**What’s wrong with Administration of Criminal Justice Act?**

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**I**t is on the above parameters amongst others that the success or failure of the Administration of Criminal Justice Act 2015 can be realistically assessed. We now turn our attention to the Act.

**Historical origin**

The Administration of Criminal Justice Act (ACJA) 2015 is a revolutionary intervention in our justice sector delivery system that ostensibly would impact on the quality of justice and avoid delays in the adjudicatory process in Nigeria. To appreciate the magnitude of the likely reforms the new law would be bringing to the table, it may be useful to go down memory lane in order to determine how we now arrive at our present destination leading to the enactment of this new law. In the words of one commentator:

‘Criminal procedure in Nigeria is governed by two principal legislations which were handed down to us by the British Colonial Administration, namely:  the Criminal Procedure Act (CPA) 1 and the Criminal Procedure Code (CPC)2. Each state in Nigeria has either adopted the CPA or the CPC. These laws have been applied for many decades without significant improvement. As a result, the criminal justice system has lost its capacity to respond quickly to the needs of the society to check the rising waves of crime speedily bring criminals to book and protect the victims of crime. The ACJA2015 responds to Nigeria’s dire need of a new legislation that will transform the criminal justice system to reflect the true intents of the Constitution and the demands of a democratic society eliminate unacceptable delays in disposing of criminal cases and improve the efficiency of criminal justice administration in the country. Indeed the Buhari Administration should urgently commence the implementation of the ACJA to prosecute its campaign against corruption and allied crimes.

The provisions for the reform of Administration of Criminal Justice were first developed in 2005 by the National Working Group on the Reform of Criminal Justice in Nigeria.  The Group which was established by the then Hon. Attorney-General of the Federation  Chief Akin Olujinmi, SAN was maintained by his successor, Chief BayoOjo (SAN). The Group consisted of individuals drawn from all segments of the criminal justice sector. The immediate Attorney-General of the Federation, Mohammed Bello Adoke (SAN) upon assumption established the Panel on Implementation of Justice Reform (PIJR) in 2011 to implement the proposals for reform produced by the National Working Group under the earlier administrations. The Panel conducted a detailed review of the proposals, brought them up-to-date and adopted an improved version.

The ACJ proposals merged the provisions of the two principal legislations, CPA and CPC into one principal federal Act which is intended to apply uniformly in all federal courts across the entire Federation. Substantially, it preserves the existing criminal procedures. But it introduces new innovative provisions that will enhance the efficiency of the justice system. In other words the ACJA 2015 builds upon the existing framework of criminal justice administration in the country. However, it fills the gaps observed in these laws over the course of several decades. The contents as revised and updated by the Panel on Implementation of Justice Reform (PIJR), with the support of the Centre for Socio-Legal Studies have now been enacted into law.  The House of Representatives have turned the proposals to an Act and passed them wholly into law’.

**Overview**

Briefly, the Administration of Criminal Justice Act (ACJA) 2015 is a 495 section law that repealed the Criminal Procedure Act and the Criminal Procedure Code as applicable in all Federal Courts and courts in the Federal Capital Territory (FCT).

**The Act is divided into 49 parts**

Part 1 deals with ‘Preliminary Matters’such as purpose, application and the issue of arrest generally.

Part 2 covers ‘Arrest, Bail and Preventive Justice’with far-reaching provisions on “mode of arrest, forestalling unnecessary restraint in the cause of arrest, notification of cause of arrest and rights of suspect, prohibition of arrest in lieu, humane treatment of arrested suspect, search of arrested suspect, inventory of property of arrested suspect, Search ofarrested suspect, Inventory of property of arrested suspect.  Examination of arrested suspect, Search of place entered by suspect sought to be arrested, Power to break out of a house or place for purpose of liberation, Arrested suspect to be taken immediately to police station, Recording of arrests, Central Criminal Records Registry, Recording of statement of suspects, Arrest by police officer without warrant, Refusal to give name and residence,  Arrest by private persons,  Arrest by owner of property, Arrest of suspect doing damage to public property, Handing over of an arrested suspect by private person, Offence committed in presence of Judge or Magistrate, Arrest by Magistrate, Arrest for offence committed in presence of Judge, Magistrate or Justice of the Peace, When public is bound to assist in arrest, Pursuit of suspect into other jurisdictions, Quarterly report of arrests to the Attorney-General,  Release on bail of a suspect arrested without warrant, Power to release on bail before charge is accepted, Remedy of suspect detainedin custody, Police to report to supervising Magistrates, Chief Magistrate to visit police stations every month”.

Part 3 is on ‘Warrants’and covers ‘General authority to issue warrant, Form and requisites of warrant of arrest, Warrant to be issued on complaint only if on oath,  Warrant may be issued on any day, Warrant, to whom directed and duration, Warrant of arrest may in exceptional cases be directed to other persons, Public summons for person absconding, Publication of public summons, Execution of warrant and procedure, Power to arrest on warrant but without the warrant, Court may direct particulars of security to be taken on execution of warrant, Procedure on arrest of suspect outside division or district of court issuing warrant, Warrant issued by the Federal High Court, Re-arrest of suspect escaping, Provisions of sections 12 and 13 to apply to arrests under section 48’

PART 4 deals with ‘Prevention of Offences And Security For Good Behaviour’and covers matters relating to: “Police to prevent offences and injury to public property, Information of design to commit offence, Arrest by police to prevent offences,  Prevention by other public officers of offences and injury to public property,  Power of Magistrate to require execution of recognizance for keeping peace, Security for good behaviour for suspected persons, Security for good behaviour for habitual offenders, Order to be made, Procedure in respect of suspect present in court, Summons or warrant in case of suspect not present, Copy of order under section 59 to accompany summons or warrant,  Power to dispense with personal attendance, Inquiry as to truth of information, Order to give security,  Discharge of suspect informed against.”

PART 5 on ‘Proceeding in all Cases Subsequent to order to furnish security’deals with”Commencement of period for which security is required, Conditions of recognizance, Power to reject sureties, Procedure on failure of suspect to give security, Power to release suspect imprisoned for failure to give security, Power of High Court to cancel recognizance, Discharge of sureties.”

PART 6 on ‘Public Nuisance’is concerned with “Conditional order for removal of nuisance, Service of order,  Suspect to whom order is addressed to obey or appear before court, Consequences of failure to obey order or to appear, Procedure where suspect appears, Consequences of disobedience to order made absolute, Order pending inquiry, prohibition of repetition or continuance of nuisance.”

PART 7 on ‘Attachment Where a Person Disobeys Summons or Warrant’deals with “Attachment of property of suspect absconding, Order to attach property, Restoration of attached property, Issue of warrant in lieu of or in addition to summons, Power to take bond for appearance, Provisions of this Part generally applicable to summons and warrant.”

PART 8 on ‘Provisions Relating to Criminal Trials and Inquiries In General’is concerned with “Application of General authority to bring suspect before a court, Right of making complaint, Form of complaint, Form of documents in criminal proceedings, Rule as to statement of exception, Limitation of period for making a private complaint.”

PART 9 on ‘Place of Trial or Inquiry’is concerned with “Venue generally, Offence at sea or outside of Nigeria, Offence committed on a journey, Offence commenced and completed in different States, Chief Judge to decide question as to court of inquiry or place of trial, Chief Judge may transfer a case, When cases may be remitted to another court,  Removal under warrant, Transfer of case where cause of complaint has arisen out of jurisdiction of court, Court may assume jurisdiction under certain conditions, Assumption of jurisdiction after commencement of proceedings.”

PART 10 on ‘Powers of the Attorney-General’covers “Information by the Attorney-General, Issuance of legal advice and other directives to police and Prosecution of offences.”

PART 11 on ‘Control of Criminal Proceedings by the Attorney-General’is concerned with “Discontinuance of criminal cases and Withdrawals from prosecution in trials and inquiries before a court.”

PART 12 on ‘Institution of Proceedings’deals with “Different methods of instituting criminal proceedings, Mode of instituting criminal proceedings in a Magistrate court and Returns by Comptroller-General of Prisons.”

PART 13 on the subject matter of ‘First Information Report’deals with “Procedure for receiving complaint and first information report.”

PART 14 covering ‘Enforcing Appearance of Suspect’is concerned with “Compelling appearance of a suspect. Summons and warrants, Making of complaint and issue of process.”

PART 15 providing for ‘Issue, Form and Service of Summons’deals with”Issue and service, Issue of summons and contents, Hearing by consent before return date of summons, Summons with immediate return date in special circumstances, Discretion in ex parte application, Summons to be in duplicate, Service of summons, Normal methods of effecting service, Service where person summoned cannot be found, Service on public officers, Service outside jurisdiction of court, Proof of service when serving officer not present, Receipt of service of summons, Person refusing to sign receipt may be arrested, Proof of service, Summons disobeyed, warrant may be issued, Issue of warrant for suspect in the first instance, Application of sections 35 to 47 to such warrant, Warrant may be issued before or after return date of summons, Power to dispense with personal attendance of defendant in certain cases.”

PART 16 on ‘Miscellaneous Provisions Regarding Process’isconcerned with”Irregularity in summons, warrant, service, or arrest, Irregularities which vitiate proceedings, Variance between charge and complaint, Process valid notwithstanding death or vacation of office of person issuing.”

PART 17  on the subject matter of ‘Saving of Validity Of Process’ deals with “Validity of process: warrant of commitment and warrant of distress, General addressee of process for issue and execution, Certain provisions applicable to all summonses and warrants in criminal matters.”

PART 18 on ‘Search Warrants’is concerned with “Application for search warrant, Cases in which search warrants may be issued, Discharge of suspected person, Search warrant to be signed by Magistrate or Justice of the Peace, Search warrant to whom directed, Time when search warrant may be issued and executed, Person in charge of closed place to allow access, Occupant of place searched may attend, Execution of search warrant outside jurisdiction, Magistrate may direct search in his presence, Detention of articles recovered, Perishable articles may be disposed of by court, Search for and disposal of gunpowder, Disposal of counterfeit currency and certain other thing, Transmission to court of other State.”

PART 19 covering ‘Bail and Recognizance: Generally’is concerned with “General entitlement to bail, Power of court to order person in custody to be brought before it, Recognizance by parent or guardian of a child, Bail where a suspect is charged with capital offence, Bail where a defendant is charged with offence exceeding three years imprisonment, Bail where a defendant is charged with offence not exceeding three years imprisonment, Bail in respect of matters in other offences, Conditions for bail, Recognizance in respect of a child, Sureties, Judge may vary bail fixed by Magistrate or police, Reconsideration of bail, Before whom recognizance may be executed,  Release on execution of recognizance, Mode of entering into recognizance, Continuous bail, Defendant bound by recognizance to appear before acourt or police may be committed to prison, Reconsideration of amount of bail on application by law officer or police, Variation of a recognizance if surety unsuitable, Discharge of sureties, Order of fresh security upon original order, Forfeiture of recognizance, Mitigation of forfeiture, Where defendant fails to find surety, Forfeiture on conviction, Where recognizance forfeited warrant may be issued, Arrest on failure to appear,  Payment on recognizance, Appeal, Registration of bondsperson, Bondspersons may arrest absconding defendant or suspect.”

PART 20 on ‘Property and Persons’covers “Methods of stating multiple ownership of property, Description of persons in criminal process, Remedies of married woman against her husband and others in respect of her person or property, Husband and wife competent as witnesses.”

PART 21 ‘On the Charge’deals with “Forms of charges in Second Schedule to be used and adapted, Offence to be stated in charge, Legal presumption of charge, Particulars in charge, Charge of criminal breach of trust, Charge of criminal falsification of accounts, Charge may contain the manner in which the offence was committed, Sense of words used in charge, Description of property and joint owners, Description of bank or currency notes, Provision as to statutory offences, Description of persons, Description of document, General rule as to description, Statement of intent, Defendants who may be charged jointly, Separate charges for distinct offences, Attempt same as substantive offences, Trial for more than one offence, Offences falling within two definitions, Acts constituting one offence but constituting a different offence when combined, Where it is doubtful which offence has been committed, Incidental offences in the same transaction.”

PART 22 on ‘Alteration or Amendment of Charges’ covers “Alteration and amendment of charge by permission of court, Procedure on alteration of charge, When court may proceed with trial immediately after altering, adding to or framing charge, Recall of witnesses when charge is revised, Effect of error, Objection to a charge and  Effect of material error.”

PART 23 on ‘Conviction When Charged With One Of Several Offences Or Of Another Offence’deals with “Where defendant charged with one offence may be convicted of another, Full offence charged, attempt proved, Attempt charged, full offence proved, Liability as to further prosecution, On charge of an offence conviction as accessory after the fact to that or connected offence may follow, Defendant tried for lesser offence but a higher offence is proved, Conviction of kindred offences relating to property, Defendant charged with burglary may be convicted of kindred offence, On charge of rape conviction under defilement, incest, unnatural or indecent assault may follow, Procedure for trial on charge for certain offences, On charge of defilement conviction of indecent assault may follow,  Where murder or infanticide is charged and concealment of birth is proved, Where murder is charged and infanticide is proved, Where offence proved is not included in offence charged, Withdrawal of remaining charges on conviction on one of several charges.”

PART 24 on ‘Previous Acquittals or Conviction’covers “Defendant convicted or acquitted not to be tried again for same or kindred offence, a defendant may be tried again on separate charge in certain cases, Consequences supervening or not known at previous trial.”

PART 25 on ‘Witnesses: Compelling Attendance and Taking of Oath or Making of Affirmation’deals with”Issue of summons for witness, Service of summons and other processes on witnesses, Warrant for witness after summons, Issue of warrant for witness, Mode of dealing with witness arrested under warrant, Penalty on witnesses refusing to attend,  Non-attendance of witness on adjourned hearing, Persons in court may be required to give evidence though not summoned, Manner of taking oath or affirmation, Witness refusing to be sworn, or produce documents.”

PART 26 on ‘Witnesses: Expenses’covers “Expenses of witnesses for the prosecution, Expenses of witnesses for the defence, Adjournment may be granted subject to witnesses’ costs, Ascertainment of witnesses’ expenses”.

PART 27 on ‘Examination of Witnesses’deals with “Application of the Evidence Act, Power to call or recall witnesses, Certificates of certain government technical officers, Right of reply, Public to have access to hearing, Court may exclude certain persons while taking evidence of a child or young person, Order under section 259 or 260 not to apply to press and certain others, Prohibition on children being present in court during the trial of other persons, Visit by court to locus, Determination of age, Age in relation to offences, Presence of defendant at trial, Conduct of cases by legal practitioner for complainant or for defendant, General control of prosecution by the Attorney-General, Position in court of person summoned.”

PART 28 is on ‘Plea Bargain and Plea Generally’covers “Plea bargain guidelines, Plea to information or charge,  Proof of previous conviction, Effect of plea of not guilty, Effect of plea of guilty, Amending charge where defendant pleads guilty to offence not charged, Failure to plead due to malice or otherwise, Pleas: autrefois acquit or convict, pardon.”

PART 29 is on ‘Persons of Unsound Mind’deal with “Procedure when defendant is suspected to be of unsound mind, Report from medical officer, Certificate of medical officer, Release of defendant of unsound mind pending investigation or trial, Resumption of proceedings or trial, Resumption of proceedings after release under section 281,  Where defendant appears to have been of unsound mind, Safe custody of defendant discharged, Order of the Attorney-General in pursuance to section 285, Observation of prisoners of unsound mind,  Procedure when defendant of unsound mind is reported to be able to make his defence,  Procedure where defendant of unsound mind is reported fit for discharge, Transfer from one place of custody to another, Delivery of defendant of unsound mind to care of relative, Removal to another State.”

PART 30 on ‘Detention Time Limits’covers “Applications for remand or other interlocutory proceedings, A court may remand in prison custody, Court may grant bail in remand proceedings, Time and protocol for remand orders, When court may exercise power of remand, Court may bring up person remanded or make any order during remand,  Place of remand.”

PART 31on ‘Presentation of Case by Prosecution and Defence and Conclusion of Trial’deals with “Presentation of case for prosecution,  Defendant’s case, No case submission at the instance of the court, No case submission by the defence and replies, Defence and prosecutor’s right of reply, Reference to the Court of Appeal,  Stay of proceedings, Consideration of case by court and announcement of finding, Judgment to be in writing,  Defendant to be discharged where found not guilty, Procedure on finding of guilty, Sentence and sentencing hearing, Recommendation for mercy, Conviction on other charges pending, Compensation to victim in judgment, Delivery of judgment when Judge or Magistrate is unavoidably absent, Warrant of commitment, Authority for carrying out sentence other than of death, Error or omission not to affect legality of act.”

PART 32 is on ‘Costs, Compensation, Damages and Restitution’covers “ Power of court to order payment of expenses or compensation, Payment to be taken into consideration in subsequent civil suit, Power of court to order restitution, Cost against private prosecutor, Compensation in cases of false and vexatious accusation, Injured person may refuse to accept compensation, but payment of compensation is bar to further liability, Monies paid as compensation, recoverable as fines, Warrant for levy of fine, Powers of court when convict is sentenced to only fine, Wrongful conversion or detention of property and award of damages.”

PART 33on ‘Custody, Disposal, Restoration of Property’deals with”Meaning of “property”, Order for custody and disposal of property pending trial, Order for disposal of property after trial, Custody or sale of property.”

PART 34on ‘Seizure, Forfeiture, Confiscation and Destruction of Instrumentality of Crime’covers “Seizure of things intended to be used in commission of crime, Destruction of seditious, prohibited or obscene publications and of obscene objects, Search warrant may be used to search for things subject to section 333 or 334,  Restoration of possession of immovable property, Procedure on seizure of property taken during arrest or investigation or stolen, Procedure where owner of property seized is unknown,  Power to sell perishable property,  Payment to innocent person of money found on defendant, Restitution and disposition of property found on defendant, Restitution of stolen property, Destruction of articles relating to counterfeiting where charge is laid,  Destruction of articles relating to counterfeiting where no charge is laid, Detention and destruction of counterfeit currency, etc., Mode of dealing with forfeiture not pecuniary.”

PART 35is on ‘Summary Procedure in Perjury’

PART 36 is on ‘Trials and Summary Trials Generally’deals with “Trials, Non-appearance and non-representation of legal practitioner, When summary trials shall be held, Non-appearance of complainant, Non-appearance of defendant, Non-appearance of both parties, Appearance of both parties, Withdrawal of complaint, 56. Manner of hearing, Discharge of defendant when no case to answer, Defence, Process for compelling production of evidence at instance of defendant, Saving as to section 358 (a),  Evidence in reply, Power to take deposition in certain cases, When statement may be used in evidence, Notes of evidence to be recorded electronically or in writing, Local inspection, Cross complaints, Joinder of complaints, Giving of decision upon conclusion of hearing,  Power to bind parties to be of good behavior, Effect of judgment of dismissal on merits, not on merits and without prejudice, Summary trial of child by Magistrate, Power to remand, Law officer may require case to be adjourned or dealt with specially, Adjournment for law officer’s decision, Security for peace in cases tried summarily, Case files, legal advice, and related proceedings.”

Part 37 is on ‘Trials by Way of Information’and covers “Form of information, Contents of information, Contents of information, proof of evidence, etc., Application of rules relating to charges, Filing of information, Assignment of information and issuance of notice of trial, Information by private person, Conditions for private prosecutors, Venue,  Change of venue, Effect of change of venue,  Form of notice of trial, Copy of information and notice of trial to be delivered to Sheriff, Time and mode of summoning parties on information, Service of notice of trial on witnesses,  Registered courier companies may serve processes, Return of service, Warrant where defendant does not appear,  Law officer or legal practitioner for State and defence in capital cases, Time for raising certain objections, day-to-day trial and adjournments, Attendance of witness bound by recognizance to attend, Warrant for arrest of witness not attending on recognizance, Warrant for arrest of witness disobeying summons, Fine for non-attendance of witness.”

Part 38 is on ‘Provisions Relating to Sentence of Death’and covers “Construction of provisions relating to punishments, Death, How death sentence is to be carried out, Sentencing in the case of pregnancy, Sentencing in the case of a child offender, Authority for detention of convict,  Judge’s certificate of death sentence to be sufficient and full authority for execution of convict, unless he is pardoned or reprieved, Steps to be taken by the Registrar,  Convict may send request to committee on prerogative of mercy, State at which President is to consider report,  Where a pardon or reprieve is granted, Copy of order to be sent to Judge,  Where pardon or reprieve is not granted,  Copy of order to be sent to prison official.”

Part 39is on ‘Procedure Where Woman Convicted Of Capital Offence Is Alleged To Be Pregnant’Procedure where woman convicted of capital offence is alleged to be pregnant or who becomes pregnant.

Part 40 on ‘Sentencing Generally Other Than Capital Sentence’deals with “Court to determine term of imprisonment, Power to order detention for one day in precincts of the court, Consecutive sentence of imprisonment,  Date from which sentence commences, Default in payment of fine,  Execution of sentence on escaped convict,  Fine in default of imprisonment, General provision on review of sums of amount, General power of awarding imprisonment in default of payment of penalty, Scale of imprisonment for non-payment of money ordered to be paid,  Limitation of imprisonment in default of payment of fine, Payment and allocation of fines and fees,  Power to commit defendant in certain cases, Allowance of further time and payment by installments, Payment of penalty to person executing warrant, Commencement of imprisonment pursuant to a warrant, Varying or discharging order for sureties,  Right of person imprisoned in default to be released on paying sum and effect of part payment,  Fines may be ordered to be recoverable by distress, Warrant of distress, Procedure on the execution of distress warrant, Part payment to reduce period of imprisonment in proportion.”

Part 41 is on ‘Detention in a Safe Custody or Suitable Place Other Than Prison or Mental Health Asylum’ “Conditions attached to detention in a safe custody or suitable place other than prison or mental asylum.”

Part 42is on ‘Deportation’covers “Meaning of “deport”, Court may recommend deportation for offences punishable by imprisonment without option, Deportation in default of security for the peace, Deportation in case of dangerous conduct, Procedure prior to court recommending deportation under sections 441 and 442, Procedure for recommendation of deportation under sections 441, 442 and 443, Detention of person concerned, Order of deportation, Minister of Interior may withhold Order and remit case to court, Citizens of Nigeria not be deported, Provisions as to sentence of deportation, Deportation order may be limited, Execution of deportation order.”

Part 43 is on ‘Child Offenders’Procedure for trying child offenders.

Part 44 is on ‘Probation and Non-Custodial Alternatives’deals with “Meaning of probation order, Conditional release of defendant and payment of compensation for loss or injury and of costs, Probation orders and conditions of recognizance, Relieving probation officer of his duties, Duties of probation officers,  Variation of terms and conditions of probation, Provisions in case of convict failing to observe conditions of release, Suspended sentence and community service,  Arrangements for community service, Performance of community service order, Default of convict in complying with community service order, Commission of further offence,  Amendment, review and discharge of community service orders, Discharge of community service orders,  Confinement in rehabilitation and correctional centre.”

Part 45is on ‘Parole’Court may direct release of prisoner before completion of sentence.

Part 46 is on ‘The Administration of Criminal Justice Monitoring Committee’deals with “Establishment of the Administration of Criminal Justice Monitoring Committee, Functions of the Committee, Secretariat of the Committee, Fund of the Committee, Annual estimates and accounts, Annual report, Power to obtain information, Proceedings and quorum of the Committee.”

Part 47 on ‘Trial of Corporation’covers “Interpretation under this Part, Plea by corporation, Information against a corporation, Joinder of counts in same information, Power of representative, Matters to be read, said or explained to representative, Non-appearance of representative, Saving under this Part and joint charge against corporation and individual.”

Part 48 is on ‘Appeal from Magistrate Courts to High Courts’

Part 49 on ‘Fees and Miscellaneous Provisions’covers “Payment of fees, Suspension of payment of fees,  State not required to pay fees, Use of forms in Schedules, Power to make rules of Court, Non-compliance, Saving as to other forms and procedure, Repeals, Interpretation, Citation”.

Schedules

There are forms attached to the first schedule of the Act. Form No. 1 is the general form of title of proceedings. Form No 2 is the order of recognition to keep the peace and be of good behaviour. Form 3 is the precedent for complaint. Form No. 4 is summons to defendants. Form 5 is warrant for arrest of defendant who had disobeyed summons. Form No. 6 is warrant for arrest of defendant in first instance. Form No. 7 is the search warrant. Form No. 8 is report and request form for remand. Form No. 9 is information on legal representation. Form No. 10 is summons to witness. Form No. 11 is form of information. Form No. 12 is forfeiture on conviction. Form No 13 is warrant for apprehension of a witness. Form No 14 is warrant for arrest of witness in first instance. Form No. 15 is warrant to commit a witness. Form No. 16 Conviction imprisonment. Form No. 17 Order for money (not a civil debt). Form No. 18 Order of dismissal with damages. Form No. 19 Order for other matters. Form No 20 Order of dismissal. Form No. 21 Warrant of distress (for penalty).

In the second schedule to the Act is precedent for form of charge under the Penal Code.

The third schedule contains information precedent.

The fourth schedule is the scale of imprisonment for non-payment of money ordered to be paid, order for execution, order for commutation of sentence, endorsement on warrant of arrest, endorsement on warrant of distress. Warrant to arrest person failing to appear pursuant to recognizance, warrant to carry out sentence, recognizance of witness, recognizance of witness conditionally bound over, notice to witness bound over or treated as bound over conditionally and Controller General of Prisons return of persons awaiting trial.

The explanatory memorandum underscores the significance of the Act as providing 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.

Analysis

We may now discuss some of the salient provisions of the legislation in some greater detail.

The main purposes of the ACJ Act (ACJA) 2015 include the following: To promote efficient management of criminal justice institutions and speedy dispensation of justice, protect the society from crime, and protect the rights and the interest of the defendant and the victim. The purposes of the ACJ Act are captured in section 1 of the Act. These indicate a deliberate shift from punishment as the main goal of the criminal justice to restorative justice which pays attention to the needs of the society, the victims, vulnerable persons and human dignity.

In summary, the main goals of ACJA include promoting efficient management of criminal justice institutions and speedy dispensation of justice and to protect the society from crime, and protect the rights and the interest of the defendants and the victims of crime (see Section 1 of the Act).

One essential feature of the ACJAis in its deliberate shift from punishment as the main goal of the criminal justice to restorative justice which pays serious attention to the needs of the society, the victims, vulnerable persons and human dignity generally.

In order to ensure speedy trial, the Act provides in Section 306 that application for stay of proceedings shall no longer be heard until judgment and cannot operate to stall continuation of trial. This is a revolutionary move that is unprecedented given the delays occasioned to the trial process by interlocutory applications to stay proceedings pending appeal on preliminary matters even when the substantive issues are yet to be tried on the merits. What the ACJA has done is to amplify the provisions of the constitution to ensure speedy dispensation of justice. This new law is very progressive, timely and in conformity with international best practices.

Section 2 of the Act provides that its provisions shall not apply to a court martial. It should be noted that the ACJA has clearly deleted the provisions of Section 10(1) of CPA which empower police to arrest without a warrant, any person who has no ostensible means of sustenance and who cannot give a satisfactory account of his/ her activities.

Section 6 of the Act provides that a police officer or a person making an arrest is to inform the arrested person of the reasons for the arrest except where he is being arrested in the course of commission of the offence. This upholds the fundamental rights to fair hearing enshrined in the constitution.

Proviso to Section 6 of the Act mandates the police officer or any other person making the arrest 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.

It is necessary to state here that the proviso in section 6 (2) is quite laudable since the suspect will have the benefit of not only being informed of the offence he has committed but also an additional advantage of counsel assisting in securing his immediate release on bail and ensuring that trial is expeditious. This would in turn prevent prolonged detention of suspects and hopefully bring about decongestion of the prisons.

It is also pertinent to note that the referred proviso to Section 6 of the Act amplifies the provisions of Section 35 (2) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).These salutary provisions upholding the liberty, dignity and fundamental rights of suspects in ensuring that no one under any guise is deprived of legal representation.

One other salient innovative provision of the new law is the one dealing with unlawful arrest of the citizen. Unlawful arrest is one of the major problems of our criminal process and it is one of the reasons why police stations and prisons are overcrowded. Arrests are sometimes made on allegation that are purely civil in nature or on a frivolous ground. By section 10(1) of the CPA, the police could arrest without a warrant, any person who has no ostensible means of sustenance and who cannot give a satisfactory account of himself. This particular provision has been greatly abused by the police who use it as a ground to arrest people indiscriminately. The ACJ Act has deleted this provision this is highly commendable.

There have been several instances where the police arrested relations or friends and close associate of a crime suspect to compel the suspect to give himself up even though that person is not linked in any way to the crime the suspect is being accused of. Section 7 of the ACJ Act specifically prohibits arrest in lieu.

Apart from the police, other agencies vested with power of arrest e.g. the Economic and Financial Crimes Commission (EFCC), National Drug Law Enforcement Agency (NDLEA), National Agency for Food and Drug Administration and Control (NAFDAC), etc had abused this power to arrest and detain relatives and close associates of criminal suspect in lieu of the suspects where they had challenges in apprehending the suspects. Section 7 should curtail this kind of abuses.

Specifically, Section 7 of the Act prohibits arrest of relations in lieu of the suspect by the police or other agencies vested with power to arrest like EFCC, ICPC, NDLEA etc. This is a revolutionary provision ensuring that Nigeria is not reduced to a banana republic where a father is held culpable for the actions and omission of a child.

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.

Section 8 (2) deals with the longstanding problem whereby people employ the machinery of criminal justice wrongly for civil matters. It is not uncommon for people to maliciously instigate the arrest and detention of others for a breach of contract, failure to pay debt owed or for other civil wrongs. This provision that “a suspect shall not be arrested merely on a civil wrong or breach of contract.” is a laudable one. It is believed that it would check arbitrary arrest of persons and torture by law enforcement and security agencies. It is important to note that this provision states that a suspect shall be accorded humane treatment, having regard to his right to the dignity of his person and shall not be subjected to any form of torture, cruel, inhuman or degrading treatment. This ensures civility, decency and decorum in the treatment of suspects during the investigative process in line with the requirement of presumption of innocence as obtains in civilized societies adopting best practices and international standards.

Section 8 (2) of the Act provides that a suspect shall not be arrested merely on a civil wrong or breach of contract. This ensures that clearly civil transactions are not criminalized by the Police as are rampant these days.

Section 10 of the Act mandates the Police Officer to take inventory of property 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. A copy of such inventory shall be given to the suspect, or his legal practitioner or such other person as the suspect may direct. This ensures that assets and personal belongings of suspects are not looted by law enforcement agents and provide a platform for dealing with erring police officers who may want to unduly enrich themselves hiding under the cover of the investigative process.

It is equally stated in the Act that the Police shall 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.

However, 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. This promotes transparency and accountability in the investigative process.

It is equally important to note that the Act provides that where 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. This is a recognition and preservation of the rights of the citizen.

The implication of the above is that 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. This is fair play commensurate with the demands of justice.

Section 15 (1) provides for mandatory record of personal data of an arrested person. Such data of the suspect shall include:

(a)              The alleged offence

(b)              The date and circumstance of the arrest

(c)               Name, occupation and residential address of the suspect

(d)              The suspect’s identification such as his height, photograph, fingerprint impressions or such other means of identification.

Section 15(2) of the Act provides that the process of recording personal data of the suspect shall be concluded within a reasonable time and not exceeding 48 hours. This is to check the prolonged pre-trial detention by the police or other law enforcement agencies.

Section 15(4) of the Act also provides for electronic recording of confessional statement of the suspect on a retrievable video compact disc or such other audio visual means. This ensures that violence is not unleashed on suspects during interrogation and will show whether any particular extra-judicial statements is voluntary or involuntary.

Section 16(1) of the Act provides for the establishment of a Police Central Criminal Records Registry. This will ensure vital records and information in aid of investigation, prosecution and adjudication are available to speed up the trial process and provide avenue for future references.

Section 16(2) of the Act provides that a Criminal Records Registry is to be established at every State Police Command which shall keep and transmit all criminal records to the Central Criminal Records Registry. This also promotes coordination and control including accountability particularly in keeping of records.

Section 16(3) of the Act mandates the Chief Registrar of the courts to transmit the decisions of the court in all criminal trials to the Central Criminal Records Registry within 30 days after delivery of judgment. This will assist speedy compilation of records of proceedings and by implication lead to quicker dispensation of justice.

However, where there is default by the Chief Registrar to transmit records within 30 days after judgment, he shall be liable to disciplinary measures by the Federal Judicial Service Commission for misconduct. This penal provisionsensures deterrence and consequences for violations – a factor that would ensure compliance.

The rationale behind the establishment of Central Criminal Records Registry is to avoid a repeat of what happened in the case of Agbi v. Ibori (2004) 6 NWLR (Pt. 868) 78 where the true identity of James OnanefeIbori, who was convicted by the Upper Area Court, Bwari in case no: CK/81/95 was in doubt whether the convicted James OnanefeIbori was the Governor of Delta State or not. This provision will forestall such embarrassment.

Objectives

One clear objective that this new law will seek to achieve is access to justice. A former Attorney-General of the Federation and Minister of Justice in a presentation titled ‘Agenda for Reforming the Justice Sector in Nigeria’ summarized the position this way:

‘As a democratic country, we have a duty to ensure that people, both rich and poor can easily use the institutions and processes of law to resolve their disputes. The enjoyment of legal rights ought not to be the privilege of the rich. Access to justice requires that people should be able to use the law or the courts with or without the intervention of lawyers for less complicated matters. We will therefore give serious thoughts to the simplification of court proceedings and the law itself and also encourage the use of alternative dispute resolution mechanisms. Indeed, the use of alternative dispute resolution mechanism s is closer to the African method of resolving disputes than the imported system of adversarial adjudication’.

I believe that in order to widen access to justice, we should pursue the provision of greater state-funded legal assistance to the poor and encourage non-state legal service providers. We should also vigorously pursue the training and retraining of judicial officers, lawyers and other role-players in the justice sector with a view to making them friendlier with the users of the institutions of justice. This is necessary because a great majority of our people regard the law as practiced in the courts as ‘foreign, unfriendly and mystifying.’ Following the example of Great Britain, which has recently reviewed the rules and procedures of her civil courts, we should encourage and support the review of the Rules of court. The aims of such review include: reducing the cost of litigation and broaden access to justice; reducing delays so that cases can be decided speedily; ensuring that litigants have an equal opportunity regardless of their resources, to assert or defend their legal rights; making the legal system understandable to those who use it amongst others.The other optimism of this new law expectedly is to deliver an effective criminal justice system for Nigeria.

Key Elements

One key element of the new law remains mechanisms put in place to fast track the trial process. Reference can be made to Section 396 of the new law on the provisions of the Act relating to the taking of pleas and the procedure on it. The section provides amongst others that objection to the charge shall be taken with the substantive issues and ruling made thereon at the time of delivery of judgment, that upon arraignment trial shall be from day to day until the conclusion of the trial and where this is impracticable, adjournments from arraignment to final judgment shall not be more than 5 adjournments with the interval between each adjournment not exceeding 14 days. In all circumstances the court is to award reasonable costs in order to discourage frivolous adjournments.

Under Section 396(7) 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 it does not prevent him from assuming duty as a Justice of the Court of Appeal.

Under Section 398, a summoned witness is obliged to attend the court from day to day or any subsequent dates until the conclusion of the case or until discharged by the court or stands the risk of being issued a bench warrant. Such a witness may also be fined or sent to prison for default.

Monitoring

There is also established for the operation of the Act the Administration of Criminal Justice Monitoring Committee under Section 469 of the Act. The composition of the committee includes:

(a)              “The Chief Judge of the FCT who shall be the Chairman;

(b)              Attorney-General of the Federation or his representative not below the rank of Commissioner of Police;

(c)               A Judge of the Federal High Court;

(d)              The Inspector-General of Police or his representative not below the rank of Commissioner of Police;

(e)              The Comptroller-General of the Nigeria Prisons Service or his representative not below the rank of Comptroller of Prisons;

(f)               The Executive Secretary of the National Human Rights Commission or representative not below the rank of Director;

(g)              The Chairman of any of the local branch of the Nigeria Bar Association in the FCT to serve for two years only;

(h)              The Director-General of the Legal Aid Council of Nigeria or representative not below the rank of Director; and

(i)               A representative of the Civil Society working on human rights and access to justice or women rights to be appointed by the Committee to serve for a period of two years only.”

The committee shall have a right of access to all the records of any of the organs in the administration of justice sector and require such organs to furnish information on its activities.

It is envisaged that the new law will be a key instrument for change management, ensuring the description and harmonization of the vision of government and non-governmental stakeholders for a reformed system of administration of justice in Nigeria and also provides a vehicle for making systematic changes to the justice system.

Challenges

Notwithstanding, we  will sue for understanding and patience by the citizenry if the new law is to achieve its full potential in that an efficient justice system cannot be created by fiat given the long established negative attitude towards reforms, inculcation of democratic values; these standards being a process not an event. If achieved however, it will restore public confidence particularly assuage the expectation of the people especially the poor, vulnerable and the excluded communities of our society.

Notwithstanding the lofty provisions of the Act, there are no doubt challenges of implementation. First we should not loose focus that this is a system that has operated for a hundred years and change cannot be instant. But the good thing is that now we have a platform for change. We have to enlighten suspects of their rights, victims of their new-found recognition and entitlements. These are grave responsibilities indeed. Secondly, there is also the question of funding. For instance, the Act envisages that court proceedings should be electronically recorded and not written in long hand by the judge. All of us as stakeholders should sit down, take a census of all federal courts, get these equipments, train the personnel on maintenance and technical know-how and provide funding for it. It is an enormous task but we can do it if we are determined and committed to the process of effecting change. Thirdly, the problem is always not with the law but with the execution of the law. Consequently we need to ensure adequate safeguards in the law to ensure that operators such as the police do not frustrate the implementation of the law. This is why we require a reform minded attorney general of the federation who needs to be committed to the full implementation of the new enactment. The political will by the ruling elite is also critical and fundamental.

Fourthly, there can be no proper reform of the Criminal Justice System without an independent and impartial judiciary and a functional judicial process. There is need for adequate funding of the judiciary to guarantee its independence and autonomy. There is also need for funding for prisons and the police force in order to make the law effective.

Conclusion

In summary, it can be said with justification that The Administration of Justice Act 2015 is the hottest law in the country right now. It is a 495-section law that repealed the Criminal Procedure Act and the Criminal Procedure Code as applicable in all federal courts and courts in the FCT. However, 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. All the provisions of the Act are geared towards ensuring that the system of administration of criminal justice in Nigeria promotes efficient management of all criminal justice institutions, speedy dispensation of justice, and protection of the rights and interests of the suspects and the victim of crime.

Expectedly, the above objectives would be achieved by restoring the capacity of the courts and law enforcement agencies, subjecting custodial and other processes to transparent and internal scrutiny, providing for non-custodial alternatives such as community service, providing opportunity to dispense with formal trial in certain circumstances, and giving further expression to various constitutional guarantees on human rights. All regulatory, institutional and even constitutional impediments to achieving these goals are expected to be removed.

Ostensibly, the new law would address the issue of delays which is characteristic of criminal justice delivery in Nigeria. Delay is one of the key objectives the Act seeks to address and it has resolved it, in principle at least, through the following, among others: authorities must electronically record or videotape the making of confessional statements, expenses of prosecution witnesses are to be borne by the court, there are restrictions on stay of proceedings and the number and interval of adjournments to 4 on each side and 14 days apart. Thus, prolonged delays of trial may remain a thing of the past.

It can be said with sufficient measure of justification that The Administration of Criminal Justice Act (ACJA) 2015 is a bold and innovative intervention in the Administration of Criminal Justice System which raises hope of speedy disposal of criminal cases by the judiciary thereby forestalling a prospect of jungle justice and pervasive impunity which now rules the land.

The Administration of Criminal Justice Act 2015 is a federal enactment. There is need for states to also replicate the initiative in their territories. Lagos State has already enacted the Administration of Criminal Justice Law of Lagos State 2011 (A law to provide rules on criminal conduct, regulate public order and for connected purpose) in furtherance to the new law. It is hoped that more states will also take the initiative to achieve the same result.

The Criminal Justice System in Nigeria is bedeviled with several challenges including long adjournment of cases, congestion, long delays in the adjudicatory process, over reliance on technicalities, collapsing infrastructure, corruption in the system, congestion in courts and prisons, poverty of knowledge, culture of impunity and declining confidence of the citizenry in the efficacy and efficiency of the administration of justice.

The foregoing raises grave concern for all stakeholders in the administration of justice imposing grave responsibilities on all to do something before the system collapses on our heads leading to anarchy and lawlessness. What therefore needs to be done? I propose the following:

1. a) The system should guarantee equal access to justice and ensure that the quality of justice satisfies the aspirations of our people in the context of civilized norms and practices including international standards and models.
2. b) We need to address barriers to both quantity and quality of justice.
3. c) We need to strengthen the capacity of our justice delivery system including address issues of welfare packages and conditions in which justice is delivered in our country.
4. d) We need to enhance physical access to justice including guaranteeing the luxury of justice to citizens through provision of legal aid to the citizens.
5. e) We need to fund the justice delivery system by ensuring the independence and autonomy of the judiciary.
6. f) We need to strengthen and promote legal awareness to the citizens.
7. g) We need to strengthen civil society organization as the foundation of promoting access to justice.
8. h) We need to recognize that increase access to justice depends on public confidence which should not be allowed to wane or else anarchy looms.
9. i) We need to support the enforcement of remedies and ensure that such remedies are adequate and commensurate with the nature of the offence.
10. j) We need to encourage procedural fairness and equal application of the law to all manner of people without discrimination including facilitating transparency in all judicial processes.
11. k) We need to increase the knowledge and professionalization of justice personnel to dispense justice.

Today, public confidence in the justice delivery system is waning. Trust is in gross deficit. Indiscipline is everywhere, corruption now rules our land. Integrity is a scarce commodity; truth is becoming a major casualty in all of these. We need to do something to arrest this decay and the culture of impunity that seems to have been promoted in our country as an article of faith.

If the new law succeeds in addressing these concerns then it would have succeeded in achieving its objectives. There is no excuse whatsoever why any litigant cannot be assured of justice within six months. There is also no reason why trials in some cases cannot take place from day to day. Punitive actions should be visited on all categories of professionals who by acts or omission are engaged in the subversion of justice in our land. Luckily, the new law has made appreciable progress in trying to address some of these concerns.

The implementation of the new law requires a new attitude and sacrifice on the part of every stakeholder to make it work. The only obstacle to the realization of the objective of the Act is you! Meaning every individual. If you resolve to make it work by embracing a new attitude, a new orientation then it will work. The problem is you.

What I have done is not an attempt to be exhaustive but to create awareness on latest legislation to create room for further discussions. I leave you with the immortal words of Professor BolajiAkinyemi who said recently ‘What is important is not the conversation but the content of the conversation’. Please join hands in enriching the content of the conversation.

I thank you for your attention.