

## 1. Introduction

The major purpose of a criminal law is to *inter-alia* forbid and prevent conduct that unjustifiably inflicts or threatens substantial harm to individuals or public interest.<sup>1</sup> It is for this purpose and to ensure justice that criminals are punished. However, the punishment of crimes must go through a process accepted as just in order for justice to be seen as manifestly done. A deviation from a just process in prosecuting offenders can mar the whole decision to the extent of setting the offender free. Therefore, in the pursuit of justice, it is not only necessary to prosecute offenders, but such prosecution must be in accordance with proper judicial process.

The Administration and Criminal Justice Act<sup>2</sup> was enacted in 2015 by the former President Goodluck Jonathan's Administration in order to unify and transform the Criminal Justice System in Nigeria. It repealed the Criminal Procedure Act and the Criminal Procedure Code of the Southern and Northern Nigeria respectively.

The primary objective of the act is to guarantee a competent and efficient structure in the criminal administration of justice in Nigeria in a bid to advance the expeditious dispensation of justice and to deter the further commission of crime, thereby protecting the rights and interests of suspects, defendants, victims and the society at large. The then Chief Justice of Nigeria, Honourable Justice Walter Onnoghen, once observed that 'delay in the administration of justice is a major challenge facing the Nigerian Judiciary.' Delay has over the years, no doubt been a cog in the wheel of effective and brisk dispensation of criminal justice in Nigeria. The Act was therefore enacted to cure and address this issue as well as concerns.

The Act is made up of 495 sections divided into 49 parts which spread across virtually every major aspect of criminal justice system. Consequent on the above, there is need to examine the contents of the Act, more particularly, the provisional sections, guiding the administration of criminal justice in Nigeria. It is expected that a proper and thorough implementation of the Act would revolutionize the criminal justice system in Nigeria. Furthermore, it is expected

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<sup>1</sup> U. J Idem, & N. E. Udofia "Sentencing and administration of Criminal Justice in Nigeria," (2018) Vol. 4 (1) Pp. 001-010 January, 2018. *Donnish Journal of law and Conflict Resolution* Available at <[https://www.researchagete.net/publication/347452115\\_sentencing\\_and\\_the\\_Administration\\_of\\_Criminal\\_Justice\\_in\\_Nigeria](https://www.researchagete.net/publication/347452115_sentencing_and_the_Administration_of_Criminal_Justice_in_Nigeria)> (Accessed May 23, 2022)

<sup>2</sup> [Hereafter, The ACJA]

that a critical examination of some of these provisions will operate to uncover several lacunae inherent in the Act, which may render the Act inefficient. There also exist challenges which may impede the successful implementation of the provisions of the Act. This paper seeks to discuss some of the provisions in the ACJA that allows for the effective and speedy dispensation of Criminal cases. It also goes further to discuss the loopholes and challenges that may be a clog in the wheel of implementation of the Act.

## 2. ACJA Provisions as catalyst for effective dispensation of justice

Some of the problems faced in the Nigeria Criminal system were solved by the ACJ. The first of them is providing a uniform Criminal Justice Procedural rule for the whole of the country as opposed to the two divergent system of laws that existed prior to the ACJ.

The ACJ Act has fixed the absurd length of time for the commencement and conclusion of actions in certain courts. Section 110 provides for a timeline in which criminal trials must be commenced and concluded in Magistrates' Courts. The Act stipulates that a Criminal trial must commence within thirty days of filing and the trial must be concluded within a reasonable time. It goes further to provide that in the case where a trial is not commenced within stipulated time (30 days) and concluded within 180 of arraignment, the particulars of the charge shall be forwarded to the Chief Judge containing the reasons why such an action was not commenced or concluded within the stipulated time. It would therefore follow that in accordance with the Act; reasonable time means not more than 180 days of arraignment. The Act also provided that the interval between each adjournment shall not exceed 14 working days.<sup>3</sup> Where it becomes impracticable to conclude the trial after both parties have exhausted five adjournments each, section 396 (5) operate to the effect that the interval between courts is also mandated to award reasonable costs. This is aimed at discouraging frivolous adjournments.<sup>4</sup>

An important factor that hindered the effective and speedy dispensation of justice in our court system over the years has been cases tried *de novo* because the judge presiding over the case got elevated to a Superior court. The legislators considered this issue while drafting the ACJ and treated it. Section 396 (7) allows a judge of the High Court who has been elevated to the Court of Appeal to preside as a High Court judge for the purpose of concluding a criminal

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<sup>3</sup> Section 395 (4)

<sup>4</sup> Section 396 (6)

case pending before the judge at the time of the elevation. The case shall however be concluded within a reasonable time. The ACJ also makes provisions for a mandatory return every 90 days of persons held in custody for more than 180 days after the date of arraignment.<sup>5</sup>

### 3. The Innovative features of the ACJA 2015

As a matter of fact, there are certain innovative features flowing from the ACJA. Some of these provisions were introduced in order to cure the defects inherent in the two legislations applicable to the Northern and Southern parts of the country.

- I. Unlawful Arrest
- II. Plea Bargain.<sup>6</sup>
- III. Trial of Corporation<sup>7</sup>
- IV. Suspended Sentence and Community Service.<sup>8</sup>
- V. Speedy Trials
- VI. Electronic Recordings of Confessional Statements.<sup>9</sup>
- VII. Remand Time.<sup>10</sup>
- VIII. Compensation to Victims of Crime

However, there are observable lacunae in the ACT, notwithstanding the numerous merits and achievements of the ACJA. The Act is not perfect as it contains certain loopholes and shortcomings. The first of these comes with the abolishment of the Criminal Procedure Act and Criminal Procedure code.

Two questions arise from this: First, with its abrogation of the CPA and CPC, what then happens to Area Courts, Upper Area Courts and Magistrate Courts as the Federal Government does not regulate these Courts? The second is a question of what Criminal Procedure Law will apply there?<sup>11</sup>

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<sup>5</sup> Section 111

<sup>6</sup> Section 270 ACIA (2015)

<sup>7</sup> Section 477 ACIA (2015)

<sup>8</sup> Section 460 ACIA (2015)

<sup>9</sup> Section 15(4) ACIA (2015)

<sup>10</sup> Section 296 ACIA (2015)

<sup>11</sup> Rose Ugbe., & A. Agi., "A Critique of the Nigerian Administration of Criminal Justice At 2015 and Challenges in the implementation of the Act" Available at

<[https://www.researchgate.net/publication/341313899\\_A\\_CRITIQUE\\_OF\\_THE\\_NIGERIA\\_ADMINISTRATI\\_ON\\_OF\\_CRIMINAL\\_JUSTICE\\_ACT\\_2015\\_AND\\_CHALLENGES\\_IN\\_THE\\_IMPLEMENTATION\\_OF\\_THE\\_ACT](https://www.researchgate.net/publication/341313899_A_CRITIQUE_OF_THE_NIGERIA_ADMINISTRATI_ON_OF_CRIMINAL_JUSTICE_ACT_2015_AND_CHALLENGES_IN_THE_IMPLEMENTATION_OF_THE_ACT)> Accessed May 23, 2022

It is important to consider these questions as the present situation of things reveals that apart from the FCT where Magistrate Courts are regulated by the Federal Government, Magistrate Courts were enacted by the Magistrates' Courts' Laws of the various states of the Federation, Area Courts by the Area Courts' Laws of the various Northern States while the High Courts of the various States were specifically created by the Constitution of the Federal Republic of Nigeria 1999. The criminal procedure in these other courts was guided by the Criminal Procedure code and the Criminal procedure Act. The ACJA having repealed the Act and the Code, failed to address this question in view of the fact that ACJA applies only to Federal Court.<sup>12</sup>

The ACJA also provides for the execution of pregnant women found guilty of a capital offence after delivery and weaning of their babies.<sup>13</sup> This should be revisited considering and having regard to the position of international frameworks and perspectives on conviction of pregnant women. Furthermore, criminal legislation in the past and in some States of the Federation provided that a death sentence shall not be passed on a woman who is pregnant and convicted of a capital offence, but her death sentence shall be substituted with imprisonment for life.<sup>14</sup> This position is even more commendable and should be adopted by the ACJA. It could be argued that the ACJA has, by sentencing a pregnant woman to death and staying execution till delivery and weaning of the baby, proved more retributive than all the other legislation because in the act, it has failed to consider the welfare of the child who will grow up without the love of a biological mother. Such a child may in fact grow up to see the law as evil, thus giving rise to a rebellious disposition. Furthermore, the execution of a woman after her baby is weaned negates the provision of restorative justice. The woman may become reformed and eligible for parole.

Other shortcomings of the Act include the lack of proper definition of the meaning of infanticide which is provided for section 232 and expressly distinguished from Murder. Some have also argued that the act is not so gender sensitive as it still makes use of the Male pronouns such as "he, his & himself."

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<sup>12</sup> See I. Mariazu, 'A Critique of Administration of Criminal Justice Act (ACJA) 2015' Available at <https://www.pressreader.com/nigeria/thisday/20151006/281792807850335> Accessed May 23 2022.

<sup>13</sup> Section 404

<sup>14</sup> See Section 368(2) of the repealed Criminal Procedure Act.

Lastly, the act make provision for trial in the absence of a defendant, who after been granted bail, jumps bail and fails to attend court without reasonable explanation.<sup>15</sup> This is a welcome development and a defendant can no longer stall proceedings against him just by refusing to turn up for his trial. If he does not, the trial will continue and he will be convicted but sentencing will be kept in abeyance until he is arrested or submits to court. However, what happens where at trail, bail is refused for capital offence and the defendant escapes from detention. Should trial continue? Can this provision be invoked to defend continuation of trial in his absence? The drafters of the law need to look into this and fix the lacuna as defendants may take advantage of it, engineer jail breaks and disappear into thin air while in detention before bail is granted to them.

#### **4. Conclusion**

From the foregoing discussion, it is clear that one of the challenges facing administration of criminal justice in Nigeria is the slow pace which Criminal Justice is delivered. This, of course, is not peculiar to our nation, for every country has its own share of challenges. But, in Nigeria, there is no doubt that sentencing is a difficult matter considering the technicalities that delay the trial process. The administration of criminal justice Act was enacted basically to remedy this problem.

Regardless of the fact that the Administration of Criminal Justice Act arrived with innovations which are expected to help promote quick dispensation of justice, some of its provisions are inadequate, especially when juxtaposed with subsisting international instruments. On the other hand, it is obvious that some provisions of the Act are retributive or inconsistent with the provisions of the constitution.<sup>16</sup>

It was examined the issue of conviction of pregnant women. Arguments were put forward to condemn the provision on grounds that a death sentence shall not be passed on a woman who is pregnant and convicted of a capital offence, but her death sentence shall be substituted with imprisonment for life. This thinking was premised on the fact that sentencing a pregnant woman to death and staying execution till delivery and weaning of the baby, proved more retributive in nature, in comparison to defunct legislations, having failed to consider the welfare of the child who will grow up without the love of a biological mother.

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<sup>15</sup> Section 352(4)

<sup>16</sup> The Constitution of the Federal Republic of Nigeria, 1999

Notwithstanding the subsisting lacunae in ACJA 2015, there are however, rooms for further improvement:

- I. The Act should be reviewed to entrench international best practices. Some provisions of the Act that are optional should be made mandatory to ensure compliance.
- II. Subsidiary legislation should be made to aid in the implementation of the Act. If this recommendation is accommodated, the real intention and objectives of the ACJA will be achieved.



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