

The ACJ Act 2015, Plea Bargain and Other Innovations: A Review Towards Peaceful Resolution in Nigeria

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Abstract. There has been much agitation for a total overhaul of the laws regulating administration of criminal justice in Nigeria. Thus, the signing into law of the Administration of Criminal Justice Act, 2015 was in response to the calls for the reform of the Nigerian criminal justice system. The various laws that govern the criminal justice system were dearly in need of amendment because they were no longer in tune with the reality of time in criminal justice system and the trend of criminal justice administration in the world and, indeed Nigeria. This article seeks to attempt an analysis of the Act in order to point out the salient innovations in the Act, with particular reference to the inclusion of plea bargain as an ADR Mechanism and the need for a continuous reform.

Keywords: Administration of Justice, Criminal Justice System, ADR, Plea Bargain and Nigeria.

1. Introduction

Prior to 2015, the numerous problems associated with the Nigerian Criminal Justice System led to clamour for the total overhauling of the entire laws on criminal justice. These calls for the reform of Nigerian criminal justice system led to the setting up of various reforms commissions and committees by successive

governments. The call for reform was principally on the two principal criminal laws which Nigeria inherited from the British Government as a result of colonization.

These laws are the Criminal Law and the Penal Code applicable in the Southern and Northern parts of Nigeria respectively. The procedural laws that formed the basis of Nigerian criminal justice procedure are the Criminal Procedure Code and Criminal Procedure Act applicable in the northern and southern parts of Nigeria respectively. These substantive and procedural laws were out dated.

The Administration of Criminal Justice Act, 2015 merged the provisions of both the Criminal Procedure Act and the Criminal Procedure Code into one thereby making way for a unifying law for the entire country's criminal justice system. The Act retains the existing frameworks of the criminal procedures but introduced innovative provisions aimed at enhancing the effectiveness and efficiency of the criminal justice system administration to solve the challenges confronting the Nigeria criminal justice system.

The work is aimed at analyzing the innovations in the Act, with the inclusion of plea bargain with a view to show the usefulness of these provisions which is divided into 49 parts made up of 495 sections and pointing out its perceived problems.

2. The Objectives of the Act

By the provisions of S. 1(1) of the Act, the purposes of the act are: i. To ensure the promotion of efficient management of criminal justice institutions. ii. To ensure speedy dispensation of justice. iii. Protection of the society from crime. iv. Protection of the rights and interests of the suspect, the defendant and the victim.

Over the years, the lack of effective co-ordination between criminal justice institutions in Nigeria occasioned mostly by supremacy friction constituted a major problem towards an effective criminal justice system. More so, the slow pace at

which criminal cases are handled lead to the delay in getting justice and the need to ensure that victims of crime get compensation are reasons for the enactment of the Act.

3. Innovations in the Administration of Criminal Justice System

The Administration of Criminal Justice Act was enacted in response to the need for the reform of the Nigerian criminal justice systems. The innovations are in the following area:

3.1 Notification of the relatives of an arrestee

The provision to S. 6 makes it the duty of any authority in custody of a suspect to notify the next of kin or relations of suspect at no cost. Prior to the coming into effect of the Act, the authority is under no duty to notify the relatives of the suspect. The only duty is to inform the arrestee as soon as possible the reason or reasons for his arrest if that person was not arrested in the cause of committing the offence for which he is being arrested. This innovation will reduce instances of missing person.

3.2 Abolition of the arrest of family in lieu of a suspect

It is common knowledge in Nigeria for police officers or law enforcement agents to arrest parents or the relatives of a suspect in lieu of that suspect. The right is now protected by S. 7, that no person shall be arrested in place of a suspect.

3.3 Treatment of suspects

The Act in S. 8 is to the extent that suspect shall be accorded humane treatment, having regard to his right to the dignity of his person and that no suspect should be subjected to any form of torture cruel, inhuman and degrading treatment. This section strengthens the right to dignity of human persons as contained in the constitution of Federal Republic of Nigeria.

3.4 Restriction of Police power to arrest to purely criminal matters and the rights of an arrestee

The earlier practice of employing arrest in transactions that are purely civil in nature is over. It is of great relief that S. 8 (2) of the Act provides that a suspect

shall not be arrested merely on a civil wrong or breach of contract. Thus the powers of the Police are contained in S.4 of the Police Act that:

'The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and orders, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without

Nigeria as may be required by them, or under the authority of this or any other Act'

The Court of Appeal in the case of Ken McLaren & Ors V. James Llyod Jennings per Salami JCA (as he then was) in reemphasizing the illegality of Police arresting any one based on purely civil matter held that:

'In the instant appeal, no felony had been alleged not to talk of being committed. It is purely a matter of breach of a contract of supply by a limited liability company. Our jurisprudence is replete with practice and procedure for enforcing contractor recovery of debt. In the circumstances of the instant appeal, there is no allegation or imputation of crime against the respondent nor the company for which he is the Managing Director. There is therefore no basis for his arrest which is not in dispute....'

The court went further on the need for the Inspector-General of Police to investigate misconduct and gross indiscipline of his officers that:

'I hope the Inspector-General of Police is listening and would cause an investigation to be conducted into the brazen act of misconduct and gross indiscipline by his men in uniform. We thank God the matter did not go beyond this. One shudder to ponder the extent of embarrassment it would have earned the Police and the hotel if something untoward had happened to the respondent while in the hotel's custody'

To further strengthened the provisions of S. 5 of the CPA and 38 CPC, the ACJA provides in its S. 6 (2) provide that the police officer or the person making the arrest or the police officer in charge of a police station shall inform the suspect of his rights 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; and
- c. Free legal representation by the legal Aid council of Nigeria where applicable.

It should be stressed here that the above provision is an improvement upon the provisions of S. 35 (2) of the 1999 constitution. This constitutional provision is to the effect that:

'Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice'

3.5 Mandatory Inventory of Property Recovered

One of the improvements of the Act is in S. 10 of the Act on mandatory inventory of property recovered from an arrested person. Under this section, it is now mandatory for a police officer to as soon as the arrest is made record information about the arrested person and an inventory of all items or property recovered from the suspect. The inventory so made must be signed by the police officer and the suspect but the refusal of the suspect to sign does not invalidate the inventory. A copy of the inventory will be given to the arrested person, legal practitioner of his choice or as he may direct. Where the police on request refused to released the property recovered from the suspect, the police is mandated to so inform the court, at its discretion decides whether to release such property or not. This section further states that where any property has been taken from a suspect under this section 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 so

taken from the suspect shall be returned to him provided the property is neither connected to nor a proceed of any offence. The very significance of this innovation is to inculcate the spirit of accountability and transparency among officers and men of the Nigeria Police and other government agencies having statutory power to arrest.

3.6 Recording the particulars of the arrestee and the use of electronic device

Another innovation is contained in S. 15 of the Act. This section provides that the police officer making the arrest or the officer in charge shall record in a prescribed form the record of the suspect arrested which shall state the alleged offence, the date and circumstances of his arrest, the full name, occupation and residential address and for the identification of the suspect, his height, photograph, full finger print impressions or such other means of his identification shall be done within a reasonable time but not more than forty eight hours.

Subsection 4 of this section provides that where a suspect volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means. Thus the use force to obtain confessional statement is against the spirit of S. 34 of the Constitution of Nigeria and also condemned by the court.

3.7 Police Central Criminal Record Registry

The establishment of a police central criminal record registry at the Federal and State level is another innovation in the Act. By S. 16 of the Act, state registry shall keep and transmit all such records to the central registry. Also, it shall be the duty of the state registry to transmit the decision of court in all criminal trials to the central criminal records registry within 30 days of the judgment.

3.8 Statement of a suspect may be taken in the presence of a legal practitioner, an officer of the legal Aid Council of Nigeria or an official of a civil society organization

The provisions of S.17 of the Act stipulates that where a suspect is arrested on allegation of having committed an offence, his statement shall be taken if he so wishes to make statement, such statement may be taken in the presence of a legal practitioner of his choice, in the presence of an officer of the legal Aid Council of Nigeria, of an official of a civil society organization or a Justice of the peace or another person of his choice provided that the legal practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.

Subsection 3 makes provision for the use of an interpreter who is lettered in English language to write and read such written statement to a suspect to his understanding. The interpreter by law is to endorse his name, address, occupation, designation or other particulars on the statement. It is doubtful if this subsection now makes it unlawful for the police to record the statement of an illiterate arrestee.

3.9 Record of Arrest

S. 29 is another salient innovation in the Act. In this section, it is now mandatory for the Inspector General of Police and the head of every agency authorized by law to make arrests to remit, quarterly to the Attorney-General of the Federation a record of all arrests made with or without warrant in relation to federal offences within Nigeria.

Subsection of 2 of this section also requires the Commissioner of Police in a state to remit same record of all arrests made in relation to state offences for arrests within the state to the Attorney -General of the state. The contents of this report are as prescribed in S. 15 of this Act. This record is to be kept in a registrar at every police station or agency so authorized by law to make arrest.

Further to this, subsection 5 of S. 29 provides for the establishment of electronic and manual database of all records of arrests at the federal and state level. It is hoped that electronic database will facilitate ease of transmission of the records for the police station to the Attorney-General of the Federation or State.

3.10 Institution of criminal proceedings at Magistrate Court and time limit

S.110 of the Act provides for the mode of instituting criminal proceedings at the Magistrate Court and equally makes provision for time limit within which to file a charge sheet, commence trial and deliver judgment. Where such trial is not completed within the stipulated time, particulars of such case shall be forwarded to the Chief Judge and reasons for failure to commence trial or to complete the trial will be stated therein. Under this section, a court seized of criminal proceedings shall make quarterly returns of the particulars of all cases including charges, remand and other proceedings commenced and dealt with in his court within the quarter to the Chief Judge who shall review the returns made by the court to ensure that:

- i. Criminal matters are speedily dealt with.
- ii. Congestion to cases in courts is drastically reduced.
- iii. Congestion of prisons is reduced to the barest minimum, and
- iv. Persons awaiting trial are, as few as possible, not detained in prison custody for a length of time beyond that prescribed in S. 293 of the Act.

By subsection 7, the Administration of Criminal Justice Monitoring Committee, shall have power to consider all returns made to the Chief Judge for the purpose of ensuring expeditious disposal of cases and the National Human Rights Commission set up under the Human Rights Commission Act shall have access to the returns on request of the Chief Judge.

3.11 Records of those awaiting trial detainees

In a bid to reduce prison congestion occasioned by those awaiting trial, S. 111 provides that the comptroller-General of prisons shall make returns every 90 days to the chief judge of every state where a prison is situate and 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 arrangement. This return shall contain the followings:

- a. The name of the suspect held in custody or awaiting trial person.
- b. Passport photograph of the suspect
- c. The date of his arraignment of 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.

It is imperative upon the recipient of the returns to take such steps as necessary to address the issues raised in the record in furtherance of the objectives of this Act.

3.12 Issues relating to bail: Bail and offences punishable with death

Bail is a security such as cash or a bond required by a court for the release of a prisoner who must appear in court at a further time. The Court of Appeal in the case of *Alhaji Toyin Jimoh V Commissioner of Police* reinstated the fact that there are three classifications of criminal offences for the purpose of bail under the Criminal Procedure Code. The first category covers persons accused of an offence punishable with imprisonment whether with or without fine for a term not exceeding three years is ordinarily release on bail. The second classification being offences punishable with imprisonment for a term exceeding three years. Accused under this category shall not ordinarily be released on bail. The third classification covers offences punishable with death which is notailable except where there are

reasonable grounds for believing that a person accused has committed the offence, but that there are sufficient grounds for further inquiry, such person may pending such inquiry, be released on bail. On the issue of bail, the provision of the Act is explicit in Ss 30-32 and 158-164. The combined provisions of these sections are improvement upon the provisions of the previous laws. The Act provides for circumstances under which a suspect is arrested, detained and charged with offence punishable with death, shall be admitted to bail by the judge of the High Court only.

These exceptional circumstances includes but not limited to:

- i. Ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a Government hospital. However, the applicant must prove that there is no medical facility to take care of his illness by the authority detaining him.
- ii. There is extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year or
- iii. Any other circumstances that the judge may in the particular facts of the case consider exceptional.

The Act also makes provisions for instances where bail may be refused by the court where the offence is punishable with imprisonment for a term exceeding three years, these instances are:

- 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, interface with, intimidate witnesses, and or interfere in the investigation of the case.
- d. Attempt to conceal or destroy evidence.
- e. Prejudice the proper investigation of the offence, or
- f. Undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system.

The reform on bail as provided for by the Act seems to be inconsistent with S. 35(7)(a) in which the right to personal liberty is guaranteed because this paragraph of the constitution cited excludes person arrested or detained upon reasonable suspicion of having committed a capital offence.

3.13 Bail and female surety

Prior to the coming into effect of the Act, women were generally denied the right to stand as surety in a criminal case. However, S. 167 (3) has addressed the discrimination when it provides that:

'a person shall not be denied, prevented or restricted from entering into a recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman'.

This is a good innovation and a reinforcement of S.42 of the 1999 constitution of the Federal Republic of Nigeria and Convention on the Elimination of Discrimination Against Women to which Nigeria is a signatory.

3.14 Bail and Bonds Person

S. 187 make provision for the registration and licensing of corporate bodies or persons to act as bonds persons within the jurisdiction of the court in which they are registered. Therefore, a person shall not be engaged in bail bond services without being duly registered and licensed. And anyone who so act in contravention of the Act will be liable to a fine of five hundred thousand Naira or imprisonment for a term not exceeding twelve months or both.

A bonds person's registered under this Act, may undertake recognizance, act as surety or guarantee the deposit of money as required by the bail condition of a defendant granted bail by the court within the division or district in which the bondsman is registered.

For anyone or organization to be registered as a bondsperson, such person or persons making up the organization must be of unquestionable character, integrity and must deposit with the chief judge sufficient bank guarantee in such amount as may be determined by the Chief Judge having regard to the registered class or limit of the bondsman's recognizance.

3.15 Plea bargain

Plea bargaining became prominent in the administration of criminal justice system in Nigeria following the passing into law the Economic and Financial Crime Act, 2004 (as amended) and has generated series of arguments either in its support or against it. S.270 of the Act specifically provide for plea bargaining. This section is to a reasonable extent the first law that unequivocally deals about plea bargaining. It is aimed at facilitating prison decongestion; enhance quick resolution of dispute and ensure that victims of crime are taken care of. This section has provided for the procedure to be followed in the adoption of plea bargain as an alternative dispute resolution mechanism.

3.16 Detention time limit

Ss. 293-296 of the Act provides for detention time limit. These provisions stipulate the time within which a suspect may be remanded. By S. 293, the power of the Magistrate Court to make an order to remand a suspect even though the Magistrate has no jurisdiction to hear such matter is provided for. The remand order shall be in pursuance to a motion *ex parte* made by the arrester and the reason for the remand request must be verified on oath.

The order shall consider whether there is a probable cause for the remand of the suspect. The Magistrate Court will consider before deciding on whether or not to grant an order for remand;

- i. The nature and seriousness of the offence.
- ii. Whether there are reasonable grounds to suspect that the suspect has been involved in the commission of the alleged offence.
- iii. If there are reasonable grounds for believing that the suspect may abscond or commit further offence where he is not committed to custody.
- iv. Any other circumstance of the case that justifies the request for remand.

Where the order for remand is made, it shall be for fourteen days in the first instance. An extension for a further fourteen days shall be made based on application in writing showing good cause why same should be made. If the suspect is still held in custody at the expiration of the further fourteen days, the court may on the application of the suspect grant bail in accordance with the provision of the Act.

By the provisions of the Act, before the bail is granted, the magistrate court shall on notice to the Inspector- General of Police and the Attorney General of the Federation, the Commissioner of Police of State or any relevant authority in whose custody the suspect is or at whose instance the suspect is remanded, inquire as to the position of the case and to show cause why the suspect remanded should not be unconditionally released.

The Act further provides that where good cause is shown, the court may extend the remand of the suspect for a final period not exceeding fourteen days for the suspect to be arraigned for trial before an appropriate court or make the case returnable within the said fourteen days from the date the hearing notice was issued.

3.17 Eliminating delay in criminal trials

Delay in the completion of criminal cases is a major problem facing the administration of criminal justice system in Nigeria. However, the Act in S. 396 makes provision for speedy trial. The Act provides for the day- to- day trial of the defendant until the conclusion of the trial. Where the day- to- day trial is not practicable after the arraignment, no party shall be entitled to more than five adjournments from the arraignment each and the final judgment, provided that the interval between each adjournment shall not exceed fourteen working days and a further of seven days inclusive of weekends where it is not possible to conclude the trial within the stipulated days.

The award of reasonable costs is introduced in the Act in order to discourage frivolous adjournments. Also, to eliminate delay in the trial of criminal cases, the Act further provides that a judge of the High Court who has been elevated to the court of Appeal shall have the power 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 same within a reasonable time.

3.18 Protection of Witness and Victim

Over the years, some witnesses and victims of a crime find it unsafe due to fear of insecurity to their lives and property or are ashamed to testify in an open court resulting in injustice or delay in the conclusion of the matter. The protection of the witness and victim of a crime has been provided for under S. 232. This section gives the court the discretion as to whether or not to disclose the names, addresses, telephone numbers and identity of a witness or victim of a crime in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witness with a combination of alphabets. The Act further provides that the court in an attempt to protect the identity of the victim or witness may:

- i. Receive evidence by video link.
- ii. Permit the witness to be screened or masked
- iii. Receive written disposition of expert evidence
- iv. Or take any other measure that the court considers appropriate in the circumstance

The neglect, refusal or otherwise of the provisions of subsections 2 of this section shall constitute an offence attracting a conviction to a minimum term of one year imprisonment.

3.19 Use of Electronics in Recording Courts Proceedings

One major problem encountered since the inception of Nigerian criminal justice system by Judges and Magistrates is the problem of writing court's proceedings in

long hand. To ameliorate this problem, the Act in S. 364 provides for the use of electronics in recording courts proceedings although at the discretion of the court. A transcript of such recording is to be produced for authentication and certification by the Judge or Magistrate who conducted the proceedings.

3.20 Compensation to victim of crime

Also, S. 319 of the Act provides for compensation for crime victim even though the defence might be punished. The order for compensation may be made even where no fine is imposed on the defendant in the judgment. This is a good innovation because prior to the enactment of this Act, the Criminal Code and Penal Code did not provide for compensating the victim. With this provision, victim of a crime can get monetary compensation for the injuries or other losses he might have suffered.

3.21 Suspended Sentence

Prison congestion is a major reason behind the call for reform of the Nigerian criminal justice system. In a bid to reduce prison congestion, S. 460 of the Act provides for suspended sentence. The court is expected to take into cognizance the need to reduce congestion in prisons, rehabilitate prisoners by making them to undertake productive work and to prevent convicts who commit simple offences from mixing with hardened criminals.

3.22 Establishment of Community Service Centre

By S. 461, a Chief Judge is allowed in a judicial division to establish a community service centre to be headed by Registrar who shall be responsible for overseeing the execution of community service orders in that division. The community centre shall keep information about the convicts sentenced to community service. This information shall include:

- i. Name of the convict.
- ii. Sentence and the date of sentence
- iii. Nature, duration and location of the community service.

- iv. Residential address of the convict.
- v. height, photograph, full finger print impressions and
- vi. Other means of identification as may be appropriate.

S. 468 provide for the use of parole, under this section, where a prisoner who has been sentenced and is serving his sentence in prison is of good behavior and he has served at least one third of his term of imprisonment if the term is at least 15 years or life imprisonment, a report may be made to the court by the Comptroller – General of Prison who may after hearing the prosecution and the prisoner or his legal representative order that the remaining term of his imprisonment be suspended, with or without conditions and the prisoner shall be released from prison. The Act further makes it a must for the prisoner released from prison to undergo a rehabilitation program in a government facility to enable him be reintegrated into the society.

3.23 Criminal Justice Monitoring Committee

One other innovation in the Act is contained in s. 469 which provides for the establishment of the Administration of Criminal Justice Monitoring Committee consisting of the Chief Judge of the Federal Capital Territory as chairman and eight other persons. The main function of the Committee is to ensure the effective and efficient application of the Act by the relevant agent. Other functions of the committee are to ensure that:

- i. criminal matters are speedily dealt with;
- ii. congestion of criminal cases in courts is drastically reduced.
- iii. congestion in prisons is reduced to the barest minimum
- iv. persons awaiting trial are, as far as possible, not detained in prison custody
- v. the relationship between the organs charged with the responsibility for all aspects of the administration of justice is cordial and there

exist minimum co-operation amongst the organs in the administration of justice in Nigeria.

- vi. collate, analyze and publish information in relation to the administration of criminal justice sector in Nigeria.
- vii. submit quarterly report to the Chief Justice of Nigeria to keep him abreast of developments towards improved criminal justice delivery and for necessary action.
- viii. carry out such other activities as are necessary for the effective and efficient administration of criminal justice.

The committee is to have a secretariat with such number of staff as may be considered necessary for the effective running of its affairs. The secretariat shall be headed by a secretary appointed by the Attorney- General of the Federation on the recommendation of the committee. The appointed person shall be a legal practitioner of not less than 10 years post call experience and shall possess sound knowledge of the practical functioning of the criminal justice system and adequate experience in justice system administration.

4. Perceived Problems of the Act

There are some loopholes and possible challenges associated with the Act. It is trite that Nigeria operates the federal system of government, thus Nigeria is made up of the Federal Government and thirty six federating States. Therefore, for an Act of the National Assembly to be binding in respect of matters on concurrent powers, domestication by these states becomes necessary. The Administration of Criminal Justice Act, 2015 is applicable to criminal trial of offences established by an Act of the National Assembly and other offences punishable in the federal capital territory, Abuja.

The implication of this section is that the Act does not apply to offences established by the States House of Assembly of the thirty six states although the act is to be applied in all Federal High Courts in Nigeria.

On the use of electronic devices, the lack of constant power supply will likely be a major hindrance. Most courts and police stations in Nigeria operate without constant power supply which may render ineffective the use of electronic devices.

5. Conclusion

This paper has shown some of the meaningful innovations including plea bargain in the Administration of Criminal Justice Act, 2015. The Act has ushered in a new regime of administration and it is imperative to organize training workshop for judicial officers, legal practitioners, police, prison officers, and other government agencies saddled with the power to arrest or prosecute crime so as to keep them abreast of the provisions of the Act.

This is necessary in view of the recent rejection by the court sitting in Abuja of masked witnesses in the trial of the leader of the Indigenous Peoples of Biafra (IPOB) Nnamdi Kanu because the Court was of the opinion that assessing the demeanour of witnesses is very crucial in a trial and it can only be assessed from the looks of a person's face. The pronouncement of the Court appears to negate the provisions of S.232 (3) (b). It is hoped that the full implementation of the Act will ensure a smooth administration of criminal justice in Nigeria.

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