

CRITIQUE OF ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015

By Iheanyichukwu Maraizu

THE Administration of Criminal Justice Act (ACJA) 2015 is, to my mind, an excellent piece of legislation which has been long overdue in coming. Its enactment has proved that law is truly dynamic as the Act has taken care of most of the ills and lacunae that have for long plagued the criminal justice system in Nigeria. Having said this I am of the humble view that unless certain issues are quickly addressed, serious challenges may be encountered in the implementation of the Act. If this happens the noble intention of the Act in addressing the ills that have for long plagued the administration of criminal justice in Nigeria will be automatically defeated.

By virtue of Section 493 of the ACJA, the Criminal Procedure Code (CPC) and Criminal Procedure Act (CPA) stand repealed with the coming into force of the ACJA. Prior to their abrogation the CPC and CPA respectively applied in the northern and southern states of the country.

They equally applied uniformly in all courts (whether Federal or State) in their respective areas.

Following the abrogation of the CPC and CPA, the Act will now apply in all the states of the Federation. It is however, only applicable in Federal Courts across Nigeria and the FCT.

This is by virtue of the fact that the territory itself is exclusively controlled or administered by the Federal government.

According to Professor Yemi Akinseye George (SAN) “The Act 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”. (This was contained in his article titled Innovative Provisions of the Administration of Criminal Justice Act 2015; The Nation June 2, 2015 page 40).

I know as a fact that the Federal Government does not control inferior Courts such as the Area Courts/Upper Area Courts and Magistrate Courts.

It is only in the FCT that Magistrates’ Courts are owned by the Federal government. This is by virtue of the fact that the courts are set up by the magistrates’ Courts’ Laws of the various states of the Federation. Area Courts are also a creation of the Area Courts’ Laws of the various Northern states. With respect to the High Court of the Various States, they were specifically created by the 1999 constitution of Nigeria.

Federal Courts, on the other hand include all the superior courts of record i.e the Federal High Courts, the Court of Appeal and the Supreme Court.

Since the CPA and CPC which applied in the states courts earlier mentioned have been automatically abrogated by the ACJA, which law will now apply in those courts.

This is one question that worries me in view of the fact that the ACJA applies only in Federal Court.

THE PURPOSE OF THE ACT

The purpose of the Act is stated in Section 1 to include efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime as well as the protection of the rights and interest of the suspect, the defendant and victim.

In order to ensure that the rights of victims are truly protected, the Act provides in Section 319 that the Court may, within the proceedings or while passing judgment order the convict to pay compensation to any person injured by the offence. This is irrespective of any other punishment or fine that may be imposed on the said convict. This compensation may be recovered by civil suit if the Court deems it fit to so order.

The Court may also order a convict to pay a sum of money to defray expenses incurred in the prosecution of the case.

Where a person is shown to be a bonafide purchaser for value without notice of any defect in the title in any property in respect of which an offence has been committed, the court may order the convict to compensate such person where he has been compelled to forfeit the property.

The foregoing provisions of Section 319 are quite laudable as the victim of a crime is equally entitled to justice.

However as laudable as this provision is, one important question remains unaddressed: what happens in a situation where the convict is unable to pay the compensation imposed on him? Will he be kept in prison for failing to pay the said compensation? If this happens one of the main aims of the ACJA which is to decongest the prisons and ensure that people are not kept in prison longer than necessary would have been automatically defeated.

The need to address this question becomes more imperative when one considers the fact that it costs a lot of money to prosecute cases in Nigeria. By the time an accused person defends himself up to the supreme court he would have spent a lot of money and may have nothing left to pay compensation.

Section 7 of the Act is quite commendable as it specifically prohibits the police and other law enforcement agencies from making unlawful and arbitrary arrests.

The Section clearly provides that “a person shall not be arrested in place of a suspect”.

This has put a stop to the obnoxious practice whereby the police and other law enforcement agencies arbitrarily arrested relations or friends of a wanted person in order to force the latter to come out of hiding.

ELECTRONIC RECORDING OF CONFESSIONAL STATEMENTS

One of the greatest challenges currently being encountered in criminal trials is the fact that confessional statements are usually denied or disowned in court by the makers. The main ground for this is the alleged involuntariness of such statements as the makers of such statements often allege that they were forced to make them.

As soon as this issue arises, the trial Court is compelled to adjourn the case sine die. It will then go into a “trial within trial” to determine the voluntariness or otherwise of such statements. The trial within trial may take months to conclude before the main trial resumes.

This has contributed in no small measure in prolonging criminal trials.

In order to ensure that this monster no longer rears its ugly head, the Administration of Criminal Justice Act provides as follows in Section 15(4) “Where a suspect volunteers to make a confessional statement, the police officers 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.”

The first observation I wish to make here is that the Act makes electronic recording of confessional statements optional instead of compulsory or mandatory.

This can be seen from the use of the word “May” instead of “Shall” in Section 15(4).

I am of the humble view that the use of the word “May” has completely whittled down what would otherwise have been a wonderful innovation. This is because the law is clear that wherever the word “Shall” is used in a legislation, it connotes mandatoriness in which case the affected person or authority would have no option or discretion in matter. On the other hand, whenever the word “may” is used it means that the doing of a particular thing is optional or at the discretion of the affected person or authority.

By making electronic recording of confessional statements optional, the Act has willingly created a loophole which will surely be exploited by investigating police officers.

This is because nothing stops a police officer from continuing with the old practice of taking the confessional statement of a suspect in secret. This would be after such a suspect would have been thoroughly tortured into submission.

I would therefore have preferred a situation where the police and other law enforcement agencies would be compelled by law to electronically and openly record the confessional statement of a suspect. Such statement will subsequently be tendered in court pursuant to the relevant provisions of the Evidence Act. This will go a long way in eliminating the rancorous situation which often plays out in Court consequent upon accused persons vehemently contesting the voluntariness of their confessional statements. It will also save the time being wasted in conducting trial within trial.

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The greatest challenge that will stultify the implementation of the ACJA is the fact that our Courts and police station are grossly ill equipped.

Government should therefore ensure that the judiciary and police are adequately funded otherwise the purpose of enacting the Act will be defeated.

Another interesting feature of the Act is Section 106 of the Act which makes the prosecution of cases the exclusive

preserve of lawyers. In effect police personnel who are not lawyers have lost the right to prosecute.

This innovative provision of the Act is commendable as experience has shown that the bulk of criminal cases pending in our Courts are lost to poor prosecution.

But it equally means that more lawyers will need to be employed as the abolition of lay prosecution will engender a dearth of qualified manpower. Failure to fill the gap as quickly as possible will definitely create problems that will ultimately defeat the aim of the Act.

One area which I have personally seen as a source of serious concern is the failure of the Act to specifically repeal section 23 of the Police Act just as it did to the CPC and CPA.

It is from this Section that the police derive their power to prosecute cases. The continued existence of this Section in the Police Act is capable of causing confusion because both the ACJA and the Police Act are Acts of the National Assembly. None is therefore superior to the other. The implication is that courts and those directly affected by the Act (such as the police) could feel free to choose which of the two Acts to obey.

I have personally argued that Section 106 of the ACJA has the effect of over-ruling the celebrated case of Osahon vs Federal Republic of Nigeria wherein the Supreme court

affirmed the right of lay police personnel to prosecute cases. This was by virtue of section 23 of the Police Act. The overruling of Osahon's case has the implication of equally repealing Section 23 of the Police Act which is the enabling Act.

My colleagues have however disagreed insisting that Section 23 of the police Act is still in force since they were not specifically repealed by the ACJA.

For now, the controversy will continue to linger until the Act is either amended to specifically repeal those sections or the issue is taken to court for resolution.

SPEEDY TRIAL OF CASES

The Act makes elaborate provisions aimed at ensuring that criminal cases are expeditiously disposed of.

Towards this end Section 396 of the Act provides that criminal cases shall be tried on a daily basis. Where day to day trial is impracticable, the Act provides that parties shall be entitled to only five adjournments each. The interval between each adjournment, according to the Act, shall not exceed two weeks each. Where the trial is still not concluded, the interval for adjournments will be reduced to seven days each.

The Court is now empowered to award costs in criminal trials to discourage frivolous adjournments. This provision

is excellent if only it will be diligently implemented. Day to day trial of criminal cases means that more hands are needed to do the job. It also means that there must be an enhanced welfare package to motivate the personnel. Equally important is the fact that there must be improved facilities. In particular, the anachronistic method of recording court proceedings manually must be phased out.

Without doing all these, Section 396 of the Act will simply not work. Under Section 396(7) of the Act, a judge of the High Court who has been elevated to the Court of Appeal is now permitted to continue to sit as a High Court Judge only for the purpose of concluding hearer matters pending before him as at the time of his elevation.

This is quite commendable as it has taken care of the situation where such cases would have to start de novo. I am however of the opinion that this provision should be made applicable to magistrates who are elevated to the High Court.

TIME LIMIT FOR ISSUANCE OF LEGAL ADVICE

It is a well known fact that issuance of legal advice by the DPP has been a close in the wheel of prosecuting criminal case in Nigeria. This is because in some cases, such advice takes years in coming.

However, Section 376 of the Act now makes it mandatory for the DPP to issue such advice (whether or not there is a prima facie case against an accused person) within two weeks of receiving the case file from the police.

To my mind however, whether or not two weeks is enough to issue this advice will depend on the work load in the office of the DPP but I am sure that the framers of the Act must have taken all relevant factors into consideration before giving the two week deadline. But it's a very commendable provision that can always be improved upon.

WOMEN SURETIES

There has been a long standing controversy as to whether women are qualified to stand as sureties for bail applicants. This is notwithstanding the clear provision of Section 42(1) of the 1999 Constitution which guarantees the right to freedom from discrimination.

This unnecessary controversy has been finally laid to rest by the ACJA which clearly provides in Section 163(3) as follows: A person shall not be denied, prevented or restricted from entering into recognizance or standing as a surety for any defendant or applicant on the ground only that the person is a woman”.

This provision is commendable not only because it reinforces the provisions of the 1999 Constitution but also

because it equally reinforces the Convention on the Elimination of All forms of Discrimination against Women (CEDAW).

In practice however, I have seen situations where women were prevented by the police from standing as sureties for their own husbands. This is to prevent a situation where the Couple can easily conspire and escape after securing bail. This will make it impossible for the police to get the suspect to face his trial.

I personally believe that there is some justification in preventing a woman from bailing her own husband especially in serious criminal cases. I therefore expect that as events begin to unfold, the National Assembly will consider the possibility of making Section 167(3) the general rule. It will then create an exception to the general rule which will be to the effect that in serious criminal cases a woman should not be allowed to stand as surety for her own husband.

If this is not done and urgently too, criminally minded couple may exploit the blanket provision in Section 167(3) to escape justice. If this happens, one of the main purposes of the Act would have been defeated.

All I have done is to examine some salient aspects of the new Act as the entire legislation will be difficult to review in a single write-up of this nature. Other provisions of the Act

especially the controversial plea bargaining will be examined critically in another write-up.

For now it is pertinent to conclude that for the Act to be successfully implemented all hands need to be on deck. Enough money must be made available. Whatever is provided must be judiciously utilized and there must be a determination by all concerned to make the Act work. Any thing to the contrary can only bring us back to square one.

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