

A Review of the Administration of Criminal Justice Act, 2015

Introduction:

The **Administration of Criminal Justice Act, 2015 (ACJ)** came into force on the 13th of May 2015. By **Section 1 of the Act**, The Act was enacted 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 **ACJ** seems geared towards restorative and preventive justice more than just punishment of offenders.

The Act is divided into **49 Parts** and **495 Sections**. The Act applies to criminal offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja.

By virtue of **Section 86**, The Provision of Part **8-30** shall not apply where express provision is made in respect of any particular court or form of trial or proceeding.

The Act applies to all criminal justice institutions with nationwide jurisdiction.

The Act repeals; the **Criminal Procedure Act, Cap C41, LFN 2004**, **Criminal Procedure (Northern State) Act, Cap C42, LFN 2004**, **Administration of Justice Commission Act, Cap A3, LFN 2004**.

Under the **ACJ**, a person charged with an offence is called a Defendant not an accused.

Key Innovations;

Arrest and Detention:

The ACJ scrapped section **10(1) of the CPA** which empowers 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. This

provision has been subject to abuse by the police who use it as a ground to arrest people indiscriminately.

Section 7 of the **ACJ** also specifically prohibits arrest in lieu. Hitherto, there have been cases where relatives or close friends of a suspect are arrested in a bid to compel the suspect to appear before the law enforcement agencies even when such people are not in any way remotely connected to the alleged crime.

Notification of cause of arrest

Sections 6 of the **ACJ** retains the provisions of **Section 5** of the **CPA** and **38** of the **CPC** which mandates a police officer or a person making an arrest is to inform the arrested person of the reason for the arrest, except where he is being arrested in course of the commission of the offence or is pursued immediately after the commission of the offence or escaped from lawful custody. However, the proviso in the **ACJ** takes it further by mandating the police officer or any other person to inform the suspect of his right to:

- (a) remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice;
- (b) consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest;
- (c) free legal representation by the Legal Aid Council of Nigeria where applicable.

This provision re-affirms **Section 35(2)** of the Constitution of the Federal Republic of Nigeria

The proviso in **Section 6 (2)** is indeed commendable as the suspect will have the benefit of not only being informed of the offence he has committed but will have the knowledge of his right to consult a lawyer even before making any statement.

Humane treatment of an arrested Person

The **ACJ Act 2015** reiterated the human right constitutional provision of the right to dignity of person. **Section 8(1)** of the Act provides that: a suspect shall- (a) be accorded humane treatment, having regard to his right to the dignity of his person.

(b) Not be subjected to any form of torture, cruel, inhuman or degrading treatment.

Prohibition of arrest on civil wrong

Section 8 (2) prohibits the use of the criminal justice system for civil matters. It is quite common for persons even with the aid of lawyers to instigate the arrest and detention of others for a breach of contract, failure to pay debt owed or for other civil wrongs. It is believed that this provision will check mate this abnormally.

Mandatory Inventory of Property

In order to encourage accountability and transparency, the **ACJ Act** introduced in **Section 10** a provision which states that a police officer making an arrest or to whom a private person hands over a suspect, shall take an inventory of all items or properties recovered from the suspect. The inventory must be duly signed by the police officer and the suspect. However, where the suspect refuses to sign, it shall not invalidate the inventory. This provision also directs that a copy of the inventory shall be given to the suspect, his legal practitioner, or such other person as the suspect may direct.

This provision permits the police to release such property upon request by either the owner of the property or parties having interest in the property pending the arraignment of the suspect before a Court. Where a police officer refuses to release the property to the owner or any person having interest in the property, the police officer shall make a report to the court of the fact of the property taken from the arrested suspect and the particulars of the property.

It is now entirely for the court to decide whether to release the property or any portion of it in the interest of justice to the safe custody of the owner or person having interest in the property. This provision further provides that where any property has been taken from a suspect in **Section 10** of the **ACJ Act**, and the suspect is not charged before a court but is released on the ground that there is no sufficient reason to believe that he has committed an offence, any property taken from the suspect shall be returned to him, provided the property is neither connected to nor a proceed of crime.

Recording of Arrest

The **ACJ Act** makes provisions for mandatory record of personal data of an arrested Person. This is contained in **Section 15** of the Act. Such personal data of the arrested person shall include:

- (a) the alleged offence(s);
- (b) the date and circumstances of the arrest;
- (c) name, occupation and residential address of the suspect; and
- (d) the suspect's identification which include his height, photograph, fingerprint impressions, or such other means of identification.

Subsection 2 of section 15, further provides that the process of recording shall be concluded within a reasonable time, not exceeding forty-eight hours. This is intended to check the prolong pre-trial detention in the guise of recording the personal data of the arrested person.

Bail

Police Bail

Where a person is arrested without warrant for an offence which is not a capital offence, the officer in charge of the Police State is mandated to release the suspect on bail with or without sureties on terms where it is not practicable to bring the suspect to Court within 24hours after the arrest.

Section 30 (1 & 2) ACJ.

Where a suspect is arrested in respect of a capital offence, the Police Officer is allowed to keep the suspect in custody pending legal advice from the Attorney General of the Federation and have the suspect taken before a Court having Jurisdiction to try the offence. **Section 30 (3) ACJ.**

Where a suspect is arrested and it appears that investigation cannot be completed immediately, the Police may grant bail on terms and have the suspect report to the Police State periodically unless the suspect is informed in writing not to appear. **Section 31(1) ACJ.**

Remedy of Suspect in Custody

Where a suspect in respect of a non-capital offence is kept in custody for more than 24 hours, such a suspect can apply to a Court having Jurisdiction in respect of that offence for bail. The application may be oral or in writing. **Section 32 ACJ.**

The general conditions for the grant of bail are detailed in **Section 19** of the **ACJ** and are not really different from the previous provisions of the **CPA**.

Restitution and Forfeiture Proceedings

Section 321 allows the Court to adjourn proceeding and determine sentence appropriate for each convict. The sentence could either be as follows;

- a. In addition to or in lieu of any other penalty authorised by law, order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted or to the victim's estate or
- b. Order for the restitution or compensation for the loss or destruction of the Victim's property and in so doing the court may direct the convict to (1) return the property to the owner or to a person designated by the owner (2) where the return of the property is impossible or impracticable to pay an amount equal to the value of the property or (3) where the property to be returned is inadequate or insufficient to pay an amount equal to the property calculated on the basis of what is fair and just.

Section 341 also provides that where a property is found in the possession of defendant in course of his arrest, the court may order that the property be returned to the person who appears to the court to be entitled to it or be returned to the defendant or any other person he directs where he is the owner or the property be applied to payment of any cost of compensation as directed by the defendant.

By **Section 343** of the ACJ, where a defendant is charged for an offence relating to Counterfeit currency, and a counterfeit currency or anything used for the purpose of making a counterfeit currency was found with the Defendant, whether the charge proceeds to conviction or not, the currency or thing shall be forfeited by the Defendant and destroyed in a manner directed by the Court.

Management of Non Custodian Punishment

Part 44 of the **ACJ** provides for Probation and Non-Custodial Alternatives.

Section 460 allows for suspended sentence and community service for offences whose punishment is for less than 3 years imprisonment. The Court in exercising this option shall have regard to the following; reduction of prison congestion, rehabilitation of prisoners by making them perform productive work and preventing convicts who commit simple offences from mixing with hardened criminals.

To properly give effect to the non-custodial punishment option, **Section 461(1)** provides that the Chief Judge shall establish in every judicial division a community service centre to be headed by a Registrar who shall be responsible for overseeing the execution of the Community Service Orders in that Division.

The Registrar shall be assisted by suitable personnel who shall supervise the implementation of Community service Orders that may be handed down by the Courts.

The Functions of the Community Service Centre are outlined in **Sections 462(3)**.

Sentencing Consideration

By virtue of **Section 416(2)** ACJ, in exercising its discretion of sentencing or review of sentence, the Court shall take into consideration the following factors, in addition to the provision of **Section 401** which provides for sentencing for capital punishment which is death by hanging or lethal injection.

- a. Each case shall be treated on its own merit.
- b. The objectives of sentencing, including the principles of reformation, shall be borne in mind in sentencing a convict.
- c. An appeal court may, in a proper case, reduce the sentence imposed by the trial court especially where it is excessive or based on wrong principles or an appeal court may increase the sentence imposed by a trial court here it is inadequate.
- d. A trial court shall not pass the maximum sentence on a first offender
- e. The period spent in prison custody awaiting or undergoing trial shall be considered and computed in sentencing a convict
- f. Trial court shall conduct an inquiry into the convict's antecedent before sentencing
- g. It may be desirable to adjourn for sentencing in order to have time to consider any evidence adduced at the sentencing hearing in accordance with **Section 311** of the **ACJ**.
- h. Where there is doubt as to whether the defendant or convict has attained the age of 18, the Court shall resolve the doubt in his favour.
- i. A Defendant may not be given consecutive sentences for two or more offences committed in the same transaction.
- j. An appeal Court may not increase the sentence of a lower court beyond the maximum number of years the lower court has power to impose.
- k. Sentencing to a term of imprisonment shall apply to only those offenders who shall be isolated from society with whom other forms of punishment have failed or is likely to fail.

Plea Bargaining

Part 28 of the **ACJ** makes extensive provisions for plea bargain.

The offer for plea bargain can either be made by the prosecutor or the defendant or his representative. **Section 270**

The **ACJ** requires that the consent of the victim or his representative be sought before a plea bargain is entered by the prosecutor. A plea bargain is considered during or after presentation of evidence by the prosecution but before presentation of evidence by the defence. **Section 270 (2).**

The ACJ however makes the entering of a plea bargain dependent on the following three conditions which must all be fulfilled;

- a. The evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;
- b. Where the defendant has agreed to return the proceeds of crime or make restitution to the victim or his representative; or
- c. Where the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.

The decision to accept a plea bargain rests on the prosecution after consultation with the agency investigating the matter, the victim or his representative and upon his consideration of the interest of justice, public policy and the need to prevent abuse of the legal process, nature of and circumstances surrounding the offence. **Section 270(3 & 5)**

The Plea Bargain must be reduced in writing.

The ACJ prohibits the Presiding Judge or Magistrate from participating in the negotiation for plea bargain. **Section 270 (8)**

The Court has a strict obligation to confirm that the terms of the bargain was voluntarily assented to by the defendant.

Where the Court is of the opinion that the Defendant cannot be convicted for the offence for which the agreement was reached and to which the defendant had pleaded guilty or that the victim or his representative was not allowed to make inputs on the content of the plea bargain regarding the content and the provision for compensation or restitution, the Court may enter a plea of not guilty and order that trial proceed. **Section 270(10)**

Where a person is convicted under a plea bargain agreement, the Court is still at liberty to award a lesser sentence and where the Court is of the opinion that the offence requires a heavier sentence, he shall inform the accused of the sentence he considers appropriate. Where the defendant is informed of the Court view of a higher sentence, the Defendant may abide by his plea of guilty and agree that subject to the defendant's right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with sentencing or withdraw his plea agreement, in which event trial shall proceed *de novo* before another Court. **Section 270(11 & 15)**

Where trial starts *de novo* after the defendant withdraws from his plea agreement, no reference shall be made to the agreement, no admission contained or statement shall be admissible against the defendant and the parties may not enter into similar plea or sentence agreement. **Section 270(16)**

Except on the ground of fraud, there can be no appeal against a judgment entered based on a plea agreement. **Section 270(18)**

Prior to taking a plea, every defendant must be informed of his right to enter a plea bargain. **Section 271**

Parole

By **Section 468** of the ACJ, the Court upon an application by the Comptroller-General of Prison may suspend the remaining term of imprisonment with or without conditions.

However, the grant of this application is dependent on the Comptroller-General of Prison making a report that the prisoner sentenced and serving his sentence is of good behaviour and has served at least one third of his prison term where he is sentenced to imprisonment for at least 15 years or where he is sentenced to life imprisonment.

Upon the release of the Prisoner, he shall undergo a rehabilitation programme in a government facility or any other facility to enable him reintegrate into the society.

Conclusion

A proper application of the ACJ will no doubt improve our criminal justice administration system. It is also recommended that the various state house of assembly adopt the ACJ and re-enact same in place of the Criminal Procedure Laws.

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