions of the law in relation to the protection of the rights of the accused persons; protection of the society from crime and protection of the rights and interests of the suspect, the defendant; the victim and ensure compliance with the provisions for the realization of those purposes in the system of administration of criminal justice. Thus, this study will review some of the provisions of the Act and other extant laws in relation to the fundamental rights of an accused person, point out defects and the loopholes which call for urgent attending and necessary amendment in relation to the

[1] J.A Agaba, *Practical Approach to Criminal Litigation in Nigeria* (Abuja, Bloom Legal Temple, 4th Edition, 2022), 10.

fundamental rights of suspects and accused persons. A former Chief Justice of Nigeria, Hon. Justice Mahmud Mohammed expressed his view as follows:

> 'The Administration of Criminal Justice Act (ACJA) is the culmination of a long-held desire to improve upon the administration of criminal justice and to bring the rules and procedures of trial in Nigeria in line with global best practices and the needs of the twenty first century.'[2]

The above words show the foundation to the concept of Administration of Criminal Justice Act in Nigeria. While section 1 of the Administration of Criminal Justice Act, 2015 which provides inter alia:

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

The above is intended to cure the anomalies and defects observed before the enactment of the Act in 2015. The Act which was signed into law in May 2015 has 495-sections, divided into 49 parts, providing for the administration of criminal justice and for related matters in the courts of the Federal Capital Territory and other Federal Courts in Nigeria. With the ACJA, Nigeria now has a unique and unified law applicable in all federal courts and with respect to offences contained in Federal Legislations. The law repeals the erstwhile Criminal Procedure Act (CPA)

[2] Hon. Justice M. Mohammed at the orientation workshop on the administration of criminal justice act (ACJA) 2015 for judges, and magistrates, at the pyramid hotel, kaduna on 28 September 2015.

as applied in the South and the Criminal Procedure (Northern states) Code (CPC), which applied in the North.

It is interesting to state that the criminal Justice System is administered by three institutions which are:[3]

1. The police[4]
2. The Courts[5]
3. Prisons now correctional service;[6]

each performs distinct roles in the administration of Justice which is geared towards the proper administration of the criminal justice with the ultimate aim of achieving the existence of a society devoid of persons with anti-social tendencies or at least instilling discipline in the society by appropriately punishing violators of the criminal law.[7] However, the three organs mentioned above are not independent of each other as they work hand in hand to achieve the above objectives.

This relationship is described by Bala & Jerry[8] in the following manner:

> 'What each one does and how it does it has a direct effect on the work of the other. The courts must deal and can only deal, with those whom the police arrest: the business of the prisons is with those delivered to it by the courts. How successfully prisons

[3] C. Wigwe, *Introduction to Nigerian Criminal Law*, (Ghana, Mountcrest University Publishers, 2016), 6-7.
[4] Section 214, 1999 Constitution of the Federal Republic of Nigeria, as amended; Section 23 Police Act; Section 56 (1) Federal High Court Act; Attorney- General of the Federation v. Osahon & 7 Ors (2006) 5 NWLR (Pt. 973), 361.
[5] Section 6 of the 1999 Constitution of the Federal Republic of Nigeria, as amended.
[6] Prisons Act, Cap p29, Laws of the Federation, 2004 (as repealed by the Correctional Services Act, 2019).
[7] J. A. Inciardi, *Examining the justice process,* (Texas: Harcourt Brace & Company, 1996), 4.
[8] M. Bala & D. Jerry, *Crime and the Criminal Justice System in Nigeria* (Abuja, Pearl Publishers, 2009), 75-77.

> reform convicts determine whether they will once again become police business and influences the sentences the judges pass. Police activities are subject to court scrutiny and are often determined by court decisions. And so reforming or reorganizing any part or procedure changes other parts or procedures. Furthermore, the criminal process, the method by which the system deals with individual cases is not a hodgepodge of random actions. It is rather a continuum; an orderly progression of events-some which, like arrest and trial, are highly visible and some of which, though of great importance, occur out of public view. A study of the system must begin by examining it as a whole. The popular or even the law book, theory of everyday criminal process over simplicity in some respects and overcomplicated in others what usually happens. That theory is that when an infraction of law occurs, a policeman finds, if he can the probable offender, arrest him and brings him promptly before a magistrate and if found guilty sent to the prison…

Prior to the promulgation of the ACJA 2015, Nigerian states were governed by two principal legislations traceable to the British colonial administration, namely the Criminal Procedure Act, (CPA) and the Criminal Procedure Code (CPC) depending on whether such a state was created out of the former northern or southern region.[9] While the Criminal Procedure Code is applicable in the North and, the Criminal Procedure Act applies in the South except Lagos.

[9] B. Frost, *Errors of justice,* (Cambridge: Cambridge, Cambridge University Press, 2004), 22.

Based on the prolonged use of these laws, without reform, the former Criminal Procedure Code and Criminal Procedure Act were mastered by lawyers who took advantage of its lapses to prolong trials.[10] As a response to these defects, the Administration of Criminal Justice Act was introduced to ensure that the criminal justice system becomes more efficient as well as responsive to the rights of the accused person.[11] But the Administration of Criminal Justice Act did not completely erode the provisions of the Criminal Procedure Code and Criminal Procedure Act. The main provisions of the laws were merged into a principal federal Act intended to apply uniformly in federal courts, as well as High Courts of the Federal Capital territory. However, the ACJA is not applicable to court martials.[12]

Thus, the Administration of Criminal Justice Act repeals the Criminal Procedure Act,[13] Criminal Procedure (Northern States) Act,[14] and the Administration of Criminal Justice Act.[15] The repeal section appears rather confusing as it relates to the Criminal Procedure Act. At first sight, it appears the Criminal Procedure Act loses its existence to the Administration of Criminal Justice Act. The Criminal Procedure Act is the parent legislation that governs criminal justice administration in the Magistrates' and High Courts of the Southern states of Nigeria except Lagos that uses Administration of Criminal Justice Law, 2011 as the Criminal Procedure Laws of these states with very minimal amendments. As such, if the repeal section of the Administration of Criminal Justice Act is given a wide interpretation, it may be construed as though the Administration of Criminal Justice Act applies to all courts in the 16 Southern states

[10] E. E. Alobo and John Inaku, an Appraisal of the Principle of Restorative Justice in the Nigerian Criminal Justice System (2018) 5 (1) *International Journal of Engineering and Technological and Management Research*, 135.
[11] M. O. Izzi, C.O. Obinuchi; The Challenges of Criminal Justice system in Nigeria: (2016) 8 (2), *The Journal of Jurisprudence and Contemporary Issues, 2.*
[12] Section 2 (2), Administration of Criminal Justice Act, 2015.
[13] CAP C41, LFN 2004.
[14] CAP C42, LFN 2004.
[15] CAP A3, LFN 2004.

of Nigeria. However, that is not so as Section 2(1) of the Act[16] limits the application to "criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja." Most Acts of the National Assembly establishing offences vest exclusive jurisdiction over such offences on the Federal High Court.[17] Although offences created by the Robbery and Firearms (Special Provisions) Act[18] are triable in the High Court of the State concerned,[19] this Act of the National Assembly is only an exception, and not the general rule.

The promulgation of the Administration of Criminal Justice Act guarantees the rights of the accused person to be heard timeously. However, it is also worthy to note that fundamental rights of the accused person are not only protected by Administration of Criminal Justice Act but the constitution goes a step ahead to provide for the enforcement mechanism of same, by virtue of the nature of Fundamental rights, the constitution provides for a special procedure of enforcement. For instance, Section 46 (3) provides that the Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section. In relation to this, the Fundamental Rights Enforcement Procedure Rules, 2009 was promulgated by his Lordship, Idris Legbo Kutigi, CJN, (as he then was). Thus, the main business of the law with fundamental rights enforcement is that of ensuring that a man is not placed on the same footing with other lower creatures because of the actions of other citizens and bodies as held in the case of *Hassan v. EFCC*.[20]

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[16] ACJA, 2015.
[17] For example, Section 20, Money Laundering (Prohibition) Act, 2011.
26, National Drug Law Enforcement Agency Act, CAP N30, LFN 2004, vest exclusive jurisdiction over offences in the respective Acts on the Federal High Court.
[18] CAP R1, LFN 2004.
[19] Ibid, Section 9.
[20] (2014) 1 NWLR (pt.1389) 607 C.A.

Against this backdrop, it can be said that the fulcrum of this thesis is to examine the current legal and contentious issues in the protection of the rights of the defendants by the judiciary in Nigeria, further examine the existing threats to human rights of the average Nigerian while proffering solutions and suggesting measures to ensure optimal realization and enjoyment of human rights through the judiciary in the face of the evident failure of the executive agencies.

1.2 Statement of the Problem

The security agencies and the courts of law which are supposed to be the hope of common man are violating the rights of defendants with impunity. It is a notorious fact that fundamental rights are protected by the Constitution and other extant laws.[21] However, most of these rights protecting a suspect who is under investigation for the commission of an offence or a defendant who is awaiting trial are breached with impunity by security agencies.[22] Thus, this study will state the practicability of those relevant laws in relation to the protection and enforcement of the rights of defendants and it will also show how these rights can be enforced in practice rather than how it is obtainable in theory and how contempt proceedings can be instituted and explored against the contemnors within the boundaries of the law.

Another problem this study seeks to address is the incoherence and inconsistency in the judgments of the courts most especially the Supreme Court decisions touching on the protection of human rights of the defendants in Nigeria. Most of the trial courts follow their discretion when they are faced with two conflicting decisions of a superior court of records and this study shall

[21] Chapter Four of the 1999 Constitution, Fundamental Enforcement Procedure Rules and other relevant laws safeguard the rights of the accused persons and suspects.
[22] For instance, Nnamdi Kanu was detained for several years in spite of court orders to release him on bail.

provide for how the two conflicting decisions of the superior court can be resolved without a trial court resorting to her discretionary powers in choosing the one that suits her the best.

Another problem is the non-justiciability of the provisions of the Chapter Two of the 1999 Constitution. By virtue of Section 6 (6) (c) of the 1999 Constitution of the Federal Republic of Nigeria, as amended,[23] the provisions of the Chapter Two of the Constitution are non-jusiticiable. This serves as a clog in the wheel in the protection of fundamental human rights as rights of a defendant includes right to health, housing, food and education and this study will examine how these rights can be enforced in a court of law notwithstanding that they are non-justiciable.

Another problem is the lack of enforcement mechanism by the executive. It is a notorious fact that the primary duty of the executive is to implement and enforce relevant extant laws. Most of the Nigerian laws including the constitution are not properly implemented and this at times, makes the interpretation of these laws cumbersome.

1.3 Aim and Objectives of the Study

The aim is to analyze the legal protection of fundamental rights of suspects and defendants in Nigeria under the Administration of Criminal Justice Act. The objectives of the study are to:

1. conduct an assessment into the efficacy of the Act in relation to speedy trial and fundamental rights of the defendants.

2. analyse the salient causes of human right violations and impediments to human right protection and enforcement in Nigeria.

[23] Nigerian Constitution.

3. examine the factors responsible for delays in the Criminal trial in spite of the innovations of the Act.
4. exhume the problems as well as the extent to which such problems have undermined the performance of the Nigeria justice system (the Police, Courts and the Prison).

1.4 Research Questions

To serve as a guide for this research work, the following research questions have been formulated:

1. How efficient is the Act in relation to speedy trial and fundamental rights of the defendant.
2. What are salient causes of human right violations and impediments to human right protection and enforcement in Nigeria?
3. What are the factors responsible for delays in the Criminal trial in spite of the innovations of the Act?
4. What are the problems as well as the extent to which such problems undermined the performance of the Nigeria justice system (the Police, Courts and the Prison) in relation to the protection of human rights in Nigeria?

1.5 Methodology

The methodology adopted and explored in this research work is qualitative i.e. library oriented research. The materials employed in the research include Primary sources: for instance, Administration of Criminal Justice Act, 2015, the Evidence Act, the 1999 Constitution of the

Federal Republic of Nigeria, as amended and judicial precedents while secondary sources include relevant information from leading authorities, textbooks on the subject matter of the research, journal articles, and periodicals, opinion of specialists and practitioners all of which are expected to add value to the quality of the work.

1.6. Justification of the Study

So many issues are associated with the protection of human rights in Nigeria. One of the issues is the non-implementation of the relevant sections of the administration of Criminal Justice system; inability of the relevant law enforcement agencies to investigate a matter reported to them properly, their inexperience in handling criminal cases in court; and corruption which has eaten deep into the fabric of the Nigerian society.

This study will illuminate the ills and impediments which currently plague the protection of human rights in Nigeria and bring into limelight current contentious issues in human right protection and enforcement in Nigeria.

This study will unveil the urgent need for human right education and public vigilance to curtail human rights abuses and promote good governance in Nigeria.

This study will suggest measures to ensure optimal realization and enjoyment of human rights through the judiciary and executive agencies. This study will contribute immensely towards the revisiting and amendment provisions of the law which have hitherto encumbered human right protection and enforcement. This study will add to the work of eminent scholars and literature on this topic. Thus, litigants, legal practitioners, researchers, among others who are engaged in the domain of human right protection and enforcement will find this study educating.

This study is projected to will help the Nigerian police force, the stakeholders, the criminology students and the entire society to understand better the functions, duties and roles of the police in the community.

1.7 Scope of the Study

This study dwells on protection of the rights of suspects and defendants in Nigeria. Judicial protection envisages the roles and duty of the courts in the safeguard, protection and advancement of human rights. Adjudication and litigation readily comes to the mind as it is only in this sphere the coercive powers and sanction of a court of law can be invoked. Nonetheless, judicial protection of human rights still captures the vast range of human rights as all human rights are readily enforceable and thus protected by the courts.

The study will however not extend to environmental protection rights, same sex rights, right to education, ethnic minority rights, utilization of natural resources, women rights or other international rights. The Universal Declaration of Human Right and Regional instruments. Relevant Nigerian legislations as well as Rules of court including international courts such as the Community Court of Justice will be considered, however, several other international instrument and rights will be jettisoned.

1.8 Operational Definition of Terms of the Study

Crime: any act or omission that is punishable under the law.

Justice: justice is the fair and proper administration of laws.

Correctional Centre: this is the place where suspects and convicts observe their punishments.

Courts: This is one of the arms of government saddled with the interpretation of the law.

Police: Police are the officers empowered to protect lives and property, safeguard fundamental human rights and prosecution of offenders.

Victim: victim is a person harmed by a crime, tort or other wrong.

Violence: violence is the use of physical force usually accompanied by fury, vehemence, or outrage, especially physical force unlawfully exercised with intent to harm.

Prosecution: means the act or process of prosecuting, specifically the institution against an offender to final judgment and continuance of a criminal suit involving the process of pursuing formal charge.

Law is the rules of conduct that regulate human behavior.

CHAPTER TWO

LITERATURE REVIEW

2.1 Nature and Sources of the Criminal Justice System in Nigeria

The sources of the criminal procedure in Nigeria include the following:

i. Administration of Criminal Justice Act, 2015

ii. Administration of Criminal Justice Law of the various States that have a model of the ACJA in their law

iii. Criminal Procedure Act/ the Criminal Procedure Laws of Southern States who have not repealed same to adopt the model of ACJA

iv. Criminal Procedure Code/ the Criminal Procedure Code Laws of Northern States who have not repealed same to adopt the model of ACJA

v. Judicial decisions of superior courts (Judicial Precedents)

vi. High Court of England Practice and Procedure in Criminal Law, this is applicable in states operating the Criminal Procedure Act where the CPA does not provide for rules in certain instances. Thus Section 363 of the Criminal Procedure Act provides:

The procedure and practice for the time being in force of the High Court of Justice in England in criminal trials shall apply to trials in the High Court in so far as this Act has not specifically made provision therefore.

Meanwhile, this provision above is not obtainable under the Administration of Criminal Justice Act, Administration of Criminal Justice Law and the Criminal Procedure Code. Rather, the ACJA provides that where there is no express provision in the Act, the court may apply any provision that meets the justice of the case.[24] This provision of the Act has the effect of vesting a form of discretion in the judge to manage the procedure in his court rather than going on a voyage to England in search of the proper procedure to adopt as was previously witnessed under the CPA where the heading of an information is always in furtherance of the High Court of England practice and procedure.

2.1.1 Focus of the ACJA

The Act covers the entire criminal justice process from arrest, investigation, trial, custodial matters and sentencing guidelines. The long title or explanatory memorandum of the ACJA captures the essence and utilitarian value of the law. It states thus:

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

In another sense, the attitude of our criminal justice system prior to 2015 was tilt towards either the punishment of the accused person when found guilty or freedom of the person when acquitted.

The purpose of the ACJA is a radical departure from the definition of the character of crime which confined its end point on punishment of the offender. This purpose encapsulates sufficiently the principle of restorative justice and it is by all means a lofty purpose. Conscious of

[24] See Section 492 (3), Administration of Criminal Justice Act, 2015.

the many troubles of our extant criminal justice system, the Administration of Criminal Justice Act 2015 purports a shift in the viewpoint of criminal justice from punishment to restorative justice and protection of society. It has made significant provisions aimed at ameliorating the pains of awaiting trial inmates with the provisions for detention timelines, abolition of holding charges, magisterial oversight of police stations to ensure compliance, the inclusion of restorative outcomes like victim restitution and return of property as well as use of non-custodial sentencing disposition like community service and parole.[25]

[25] D. Omale, *Understanding Restorative Justice: A Handbook for Criminal Justice Stakeholders*, (Trinity – Biz Publication, Enugu, Nigeria, 2005), 86.

2.2 The Concept of Human Rights

The best way to describe a term as complicated as "Human Rights" in jurisprudence is by way of etymology, hence, the term involves two distinct objects which are Human and Rights. While "Human" means "relating to human beings", relating to members of the races of *homo sapiens* that is, men women, children, 'Right' refers to that which is just or correct, truth, fairness, justice, just or legal claim. Therefore, human rights may be described as the freedoms, immunities, and benefits that according to modern values, all human beings should be able to claim as a matter of right in the society in which they live.[1] In the Nigerian context, human rights can be said to be applicable to every person but it is not correct to state that human rights is absolute as every right is subject to some level of restriction or exception. Human rights involve all those rights allowed by the constitution and those bestowed on individuals by statues and common law, for example, those found in the law of tort. Therefore, human rights law in Nigeria is that area of the law that recognizes and protects the legitimate claims of persons in Nigeria.

The Court of Appeal while delving into a jurisprudential analysis explained the term "Human Rights" as inherent to all human beings, whatever the nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status, every person by virtue of being human (a class of the homo sapiens) is entitled to human rights.[2] Fundamental rights are generally regarded as those aspects of human rights which have been recognised and entrenched in the Constitution of a country. They are specially provided for to enhance human dignity and liberty in every modern State. In Nigerian context the terms "human rights" and "fundamental rights" are always used interchangeably. This has been justified by a learned author who has stated:

[1] See B.A Garner op. cit. p. 209.
[2] See Fort Royal Homes Ltd and anor. v. EFCC and Anor (2017) LPELR-42807, p. 19 per Yahaya JCA

> "Human rights remain so, whether they occur in the international plane or within municipal plane or within municipal confines, and whether they are called "human rights" or "fundamental rights". It should be noted that the international bills of rights-the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights-use the expression fundamental human rights. So also the UN Charter.[3].

Since the constitution specifically provides for 'fundamental rights" Nigerian Courts have found it expedient to draw a line of dichotomy between 'human rights' and 'fundamental rights'. Thus, in *Uzoukwu v. Ezeonu II Ors.*[4] The Court of Appeal (per Nasir J.C.A) said:

"Due to the development of Constitutional Law in this field distinct difference has emerged between 'Fundamental Rights' and 'Human Rights'. It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person as human being. These were termed human rights. When the United Nations made its declaration it was in respect of 'Human Rights' as it was envisaged that certain Rights belong to all human beings irrespective of citizenship, race, religion and so on. This has now formed part of International Law. Fundamental Rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country; that is by the constitution".

The confusion associated with the difference between 'Human Rights and 'Fundamental Rights' has been removed in Nigeria[5]. Human Rights are now said to include fundamental rights man

[3] Osita Nnamani Ogbu, *Human Rights Law and Practice in Nigeria; an introduction*, (CIDJAPRESS, Enugu 1999), 31.
[4] (1991) 6 NWLR (Pt. 200)708 at 761.
[5] Order 1 Rule 2 of the Fundamental Rights Enforcement Procedure Rules, 2009.

any of the rights provided for in the Chapter IV of the constitution and the African Charter on Human and People's Rights (Ratification and Enforcement) Act[6]. On the need for judges to bear in mind that the Constitution cannot condescend to details in its description of the fundamental rights and freedoms it guarantees, Ayoola J.C.A (as he then was)once observed thus:

> "The constitution is an organic document, which must be treated as speaking from time to time. It can therefore only describe the fundamental rights and freedoms it guarantees in broad terms. It is for the courts to fill the fundamental rights such as would fulfil their purpose and infuse them with life. A narrow and literal construction of human rights provisions in our constitution can only make the constitution arid in the sphere of human rights. Such approach will retard the realizations, enjoyment and protection of those rights and freedoms, and is unacceptable."

2.3 Literature Review

Plethora of authors in the legal profession has written extensively on the issue of justice, human rights, problems and prospects of the Administration of Justice in Nigeria. Some remarkable publications of some of these authors will be reviewed below:

According to Nash, [7]justice system is greatly influenced by the major objective of protecting the public from various incidents and the degrees of what is perceived as a danger to the state and society. The Courts are the interpreters of the laws, arbiters of disputes and have a unique role in the Nigerian Justice System for the protection of human rights, and in the ideal sense, they are a fundamental cornerstone of democracy and protection of human rights. As such, the courts have to play a unique and expected role in the administration of justice. Similarly, the judges must be

[6] (CAP A9) Laws of the Federation of Nigeria, 2004.
[7] M. Nash, *Police probation & protecting the public.* (London: Blackstone Press Limited 1999), 23.

experienced in law and life, objective, disciplined, uncompromising, independent and fearless, constant and impartial in discharging their duties. Meanwhile, this author was unable to describe how the fundamental rights of the defendant can be guaranteed against the state rascality acting under a disguise of protecting the national security.

The Nigerian justice system[8] which comprises of the Police, Courts and the Prisons established with great influence of colonial orientation is currently bedeviled by several problems as delay in police investigations, overuse of prison sentences by the courts, non-adherence to the complainant, accused and Nigerian Justice System. Badamasiuy & Bello[9] were also of the view that the system has over years, suffered a refuting neglect leading to near total decay of the administration of justice and culminating into several other linked problems, while there is a geometric increase in the population of the country without a commensurate increase in related facilities/infrastructures and services. Like in other systems, however, errors of justice (through interpretation, procedure and or laws execution) are part of human nature, and thus very common in every justice system as noted by Forst[10], who also maintained that it (errors) often begin with the Police who are called first after an alarm is raised. Likewise, sentencing is very crucial in every justice system being the stage where and when a judge determines how a convicted person is to be punished for the offence he/she is convicted of; it is thus where policy and practice clash or complement each other and where different sentences (minimum and maximum) interplay as maintained by Carlson[11], while the punishments are imposed in order to achieve social control,

[8] Nigerian Justice System: The Ideal, Hope and Reality Sahel Analyst: ISSN 1117-4668 Page 114.
[9] J. Badamasiuy, & M. Bello, An appraisal of administrative justice and good governance in Nigeria; (2013) 6 *Journal of Politics & Law*, 216-230.
[10] J. Fischer. *Annual report for digital commons: The legal scholarship repository,* (Golden Gate University School of Law. 2016), 23.
[11] N. A.,Carlson, K. M.Hess, & C. M. H. Orthmann, *Corrections in the 21st century: A practical approach. High Holborn:* (London: Wadsworth Publishing Company 1999), 8.

social change and also maintains order in the society. However, the authors only identified the problems without preferring how the problems can be solved.

According to Miethe & Lu[12] Nigeria criminal justice system is, therefore, not up to the reality in relation to the enormity of its dynamic and institutional roles alongside the endemic problems it is facing. For example, up to this moment, issues of forensic investigations, tests and analysis are either not or poorly conducted, which are a great material for the justice system to rely on. This author was only concerned about the forensic evidence and technology and was not able to explain further on how the knowledge of ICT can enhance forensic evidence in Nigeria.

According to Malemi[13], injustice, whether at the Police, Courts or Prison comes in various forms such as abuse of power, exclusion of the members of the Armed Forces or paramilitary, misuse of discretion, arbitrary arrest and unlawful detention, unfair denial of bail, torture, criminal punishment without fair trial, discrimination, unwarranted dismissal, misappropriation of another's property, outright oppression and unfair or inhuman conduct. Malemi discussed various forms of abuse and violations of human right but he did not provide for relevant procedure to follow in getting remedy for those rights that had been violated. One of the problems associated with the administration of Justice in Nigeria is injustice as delay in criminal trial is not only unfair to the accused himself but also seen as injustice to the entire community.

Also, Oputa J.S.C in Godwin Josiah v the state [14] explains the purpose of justice thus:

[12] T. D. Miethe, & H. Lu,. *Punishment: A comparative historical perspective. Nevada-Las Vegas:* (Cambridge University Press 2005), 78-79.
[13] E. Malemi, *The Nigerian constitutional law*. (Lagos: Princeton Publishing Company 2010), 81.
[14] (1985) 1 N.W.L.R. 125 at 141.

> "Justice is not a one way traffic. It is not justice for the appellant only. Justice is not even, only a two-way traffic. It is justice for the appellant accused of a heinous crime of murder; it is justice for the victim, the murdered man, i.e. the deceased whose blood is crying for vengeance; and finally it is justice for the society at large – the society whose social norms and values had been desecrated and broken by the criminal act complained of … That justice which seeks only to protect the appellant will not be even-handed justice… But justice sacrificed at the shrine of guilt".

Nwanegbo and Odigbo[15] argued that the concept of security is a crosscutting, and multidimensional concept which has, over the last century, been the subject of great debate. However, long before that, the history of mankind was interspersed by the frenzied search for the best way of ensuring the security of the people, their properties, territories, states and institutions among others. In all places and countries, security has been considered as a first order value worth preserving. The aforementioned notwithstanding, there is no consensus on the definition of security. This is not surprising because as a social phenomenon, it is often approached from different perspectives. These authors were unable to strike the balance between national security and protection of fundamental human rights and it is against this light, this study will strike the balance between national security and protection of human rights in Nigeria.

Akinbiyi[16] noted that the court or a presiding judge has duties of controlling court proceedings, doing justice between parties, upholding the independence of the judiciary and principles of fair hearing, politeness and courtesy to all, especially the two parties and maintenance of high standards of behaviour. Competence and hard work are the therefore, the indispensable tools for

[15] C. Nwanegbo and E. Odigbo, Insecurity and Socio-economic Development in Nigeria. Journal of Sustainable Development Studies, (2014) 6 (1) 2014, 40-63.
[16] S. Akinbiyi, *Ethics of legal profession in Nigeria.* (Abeokuta: Augustus Publication 2003), 120.

the effective performance of judicial functions. The court has the hope of common man is supposed to uphold the scale of justice and ensure that the defendant is tried timeously however, most of the Nigerian judges do not care of the extent of arraigning a defendant and that has made the court to be guilty of the violations of the rights of defendants. Akinbiyi[17] also noted that there are over 5, 000 cases pending in the apex Court in Nigeria and many of them which relate to politics and appeal date as far back as the year 2005. One of the major challenges facing the police/prosecution work in terms of justice administration is the issue of outdated Criminal and Penal Codes Laws which also encompass different crimes, but not categorically differentiated and therefore misleading both the police and the public as noted by Grant & Toch[18] thereby making the Police work more problematic as result of asking different behaviours and crime incidents into one, for example, similar crime, but committed by different individuals under different circumstances and influences. Most of the times, manners of police and their misconducts undermine proper discharge of their duties and damages police-public relations while the more they do such, the more public perceive and judge them with skepticism.

Furthermore, the role of the Police/prosecution to every justice system is first and most strategic as noted by Forst[19], the Police who are called first to receive complaints, call for help or redress against any injustice. Inciardi[20] has also acknowledges the strategic role of the Police, which he maintained is the largest and most visible part of justice process, but decries the Police(discretion), which he lamented poses a problem, especially to the community being served and in the process of discharging their functions as agents of law enforcement, prevention and detection of crime, apprehension of criminal offenders, protecting constitutional rights,

[17] Ibid.
[18] J. D.Grant, & H. Toch, *Police as problem solvers*. (Washington: American Psychological Association 2005), 14.
[19] B. Frost, *Errors of justice*, (Cambridge:Cambridge University Press 2004), 22.
[20] J. A. Inciardi, *Examining the justice process: A reader.* (Texas: Harcourt Brace & Company 1996), 4.

promotion of civil order and resolution of domestic and community conflicts. It is admitted that Police is unique and strategic for the fact that they work round the clock with unlimited jurisdiction and substantial authority; while serving as the hope for all with the highest expectations of them.

Similarly, the processes of compensation, restitution and restoration to victims have been deliberately embedded by corruption in our courts. There is also congestion in virtually all the courts, thereby becoming a carryover to the prisons (congestion) which are attributed to adjournments and slow hearing of the charges.

According to Ajomo & Okagbue[21], the courts are also an integral part of the justice system problem as they are responsible for excessive and unnecessary adjournments of cases, the inadequacy of personnel on one hand and unlawful arrests and stern conditions attached to bail processes. Most of the Courts are also over-burdened with cases, some of which are deliberately delayed, frustrated, neglected. McCorkle & Korn[22] have defined prison as an erected structure with a specified number of confined inmates and living under a specially provided state of affairs in a social environment that is uniquely dissimilar to the general and free societal life.

Akinnawo & Akpunne[23]also note that the largest number of inmates in Nigeria prisons are those awaiting trial or under prosecution, which signifies that only a small proportion of the inmates are those convicted and sentenced for one offence or the other and for various prison terms.

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[21] S. Akinbiyi, *Elements of civil procedure & professional ethics, Nigerian Law*. (Abeokuta: Augustus Publication 2000), 22.

[22] MC Corkle L. & R. Kom, "Resocialisation within the walls". (1954) 293 (1), *the Annuals of American Academy of Political Science*, 88-98.

[23] E.O. Akinnawo, & B.C. Akpunne, (2016). The Influence of gender on the level of drug consumption and psychological health of inmates of Lagos Medium Security Prisons.(2016) 1 (4) *International Journal of Gender and Development Issues (IJGDI)*, 196- 207.

Prisons in Nigeria have become a pipe for diverting public resources; the prisons have become centres of excelling in crime, hot spots for drug abuse, addiction and trade, female criminals becoming victims of rape, etc., it is interesting to note that the Administration of Criminal Justice Act have made provisions to fill in the gaps for most of these problems or defects.

Awolowo[24] sees right means that which a person has a just or valid claim over. They are inherent in man by virtue of being a social animal and they are to be enjoyed by all human beings in a country and not gifts to be withdrawn, withheld or granted at a particular person's whims and caprices. They are part of the very nature of a human being and attach to all human beings everywhere in all societies, just as much as do his arms and legs.

Ortuanya,[25] right is seen as something to which that community is entitled to disregard or forcibly remove anything that stands in the way of even a single individual getting it. It is also guaranteed to an individual by the law of the land such as constitution of a country guarantees the right to be protected from any form of manipulations, torture, illegal detention etc. he sees rights as inalienable and protected by law.

Oputa,[26]was of the view that some rights are inalienable as they attach to the human person and form an essential part of his/her humanhood. To deny any human being such rights will be at best to distort his or her humanhood and at worst to destroy that which is most essential to us as human beings. Other rights are secondary and protective and assist in the enforcement of essential and primary rights. But an essential primary rights which cannot be enforced is a white

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[24] O. Awolowo, *Rights* (1st Ed, Lagos: Throne-of-Grace Limited, 2006), 1-2.

[25] S.U. Ortuanya, *Human Rights in Nigeria: Law, Practice and International Perspectives* (1st Ed, Lagos: Princeton & Associate Publishing, 2022), 1.

[26] C.A. Oputa, "Human Rights in the Political and Legal Culture of Nigeria" (1989), Lagos Nigerian Law Publications, 73 cited in Yinka Olomojobi; *Human Rights and Civil Liberties in Nigeria* (2nd ed. Lagos: Princeton & Associates Publishing Co. Ltd, 2018), 3.

elephant, a toothless bull-dog, omnipotent in theory and on paper but hopelessly impotent in fact and in practice.

Agbakoba[27]submitted that the concept of rights enure to every person was a hard fought agitation for humans through the centuries; the early man thrived on sheer brute force. He further opined that every person is entitled to human rights but those rights are not absolute and can be derogated upon by virtue of the same instrument or law. The right to personal liberty of a suspect or defendant may be restricted by order of court and such restriction does not amount to violation of the fundamental right because it is permitted by law but he was unable to state how a court order to detain or restrain a defendant can be vacated.

Mcdave[28] submitted that relevant laws frowned against illegal detention and a defendant or a suspect who is alleged to have committed a crime is entitled to right to health, water, food, shelter before, during and after his trial. He posited further that these rights are provided for by the law and they cannot be waived except as provided by the law. He submitted also that any form of torture, cruel inhuman and degrading treatment against a suspect is illegal and unconstitutional and same can be protested against in court. This author forgot to discuss the derogation clause under the Constitution and other extant laws.

CHAPTER THREE

[27] E. Odikpo, *Enforcement of Fundamental Rights in Nigeria;* (1st Ed, Lagos: Princeton & Associate Publishing, 2020), 9.
[28] K.E. Mcdave, "Human Rights Protection in the wake of Covid-19 Pandemic", (2022) 6 (2), *African Journal of Law and Human Rights,* 66.

LEGAL AND INSTITUTIONAL FRAMEWORK

3.1 Comparative Analysis of Delay of Justice under Administration of Criminal Justice Act, Criminal Procedure Act and Criminal Procedure Code.

The enactment of this Act is an important landmark in Nigeria's criminal justice reform process. It is an outcome of the fusion of the Criminal Procedure Act (CPA) and Criminal Procedure Code (CPC). Administration of Criminal Justice Act (ACJA) provides for the administration of criminal justice system, which promotes efficient management of criminal justice institutions, Speedy dispensation of justice, protection of the society from crimes and protection of the rights and interest of the suspect, the defendant and victims in Nigeria.[29]

It will not be out of place to consider the objective of the Act in line with the provisions of the Act. The objective can be found in the provisions of the Act itself. Section 1 (1) of the Act provides as follows:

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

The purpose of the Act as captured above is a deliberate shift from punishment as the main goal of our criminal justice to restorative justice which pays attention to the needs of the society, the victims, vulnerable persons and the rights and interest of a defendant. This is unlike the concentration of the CPA and CPC on commission of offences and their punishment, this has made justice to serve the state only in almost all cases, from the objective of the ACJA, it will be seen that it is intended that the tripartite purpose of justice be served, that is, justice must be

[29] This can be inferred from Section 1 (1), ACJA.

served on the defendant, the state and the victim as shall soon be seen in the course of this study. The ACJA runs through every major aspect of criminal justice system. In fact, the Act regulates more than just criminal procedure; it covers, in most part, the entire criminal justice process from arrest, investigation, trial, custodial matters and sentencing guidelines. It is about all things criminal, from the cradle to the grave.

In considering the applicability of the Act, Section 2 (1) shall be considered, the said section provides as follows:

> …the provision of this Act shall apply to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja

The analysis of the provision is that the Act shall now be the principal enactment which is applicable to criminal trials in the following cases:

i. Offences established by an Act of the National Assembly, for instance, the provisions of the Armed Robbery and Fire Arms Act,[30]Money Laundering (Prohibition) Act, 2011, National Drug Law Enforcement Agency Act[31] are all laws enacted by the National Assembly

ii. Offences punishable in the Federal Capital Territory, this will then include all criminal trials conducted before the High Court of the Federal Capital Territory.

From the foregoing, it will be stated that invariably, all criminal cases tried before the Federal High Court are federal offences,[32] it will then be further advanced that the Constitution never

[30] CAP R1, Laws of the Federal Republic of Nigeria, 2004.
[31]CAP N30, LFN 2004.
[32] This is so by virtue of Section 251 (3) of the Constitution of the Federal Republic of Nigeria which vests jurisdiction over criminal matters which are contained in Section 251 (1) of the Constitution, that is, in the cases where the Federal High Court has exclusive jurisdiction in civil cases, it also has criminal jurisdiction.

intends that the criminal jurisdiction of the Federal High Court be exclusive.[33]However, the provision of Section 8, Federal High Court drives at the exclusion the State High Court from having jurisdiction over federal enactments in criminal matters. It is then submitted in line with the decision of the court in *Mandara v. Attorney General of the Federation*[34] that Section 8 of the Federal High Court Act and other statutes tending to confer exclusive criminal jurisdiction on the Federal High Court is inconsistent with Section 251 (3) of the Constitution. This line of argument was maintained by Agaba.[35] Also, the provision of section 286 of the Constitution is a point to the fact that the jurisdiction of the High Court of the State is only limited by the territory, whether or not a criminal matter is contained in a federal enactment or a state law, the state high court will still have the jurisdiction. Having advanced the argument that, the State High Court can hear matters relating to a federal enactment, the question will then be asked on whether the state high court when hearing such offences of a federal enactment must be bound by the Administration of Criminal Justice Act, 2015 even where the state has its own Administration of Criminal Justice Law, if this question is answered in the affirmative, the result would sound illogical. Thus, it is submitted that it is not the intendment of the draftsman that the ACJA should regulate the proceedings in a state high court in whatever situation, this is further reinforced by section 490 of ACJA which vests only on the Chief Judge of the Federal High Court or of the Federal Capital Territory or the President of the National Industrial Court the power to make rules of court generally for carrying into effect the purposes of the ACJA. The above authorities cannot make rules which State High Courts or Magistrates' Courts will be subject to. Thus, the ACJA applies only to courts subject to the supervision of the above authorities as the case may

[33] As against the provisions of Section 20, Money Laundering (Prohibition) Act, 2011, and Section 26, National Drug Law Enforcement Agency Act, CAP N30, LFN 2004, vest exclusive jurisdiction over offences in the respective Acts on the Federal High Court.
[34] (1984) 1 SCNLR 311.
[35] J.A. Agaba, (n.18), 201.

be, namely, the Federal High Court, the National Industrial Court, the High Court of the FCT, the Magistrates' Court of the FCT, and the Area Courts of the FCT.

Meanwhile, Section 2 (2)[36] restricts the provisions of the Administration of Criminal Justice Act, 2015 from being applicable at the Court Martial, the court martial is regulated by the Armed Forces Act, Rules of Procedure, Army, 1972, Rules of Procedure, Royal Navy, 1972 and Rules of Procedure, Royal Air Force, 1972 and the rules of Fair hearing as an integral limb of the doctrine of natural justice which requires both that a person shall not be a judge in his own cause and that both sides in a trial must be heard.[37]The Armed Forces Act[38] provides for summary trials, court martial, trial procedure and post-trial procedure etc. there is also provision for appeals form the decisions of court martial.

In order to properly appreciate the purpose of enacting the ACJA, it will be important to state the defects of the previous laws regulating the Criminal Procedure in Nigeria. It will be stated that both the CPA and CPC are relics of colonial heritage in Nigeria and are adaptation of laws from different jurisdictions, in addition to the fact that these laws were age-long, they have not also been subject to review[39] for a long period of time. The obvious consequence of this is that the law had become obsolete if placed alongside the dynamics of our society, for instance, the invention and development of technology which could aid the administration of criminal justice

[36] Administration of Criminal Justice Act, 2015.
[37]See Nigerian Army v. Col Umar Mohammed where the Supreme Court confirmed, per Belgore JSC that: "It is true court martial is a military court, it is however always bound by rules of evidence and manifestation of fair trials; Also in the case of Anyankpele v. Nigerian Army, the Court of Appeal held that a trial where the accusers are the prosecutors and the judge at the same time can never guarantee fair hearing. It also held that the duty of a tribunal or any adjudicating body is to limit itself to the evidence before it and not to go fishing for evidence.
[38] CAP A20, LFN, 2004.
[39]These laws have been in force since 1945 and 1960 respectively without significant improvement as such. See F. Waziri-Azi, (n.13), 114.

could not be captured under the CPA and CPC. Thus, it could be said that the whole of the CPA and CPC does not have provisions relating to electronic management of cases, the attendant effect of this is that cases linger for ages in courts and accused persons end up spending more years as Awaiting Trial Persons than they would have spent in prison if they were convicted for the offence charged.[40]It will then be said that the major problem of the CPA and CPC manifested by virtue of certain loopholes which were previously not catered for. These loopholes are discussed below. The Nigerian criminal justice system had literally become a failed system principally on account of its painful and pathetic inability to conclude High Profile Criminal Cases, particularly those involving politically exposed persons, the delay can be seen on the part of both the prosecution and the defence, the effect of this is that many of these cases linger on *ad infinitum* before judges who were mostly helpless in the face of the provisions of law.[41] Such cases dragged on interminably in the justice system.[42] The law is clear that it is a violation of the right to personal liberty and freedom of movement of a defendant by the court if the court does not sit on a criminal matter timeously.[43] It must be stated that Criminal Procedure Act applies in some southern states where Administration of Criminal Justice Law has not been enacted by the House of Assembly while Criminal Procedure Code is applicable in the Northern part of Nigeria as a rule of procedure and Administration of Criminal Justice Act applies to Federal Capital

[40]Nigeria has a history of slow dispensation of justice; trials could remain in court for as long as ten years without making any progress with all sides exploiting the loopholes in the laws. Ibid.

[41] This is so because of the fact that judges have a very limited discretion in criminal matters.

[42]EFCC v. Akingbola (2015) 14 NWLR (Pt. 1478) was remitted back for trial after five years; Nyame v. FRN (2010) JELR 56428 (SC) remains unresolved after several years; Kalu v. FRN (2016) JELR 37114 lasted for about ten years; Dariye v. FRN (2015) JELR 56070 (SC) is still in the system after over Decade; FRN v. Borishade (2012) 18 NWLR 9Pt 1332) P 347 lasted until the defendant's demise. Eko Jsc in Metuh v. FRN (2017) 4 NWLR (part 1554) 108 at 185 rightly observed that "Contemporary Nigerian history shows the widespread abuse of injunctive remedies to stall trials of high profile offenders in the country being crippled by corruption" Aguda further states that in Nigeria, it is not surprising for a simple case of assault occasioning harm to last for over five (5) years. Instances where cases have lasted between ten to fifteen years are legion. see T.A Aguda, The Challenge for Nigerian Law and the Nigerian Lawyer in the Twenty-First Century," Nigerian National Merit Award Winner's Lecture delivered on Wednesday, September 14, 1988, 20.

[43] Adeoye Adekunle v State (2018) LPELR-45386 (CA).

Territory, Abuja and all Federal Courts irrespective of their locations within Nigeria. All that the courts including the Supreme Court could do was to lament from time to time over the delay of justice inflicted by interlocutory criminal appeals.[44]This predicament is notoriously known to Courts in other jurisdiction that had taken judicial notice of the incapacity of Nigerian courts, especially appellate courts, to deal with issues promptly and timeously. For instance, in *IPCO (Nigeria) Ltd.v. NNPC*,[45] the English Court of Appeal once had cause to describe the Nigerian judicial system as 'bedeviled by 'catastrophic delays'. There is no doubt that such delays not only erode public confidence in the judicial process but also undermine the very existence of the courts.[46] This is in spite of the fact that speedy trial is guaranteed by Section 36 (1) of the 1999 Constitution which provides that:

> In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

In the same vein, Section 36 (4) of the Constitution provides that whenever any person is charged with a criminal offense, he shall be entitled to a fair hearing within a reasonable time by a court or tribunal. Unfortunately, the Constitution does not define the meaning of the expression "within a reasonable time" as used in these subsections. The Supreme Court however had cause

[44]Y. Akinseye-George, Should the Supreme Court Revisit its Ruling in Metuh V. FRN & Anor.?-A Case Review (unpublished) presented at the J.B Daudu & Co. 1St Annual Criminal Law Review Seminar on the Administration of Criminal Justice Act, 2015 held at the Conference Hall, J.B Daudu & Co., House 3, 16B P.O.W Mafemi Crescent, Utako District, Abuja, on 25th May 2018, 2.
[45][2014] EWHC 576 (Comm).
[46] C.A. Oputa, *In the Eyes of the Law* (Friends Law Publishers, 1992), 50.

to define this phrase in the case of *Gozie Okeke v. The State*.[47] In his judgment, Justice Ogundare held that:[48]

> The word "reasonable" in its ordinary meaning means moderate, tolerable or not excessive. What is reasonable in relation to the question whether an accused has a fair trial within a reasonable time depends on the circumstances of each particular case, including the place or country where the trial took place, the resources and infrastructures available to the appropriate organs in the country. It is, therefore, misleading to use the standard or the situation of things in one or a particular country to determine the question whether trials of criminal cases in another country involves an unreasonable delay ... A demand for a speedy trial, which has no regard to the conditions and circumstances in this country, will be unrealistic and be worse than unreasonable delay in trial itself.

One of the causes of the delay stated above is the use of interlocutory applications which could be appealed up till the Supreme Court while the substantive matter is stayed. Interlocutory criminal appeals are filed in the course of criminal proceedings, these interlocutory applications may be on ground of jurisdiction of the court, admissibility of certain evidence, competence of the charge. Akinseye-George[49] states that the ingenuity of Nigerian lawyers to couch such grounds is legendry. This baneful practice is made all too easy by the fact that the case law on jurisdiction is unwieldy and open-ended. A defence counsel who is bent on delaying trial of the substantive matter can easily dress his objections as jurisdictional or as issues of law. For

[47] (2003) 15 NWLR pt. 842, 25.
[48] C.A. Oputa (n.45), 84-85.
[49] Oputa (n.48), 9.

instance, in *Ehindero v. FRN*,[50] this appeal was fought to the Supreme Court over a period of about five years on the jurisdictional question. Another cause of the problem of a delayed trial is the ability of both the defence and the prosecution to seek adjournments on various occasions and for various flimsy reasons during trial, this adjournments are always hinged on the basis that the doctrine of fair hearing dictates that the accused person must be given adequate time and facilities to prepare for his defence.[51] However, as important as the principle of fair trial is, its provisions have been explored to suit the wishes of a defendant who intends to frustrate his trial and the prosecution who intends to prolong the inflictions on the defendant.

Another kind of delay tactics which is possible under the CPA and CPC is the numerous pre-trial delay machinery, this includes the concept of holding charge and advice from the Director of Public Prosecution. Where a matter is very serious, especially in murder, armed robbery and related offences, and the accused person is arraigned before a Magistrate's Court in what is loosely referred to as "a holding charge" the normal practice is to require the advice of the Director of Public Prosecutions (DPP) first, to determine whether the matter can be handled by the Magistrate's Court or would have to be sent to the High Court. This procedure which is premised on a very solid foundation is designed to enable the DPP to critically examine the proofs of evidence to ascertain whether the accused person should actually face the charge preferred against him or not. Where the DPP advises that the charge cannot be sustained, the accused person would be discharged at that stage. On the contrary, if the advice is that the charge can be sustained as presently constituted or in an altered manner, he drafts the proper charge and sends the matter to the appropriate court. As laudable as this procedure is, it is one of the procedures by which accused persons are unduly kept in detention.

[50](2017) JELR 37368 (SC).
[51] See Section 36, Constitution of the Federal Republic of Nigeria, 1999.

It will be important to state here that jurisdiction is the life of any trial before the courts.[52] When investigation have not been made thorough, police officers have over the years developed the tactics of presenting the accused persons before courts that lack jurisdiction so as to allow them buy time to be able to keep the accused person in detention for a longer period pending investigation. Ayemere and Enakemere elaborately explain the concept of holding charge in the following words:

> Holding charge" is that term used to describe a criminal charge that is filed by the police before a magistrate court against an accused person just for the purpose of prison custody pending the conclusion of investigations. charge" that is filed against an accused person by the police before a magistrate court that ostensibly has no statutory power to try the person charged, makes an order remanding the person in prison custody pending the conclusion of the investigation or arraignment of the person in the High court.[53]

The rationale for the continued practice of holding charge in the Nigerian Criminal Justice system was emphasized by Mukhtar JSC in *Lufadeju and Anor v. Johnson*[54] inter alia:

> "... The fact is there was strong suspicion that the respondent and some others have committed an indictable offence to wit treason. After their arrest by the police, there was the need to properly and lawfully keep them in custody, and the only way to do this was to take them to a magistrate who would remand them in custody. They could not possibly continue to remain in police custody without the order of a court. Police investigations sometimes take time, and sometimes there is the fear of a likelihood of

[52]See Lufadeju v. Johnson (supra).
[53] E. Ayemere and L.E Enakemere, "the Legality of the Practice of Holding Charge under the Nigerian Criminal Justice System" (2014) 1 *African Journal of Law and Criminology*, 34.
[54] (2009) 8 ACLR 190.

continued committal for the same or other offences. There is also a likelihood of interference with investigations. While this process continues or is concluded, the legal advice of the ministry of Justice is sought..."[55]

In a search for the reason enabling the survival of holding charge and the detention pending DPP's advice, it is found that the police rarely consults with the Ministry of Justice before charging suspects to court.[56]It is usually after a series of adjournments at the Magistrate Court that the case file is finally handed over to the State's Director of Public Prosecution for his legal opinion. Basically, the police seem to rely on the statutory provisions of the CPA and CPC in the continued practice of holding charge.[57]It is then stated that the CPA and CPC failed to provide a system to prevent this rather nebulous "holding charge" although, the courts on so many instances have declared it illegal. For instance, in Enwere v. C.O.P,[58] the Court of Appeal while declaring the practice as unconstitutional and allowing the appeal held that it is unknown in Nigerian law that an accused person detained thereunder is entitled to be released on bail within a reasonable time before trial more so in capital offence. In that case; the appellants were arrested and remanded in police custody on 11th of May, 1992 on charges of conspiracy to commit a felony, to wit: murder and the unlawful killing of a member of the Abia State House of Assembly. On the application brought under the Fundamental Rights (Enforcement Procedure Rules), the appellant was released on bail on the same day by the High Court at Calabar where the appellant had in the meantime been removed and detained. The liberty of the appellant was short-lived as on the 21st of May, 1992, he was rearrested by the police. On the 27th of May, 1992, he was arraigned before the Isuikwuato Magistrate Court which refused the bail application for

[55] Ibid at p. 213.
[56] Adebokun A, "police and the criminal Justice Administration in Nigeria". (1998) *Nigeria criminal Law Review*, 2.
[57]E. Ayemere et.al,(n.7), 2.
[58] (1993) 6 NWLR pt436, p320 pt. 335, ratio.

want of jurisdiction ordered the remand of the appellant in Isuikwuato Police station. The appellant thereafter on the 31st of December 1992 applied to the High Court of Abia state for grant of bail which, though unopposed, was nevertheless refused. There was no charge before the High Court. Dissatisfied with the decision, the appellant appealed to the Court of Appeal.[59]

Another factor that has always led to the delay of justice in criminal trial in Nigeria is the treatment of informal confessional statements of the accused person, in the process of investigation, it may seem to an observer that the easiest way of securing convictions through the confession of the accused.[60] However, this statement has not proved to be true in the face of criminal trials in our courts. The Evidence Act provides that one of the means of proving the guilt of an accused person at trial is by tendering the confessional statement of the accused person.[61] It is the statement by the accused, admitting that he committed the offence(s) that he is being charged with. It is regarded as the "best form of evidence".[62]In *Olabode v State*,[63]it was held that a free and voluntary confession of guilt by an accused person whether judicial or extra-judicial, if it is direct and positive and is duly made and satisfactorily proved is sufficient to ground a conviction without corroborative evidence. In Nigeria, the informal confessional statement is usually made at the police station and thus the burden is on the prosecution to tender the statement through the Investigating Police Officer or any other law enforcement agent that received the statement from the accused person or was involved in the process of making same. The real problem however, with the confessional statement is that the accused person who is alleged to have made a statement may retract same upon trial or may even say that the said

[59] See also Shagari v. COP (2005) All FWLR (pt. 262) 451 at p.469; Oshinaga v. COP (2004) 17 NWLR pt. 901 at p.1; Onagoruwa v The State [1993] 7 NWLR 49, 107 per Tobi JCA.
[60] C.A. Oputa, "Human Rights in the Political and Legal Culture of Nigeria" (1989), Lagos Nigerian Law Publications, 73.
[61]Sections 28 and 29 of the Evidence Act 2011.
[62]Federal Republic of Nigeria vs Borisade (2015) All FWLR (pt 785) 227.
[63] (2007) All FWLR (Pt 389) 1301; See also Rasheed Lasisi v. The State, (2013) LPELR-20183(SC).

confession was obtained illegally. An accused person may object to the admissibility of his confessional statement on either the ground that he did not make the statement which is regarded as a retraction or that he made the statement but involuntarily. The effect of the objection differs as will be shown below.

In *Kazeem v. State*,[64]the court held that where an accused person retracts his statement by denying making same or retracts from tendering same, the court can go ahead and admit the statement notwithstanding the retraction but will determine the probative value to be attached to it during the evaluation of the evidence before the court, based on the surrounding circumstances of the trial.[65]On the other hand, it has been held in *Dairo vs Federal Republic of Nigeria*,[66]that if the accused person challenges the admissibility of the statement on the basis that he made the statement involuntarily due to certain vitiating elements such as inducement, promise of an advantage, threat, duress etc. the court is expected to determine the veracity of this claim before deciding whether to admit the statement or not. Thus the Court must either on the application of parties or *suo motu* order a trial within trial. A trial within trial is the procedure for determining the admissibility of a statement challenged on the ground of involuntariness. The sole purpose of a trial within trial as enunciated by the court in *Ibeme v The State*[67]is to determine whether in obtaining the statement being challenged the accused person was coerced, induced, threatened, deceived or forced by means of any unnatural intervening factors which would have influenced the making of the statement in question.

The most excruciating part of this is that the court will have to halt the main proceedings to establish the fact of whether the statement was voluntary or not, this will then include the process

[64](2009) All FWLR (pt 465).
[65]J.A. Agaba, (n.16), p. 79.
[66](2012) 16 NWLR (pt. 1325) 129.
[67](2013) 10 NWLR (pt. 1362) 333 at 371 paras C-D.

of the prosecution presenting evidence before court and calling witnesses to show that the statement was voluntary, in the same vein, the defence will also present evidence and witnesses to show that the statement he made earlier was involuntary in a bid to successfully retract same, this process may take a very long period. Unfortunately, neither the CPA nor CPC has any provision to save the court of this exercise (that is, the exercise of trial within trial). In fact, even the procedure for a trial within trial does not have foundation in any substantive or procedural statutes. Thus, Ike-Okafor stated that;

> "There is also no provision in either the Criminal Procedure Act or the Criminal Procedure Code on the issue. Regrettably to state further, I found the procedure missing even in the Judges Rules of England, 1964, applicable to the Southern States and the Criminal Procedure (Statement to Police Officers) Rules 1960, applicable to the Northern States. As the rule is lacking in all the practice directions in our criminal laws, I may even add more by saying that the procedure is not contained in the substantive laws of the country. By substantive laws I mean and bear in mind the Criminal Code and the Criminal Procedure Code."[68]

Having highlighted some of the provisions making mockery of the justice system under the CPA and CPC, it will then be stated the purpose of enacting the ACJA is to remedy the problems associated with the CPA and the CPC, in another sense, it would be observed that the CPA and CPC tenure provides a system of criminal justice which is not in uniformity, hence, the ACJA is an attempt towards the unification of the criminal justice in Nigeria. To get around the predicaments above, the Administration of Criminal Justice Act was introduced in 2015.

3.2 Stakeholders in the Administration of Justice

[68]C. G Ike-Okafor "The Concept of Trial Within Trial" available at www.academia.edu, Accessed May 15, 2024.

Cramption J in the case of R v Connel [69] states as follows:

"This court in which we sit is a temple Justice and the advocate at the Bar as well as the Judge in the Bench are equally ministers in that Temple" both of them have the objective of justice".

The above shows the importance of the court, the police and even the correctional centre in the administration of justice. They have big roles to play in the administration of justice by ensuring justice is not only done but manifestly done[70]. Thus, this chapter will examine the legal framework and institutional framework of the protection of the rights of the Defendants under the Administration of Criminal Justice System in Nigeria.

3.2.1 The Nigeria Police

The structure of the Nigeria Police Force is provided for in section 214 (2) (a) and 215(2) of the 1999 Constitution. Section 23 of the Police Act also empowers the police to institute a criminal action while section 381 (b) Administration of Criminal Justice Act allows a public officer which includes but not limited to police to institute a criminal proceedings. However, this power of the Police is subject to the powers of the Attorney-General of the Federation. It is the duty of the Nigeria Police Force to keep Central Criminal Records Registry[71]. The purpose of this is to ensure that every state police command have the records of every suspect being tried by the court and these records are to be transmitted to the Central Criminal Records within 30 days of the judgment. These powers of the Attorney General are delegated to the Nigerian Police Force under Section 23 of the Police Act.[72]

[69] (1884) 7 IR 261 @311.
[70] Rondel v Worsley (1967) 1 QB 441.
[71] Section 16 of the Administration of Criminal Justice Act, 2015.
[72] Cap. P19 LFN 2004.

structure of the Nigeria Police Force is provided for in section 214 (2) (a) 1999 Constitution. These sections provide inter area, section 214(2) (a):-

"Subject to the provisions of this constitution (a) the Nigeria Police shall be organized and Administered in accordance with such provisions as many be prescribed by an Act of the National Assembly

While Section 215 (2) 1999 CFRN, as amended also provides that:

"The Nigeria Police Force shall be under the Command of the Inspector-General of Police and any contingents of the Nigeria Police Force stationed in a state shall; subject to the authority of the Inspector-General of Police, be under the command of Commissioner of Police of that state"

Section 23 of the Police Act also empowers the police to institute a criminal action while section 381 (b) Administration of Criminal Justice Act allows a public officer which includes but not limited to police to institute a criminal proceedings. However, this power of the Police is subject to the powers of the Attorney-General of the Federation. It is the duty of the Nigeria Police Force to keep Central Criminal Records Registry[73]. The purpose of this is to ensure that every state police command have the records of every suspect being tried by the court and these records are to be transmitted to the Central Criminal Records within 30 days of the judgment. Section 23 of the Police Act provides as follows:

> *Subject to the provisions of Sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (which relate to the power of the Attorney General of the Federation and of a State to institute and undertake, take over and continue or discontinue*

[73] Section 16 of the Administration of Criminal Justice Act, 2015.

criminal proceedings against any person before any Court of law in Nigeria), any Police Officer may conduct in person all prosecutions before any court, whether or not the information or complaint is laid in his name.[74]

From the foregoing, it is seen that prosecuting criminal offences commence with the police upon thorough investigation. Meanwhile, after the successful duplication of a case file, another bottleneck is the transmission of the duplicate file to the office of the Director of Public Prosecutions. Because of the rigid hierarchical and bureaucratic structure of the Nigeria Police, duplicate case files are only transmitted to the Director of Public Prosecutions through the Officers"-in-Charge of Legal matters, who are domiciled at the states" and national headquarters. In some instances, where offences are committed in remote rural areas, the case files are transmitted from the police post through the Divisional Police Office to the Area Command, to the State Headquarters, to the Zonal Headquarters and finally to the Force National Headquarters at Abuja before coming back to the office of the Director of Public Prosecutions of the State where the offence was committed. This long and tortuous journey is time consuming and contributes to the delays encountered in the Nigerian criminal justice system.[75] Any person who threatens the peace and unity of Nigeria in the name of agitation is seriously investigated and prosecuted by the police. An agitation marred with violence is not a peaceful agitation and such is inimical to the growth and development of Nigeria.

In the course of discharging their constitutional duties, the police and other security agencies as gatekeepers of the criminal justice system under the administration of criminal justice Act and other relevant statutes must comply with the following:

[74] IGP V. Andrew (2014) LPELR-CA/AE/78c/2013 (Law Pavilion).
[75] Ibid, section 108.

Notification of cause of arrest of any suspect;[76] Suspects must be informed of their rights to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of their choice;[77] suspects must be informed of their rights tom consult a legal practitioner of their own choice before making, endorsing or writing any statement or answering any question put before him after arrest[78]; Free legal representation by the Legal Aid Council of Nigeria where applicable;[79] Suspects will have the benefit of counsel assisting in securing his immediate release on bail and ensuring expeditious trial;[80] ACJA frowns at arrest in lieu of a suspect;[81] arrest on civil cases;[82] a suspect shall not be subjected to any form of torture, cruel, inhuman or degrading treatment;[83]all arrest must be recorded;[84] all confessional statements must be recorded electronically;[85] recording of a suspect's statement must be in the presence of either a lawyer of his own choice, office of legal aid council, civil society organization, Justice of Peace, or any other credible person of his choice.[86]

3.2.2 Courts

Section 6 (1)[87] provides that:

" the judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation".

[76] Section 6 (2), ACJA.
[77] Section 6 (2a), ACJA.
[78] Section 6 (2b), ACJA.
[79] Section 6 (2c), ACJA.
[80] Section 6 (2) ACJA
[81] Section 7.
[82] Section 8.
[83] Section 8 (1a and b).
[84] Section 15.
[85] Section 15 (4).
[86] Section 17 (2).
[87] CFRN, as amended.

Section 419 of the Act provides that court includes Federal Courts, the Magistrates' Court and High Courts of the Federal Capital Territory Capital Territory or Area Courts. Federal High Courts is provided for in section 249 of the 1999 CFRN, as amended While section 255 of the 1999 CFRN, as amended, provides for the High Court of the Federal Capital Territory, Abuja and magistrate courts in consequence of section 6 (5) (k) of the 1999 CFRN ,as amended. And section 419 of the ACJA defines Magistrate as Magistrates' courts established under the law of a state or the Federal Capital Territory.

Noteworthy is the fact that by virtue of Section 112(11)[88], where in the proceeding before a Magistrates' Court, the court at any stage before judgment, is of the opinion that the case is one which ought to be tried by the High Court, he shall transfer the case along with the suspect to a High Court for trial upon a charge or information in accordance with the provisions of the ACJA. More so, the form and contents of information are as provided for in Sections 377-379[89]. In the ACJA leave is not required to file information in the High Court.[90] Expressly, Section 348(1)[91] provides that trials shall be held in the High Court by information filed by the persons listed therein. There is no requirement for leave of the High Court before filing such.

In the course of trial, the court must ensure that the case of the defendant must be tried timeously as the defendant is entitled to speedy trial.[92]

3.2.2.1 Powers and duties of the Chief Magistrate under Act

[88] Ibid.
[89] Ibid.
[90] Section 379 (1), Administration of Criminal Justice Act, 2015.
[91] Ibid.
[92] B. Nwabueze, *the Judiciary as the third estate of the realm.* (Ibadan: Gold Press Limited 2007), 13; Adeoye Adekunle v State (2018) LPELR-45386 (CA).

The Administration of Criminal Justice Act, 2015 make provisions for the protection of the interest of suspects. The police is compelled and mandated police to report to supervising Magistrates on the last working day of every month, 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[93]. The Magistrate will in turn forward such reports to the Criminal Justice Monitoring Committee which shall analyze the reports and advice the Attorney-General of the Federation as to the trends of arrests, bail and related matters. To enforce such reports by the police, Section 33(5), (6)[94] provides that in the absence of such reports by the police, the supervising Magistrate shall forward a report to the Chief Judge of the State and the Attorneys-General of the State for appropriate remedial action[95] and in case of Abuja, to the Chief Judge of the Federal Capital Territory, Abuja and the Attorney- General of the Federation for remedial action[96].

Section 34 of the Act[97] also provides that the Chief Magistrate, or where there is no Chief Magistrate within the police division, any Magistrate designated by the Chief Judge for that purpose, shall, at least every month, conduct an inspection of police stations or other places of detention within his territorial jurisdiction other than the prison.

The duties saddled on the Magistrate during the visit are as follows[98]:

(a) Call for, and inspect, the record of arrests;

(b) Direct the arraignment of a suspect;

(c) Where bail has been refused, grant bail to any suspect where appropriate if the offence for which the suspect is held is within the jurisdiction of the Magistrate and in so doing,

[93] Ibid, Section 33 (1).
[94] Ibid.
[95] Ibid, Section 33 (5).
[96] Ibid, Section 33 (6) ACJA.
[97] Ibid.
[98] Ibid, Section 34 (2).

the officer who arrested the suspect is duty bound to make available the following to the visiting magistrate[99]:

(a) The full record of arrest and record of bail;

(b) Applications and decisions on bail made within the period; and

(c) Any other facility the Magistrate requires to exercise his powers under that subsection

The Act also provides that where any officer in charge or authorized to make an arrest does not comply with the provision of subsection 3 by making all the relevant particulars available to the visiting magistrate, his act will be treated as a misconduct and shall be dealt with in accordance with the relevant Police Regulation under the Police Act or any other agency saddled with that responsibility.[100]

3.2.2.2 Powers and duties of the Chief Justice of the Federation under Act

The office of the Chief Justice of Nigeria is provided for under section 230 (2) of the 1999 Constitution of the Federal Republic of Nigeria. He is the primus inter pares among the Justices of the Supreme Court of Nigeria. The administration of Criminal Justice Act, 2015 empowers him receive quarterly reports from the Administration of Criminal Justice Monitoring Committee so that he can be abreast of developments towards improved criminal justice delivery and for necessary action.[101]

3.2.2.3 Powers and Duties of the Chief Judge of the Federal Capital Territory, Abuja under the Act

This is the Chairman of the Administration of Criminal Justice Monitoring Committee established under section 469 of the Administration of Criminal Justice Act. Section 469 (2)

[99] Ibid, Section 34 (3).
[100] Ibid, Section 34 (1).
[101] Ibid, Section 470 (2) (g).

(a)[102] provides that the committee shall consists of the Chief Judge of the Federal Capital Territory, Abuja as a chairman of the committee. He is among nine committee members saddled with the responsibility of ensuring effective and efficient application of the Act by the relevant agencies. The Chief Judge of the Federal Capital Territory presides over all the meetings of the Administration of Criminal Justice Monitoring Committee, and in his absence, can delegate his power to a representative.[103] Section 97 of the Act also empowers the Chief Judge to decide questions as to place of trial and also may transfer a case[104]

3.2.2.4 Chief Magistrate visits police stations every month

Section 34 of the Act[105] provides that the Chief Magistrate or any Magistrate designated by the Chief Judge for that purpose, shall, at least every moth, conduct an inspection of police stations or other places of detention within his territorial jurisdiction other than the prison.

3.2.2.4.1 Application for Remand

Section 293 of the Act provides that where a magistrate court does not have the power to try a particular offence, the prosecution can bring an application to remand him within reasonable time[106]. Section 294 of the same Act provides that the court may remind the suspect in prison custody.

The above provisions of the Act expressly legalize the illegality and unconstitutional principle of Holden charge, Holden charge is unknown to our jurisprudence and it has no place by the combined reading of section 35 (4) and (5) of the 1999 CFRN, as amended.

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[102] Ibid.
[103] Ibid, 476 (4).
[104] Ibid, section 98.
[105] Ibid.
[106] Ibid, Section 293 (1) and (2).

3.2.3 The Correctional Service

In ensuring proper correction of inmates, security of life and property which is the primary function of any criminal justice system, the place of the correctional institutions such as prison cannot be overemphasized. The prison system is an integral part of the criminal administration of justice in a state. This is because the institution is expected to serve as the melting point for the activities of the security agencies. The Nigerian prison system was established in accordance with three forms of penal legislation which operate alongside each other in the country. The Penal code and the accompanying Criminal Procedure Code cap 81 laws of the federation 1990 (CPC), the Criminal code and the accompanying Criminal Procedure Act Cap 80 laws of the federation (CPA) and the Sharia penal legislation in 12 Northern States of Nigeria which is applied to only. Indeed, the main aim of establishing the prison institution in Nigeria is to provide rehabilitation and correctional services for those who violated the acts and omissions prohibited by law including rape which is a subject of this discourse.

The prison system is also expected to inculcate in the offenders basic moral values that will make them become law abiding citizens. Prisons are generally conceived as corrective institutions. This is the prime objective of establishing prisons all over the world. Prisons are usually structured to identify the peculiar problem of each inmate and devise means of guiding the individual out of the problem. However, it is painful to see that a crucial aspect of identifying the inmates‟ needs is grossly neglected in Nigeria. Despite Nigeria's progress on democratic, economic and political reforms, Nigeria's prisons are yet to make appreciable impact on the welfare of the inmates. Nigeria's prisons are "living hell", with twenty to thirty inmates arriving at the prison daily. Thus, overcrowding the reformatory structure, which do not even exist in the

true sense, and more regularly stretching the original carrying capacity of the facilities. Consequently, inmates are locked up all day long, buckets serve as toilets in some cells, some of the inmates are denied visitors, and there is overcrowding and lack of food rich in nutrients.[107]

3.2.3.1 Duties of the Comptroller-General of the Correctional Service under the Act

The Comptroller-General of Prisons shall make returns every 90 days to the Chief Judge of the Federal High Court, Chief Judge of the Federal Capital Territory, the President of the National Industrial Court, the Chief Judge of the State in which the prison is situated and to the Attorney-General of the Federation of all persons awaiting trial held in custody in Nigerian prisons for a period beyond 180 days from the date of arraignment[108].

The returns above shall be in a prescribed form as follows[109]:

(a) The name of the suspect held in custody or Awaiting Trial Persons;

(b) Passport photograph of the suspect;

(c) The date of his arraignment or remand;

(d) The date of his admission to custody;

(e) The particulars of the offence with which he was charged;

(f) The courts before which he was arraigned;

(g) Name of the prosecuting agency; and

(h) Any other relevant information.

Consequent upon receipt of such return, the recipient shall take such steps as are necessary to address the issues raised in the return in furtherance of the objectives of this Act.[110]

[107] Nigerian Justice System: The Ideal, Hope and Reality Sahel Analyst: ISSN 1117-4668 Page 114.
[108] Section 111 (1) Administration of Criminal Justice Act, 2015.
[109] Ibid, section 111 (2).
[110] Ibid, section 111 (3).

3.3 Establishment of the Administration of Criminal Justice Monitoring Committee

The Administration of Criminal Justice Act (ACJA) establishes the Administration of Criminal Justice Monitoring Committee (the Committee)[111].By this establishment, the Administration of Criminal Justice Act becomes the first legislation in the Nigerian administration of criminal justice framework to establish a body charged with the responsibility of ensuring effective application of the Act.

The Committee comprises nine members with the Chief Judge of the Federal Capital Territory as the Chairman[112]. By virtue of Section 470[113], the Committee has the responsibility of ensuring effective and efficient application of the Act by the relevant agencies. In doing this, the Committee shall among other things shall:

a. ensure that criminal matters are speedily dealt with[114];
b. congestion of criminal cases in courts is drastically reduced[115];
c. congestion in prisons is reduced to the barest minimum[116];
d. and persons awaiting trial are, as far as possible, not detained in prison custody[117],
e. the relationship between the organs charged with the responsibility for all aspects of the administration of justice is cordial and there exists maximum co-operation amongst the organs in the administration of justice in Nigeria[118];

[111] Ibid, Section 469.
[112] Ibid, Section 469 (2) (a)- (i).
[113] Ibid.
[114] Ibid, Section 470 (2) (a).
[115] Ibid, Section 470 (2) (b).
[116] Ibid, Section 470 (2) (c).
[117] Ibid, Section 470 (2) (d).
[118] Section 470 (2) (e).

f. collate, analyze and publish information in relation to the administration of justice sector in Nigeria[119];

g. and submit quarterly report to the Chief Justice of Nigeria to keep him abreast of developments towards improved criminal justice delivery and for necessary action[120];

h. And carry out such other activities as are necessary for the effective and efficient administration of criminal justice[121] .

Section 471[122] establishes a secretariat for the Committee, Section 472[123] establishes a fund for the Committee, and Section 476[124] provides for proceedings and quorum of the Committee.

Section 33 (3)[125] also empowers the Criminal Justice Monitoring Committee to analyze any report sent by the supervising magistrate and advise the Attorney-General of the Federation accordingly on the trends of arrests, bail and related matters.

3.4 Compliance under the Administration of Criminal Justice Act

3.4.1 Compliance

Section 491[126] provides that where no other sanction is provided for in this Act, failure on the part of a person to discharge his responsibility under this Act without reasonable cause shall be treated as misconduct by the appropriate authority.

3.4.2. Central Criminal Records

[119] Section 470 (2) (f).
[120] Section 470 (2) (g).
[121] Section 470 (2) (h).
[122] Ibid.
[123] Ibid.
[124] Ibid.
[125] Ibid.
[126] Ibid.

The Administration of Criminal Justice Act[127] provides that there shall be established a Central Criminal Records Registry at the Nigeria Police Force and every state command of the Force will have its own criminal registry which shall be consequently transmitted to the Central Criminal Records Registry and the police command must ensure that the decisions of the court in all criminal trials are transmitted to the Central Criminal Records Registry within 30 days of the judgment.

3.4.3 Inventory of property of arrested suspect

Section 10 (1) of the Act provides of the inventory of property. A police officer making an arrest or to whom a private person hands over the suspect, shall immediately record information about the arrested suspect and an inventory of all items or property recovered from the suspect.

Section 10 (3) provides that a copy of the inventory shall be given to the legal practitioners' of the arrested suspect.

3.4.4 Arrest in lieu prohibited

Section 7[128] provides that a person shall not be arrested in place of a suspect.

3.4.5 Institution of Criminal Proceedings

[127] Ibid, Section 16 (1) (2) and (3).
[128] ACJA.

Section 381 of the Act[129] provides that information may be filed by:

(a) The Attorney- General of the Federation or officers in his office;

(b) A public officer acting in his official capacity

(c) A private legal practitioner authorized by the Attorney-General of the Federation; or

(d) A private person provided the information is endorsed by a law officer that he has seen such information and declined to prosecute at the public instance and the private person enters into a bond to prosecute diligently and to a logical conclusion.

Looking at paragraph (b) of the above provision, one can submit that a public officer includes Efcc, Nafdac, Police etc. Thus, one can say that police officers are included in prosecuting an offence under Administration of Criminal Justice Act, 2015. While section 106 of the Administration of Criminal Justice Act, 2015, also provides that subject to the provisions of the Constitution, relating to the powers of prosecution by the Attorney- General of the Federation, prosecution of all offences in any court shall be undertaken by:

(a) The Attorney- General of the Federation or a Law officer in his Ministry;

(b) A legal practitioner authorized by the Attorney- General of the Federation; or a legal practitioner authorized to prosecute by this Act or any Act of the National Assembly.

From the above, it is trite that the maxim "*expressio unis est exclusion atterius*" applies which means that the express mention of one thing result in the exclusion of others. To this end, this

[129] Administration of Criminal Justice Act, 2015.

provision[130]excludes police officers from prosecuting under the Act[131] meaning that when section 381 (b) empowers the police to prosecute under the Act[132] section 106 excludes.

3.4.6 Mode of institution

Section 2 (2) of the Act[133] provides that it applies to Federal High Court and the mode of bringing a criminal proceeding under the Administration of criminal Justice Act is by way of information while section 56 (1) of the Federal High Court Act provides that a criminal proceeding can only be brought to the Federal High Court by way of charge.

The provision of the Federal High Court overrides the provisions of the Administration of Criminal Justice Act at the Federal High Court. In practice, criminal proceedings is brought by a way of charge.

3.4.7 Power of the Justice of Court of Appeal to finish the case he earlier adjudicated at the High Court.

Sections 253 and 258 of the 1999 Constitution of the Federal Republic of Nigeria, as amended provides for the constitution of the Federal High court and High court of the Capital Territory, Abuja respectively. The import of the sections is that the court will be duly constituted where it comprises at least a judge of that court. The phrase "of that court" literally means that once a judge of the High Court of a state is promoted to the superior court, he will cease to be a judge of the High Court. However, section 396 (7) of the Act[134] provides otherwise and states:

[130] Ibid, section 106.
[131] Ibid.
[132] Ibid.
[133] Ibid.
[134] Ibid.

"notwithstanding the provision of any other law to the contrary, a Judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit as a High Court Judge only for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time:

Provided that this subsection shall not prevent him from assuming duty as a Justice of the Court of Appeal.

This provision is not in tandem with the provisions of the 1999 CFRN, as amended

CHAPTER FOUR

PROTECTION OF THE RIGHTS OF DEFENDANTS UNDER THE NIGERIAN CRIMINAL JUSTICE SYSTEM

4.1 Stages of Trial under Administration of Criminal Justice Act

This chapter attempts to examine the provisions of the Administration of Criminal Justice Act (ACJA) as it relates to trial of a defendant, the process of administration of justice in criminal law involves the process of arresting a suspect till the moment he is arraigned before the court and the steps that follow upon conviction. It also addresses the relevant rights available to the defendant at every stage of the proceedings. This chapter further divides the provision of ACJA into three categories:

i. Pre-trial provisions

ii. Trial provisions and

iii. Post-Provisions

In doing this, a comparative analysis is made with the provisions of the Administration of Criminal Justice Act (ACJA) with those of the *Criminal Procedure Act (CPA)*, *Criminal Procedure Code (CPC),* and the *Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011; and Administration of Criminal Justice Law of Oyo state (ACJL).* The object of such comparison is to identify the strengths of the ACJA over the already existing legislations in the criminal justice framework.

4.1.1 Pre-Trial Provisions under the ACJA

It will be important to state that the Criminal Justice begins with the commission of a crime; it is when a crime occurs that a remedy can be sought by the state against the offender. Thus, absence of crime cannot give rise to the ignition of the machinery of the law against the alleged offender, the provisions of the ACJA therefore, structures the pre-trial provisions from the point of arrest up till the period of investigation. Therefore, the points of pre-trial under the ACJA involve the following subjects:

i. Bringing a person before justice (arrest and summon)

ii. Bail (this will be treated as administrative bail)

iii. Investigation

4.1.1.1 Arraignment and Arrest

Whenever a person is caught committing an offence, the law makes provisions as to how such person must be brought before the court to answer such allegation against him.[135] Essentially, the law provides for two ways of bringing an offender before the court:

i. By arresting the offender (with or without warrant depending on the each condition)[136]

ii. By issuance of a criminal summon[137]

iii. By issuance of public summons[138]

A person can be arrested with or without warrant, generally speaking, it is not in all conditions that the law requires that there must be a warrant before an arrest can be made. Arrest without warrant is permitted as a matter of law in the following cases:

i. Where the law creating the offence does not requires that the offender cannot be arrested without warrant[139]

[135] Agaba (n. 1) in Chapter One of this study, p. 328.
[136] Section 3 of the Administration of Criminal Justice Act (ACJA), 2015 provides that a suspect or defendant alleged or charged with committing an offence established by an act of the National Assembly shall be arrested, investigated, inquired into, tried or dealt with… see the provisions of Section 3, Criminal Procedure Act, Cap C41, LFN, 2004; Section 26, Criminal Procedure Code.
[137] See section 115 (1), Administration of Criminal Justice Act (ACJA), 2015.
[138] Ibid, Section 41; see also, Section 67 (1), CPC. This mode is not applicable under the Administration of Criminal Justice Law of Lagos, 2011 and the Criminal Procedure Act.
[139] Examples of offences where the offender cannot be arrested without warrant include the offence of public officers interested in contract in Section 101, Criminal Code, CAP C38, LFN, 2004; see also, Sections 105 and 107, Criminal Code.

ii. Warrant of arrest will not be required where the offender is caught in the act of committing the offence even where the law creating the offence provides that the offender cannot be arrested without a warrant[140]

Section 18 (1)[141] further provides for the conditions where a police officer may arrest without a warrant, the conditions are:

a. A police officer can effect an arrest where the law creating the offence does not require that it should be done with warrant
b. Where the offence is committed in his presence
c. Where the person is attempting to escape from lawful custody or where the offender obstructs the police officer
d. In the case of an offence of stolen property
e. A deserter of any of the armed forces can be arrested without a warrant
f. A police officer can arrest a person without warrant if the person is reasonably suspected to have committed an offence outside Nigeria which would be punishable if committed in Nigeria
g. A person who has in his possession, an instrument of housebreaking, car theft, fire arms or any offensive dangerous weapon
h. The police officer can arrest a person without a warrant if a warrant has been previously issued against the offender[142]

[140] See Section 18 (2), ACJA; Section 10 (2).
[141] Ibid.
[142] In this instance, it is submitted that the offender shall be shown the warrant as soon as he is taken to custody. In relation to this, the ACJA is only similar to the CPA in providing that in such circumstance, the warrant shall, on the demand of the suspect, be shown to him as soon as practicable after his arrest, see Section 44, Administration of Criminal Justice Act, 2015; Section 29, Criminal Procedure Act, CAP C41, LFN 2004. Meanwhile, the ACJL provides for a more specific time-frame for showing the warrant to the suspect within 24 hours after his arrest, see Section 28, Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011.

i. Where a person is found to be trying to conceal his presence in Nigeria or taking precautions towards the commission of an offence

j. A police officer can also arrest without warrant in order to prevent the commission of an offence[143]

k. Where a public summon has been issued against the offender

Meanwhile, it will be stated that the power of arrest is not the repository of the police alone, the following persons may also effect arrest:

i. Private citizens[144] have the power of arrest under the CPA[145] to make arrest on the suspicion of the commission of:

   a. a felony or misdemeanor at night,

   b. a private person may also arrest without warrant, any person committing an offence relating to injury on his own property.

Meanwhile, under the CPC, a private may arrest in the circumstances where he has a warrant or where without a warrant of arrest, the offender is escaping from a lawful custody, or where the offender had earlier been issued with a public summons or where the person his committing an offence in his presence.[146] The ACJA expands this provision in a way by providing in Section 20 that a private person can arrest an offender where the offence is committed in his presence or where the police could arrest without a warrant, it will be said that the ACJA is a bit clearer, the intendment of the said provision can be summarized below:

[143] See section 18(1) (j), ACJA.
[144] The tenor of Section 4 of the ACJA enables private person to have the power of arrest if one reads the provision that "… the police of officer or other persons making the arrest." see also, Section 12, CPA; Section 28, CPC.
[145] Section 13, CPA.
[146] See Section 28 (a) (b) (c) and (d) CPC.

> A private person may arrest in every situation where a police officer would have the power to make arrest

The ACJA provides that the private person can further make arrest where the person making the arrest has his property being tampered upon by the offender, the ACJA however, expands the provision to include the servants, agents or persons authorized by the owner of the property to make such arrest.[147]

ii. Judge, Magistrate, Justice of the Peace.[148]

The ACJA provides that a warrant of arrest can only be issued in the first instance upon complaint on oath or in writing by the complainant himself or by a material witness;[149] this is in *pari materia* with the provision of Section 23 of the CPA, the Administration of Criminal Justice Law of Lagos. Meanwhile, this is not required under the CPC. By virtue of Section 22 (1) of the ACJA, a warrant of arrest may be issued by a judge or a magistrate, on the part of the ACJA, it merely states that warrant may be issued by the court which will mean the judge or magistrate.[150] In reaction to this provision, Abajuo[151] writes that the said section creates confusion in the law, he puts it in the following words:

> …there seems to be confusion as to which authority can issue a warrant of arrest in the ACJA. While Section 36(c) of the ACJA provides for signing of a warrant of arrest by the Judge or Magistrate by whom it is issued…

It is however, submitted that the provision of the ACJA is not confusing, the word "court" used by the law will be better construed as court in the strict sense. The court is defined as the

[147] See Section 21, ACJA.
[148] section 30, CPC.
[149]Section 36, ACJA.
[150] See Section 36 (1) (c), Ibid.
[151] R.E Abajuo, An Appraisal of the Administration of Criminal Justice Act, 2015, available at Electronic copy available at: http://ssrn.com/abstract=2665611, last assessed on 05/05/2024, p.3.

governmental body consisting of one or more judges who sit to adjudicate a dispute and administer justice.[152] Court in the eye of the Nigeria's Constitution would also mean those ones listed in Section 6 (5),[153] it will also include those ones not listed as superior in the constitution to include those created by the law of a State House of Assembly or the National Assembly.[154] In this sense, it will be stated that having first stated that the Judge or Magistrate issuing the warrant must sign the warrant in Section 36 (1) (c), the word court would mean nothing but a high court or a magistrate court. Thus, the ACJA can be said to have conformed with the CPA in the provision for the issuance of a warrant.

From the foregoing, it would be seen that a warrant of arrest is directed to the person who is supposed to make an arrest,[155] the attendance of the suspect before the court is not by his own locomotion but he walks to the court on the leg of the person arresting him. Meanwhile, the variant of a summon allows the suspect to attend the court by his on means, this is seen by the provision of Section 117 of the ACJA which requires that the summons is directed to the suspect requiring him to appear within a period (not less than 48 hours). In this case, it would be seen that a warrant is more serious than a summons, since a warrant of arrest has the effect of dragging him to the court while the summons is only inviting him. Section 117 of the ACJA provides for the issue of summons where a complaint is made before a magistrate as provided in Section 115 of the ACJA and the magistrate decides to issue a summons. Section 115 of the ACJA provides for the making of a complaint over an offence committed by a person whose appearance the Magistrate has power to compel. It appears here that from the above provisions, only a Magistrate can issue a summons by virtue of the ACJA. This is because the provisions do

[152] B.A. Garner, *The Black's Law Dictionary*, (USA: Thompson Reuters West Publishers, 2009), 406.
[153] Constitution of the Federal Republic of Nigeria, 1999.
[154] Ibid.
[155] See section 39, ACJA.

not use the word 'court' which has extended meaning as used in other sections, neither do the sections provide for issuing of a summons by a Judge or by a Justice of the Peace. Also, the provision of Sections 115 and 117 makes the issuance of a summons consequent upon the receipt of complaint by a magistrate. However, a consideration of Section 120[156] of the ACJA would lead to a conclusion that it is not only a magistrate that has the ability to issue a summons, the Section provides the requirement of a valid summons as follows:

i. It must be in writing

ii. It must be made in duplicate

iii. Signed by the presiding officer of the court (magistrate) or such other officers as may be specified by the Chief Judge from time to time***[157]***

From the above, it would be seen that the Chief Judge may designate any officer to sign a summons, the effect of a person signing a document means that he is the author of such a document, in the admissibility of a document the signature of the maker is usually considered, Section 83 (4) of the Evidence Act[158]provides as follows

> …A statement in a document shall not be deemed to have been made by a person unless the document or a material part of it was written, made or produced by him with his own hand, or was signed or initialed by him…[159]

Mary Peter-Odili JSC opines that it is the signature on a document that determines the origin of such document.[160] Thus, Tsamani JCA, in *Lawrence V. Olugbemi & Ors*[161] has the following to say on the effect of signing a document:

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[156] See also Section 87, CPA.
[157] Emphasis mine.
[158] Evidence Act, No. 18, 2011.
[159] Ibid.
[160]. Ashakacem Plc V. Asharatul Mubashshurun Investment Ltd (2019) LPELR-46541(SC) Pp. 27-29, Paras. C-E
[161] (2018) LPELR-45966(CA), p. 47-49, Par. A-E.

It is my view that where a document is not signed, it may not be admitted in evidence. Even if it is admitted in evidence the Court should not attach any probative value to it. This is because a document which is not signed has no origin in terms of its maker." Such a document is worthless and a worthless document has no evidential value.

Therefore, if the signature on a document determines the origin of same as established below, it would only be logical that if the Chief Judge could authorize a person to sign a summons as in Section 120, such person is the issuer of such summons. Suffice it to submit, however, that a summons issued pursuant to the provisions of the ACJA has the ability outlive its issuer, the law provides that it shall not be invalidated by reason of the issuing authority ceasing to have jurisdiction.[162] Just like the CPA, the ACJA provides that a summons can be issued and served on any day including Sunday and a Public Holiday.[163] The provisions of the ACJA on the mode of service of a summons and the life span of a summons are similar to those of the CPA, ACJL, and CPC.[164] The only difference is that unlike the other legislations, the ACJA provides for service of a summons through a courier service company duly registered with the Chief Judge as a process service agent of the court under the Act.[165]

Meanwhile, if a person is reasonably believed to be evading a warrant of arrest, the court may issue a more public way of informing the whole public to arrest the offender,[166] the service of a summons on a person looks like a more private affair, since it is served on the person directly[167]

[162] Section 139, Administration of Criminal Justice Act, 2015.
[163] Section 116, Administration of Criminal Justice Act, 2015; See also Section 82, Criminal Procedure Act, CAP C41, LFN 2004.
[164] Sections 122-126, Administration of Criminal Justice Act, 2015; Sections 88-92, Criminal Procedure Act, CAP C41, LFN 2004; Sections 86-91, Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011; Sections 48-54, Criminal Procedure Code.
[165] Section 122, Administration of Criminal Justice Act, 2015.
[166] See section 41, ACJA, Section 67, CPC.
[167]Ibid, Section 123.

except for situations where the law allows that substituted service can be made.[168] However, in the case of a public summons, nothing is private, it is a way of informing the general public to arrest the offender and as such, a private person may arrest him without a warrant.[169] The public nature of a public summons is seen in Section 42 (1) of ACJA which provides that public summons shall be published in the following ways:

i. In a newspaper that enjoys wide circulation or circulated in any other medium as may be appropriate

ii. By affixing it to some conspicuous part of the house or premises or to some conspicuous place in the town or village in which the person ordinarily resides or

iii. By affixing a copy to some conspicuous part of the High Court or Magistrate Court building[170]

The ACJA makes similar provisions with Section 67 of the CPC as regards the issuance of public summons for a suspect absconding from arrest.[171] Differences, however, exist between the legislations in the methods of publishing a public summons. The ACJA excludes reading of the public summons in some conspicuous place in the town or village in which the suspect resides as against the provision of Section 67 (2) (a) of the CPC. Also, publication of the public summons under the ACJA includes publication in a newspaper that enjoys wide circulation or circulated in any other medium as may be appropriate,[172] this is not included in the CPC. However, the draftsman of the ACJA seems to be guilty of a mindless lifting of the provision of the CPC in enacting the Section 41. The said section provides as follows:

[168] Ibid, Section 124.
[169] See Abdallah v. Borno Native Authority (1963) 2 NSCC 132.
[170] See Section 42 (1) (a) –(c), ACJA.
[171] Section 41 ACJA. Meanwhile, this is not contained in the Criminal Procedure Act.
[172] As in Section 46 (2) (1) (a).

> Where the court has reason to believe, whether after evidence or not, that a suspect, against whom a warrant of arrest has been issued by itself or by any court or justice of the peace, has absconded or is concealing himself so that the warrant cannot be executed, the court may publish a public summons…[173]

Considering the above, the ACJA is imputing a situation that looks as if a Justice of the Peace has the jurisdiction to issue a warrant of arrest, the position however, under the ACJA is that a Justice of the Peace cannot issue a warrant of arrest. Adekunle[174] explains the innovation of the ACJA in relation to the blemishes associated with arrest in Nigeria. He explains that unlawful arrest and detention are major problems in the system resulting in overcrowded police stations and prison facilities.[175] The ACJA addresses the issue by pruning grounds for arrest and also subjecting the exercise of the power of arrest to judicial moderation.[176] For example Section 10(1) of the Criminal Procedure Act (CPA)[177] which authorizes the police to arrest without a warrant any person who has no ostensible means of sustenance and who cannot give a satisfactory account of himself has been deleted. Section 7 of the ACJA 2015 also prohibits arrest of family and friends of a suspect in order to get the suspect to surrender.

Furthermore, the ACJA clearly provides that a suspect shall not be arrested merely on a civil wrong or breach of contract,[178] thus preventing a situation whereby complainants uses law enforcement agencies as a tool to recover debts or enforce contractual agreements. This is as a result of the attitudes of the police at the exercise of the power of arrest illegally. For instance, in

[173] Emphasis mine.
[174] A. ADEKUNLE, An Overview of the Administration of Criminal Justice Act 2014,Unpublished paper Presented At the 2016 Induction Course for Newly Appointed Judges And Kadis Organised By The National Judicial Institute 23rd MAY – 3RD JUNE 2016, ABUJA. P. 3.
[175]Ibid.
[176] Ibid.
[177] CAP C 41, LFN, 2004.
[178] See section 8 of the Administration of Criminal Justice Act, 2015.

Mclaren v. Jennings,[179] the plaintiff had filed the suit after the defendant had traveled out of Abuja with policemen to arrest the plaintiff over a debt his company was owing the defendant, upon his arrest, he was detained in a hotel in Kano overnight before he was finally released the following day.

4.1.1.2 Investigation under the ACJA

The next stage after bringing an offender to custody is the investigation of the person in order to establish a prima facie case upon which a charge and subsequent trial can be brought against the defendant. It is a mandatory statutory requirement that when an offence is alleged to have been committed, the complainant must report to the police which has the duty of investigating allegations of the commission of an offence.[180] It is based on this statutory injunction that the courts have consistently maintained that once there is an allegation of the commission of an offence, report must be lodged with the Police.[181]

The point of investigation is one that has to be thorough, this is because of the fact that offenders can be left off the hook easily where the case is not properly investigated, the court has on so many occasions lamented how poor investigations has led to dismissal of a worthwhile trial. For instance, in Jamal v. State,[182]Chukwuemeka Eneh JCA held that:

> …I will say that it is glaringly obvious from the totality of the evidence before the trial court that the investigation of this case leaves so much to be desired. The tragedy of it all is that a case so straight forward as this case could be so badly bungled up in the course of investigation.

[179] (2003) 3 NWLR (Pt. 808) 470.
[180] Section 24(1) Police Act; s.10 Criminal Procedure Act.
[181] The principle is so strictly applied that even in civil cases, once there is allegation of the commission of an offence the courts insist that it must first be investigated by the Police and tried by a criminal court: Olarewaju v Afribank Nigeria Plc (2001) 7 NSCQR, 22.
[182] (1999) 12 NWLR (PT. 632) 582.

The process of investigation as provided in the ACJA and the other enactments can be discussed under the following headings:

i. Obtaining the statement of the suspect

ii. Conduct of search

iii. Remand order and detention and;

iv. Bail Pending Trial

4.1.1.3 Obtaining the statement of the suspect

Section 17 of the ACJA provides for the procedure for obtaining the statements of suspects. Section 17(1) expressly provides that such statement shall only be taken if the suspect so wishes to make a statement.[183] Such statement may be taken in the presence of a legal practitioner of the suspect's choice, an officer of the Legal Aid Council of Nigeria, an official of a Civil Society Organization, a Justice of the Peace, or any other person of the suspect's choice.[184] Where the suspect does not understand English language, Section 17(3) of the ACJA provides for an interpreter who shall record and read over the statement to the suspect to his understanding, and the suspect shall then endorse the statement with the interpreter attesting to the maker of the statement.

The most intricate part of taking a statement is the area of confessional statement which has the capability protracting a trial as a result of retraction of the statement by the defendant, the zeal to secure conviction at every cost also makes the police officers to apply torture to obtain a confessional statement, the ACJA however, provides for a better way of evading these hurdles.

[183] This is in line with the provision of Section 35 (2), Constitution of the Federal Republic of Nigeria, 1999.
[184] Section 17(2), Administration of Criminal Justice Act, 2015, this provision is an innovation from the tenure of the CPA and CPC. Most especially, the allowance of the Civil Society Organization in the process of taking of statement

Most often in a criminal trial the accused persons turn around to state that the confessional statement made by them was done under duress, thereby delaying trial as a trial within trial (TWT) is conducted.[185] The ACJA has made it compulsory for confessional statements to be recorded either by video or audio recording.[186] When these provisions are fully in operation, these measures will go a long way in helping the court to dispense with TWT cases faster in other to get back to the proceeding proper and also protect the accused from torture.[187] However, the provision is still not effective yet owing to the realities that these technological equipment to effect that provision is absent in our police station and as a matter of fact, Section 17 (5) of the ACJA has rendered the provision a mere aspiration which the draftsman does not wish to be immediately enforceable.

4.1.1.4 Conduct of Search

Conduct of search under all the enactments relate to search of persons suspected to have illegal objects or objects used or intended to be used for the commission of crime, they also relate to the search of premises. The ACJA empowers the police to search arrested suspects using such reasonable force as necessary for the purpose.[188] Just like the CPA and ACJL, the ACJA makes an exception when the arrested suspect is granted bail and bail is furnished.[189] All the legislations relating to the search of an arrested person make provision for the observation of decency[190]

[185] See Adekunle (n.40), 11.
[186] Section 17 (4), ACJA.
[187] Adekunle (n.40), 12.
[188] Section 9, Administration of Criminal Justice Act, 2015; See also Section 6, Criminal Procedure Act, CAP C41, LFN 2004; Section 5, Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011; Section 44, Criminal Procedure Code; Section 6 (1), Criminal Procedure Act also provides that Whenever a person is arrested by a police officer or a private person, the police officer making the arrest or to whom the private person makes over the person arrested may search such person, using such force as may be reasonably necessary for such purpose, and place in safe custody all articles other than necessary wearing apparel found upon him.
[189] Ibid.
[190] See Section 44 (3) of the Criminal Procedure Code, Section 6 (2), CPA further provides that whenever it is necessary to cause a woman to be searched the search shall be made by another woman.

Meanwhile, the ACJA in providing for the procedure for search of persons did not just stop at providing for decency and search by a person of the same sex;[191] it made the following exception:

> *...unless the urgency of the situation or the interest of due administration of justice makes it impracticable for the search to be carried out by a person of the same sex.*[192]

The above provision contemplates a situation where a search by a person of same sex is impracticable. This exception is lacking in the other legislations.

Section 12 of the ACJA empowers a police officer acting under a warrant of arrest to search without a warrant a place wherein a suspect sought to be arrested is suspected to be. Apart from this provision, a search warrant is required for search of premises like in the other legislations. The application for a search warrant is done by a police officer carrying out an investigation, the ACJA authorises a court or a Justice of the Peace[193] to issue search warrants in circumstances provided for in Section 144 thereof which include upon information on oath and in writing. The procedure for the execution of a search warrant as provided by the ACJA is similar to that in the other legislations save that the ACJA prescribes that a search warrant can be executed at any time on any day,[194] this provision can be compared with Section 111, *Criminal Procedure Act,* and Section 108, *Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011,* both of which prescribe execution of a search warrant between 5am and 8pm on any day. It is submitted that the provisions under the CPA and the ACJL both have consideration of

[191] this provision is also contained in the Administration of Criminal Justice Law of Lagos State.
[192]See section 9 (3).
[193] The provision of the ACJA empowering the Court or a Justice of the Peace to issue a search warrant is conceived in this study as a fusion of the provision of both the CPA and the CPC, while the CPA and the ACJL empowers only a court to issue a search warrant, the CPC also empowers a Justice of the Peace to issue same, the ACJA provision is however, a way of unifying all the extant procedural laws on this subject, the Police Act in Section 28 however, adds to the group of persons who can issue a search warrant, that is, a police officer not below the rank of Cadet Assistant Superintendent of Police, this is however, not absolute but subject to the conditions under the Police Act.
[194] See Section 148.

Fundamental Human Rights of citizens to Private and Family life than the ACJA since it may sound weird to invade a person's place of abode to execute a search warrant at a time like 2:00 am. Also, the ACJA makes similar provisions with the CPC as regards execution of the search warrant in the presence of two respectable inhabitants,[195] and as regards consideration of women in *purdah* when searching a place.[196]Section 151 of the ACJA provides for execution of a search warrant outside jurisdiction, in which case a person executing same must apply to the court within whose jurisdiction search is to be made and shall act under its directions. The ACJA also makes elaborate provisions for detention of articles recovered from a search.[197]

However, it is important to state that the position of the law as stated is that even where the provisions of law as above are violated, whatever evidence discovered as a consequence of the illegal search will still be admissible. The common law principle on admissibility of illegally obtained evidence is that, once an evidence is relevant to the issue in contention, then it is admissible and the court should not concern itself with whether the evidence was legally or illegally obtained, in as long as it is relevant to the issue in contention. Ogunbiyi, JCA, in the case of *Aregbesola v. Oyinlola*[198] expounded on the jurisprudence of the admissibility of illegally obtained evidence by relying on the dicta of eminent Nigerian jurists of the ranks of Eso, Obaseki and Aniagolu JJSC to wit: In the case of *Sadau & Anor v State*[199] where the apex court relied on the case of Kuruma, Son of Kamiu v The Queen,[200]the Privy Council described the position of the law as follows:

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[195] Section 149(4), Administration of Criminal Justice Act, 2015; See also Section 78, Criminal Procedure Code.
[196] Sections 12(3) and 149(6), Administration of Criminal Justice Act, 2015; See also Section 79, Criminal Procedure Code.
[197] See Section 153.
[198] (2010) 7-12 KLR (Pt.286) 2681 at 2737- 2739, paras. D- B; Oshunride v. Akande (1996) 6 NWLR (Pt. 455) 383, (1996) 6 SCNJ 193 at 199 - 200 - per Mohammed, JSC, Dr. Ufere Torti v. Chief Chris Ukpabi & Ors. (1984) 1 S.C. 370 at 412 - 143, (1984) ANLR 185 at 195; (1984) ANLR 185 at 195; (1984) 1 SCNLR 214.
[199] (1968) ANLR 125,129.
[200] (1955) AC 197 PC at At p. 203.

"In their Lordships opinion the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is admissible the court is not concerned with how the evidence was obtained."[201]

Lord Goddard further stated as follows:

"When it is a question of admission of evidence, strictly, it is not whether the method of which it is obtained is tortuous but excusable, but whether what has been obtained is relevant to the issue being tried.[202]"

This common law principle expounded above has now been codified in the Nigerian Evidence Act of 2011 in Sections 14 and 15 thus:

a. improperly or in contravention of a law; or b. in consequence of an impropriety or of a contravention of a law; shall be admissible unless the court is of the opinion that the desirability of admitting the evidence is out-weighed by the undesirability of admitting evidence that has been obtained in the manner in which the evidence was obtained.

The Act further provides for the factors to be considered in exercising the discretion of either excluding or admitting such evidence as follows:[203]

a. the probative value of the evidence;
b. the importance of the evidence in the proceeding;
c. the nature of the relevant offence. cause of action or defence and the nature of the subject-matter of the proceeding;
d. the gravity of the impropriety or contravention;
e. whether the impropriety or contravention was deliberate or reckless.

[201] See also Igbinovia v State (1981) 2 SC 5, 15-16 where Obaseki, JSC.
[202] Kuruma v R. (Supra) at 24.
[203] See Section 15, Evidence Act, 2011.

f. whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the impropriety or contravention; and

g. the difficulty, if any, of obtaining the evidence without impropriety or contravention of law.

4.1.1.5 Detention Time Limits during Investigation

The Constitution of the Federal republic of Nigeria has not empowered any agency or body to keep a suspect in detention for a period more than twenty-four hours or forty-eight hours in the maximum without trial. Thus, the police have in the past, found a way to circumscribe this provision via the system of holding charge.[204] This procedure is not found in the law and has therefore, been declared illegal.[205] However, the CPA and CPC failed to provide a system to prevent this rather nebulous "holding charge" although. What the ACJA has rather done is to give a statutory flavour aimed at balancing the need for police officers to conduct proper and detailed investigation and the need to protect the Fundamental Human Rights of citizens, instead of living the issue as it was under the CPA and CPC , the ACJA provides a situation that allows the police to detain a person pending investigation with the knowledge of the court, that is, the police cannot detain a person beyond the constitutionally allowed period without the knowledge of the court, this is provided for under the heading "Applications for Remand."[206]

Section 293 of the ACJA provides that a suspect arrested for an offence which a Magistrate Court has no jurisdiction to try shall within a reasonable time of arrest be brought before a Magistrate Court for remand. The Court is authorized to remand the suspect in prison custody if the Court is satisfied that there is probable cause to remand the suspect pending the receipt of a

[204] Holding charge has been discussed elsewhere in this study; See Chapter II ante.
[205] Shagari v. COP (2005) All FWLR (pt. 262) 451 at p.469; Oshinaga v. COP (2004) 17 NWLR pt. 901 at p.1; Onagoruwa v The State [1993] 7 NWLR 49.
[206] See Section 293, ACJA.

copy of the legal advice from the Attorney-General of the Federation and arraignment of the suspect before the appropriate court.[207] The remand order shall be for a period not exceeding fourteen days in the first instance, and the case shall be returnable within the same period.[208] Such order can be renewed for a further period of fourteen days on application in writing with good cause shown. After this period of 28 days and the suspect is still in custody, the Court may grant suspect bail.

However, the court may instead of granting the suspect bail, issue hearing notices on any of the authorities in Section 296(4) of the ACJA, and adjourn the matter for a period not exceeding fourteen days with the suspect still remanded. At the return date, if the authority concerned requests for and shows good cause to another remand, the Court may remand the suspect for a final period not exceeding fourteen days for the suspect to be arraigned for trial before an appropriate court. At the end of this final period or if good cause is not shown by the said authority, the suspect shall be immediately released from custody.[209]

One may argue that in the maximum, the suspect would be in custody for only 56 days by virtue of the above provisions. However, that position still takes the criminal justice system backwards.[210] It will be noted that the said application for remand is usually by an ex parte application which means that the defendant is not heard during this period, this may have the effect of prejudicing the rights of the defendants, if the prosecution could be given the right to explain to the court why he should remand the defendant, it is submitted that the defendant should also be heard on why he should not be further detained as well.

[207] Ibid, Section 294.
[208] Section 296, Administration of Criminal Justice Act, 2015.
[209] Ibid.
[210] See R.E Abajuo, Op. cit. p. 10.

First, the above provisions statutorily confers a sort of jurisdiction on the Magistrates' Courts over offences which they ordinarily have no jurisdiction. Second, the provision works against the adversarial nature of our criminal justice system which presumes a suspect innocent until proven guilty. Contemporary investigation procedures could be adopted by the Police to enhance speedy investigations. More so, the provision encourages laxity on the part of the State Counsel who ordinarily should be prompt as regards their legal advice in criminal matters. Certainly, the time protocol for the remand orders and the remand order itself work against the entire intent of the ACJA.[211]

4.1.1.6 Bail Pending Investigation

By virtue of the ACJA, where a suspect is arrested without a warrant for an offence other than a capital offence, the officer in charge of a police station where it is impracticable to bring the suspect before a court of competent jurisdiction, shall release the suspect on bail *within 24 hours after the arrest.*[212] Bail is granted on the suspect's entering a recognizance with or without sureties for a reasonable amount of money to appear before the court or at the police station at the time and place named in the recognizance. This provision is very laudable as it guarantees the rights of the suspect to personal liberty and will reduce the congestion of police cells which is the norm in Nigeria. Where the offence for which the suspect is arrested is a capital offence, the suspect shall be detained in custody, and the police officer may refer the matter to the Attorney-General of the Federation for legal advice and cause the suspect to be taken before a court having

[211] Ibid.
[212] Section 17(2), Administration of Criminal Justice Act, 2015; Section 30(1), Administration of Criminal Justice Act, 2015; See also Section 17(1), Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011.

jurisdiction within a reasonable time.[213] "Reasonable time" here has the same meaning as defined in *Section 35(5)* of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).[214]

Notwithstanding this provision, though, *Section 31(1) of the ACJA* empowers the police officer in charge to release the suspect on same bail terms as above if it appears to the officer that the inquiry into the case cannot be completed forthwith. This latter provision does not distinguish between capital offences and non-capital offences; thus, it is submitted that *Section 31(1)* applies to both types of offences. It is noteworthy that *Section 31(1) of the ACJA* is an innovation as such provision is not found in the other kindred legislations. A closer provision in the ACJL only provides for discharge of a suspect for want of evidence after the inquiry is completed into an offence other than a capital offence.

One interesting aspect of the ACJA's provisions on bail pending investigation is that it provides for a remedy for a suspect detained in custody. Unlike the ACJL which only provides for application to a Magistrate,[215]*Section 32 of the ACJA* provides for an application to "a court" of competent jurisdiction, thus:

> (1) Where a suspect taken into custody in respect of a non-capital offence is not released on bail after twenty-four hours, a court having jurisdiction with respect to the offence may be notified by application on behalf of the suspect.
>
> (2) The Court shall order the production of the suspect detained and inquire into the circumstances constituting the grounds of detention and where he deems fit, admit the suspect detained to bail.
>
> (3) An application for bail under this section may be made orally or in writing.

[213] Section 30(3), Administration of Criminal Justice Act, 2015.
[214] Section 494, Administration of Criminal Justice Act, 2015.
[215] Section 19, Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011.

Going further to protect the interests of suspects, the ACJA mandates the police to report to supervising Magistrates on the last working day of every month, 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.[216] The Magistrate will in turn forward such reports to the Criminal Justice Monitoring Committee which shall analyze the reports and advice the Attorney-General of the Federation as to the trends of arrests, bail and related matters.[217] To enforce such reports by the police, Section 33(5), (6) of the ACJA provides that in the absence of such reports by the police, the supervising Magistrate shall forward a report to the Chief Judge of the State or FCT and the Attorney-General of the State or Federation as the case may be for appropriate remedial action.

4.2 Trial Provisions under the ACJA

It will be stated here that trial of an accused person proceeds as follows:

a. institution of criminal proceedings
b. Arraignment
c. Interlocutory Proceedings
d. Taking of Evidence
e. Judgment

This section will consider the Provisions of the Administration of Criminal Justice Act in relation to the above.

4.2.1 Institution of criminal proceedings under the ACJA

[216] Section 18, Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011.
[217] Section 33(3), Administration of Criminal Justice Act, 2015. Similar provision is found in Section 20 of the Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011. The difference is that the Magistrate in the latter case reports to the Attorney-General of Lagos State directly.

Persons to institute criminal actions

The ACJA would have made an innovation in this regard but for its self-contradictory provisions. Section 106 of the ACJA limits the power to institute and undertake criminal proceedings to the following persons:

a) The Attorney-General of the Federation or a Law Officer in his Ministry or Department;

b) A legal practitioner authorized by the Attorney-General of the Federation;

c) A legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.

Further, Section 110 of the ACJA provides that charge sheets used to institute criminal proceedings in a Magistrates' Court shall be signed by any of the persons mentioned above and none other. These provisions override the provision in Section 23 of the Police Act, by which the Police are empowered to prosecute cases in any court in Nigeria, as it relates to courts to which the ACJA applies. To this end, one would be tempted to conclude that the decision of the Supreme Court in the case of *Osahon v Federal Republic of Nigeria*[218] with respect is no longer good law as it relates to courts to which the ACJA applies, including but not limited to the Federal High Court. However, as lofty as this provision may sound, the ACJA itself in Section 381 that information may be filed by the following persons:

i. the Attorney General or an officer in his department
ii. a public officer acting in his official capacity
iii. a private legal practitioner authorized by the Attorney General
iv. a private person provided that the information is authorized by a law officer

[218] [2006] 2 SC (Pt. II) 1.

Before exposing the contradictions created by the Act, it would be stated that the procedure of filing a criminal action before a magistrate court is by charge while the superior courts are assessed via information or charge, by Section 106 of the ACJA, only legal practitioners can bring an action before the courts, the purports of this is that non-legal practitioner including the police cannot prosecute before any court. However, section 381 (ii) now provides that a public officer which includes a police officer can file an information before the court, another contradictory part is paragraph IV which allows private persons (who may not be a legal practitioner) to file an information upon authorization of a law officer, the question then is whether or not a person filing an information is not the one prosecuting the offence.

4.2.2 Modes of Instituting Criminal Proceedings under the ACJA

The ACJA attempts at fusing the provisions of both the CPA and the CPC as it relates modes of instituting a criminal action, for instance, the mode of filing an action before a magistrate court in the North is via a first information report, what the ACJA has done is to fuse the two provisions under the CPA an CPC. Section 109 of the ACJA provides for the different methods of instituting criminal proceedings.

In a Magistrates' Court:

a. By a charge;
b. By complaint whether or not on oath; or
c. Upon receiving a First Information Report as provided for in Section 112 of ACJA

In a High Court:

i. By information of the Attorney General (Fed) subject to Section 104 of the ACJA;

ii. By information or charge filed in the court after the defendant has been summarily committed for perjury by a court under the provisions of the ACJA;

iii. By information or a charge filed in the court by any other prosecuting authority; and

iv. By information or charge filed by a private prosecutor subject to the provisions of the ACJA.

A Charge is defined as the statement of offence or statement of offences with which a defendant is charged in a trial whether by way of summary trial or trial by way of information before a court. Meanwhile, there is no specific definition offered of the term 'Information'. However, 'Indictment' defined as meaning the filing of information against a person in the High Court. However, it should be noted that in the Court of Appeal had earlier in its decision in the case of *Fawehinmi v. A.G, Lagos State*[219] held that Information is not the same thing as a Charge. The filing of Information is a proceeding preliminary to a Trial. Unlike in a Charge, the accused person (defendant) is not directly indicted in Information. Rather, the court is informed by the Attorney-General, who is responsible for the prosecution, that the accused committed the offence or offences. In other words, Information is a mode of instituting criminal proceedings. It will be stated that information is usually employed in the trial of indictable offences in states of the Criminal Procedure Act, this does not however, mean that non-indictable offences cannot be tried by way of charge in the high court.

A charge and/ or Information as the case may be thus generally be described as a document which the purposes of our criminal justice administration system refers to a court process filed by a prosecuting authority or person in the course of transactions culminating in the initiation of criminal prosecution against a criminal defendant found culpable of the commission of offences

[219] (No 1) (1989) 3 N.W.L.R (Pt. 112) 707.

prohibited under any extant substantive criminal law statute. They are both likened to notices directed more particularly at the defendant and the Honourable trial court containing in succinct terms the statement and particulars of the offences criminal wrong doings with which the criminal defendant as a person indicted is to be prosecuted for before a competent court of jurisdiction.[220]

Noteworthy is the fact that by virtue of Section 112(11) of the ACJA, where in the proceeding before a Magistrates' Court, the court at any stage before judgment, is of the opinion that the case is one which ought to be tried by the High Court, he shall transfer the case along with the suspect to a High Court for trial upon a charge or information in accordance with the provisions of the ACJA. More so, the form and contents of information are as provided for in Sections 377-379 of the ACJA. In the ACJA leave is not required to file information in the High Court.[221]Expressly, Section 348(1) provides that trials shall be held in the High Court by information filed by the persons listed therein. There is no requirement for leave of the High Court before filing such.

4.2.3 Bail Pending Trial

Factors to be considered in Granting Bail

Section 158 of the ACJA provides that a defendant or a suspect shall be generally entitled to bail subject to the provisions of the Act. To this end, the Act makes provisions for considerations for granting bail where a suspect is charged with a capital offence, where a suspect is charged with a felony, where a defendant is charged with a misdemeanour or simple offence, and bail in respect of matters in other offences.

4.2.3.1 Bail in Capital Offences

[220] See Section 196(1) Administration of Criminal Justice Act, 2015.
[221] See Section 379 (1), Administration of Criminal Justice Act, 2015.

Section 161 of the ACJA provides that a suspect arrested, detained, or charged with a capital offence shall only be admitted to bail by a Judge of the High Court only under exceptional circumstances. In defining "exceptional circumstance", Section 161(2) of the ACJA provides that the term includes:

a. Ill health of the applicant confirmed and certified by a medical practitioner employed in a Government hospital, with proof that the detaining authority has no medical facilities to take care of his illness;
b. Extraordinary delay in the investigation, arraignment, and prosecution for a period exceeding one year; or
c. Any other circumstance that the Judge may, in the particular facts of the case, consider exceptional.

This provision applies to suspects who have not yet been charged to court as it applies to arrest and detention. Thus, even when a suspect is detained for a capital offence, only the High Court Judge has jurisdiction to grant the suspect bail, and not the police or any other detaining authority. Apparently, the above provision still reserves some discretion to the Judge to determine when a circumstance not falling under the first two provisions is exceptional. More so, the use of the word 'include' in Section 161(2) above shows that the list is not exhaustive, thus giving the Judge discretionary powers.

4.2.3.2 Bail in Felonies

Section 162 of the ACJA provides that a defendant charged with an offence exceeding three years imprisonment shall on application to the court be released on bail. The use of 'court' in this Section extends its meaning beyond the High Court to include the Magistrates Courts, provided, however, that such courts have jurisdiction over the offence for which bail is sought. Further, this

Section applies only when the defendant has been charged to court. All the other provisions for administrative bail at the police station discussed in earlier sections of this work are still extant on the period covering investigation of the offence to proper arraignment of the defendant as it relates to felonies other than capital offences. Section 162 of the ACJA provides for circumstances wherein the court shall not grant bail, namely:

a. Where there is reasonable ground to believe that the defendant will, where released on bail, commit another offence;
b. Attempt to evade his trial;
c. Attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case;
d. Attempt to conceal or destroy evidence;
e. Where granting bail will prejudice the proper investigation of the offence;
f. Where granting bail will undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system.

4.2.3.3. Bail in Misdemeanours and other Offences

Section 163 of the ACJA provides that in offences other than those provided for in Sections 161 and 162, the defendant shall be entitled to bail unless the court sees reasons to the contrary. Such bail will be granted as provided for in Section 164 of the ACJA, upon the defendant's entering into recognizance in the manner provided for in the ACJA.

4.3.3.1 Bondsperson

Just as the ACJL,[222] the ACJA makes provision for the registration of bondspersons.[223] Section 187 of the ACJA provides that the Chief Judge of the FCT can make regulations for persons or

[222] See Section 164-165, Criminal Procedure Act, CAP C41, LFN 2004; Sections 208-209, Criminal Procedure Code, Sections 155-156, Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011.
[223] Section 138, Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011.

corporate bodies to act as bondspersons within the jurisdiction of the court in which they are registered. The licence empowers the bondsperson to:

a. Undertake recognizance;
b. Act as surety;
c. Guarantee the deposit;
d. Arrest any person absconding or attempting to evade appearance.

The bondsperson must meet the following two conditions:

a. Must be a person or comprise persons of unquestionable character and integrity;
b. Must deposit with the Chief Judge sufficient bank guarantee in such amount as prescribed by the Chief Judge in a Regulation and as will limit his recognizance.

4.2.4 Interlocutory Applications under the ACJA

It has been stated elsewhere in this study that one of the causes of delayed trial is the ability of defendants to explore the instrument of interlocutory applications and objections and pursue them up to the Supreme Court,[224] in an attempt to address this, the ACJA has invented Section 306 of the ACJA which prohibits the entertainment of application for stay of proceedings in criminal matters, this is a form of reaction to the undue delay usually cause by the grant of stay of proceedings when an interlocutory objection is pursued up to the appellate court, in giving effect to this provision, the Supreme Court in Metuh v. FRN[225]declared the concept of stay of proceeding illegal in criminal trials. In the leading Judgment, Ogunbiyi, JSC held,

[224] See Chapter II ante.
[225] Supra.

> Contrary to the submission advanced by the applicant's counsel, the consequential effect is that, the Supreme Court, like the two lower courts, also lacks the powers to stay proceedings under section 22 Supreme Court Act or under its inherent powers.[226]

Citing the jurisprudential concept of the 'grundnorm', Ogunbiyi, JSC aptly noted that, section 36(4) of the Constitution also provides for dealing with criminal trials within a reasonable time. In concluding the judgment, his Lordship further stated:

> The appellant/applicant's motion for stay of proceedings is violently in conflict with the provisions of section 36 (4) CFRN 1999 (as amended), section 306 ACJA, 2015 and section 40 of the EFCC (Establishment) Act, 2004 as well as the plethora of case law authorities cited. The application is hereby refused and dismissed

In the same vein, Section 221 of the ACJA prohibits the taking of objection to an erroneous charge in the course of trial, the position has the effect that when the prosecution presents an imperfect charge against a defendant, the defendant must go ahead to answer the charges even where he is misled by the charge, his only remedy will be found at the appellate court which may either quash the charge or order a retrial.[227] The danger in this provision is that a person will still subject himself to the jurisdiction of the court even where he is brought to court on an illegal charge, he will go ahead to be tried on that imperfect charge, an exercise which may last for years, upon conviction at the trial court, provided that he has the economic means to file an appeal, he would appeal to the appellate court, after which the court may now order that he be tried on another charge, the trial becomes untidy as key witnesses may have died or lost their memories at the new trial. This is capable of occasioning untold hardship to both the prosecution and the defendant.

[226] Ibid at 117.
[227] See Section 221 (2) and (3), ACJA.

4.2.5 Arraignment

The procedure for arraignment and plea under the ACJA is the same as the procedure in other legislations. For this reason, this review shall not dwell so much on this. The same process of placing the defendant in the dock unfettered, reading over and explaining the charge to the defendant to the satisfaction of the court, and calling on the defendant to plead instantly is provided for in the ACJA.[228]More so, the various options open to the defendant on arraignment in other kindred legislations are also provided for in the ACJA.[229]Noteworthy though is the position that an objection to a defective charge can only be raised after the plea has been taken and at any time before judgment. However, such objection shall not be considered in isolation during the proceeding or trial, but shall be considered with the substantive issues, and ruling on it made at the time of delivery of judgment.[230] However, the pleas of *autrefois acquit, autrefois convict,* or pardon, shall be taken at the time of the plea and the Court shall determine it at that time.[231] More so, where the defendant pleads guilty to offence not charged, the court shall direct the prosecution to amend the charge or information accordingly to include the admitted offence, and a fresh plea shall be taken on the amended charge or information.[232] Meanwhile, the ACJA like other legislations has the provision for defendants whom a higher offence is proved, the law is that the court may n its discretion allow amendment of the charge to that higher offence,[233] the ACJA goes further by stating that such new charge as may be amended will be tried by another court.[234] Meanwhile, the process of arraignment proceeds from the period when the defendant is

[228] Section 271, Administration of Criminal Justice Act, 2015; See also Section 356, Administration of Criminal Justice Act, 2015.
[229] Sections 273-278, Administration of Criminal Justice Act, 2015.
[230] Section 396 (2), Administration of Criminal Justice Act, 2015.
[231] Section 277, Administration of Criminal Justice Act, 2015.
[232] Ibid, Section 275.
[233] See Section 172, CPA; Section 228(1), ACJA.
[234] Ibid, Section 228 (3).

brought before the court till judgment delivered and as such, certain issues will be discussed as regards the presence of parties before the court.

It is the law that a criminal prosecution is tried timeously so that the suspect or the defendant can know his faith in respect of the charge preferred against him.[235] The courts held that for as long as the charges are hanging on the head of the defendant, it could be said that he is not totally free in the exercise of his fundamental rights to freedom of movement. That is, extreme delay in conduct of trial of a defendant is a gross violation to his right to freedom of movement[236].

Presence of the Defendant

Section 266 of the ACJA provides that a defendant shall be present in court during the whole of his trial. Circumstances where the defendant may be absent are:

a. When the defendant misconducts himself in such a manner as to render his continuing presence impracticable or undesirable;[237] or
b. At the hearing of an interlocutory application.

The above provision, however, is made subject to Section 135 of the ACJA which empowers a Magistrate to dispense with personal attendance of a defendant where a summons is issued and the offence has a penalty of fine not exceeding N10, 000 or imprisonment for a term not exceeding 6 months where:

a. The offence is punishable by fine or imprisonment or both; and
b. The offence is punishable by fine only, if the defendant pleads guilty in writing or appears and so pleads by his legal practitioner.

[235] Adeoye Adekunle v. state (2018) LPELR-45386 (CA); Ifionu v state (2018) LPELR-44 644 C.A.
[236] Ibid.
[237] See Section 210, , Criminal Procedure Act, CAP C41, LFN 2004; Section 208, Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011; Section 153, Criminal Procedure Code.

Where the defendant fails to appear and no sufficient cause is given for his absence, then if the court is not satisfied that the defendant was duly served with the summons or that a warrant issued in the first instance was not executed, the court may adjourn the hearing to another day until the service is effected or warrant executed. On the other hand, if the court is satisfied that the summons was duly served or that the defendant had notice of hearing, the court may issue a bench warrant for his apprehension. Upon arrest, the defendant shall be committed to prison or custody to be produced for trial.[238]

The above provision notwithstanding, the ACJA made a departure from the provisions of the other kindred legislations. Section 352(4) provides thus:

> Where the court in exercise of its discretion has granted bail to the defendant and the defendant in disregard for court orders, fails to surrender to the order of court or fails to attend court without reasonable explanation, the court shall continue with the trial in his absence and convict him unless the court sees reasons otherwise, provided the proceedings in the absence of the defendant shall take place after two adjournments or as the court may deem fit.

The above provision allows the court to proceed with the trial and convict the defendant if after two adjournments or as the court deems fit, the defendant fails to surrender to the order of the court. Noteworthy, however, is the position that the Court shall impose a sentence only when the defendant is arrested or surrenders to the custody of the court.[239] Hence, while trial and conviction may be in the absence of the defendant, sentence can only be in the presence of the defendant.

[238] Section 352(1) (a), (b), Administration of Criminal Justice Act, 2015; See also Section 281, Criminal Procedure Act, CAP C41, LFN 2004; Section 235 Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011.
[239] Section 352(5), Administration of Criminal Justice Act, 2015.

Presence of the Complainant

As in the other legislations, when the case is called and the defendant appears, if the complainant fails to appear having due notice of the date, time, and place without notice of the absence, the court may dismiss the complaint and discharge the defendant. However, where the court receives a reasonable excuse for the non-appearance of the complainant or his representative or for other sufficient reason, the court may adjourn hearing of the complaint to some future date.[240]

Presence of Counsel to the Defendant

By virtue of Section 349 of the ACJA, where a defendant charged before the court is not represented by a legal practitioner, the court shall inform him of his rights to a legal practitioner, and enquire from him whether he wishes to engage his own legal practitioner, or a legal practitioner engaged for him by way of legal aid. However, Section 267(4) of the ACJA provides that the Court shall ensure that the defendant is represented by Counsel in capital offences provided, though, that a defendant who refuses to be represented by Counsel shall, after being informed under Section 349(6) of the ACJA of the risks of defending himself in person, be deemed to have elected to defend himself in person and absence of counsel shall not vitiate the trial.

Where a legal practitioner who had appeared on behalf of the defendant ceases to appear in court in two consecutive sessions of the court, the court shall enquire from the defendant if he wishes to engage on his own another legal practitioner or a legal practitioner engaged for him by way of legal aid.[241] If the defendant elects to retain on his own the services of counsel, the court shall allow him reasonable time not exceeding 30 days. However, if he fails, or is unable to secure a

[240] Section 351, Administration of Criminal Justice Act, 2015; See also Section 280, Criminal Procedure Act, CAP C41, LFN 2004; Section 232, Administration of Criminal Justice (Repeal and Reenactment) Law of Lagos State, 2011; and Section 165 Criminal Procedure Code.
[241] Section 349(2), Administration of Criminal Justice Act, 2015.

legal practitioner after a reasonable time, the court may direct that a legal aid counsel represent the defendant.[242]

Where the defendant elects to represent himself, the court shall inform him of all his rights under the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under the ACJA, and indicate the fact of having so informed the defendant on the record.[243] Where a legal practitioner intends to disengage from a matter, he shall notify the Court not less than three days before the date fixed for the hearing and such notice shall be served on the Court and all the parties.[244]

4.2.6 Provisions relating to Evidence under the ACJA

It would be important to state that the ACJA touches on certain part of evidence which is more detailed than the provisions of the CPA and CPC, the ACJA makes an innovation with regards to taking of evidence in the aspect of electronic hearing, Section 364 of the Act states that court proceedings shall be recorded electronically. Similarly, section 362 of the Act provides for cases where evidence of a witness can be taken electronically, that is:

a. Evidence of expert that would not be contentious as to require cross examination
b. where a person who is seriously ill or hurt may not recover, but is able and willing to give material evidence relating to an offence and it is not practicable to take the evidence the during trial, the Judge or Magistrate shall take in writing the statement on oath or affirmation of the person.[245]

The Court shall also take written depositions from persons who are seriously ill or hurt and who may not recover, but are able and willing to give material evidence relating to an offence and it is

[242] Section 349(3), (4) Administration of Criminal Justice Act, 2015.
[243] Section 349 (6), Administration of Criminal Justice Act, 2015.
[244] Section 349 (8), Administration of Criminal Justice Act, 2015.
[245] Section 362 (1) and (2).

not practicable to take the evidence in accordance with the provisions of the ACJA. In this latter circumstance, the following conditions must be satisfied:

i. The Judge or Magistrate shall subscribe the statement and certify that it contains accurately the whole of the statement made by the person; and

ii. The Judge or Magistrate shall add a statement of his reason for taking the statement, the date and place when and where the statement was taken, and shall preserve the statement and file it for record.

In either case, however, whether an expert or an incapacitated witness, the Court shall cause reasonable notice of the application to take the deposition and the time and place where it is to be taken to be served on the prosecutor and the defendant. If the defendant is in custody and his presence is required for the deposition, he shall be brought by the person in whose custody he is, to the place where the statement is to be taken, under an order in writing of the court.[246]This provision is laudable as it takes into consideration the limitations that may arise when securing the attendance of an expert witness is impracticable, or when a vital witness is critically ill.

4.2.7 Delivery of Judgment under the ACJA

It is noteworthy to state that the provisions relating to delivery of judgment under all criminal procedure laws in Nigeria including the ACJA have unified principles.[247] Meanwhile, the following are the basic requirements of a valid judgment under the ACJA:[248]

a. The Judgment Must Be in Writing. The ACJA makes an exception to this requirement in the case of Magistrates' Courts. *Section 308 (2)* of the ACJA provides that the Magistrate, instead of writing the judgment, may record briefly in the book his decision or finding

[246] Ibid, Section 362 (3).
[247] One of the few cases where difference exist is the position of the CPA relating to the fact that a magistrate may deliver judgment orally after he had given a brief recording of his judgment as in Section 245 (a) and (b), CPA.
[248] See Section 308.

and his reason for the decision or finding, and then deliver an oral judgment. Hence, when the Magistrate fulfills the necessary conditions, the Magistrate can deliver an oral judgment.[249]More so, where a Judge or Magistrate having tried a case is unavoidably absent on the day which he is to deliver his judgment or sentence, then if the judgment has been reduced into writing and signed by the Judge or Magistrate, it may be delivered and pronounced in open court by any other Judge or Magistrate in the presence of the defendant.[250]

b. The Judgment must contain the point or points for determination.
c. The Judgment must contain the decision and the reasons for the decision.
d. The Judgment must be dated and signed by the judge or magistrate at the time of pronouncing it.

Meanwhile, the aspect of delivery of judgment under the ACJA which had become a point of controversy in recent times is the provision of Section 367 (7) of the ACJA which allows a justice of an appellate court to deliver judgment in the lower court. The next section of this study shall discuss this in detail.

4.2.8 Constitutional Implications of Section 396(7) of the ACJA

Prior to the enactment of the ACJA, if the presiding judge sitting over a criminal matter gets elevated to the appellate court, the matter shall be transferred to another judge who shall try the matter de novo. Meanwhile, Section 396(7) of the ACJA made provisions that have given rise to some constitutional issues. This Section provides thus:

> Notwithstanding the provision of any other law to the contrary, a Judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to sit as

[249] This is in line with the CPA. See Fn. 111ante.
[250] Section 315, Administration of Criminal Justice Act, 2015; this is also a general exception to the rule that a judge who heard the case is the only one with jurisdiction to deliver judgment.

a High Court Judge only for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time:

Provided that this subsection shall not prevent him from assuming duty as a Justice of the Court of Appeal.

This provision touches on jurisdiction since it has something to do with the eligibility of the presiding judge to sit in the said court.[251] The intent of this subsection is clear, namely, vesting on a Justice of the Court of Appeal the authority to conclude a part-heard criminal matter which was pending before him as a High Court Judge at the time he was elevated. Needless to say, this this provision has wonderful intentions. Among other things, it saves the time that would have been wasted if the trial should start *de novo* before another High Court Judge. Again, it saves the defendant the stress of being put through trial a second time. However, the issue is whether this provision is constitutional. The circumstance envisaged by this subsection played out in the case of *Ogbunyiya v Okudo*[252] where Nnaemeka-Agu, JSC who had two days after being elevated to the Federal Court of Appeal delivered judgment in a case pending before him as a Judge of the High Court of Anambra State before his elevation. On appeal to the Supreme Court, the apex court held thus:

From the foregoing observations, we are satisfied that (1) it was the intention of the Supreme Military Council as expressed in Exhibit SC 1 that the appointment of Nnaemeka-Agu, J as a Judge of the Federal Court of Appeal should, and did, take effect from the 15th June, 1977, and, (2) on that date (15th June, 1977) he ceased to

[251] Madukolu v. Nkedilim (1962) 1 All NLR 587]; Oloriegbe v. Omotesho (1993) 1 NWLR (Pt.270) 386.
[252] *(1979) NSCC 77.*

be a Judge of the High Court of Anambra State, and (3) when, therefore, on the 17th day of June, 1977, he gave the judgment now on appeal he did so without jurisdiction.

The subsection presently under review has clearly jettisoned the position of the Supreme Court in the case above by its use of the expression, "notwithstanding the provision of any other law to the contrary." Despite the fact that it only vests on the now elevated Judge the jurisdiction over part-heard matters pending before his elevation, it still follows that this subsection vests on a Justice of the Court of Appeal jurisdiction in a matter exclusively for the High Court. The constitutional implication is discussed below.

Section 257(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides thus:

> Subject to the provisions of Section 251 and any other provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of the Federal Capital Territory, Abuja shall have jurisdiction to … determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment, or other liability in respect of an offence committed by any person.

Section 255 (2) of the Constitution provides thus:

The High Court of the Federal Capital Territory, Abuja shall consist of –

a. a Chief Judge of the High Court of the Federal Capital Territory, Abuja; and
b. such number of Judges of the High Court as may be prescribed by an Act of the National Assembly

Clearly, by virtue of the above provisions of the Constitution only a Judge or Judges of the High Court can exercise such jurisdiction vested in the High Court by virtue of Section 257 (1) of the Constitution. It is submitted here, therefore, that upon elevation, a Judge of the High Court

ceases to be a Judge of the High Court. To this end, that Judge whenever he sits can only sit as a Justice of the Court of Appeal. The decision in *Ogbunyiya v Okudo*[253] is still good law in the Nigerian legal system, as it traces its basis to the Constitution.

Section 396(7) of the ACJA, it is submitted, is inconsistent with the clear provisions of the Constitution which vests jurisdiction to determine criminal proceedings on the High Court consisting of at least one Judge of the High Court, and not one Justice of the Court of Appeal.

In the light of this, Abajuo[254] stated as follows:

> It is immaterial how elegant the provision is; to the extent of its inconsistency with the Constitution, it stands as a nullity.[255]It is only a matter of time before a Court of competent jurisdiction declares it null and void and strikes it out using the blue pencil rule.[256]

Vindicating the position of the author above, the Supreme Court on 20th May, 2020 in the case of *Ude Jones Udeogu v Federal Republic of Nigeria*[257] declared section 396(7) of the Administration of Criminal Justice Act 2015 ('ACJA') to be inconsistent with provisions of the Nigerian Constitution of 1999. Specifically, the Supreme Court held that section 396(7) of the ACJA is inconsistent with section 290 of the 1999 Constitution and that it is thus void to the extent of that inconsistency.

4.2.9 Plea Bargain

Certain cases are left in the courts which waste the time of the court, the judgment in certain cases may actually include restitution rather than sentencing, in this provision, the ACJA takes into consideration, the three parties involved in justice, that is, the prosecution, the defendants

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[253] Supra.
[254] Op. cit. p. 32.
[255] Section 1(3), 1999 Constitution of the Federal Republic of Nigeria (as amended).
[256] Emphasis mine.
[257] (unreported Appeal No SC. 662C/2019; delivered May 9, 2020).

and the court, the plea bargain may emanate from either the prosecution or the defendant. By virtue of Section 270 of the Act, the Prosecutor may with the consent of the victim or his representatives consider, offer or accept a plea bargain from a defendant. The prosecutor must ensure that the acceptance of such plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process. In determining whether it is in the public interest to enter into a plea bargain, the prosecution must weigh all relevant factors, including:

i. the defendant's willingness to cooperate in the investigation or prosecution of others;
ii. the defendant's history with respect to criminal activity;
iii. the defendant's remorse or contrition and his willingness to assume responsibility for his conduct;
iv. the desirability of prompt and certain disposition of the case;
v. the likelihood of obtaining a conviction at trial, the probable effect on witnesses;
vi. the probable sentence or other consequences if the defendant is convicted;
vii. the need to avoid delay in the disposition of other pending cases; and
viii. the expense of trial and appeal.
ix. The defendant's willingness to make restitution or pay compensation to the victim where appropriate.[258]

Where it is reasonably feasible to afford the victim or his representative the opportunity to make representations regarding the contents of the agreement and the inclusion in the agreement of compensation or restitution order, such agreements between the parties must be in writing and signed.[259] The presiding Judge or Magistrate is not permitted to be part of the discussions. Where

[258] See Section 270 (5), ACJA.
[259] Ibid.

there is an agreement between the parties, the prosecutor shall inform the court of the agreement reached by the parties, it is the duty of the presiding Judge or Magistrate to inquire from the defendant to confirm the correctness and the voluntariness of the agreement. After considering the agreed sentence, the presiding Judge or Magistrate may impose the sentence agreed upon, or impose a lesser sentence. Where a presiding judge or magistrate is of the view that the offence requires a heavier sentence, than the one agreed, he is to inform the defendant of his view. The defendant may decide to abide by his plea of guilty and accept the sentence by the Judge or Magistrate, or he may decide to withdraw from his plea agreement. If he does so, the trial precedes de novo before another presiding Judge or Magistrate.

The provision which allows the Judge or Magistrate to decline to be bound by the sentence agreed by the parties is a safeguard for situations where public sensibility may be offended by the sentence agreed.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary

The primary purpose and main objectives of this study were to arrive at how the rights of a defendant or suspect be protected under the the Administration of Criminal Justice Act, 2015. For that purpose, the study explored Nigeria's current levels of access to justice, the timeliness and quality of justice delivery, the independence and impartiality of the judiciary, the roles of the prosecution and the efficient speedy trial which are core values that the Act intends to add to the administration Justice in Nigeria.

The study also presents all the relavant sgtaekholders drawn from the provisions of the Act in relation to the key players and institutions with specific groups within the justice system: judges, lawyers, the Nigeria police force, police and prisoners awaiting trial.

Drawing from the provisions of the Act, and paying particular attention to the reinforcing interdependencies of the various problems, this study presents key findings relating to the perceptions and experience of the target groups in terms of delivery of justice and integrity of the justice system and identifies the root causes of the problems. Chapter II of the study presents the Nigerian Criminal Justice System as a whole, Chapter Three provides for the legal and institutional framework while Chapter four covers the protection of defendant's rights during different stages.

Based on the key findings, chapter IV presents detailed policy recommendations for judicial reform measures aimed at increasing accessibility to the courts, making justice delivery more efficient, enhancing the public's trust in the justice system, increasing the independence, fairness and impartiality of the judiciary.

5.2 Conclusion

Criminal Justice System is an essential part of any civilized nation to ensure justice, fairness, the practice of the rule of law and the institutionalization of a democratic system. The Criminal Justice System is a system comprising of many bodies, groups, institutions or agencies that have been charged with the responsibilities of ensuring social agreement and mass compliance with the law, and deciding whether or not an individual is guilty of violating the laws of the society, and the appropriate punishment to be meted to such an individual. Anecdotal evidence and a cursory look around the Act however suggests that something is wrong somewhere particularly considering the waves of crime in Nigeria. The delay in the administration of justice and the archaic provisions of the Criminal Procedure Code and Act brought some prospects and innovations in a form of a legislation known as "Administration of Criminal Justice Act, 2015".

More worrisome is the alarming cases of prolonged trials and non-compliance with the Act which then calls to question the usefulness of the Administration of Criminal Justice Act, 2015 in the Nigerian Criminal justice system. The question then is, what characteristics of the Administration of Criminal Justice System factors in the effectiveness or otherwise of this system? This study, thus, focuses on the roles of the Nigeria criminal justice system and its effectiveness in the procedure explored from the point of arrest, arraignment, trial, judgment and sentencing and most importantly, the roles being played out by the institutions provided by the Act for the purpose of compliance. The roles and effectiveness of its principal actors are examined and analyzed within relevant theoretical frameworks.

Without doubt, concern for human rights is universal, which is why the concept of human rights has gained remarkable appeal and significance in our world of pluralism, diversity, and interdependence. Regrettably, the enjoyment of human rights in Nigeria as in many nations across the globe has been hamstrung by multifarious and multidimensional impediments.

This is why atrocious violations of human rights still exist in Nigeria today. Many of the hindrances to human rights protection in Nigeria have been sustained, and remain unabated, partly because of a lack of genuine and practical commitment on the part of the government to ensure meaningful enjoyment of these rights. Successive Nigerian governments, like many governments, have not been able to match the impressive record of codification and prescription of the rights with equally rigorous application and enforcement. Rather, they have been contented with mere codification presumably because as noted by Haleem[260]generally, governments find it difficult to vote against what is deemed to be good and what makes prudent political sense in light of the fact that human rights issues now form part of the equation of international relations.

Since human rights are most effectively protected at the national level, it is therefore imperative for each national government to take all legislative, judicial, and administrative measures in order to prevent, prohibit, and eradicate all human rights violations. It should not merely be fashionable to accept and adopt international human rights instruments. Rather, practical commitment ought and should be demonstrated at all times towards the realization of their noble objectives. Accordingly, it is hereby advocated that meaningful steps be taken to adopt the proposals for reform stated in this article among others. Specifically, the ambit of permissible derogation must be well-defined and severely limited. Further, the dualist model on the applicability of international human rights treaties should be abolished as it constitutes a significant drawback to human rights protection in Nigeria. Finally, the courts must at all times adopt a generous interpretation of human rights provisions and avoid what has been called the austerity of tabulated legalism suitable to give individuals the full measure of the fundamental rights and freedom. In the same vein, people who are starving every day will not care about the enforcement of their rights.

[260] Halem; Fundamntal Human Right in Nigeria (unreported) p. 56

Lending his opinion on this problem, Aguda lamented that: the practical actualization of most of the fundamental rights cannot be achieved in a country like ours where millions are living below starvation level… In the circumstances of this nature, fundamental rights provisions enshrined in the constitution are nothing but meaningless jargon to all those of our people living below or just at starvation level.[261]

Also, the extra-judicial bodies are in a more precarious position. Being controlled, directly or indirectly, by the government through funding, composition of membership, and provision of operational guidelines, among others, government interference or influence becomes not a mere possibility but a reality.

Furthermore, once the court or the judiciary has given order, judgment or ruling on a human right matter brought before it, the next thing is the proper execution of that judgment, order or ruling. It is a notorious fact that judgments and orders of courts are not self -executing and the judiciary does not have its own body or institution charged with the responsibility of enforcing its judgments.[262] The implication of this fact is that the judiciary inevitably depends on the executive for the enforcement of its judgments. The executive branch, without doubt, is the greatest violator of human rights.[263] It is the major "predator" from which judicial protection is often sought.[264] This being the case, there is little guarantee that when an order is made against the executive branch, the same will be treated as sacrosanct. On the contrary, the unfortunate and regrettable experience has been regular disobedience of the executive to lawful and subsisting court orders.[265] Often, government chooses the orders to obey. It obeys

[261] T. Akinola Aguda, Judicial Process and Stability in the Third Republic, NAT'L CONCORD Nov.7, 1988, at 7.
[262] Under the 1999 Constitution, as amended, it is the responsibility of the executive branch to enforce the law, including judicial decisions. See CONSTITUTION, Art. 5 (1999) (Nigeria).
[263] Chidi Anselm Odinkalu, "Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa", (2003) 4 (7) *Journal of African Law*., 4.
[264] I. Sagay, Newbreed Magazine, August 13, 1989 at 8.
[265] This is amplified by the cases of Military Governor of Lagos State v. Chief Emeka O. Ojukwu, [1986] 1 NWLR 621 (Nigeria); Lakanmi & Kikelomo Ola v. Attorney General (Western State), [1971] UNIV. IFE L.

those it is comfortable with and disobeys those which are in conflict with its interest, ignoring the consequences to the individuals whose rights have been violated. The 1999 Constitution empowers the National Judicial Council to "collect, control and disburse all moneys, capital and recurrent, for the judiciary."

5.3 Recommendations

As seen in this study, the roles of legislations in the administration of justice in Nigeria cannot be over-emphasized. The Administration of Criminal Justice Act in spite of its flaws and problems still plays a vital role in the criminal justice system in Nigeria, some of the provisions of the Act however, still includes rules that do not meet up with emerging legal issues, some are not applicable in practice and only exist on paper which has to do with compliance and hence, the provisions of the Act are long overdue for reform.

The National Assembly has a very crucial role to play in the reforms of the Act. This is the only authority to deliberately abolish or modify existing enactments in relation to federal laws. Such legislation should be considered with other existing legislations most especially the 1999 Constitution of the Federal Republic of Nigeria, as amended. This is necessary so that the provisions of the Act can be in consonance with the constitution as the repercussion for any inconsistency will not only frustrate the work of the National Assembly but will also declare the inconsistent part null and void. The legislators should therefore prescribe the duties and functions of the institutions like Administration of Criminal Justice Monitoring Committee more pronounced in the reform so that the body can be more active and effective.

In another sense, it is important that unification in terms of restatement of laws be done so that the provisions of the Federal High Court Act making provision for charge as a mode of instituting an action in the Federal High Court will accord with the provisions of the Act which

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REP. 201. 17 Dada: Human Rights Protection in Nigeria Published by GGU Law Digital Commons, 2012 84 ANNUAL SURVEY OF INT'L & COMP. LAW [Vol. XVIII.

provides that it should be by way of information. It will however, be important to state here that some of the provisions of the Act are relics of another country's Criminal Justice System which is not practicable in the present-day Nigeria. It is against this background that there is need for a radical amendment of this Act.

Without doubt, it is the state, with its various institutions, which is primarily responsible for guaranteeing the implementation and enforcement of human rights.[266] Consequently, to overcome the multitudinous challenges of the protection of rights of defendants, it is imperative that necessary constitutional and institutional reforms be undertaken in addition to the need for government to demonstrate pragmatic political will to promote and protect human rights. It is therefore intended in this part to briefly propose the following reforms which, if faithfully implemented, will ensure better protection and enforcement of fundamental human rights in Nigeria:

1. **Exclusion of Human Rights Instruments from the Ambit of Section 12 of the Constitution**.

Human rights instruments should be excluded from the provision of section 12 of the 1999 Constitution requiring the National Assembly to enact treaties to which Nigeria is a party into law before they become binding and enforceable in Nigeria. This means that any international human rights instrument to which Nigeria is a party will automatically become applicable and enforceable in Nigeria without the necessity of the same being

[266] HUMAN RIGHTS: INTERNATIONAL PROTECTION, MONITORING, ENFORCEMENT 257 (Janusz Symonides ed., 2003). 103. U.N. Charter art. 56

enacted into law by the National Assembly. This way, Nigeria will be bound by all human rights instruments it ratifies on the basis of pacta sunt servanda.

2. **Derogation Clause**

The ambit of permissible constitutional derogations must be severely limited. Accordingly, the various sections such as sections 33 and 45 of Constitution[267] which provide wide and sometimes nebulous limitations on some of the rights must be amended. The danger posed by these derogation clauses informs their condemnation by Honorable Justice Bhagwatti[268]. In his words:

> *We must therefore take care to ensure that in no situation, however grave it may appear, shall we allow basic human rights to be derogated from, because once there is a derogation for an apparently justifiable cause, there is always a tendency in the wielders of powers in order to perpetuate their power, to continue derogation of human rights in the name of security of the state. Effective respect for human rights must place two kinds of restrictions on the forces of derogation. It must limit the circumstances and specify the procedures under which derogation may be legitimately invoked and it must also identify and reserve certain core human rights such as the right to life or the right to personal liberty, or freedom ex post facto from criminal laws which are the most vital from a political science perspective, as absolutely non-derogable*

3. Strengthening of the Extra-Judicial Bodies:

Extra-judicial bodies for human rights enforcement must be strengthened to promote their efficiency and efficacy in human rights promotion and protection. Judicial enforcement of human rights is characteristically protracted and expensive. This is why over-reliance and

[267] Constitution of the Federal Republic of Nigeria, 1999, as amended
[268] Justice Bhagwatti, HUMAN RIGHTS IN THE POLITICAL AND LEGAL CULTURE OF NIGERIA 67-68 (1989) p. 22

dependence on the judiciary must be de-emphasized and discouraged in favour of these extra-judicial bodies which are less cumbersome, less technical and inexpensive. Accordingly, the human rights agencies should enjoy reasonable independence to free them from executive interference. In addition, the agencies especially, the National Human Rights Commission, and the Public Complaints Commission must be strengthened and adequately funded. The constituent instruments of the Commissions should be amended to grant them financial autonomy so that they can discharge their noble statutory mandate. Apart from ensuring the financial autonomy of the Commissions, government should be charged with the responsibility of providing technical and financial means to the human right organizations. As earlier noted, the appointment, funding, and operational guidelines of these executive bodies are controlled by the executive branch of government often the most dangerous human rights predator.

4. Dedicated Obedience to Court Orders:

The executive branch has the onerous, important, and compelling duty to ensure prompt compliance with the orders of the courts. Human rights should no longer be a matter of rhetoric. Rather, the government must constantly and deliberately seek to advance the cause of human rights through human rights-friendly legislation, policies, and actions. It is fitting and commendable that the Federal Government of Nigeria, in response to the recommendation of the Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in Vienna Australia in 1963, it has drawn up a comprehensive National Action Plan for the promotion and protection of Human Rights in Nigeria. In furtherance of the mandate of the Vienna Declaration, the Nigerian National Action Plan has carefully identified and drawn up an integrated and systematic national strategy to help realize the advancement of human rights in Nigeria. This noble and laudable effort will be meaningless and remain dead letters if the government fails to honestly and committedly

pursue the program of action articulated therein. In discharging this commitment, the Government must always ensure that persons of proven integrity with spotless moral character are those appointed to the bench and bodies consecrated for human rights promotion and protection.

5. Sustainment Of Democracy:

Human rights can no longer be meaningfully discussed outside a democratic environment. Indeed, it is axiomatic that the more democratic a state is, the less violation of human rights the citizens of that state experience.[269] The current democratic environment, with all its imperfections, is undoubtedly more clement for the protection and development of human rights than military rule, which is characteristically associated with autocracy and totalitarianism. Accordingly, the current culture of violence and impunity must be halted. Those in public offices, especially in the legislative and executive branch, must be more transparent in the way the affairs of government are conducted just as they owe a duty to abide by the mandate of section 15(5) of the 1999 Constitution (as amended) to "abolish all corrupt practices and abuse of power.

Furthermore, as seen in this study, the roles of legislations in the administration of justice in Nigeria cannot be over-emphasized. The Administration of Criminal Justice Act in spite of its flaws and problems still plays a vital role in the criminal justice system in Nigeria, some of the provisions of the Act however, still includes rules that do not meet up with emerging legal issues, some are not applicable in practice and only exist on paper which has to do with compliance and hence, the provisions of the Act are long overdue for reform.

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[269] STEINER ET AL., supra note 16, at 207 24 Annual Survey of International & Comparative Law,18 [2012], Iss. 1, Art. 6 http://digitalcommons.law.ggu.edu/annlsurvey/vol18 last accessed 09/05/2024.

Such legislation should be considered with other existing legislations most especially the 1999 Constitution of the Federal Republic of Nigeria, as amended. This is necessary so that the provisions of the Act can be in consonance with the constitution as the repercussion for any inconsistency will not only frustrate the work of the National Assembly but will also declare the inconsistent part null and void. The legislators should therefore prescribe the duties and functions of the institutions like Administration of Criminal Justice Monitoring Committee more pronounced in the reform so that the body can be more active and effective.

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