*Ayden International Journal of Law, Political Science, and Administration, Volume 11 (2), 2023 / ISSN: 2997-2957*

**Original Article**

# THE QUEST FOR EQUITABLE JUSTICE: A CRITICAL REVIEW OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT IN NIGERIA

***Victor Oluwaseun Adekunle, LL.M. and Grace Ifeoma Okoro, LL.M.***

Lecturer, Faculty of Law, University of Benin, Benin City, Nigeria

**Abstract:** In Nigeria, ensuring equitable access to justice remains a pivotal challenge, impeded by systemic issues such as protracted delays, exorbitant litigation costs, complex legal frameworks, and widespread corruption. These barriers significantly hinder the enforcement of human and contractual rights, thereby undermining the protection of human rights and the rule of law. This article delves into the importance of unhindered access to the judicial system in Nigeria, highlighting its role in the effective enforcement of rights. It examines the potential of integrating innovative judicial approaches, such as restorative justice and victim-offender mediation, which promise mutual benefits for the state, offenders, and crime victims alike. These approaches, coupled with effective case flow management, case front-loading, pretrial conferences, and alternative dispute resolution (ADR) mechanisms, are proposed as strategic solutions to alleviate judicial delays and reduce litigation costs. By exploring these methodologies, the article suggests a pathway towards a more responsive and cost-effective justice system in Nigeria, fostering a more just society.

**Keywords:** Access to Justice, Restorative Justice, Alternative Dispute Resolution, Judicial Reforms, Nigeria

## 1. Introduction

The effectiveness of a country's judicial system can be measured by the efficacy of its access to Justice. Access to Justice is an essential instrument for human rights protection and the rule of law to flourish in Nigeria. The setbacks to access to justice in Nigerian, civil and criminal justice system are quite exigent. These setbacks include: delays, cost of litigation, complex legal rules and procedure, lack of awareness and legal knowledge. Corruption is also one of the factors hindering the smooth flow of access to justice in Nigeria. This article reveals that it is only when an individual has unhindered access to the law courts or other medium that guarantees speedy affordable justice that it can really be said that his rights have been enforced. Such rights include his human rights, contractual rights etc. The full embrace of emerging processes like restorative justice and victim offender mediation, are guaranteed to bring justice not only for the State and the offender, but also to the victim of crime. The full adoption and practice of case flow management, front loading of cases, pretrial conference and Alternative Dispute Resolution (ADR) are certain to reduce or eliminate delay and greatly reduce cost of litigation.

**Original Article**

### 3. Access to Justice

Access to justice refers to the substantive and procedural mechanisms existing in any particular society designed to ensure that citizens have the opportunity of seeking redress for the violation of their legal rights within the legal system. It focuses on the existing rules and procedures to be used by citizens to approach the courts for the determination of their civil rights and obligations[1]. It may also be considered as the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standards.

One of the prerequisites of a system that assures access to justice is that the judiciary must be independent. An independent judiciary is the most effective guarantee that society has for ensuring constitutionalism, individual rights, law, order, and stability.

### 2. Avenues for Accessing Justice

When we talk of access to justice, it is important to start with determining who gives the justice. Where can an aggrieved person go to seek redress or justice? Such avenues can be found in international, regional and domestic fora. The United Nations recognises that the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. To maintain justice and freedom for the human race, the United Nations has set up several judicial and quasi-judicial organs in form of courts and committees. Though most of these organs can only be accessed by States who are parties to the relevant Convention setting up the Court or Committee, yet the effect of any decision of such court or committee is felt by the individuals in those countries that are subject to the decision.

### 3. The Nigerian Judiciary

One of the prerequisites of a well-established democracy is a liberated, strong, impartial and wellmotivated judiciary. The Judicial systems in flourishing democracies, besides being the custodian of constitutional governance and democracy, should be independent in every sense of the word and well equipped to dispense justice to all and sundry without hindrance or prejudice. It should inspire belief of citizens that justice shall be done in all cases.

The Constitution established the Federal and the State Courts[2]. These Courts are empowered to adjudicate upon matters between persons, or between government or authority and any person in Nigeria, for the determination of any question as to the civil rights and obligations of that person. Besides these Courts, there are other Courts of special jurisdictions, namely:

1. the juvenile Courts
2. Coroner's Courts
3. Court of Resolution.

In addition to the above mentioned Courts, we have the National Assembly Election Tribunals and the Governorship and Legislative Houses Election Tribunals. The Administration of Criminal Justice Act 2015 was enacted with the aim of 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 suspects, the defendants and victims in Nigeria. The pertinent questions

[2] Gives the National Assembly or any House of Assembly, the right to establish or abolish Courts with subordinate jurisdiction to the ones enumerated in the Constitution. The following courts are the only superior courts of record in Nigeria: (1) The Supreme Court of Nigeria; (2) The Court of Appeal; (3) The Federal High Court; (4) The High Court of the Federal Capital Territory, Abuja; (5) A High Court of a State; (6) The Sharia Court of Appeal of the Federal Capital Territory, Abuja; (7) Sharia Court of Appeal of a State; (8) The Customary Court of Appeal of the Federal Capital Territory, Abuja and (9) Customary Court of Appeal of a State

begging for answers are: is the Administration of Criminal Justice Act 2015 a workable document? Has the problems associated with the previous laws on the administration of criminal justice been adequately taken care of by the provisions of the Act the subject matter of this article? Are the provisions of the Act-practicable in Nigeria, considering the peculiarity of the practitioners, disparity of the agencies involved and in some cases interagency rivalry amongst the various law enforcement agencies involved in the administration of criminal justice in Nigeria?

**4. The Administration of Criminal Justice Act, 2015 (ACJA)**

The Administration of Criminal Justice Act. 2015 (ACJA) is the most potent legislation on criminal justice in Nigeria presently and it is without doubt due to its wide applicability and revolutionary nature. The Law comes in handy for both lawyers and non-lawyers. The Act which was signed into law in May 2015, has a 495-sections divided into 49 parts, providing for the administration of criminal justice and for related matters in the courts of the Federal Capital Territory and other Federal Courts in Nigeria. With the ACJA, Nigeria now has a unique and unified law applicable in all federal courts and with respect to offences contained in Federal Legislations. The law repeals the erstwhile Criminal Procedure Act as applied in the South and the Criminal Procedure (Northern states) Act, which applied in the North and the Administration of Justice Commission Act.

The ACJA, by merging the major provisions of the two principal criminal justice legislations in Nigeria, that is CPA and CPC, preserves the existing criminal procedures while introducing new provisions that will enhance the efficiency of the justice system and help fill the gaps observed in these laws over the course of several decades.

The law has been described as the much awaited revolution in the criminal justice arena as the criminal justice system existing before the coming into force of this law has lost its capacity to respond quickly to the needs of the society, check the rising waves of crime, speedily bring criminals to book and protect the victims of crime. Section 1 of the ACJA is overtly apt in explaining the purpose of the Act thus: The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.

One essential feature of the ACJA is its paradigm 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. The general tone of the Act puts human dignity in the fore, from the adoption of the word defendant instead of accused, to its provision for humane treatment during arrest[3], to its numerous provisions for speedy trial, to suspended sentencing[4], community service[5], parole[6] compensation to victims of crime[9] and so-on.

Comfort Chinyere Ani[10] is of the view that most of the rights of the defendant are contained in the old law, but that the Administration of Criminal Justice Act 2015 has added emphasis to these rights and that it has also succeeded in ironing out lots of grey areas that have been long overdue for change. According to Femi Falana (a Senior Advocate of Nigeria), in his article published in the Guardian Newspaper.[7] The learned silk states thus:

It was the virtual collapse of the Criminal Justice system which led to the enactment of the Administration of Criminal Justice Act 2015. In a rather comprehensive manner, the Act has provided for the administration of

[3] Section 8(1) Administration of Criminal Justice Act, 2015
[4] Section 460(1) Administration of Criminal Justice Act. 205
[5] Section 460(2) Administration of Criminal Justice Act, 2015
[6] Section 468 Administration of Criminal Justice Act. 2015 [9] Section 314, 319 Administration of Criminal Justice Act. 2015 [10] Reforms in Nigeria Criminal Justice Law (Supra).
[7] The Administration of Criminal Justice Act 2015 published in Guardian Newspapers of 31st August, 2015.

criminal justice in the Courts of Federal Capital Territory and other Federal Courts except Courts Martial which have separate rules of procedure. Even though it is a federal enactment some of the provisions are of general application throughout the country. In particular arrest and detention of all criminal suspect shall be regulated by the provisions of the Administration of Criminal Justice Act.

He is also of the opinion that the Act is expected to revolutionize the criminal justice system in Nigeria. On her part. Titi Ogunye[8] states that the introduction of the Administration of Criminal Justice Act 2015 remains the bold and decisive measure to tackle the delay in the dispensation of justice and fast-track the criminal justice system in the country. It is noteworthy that at different fora all over the country, there is hardly any reference to the administration of criminal justice system in Nigeria without mentioning the Act.

## 5. Issues in the Administration of Criminal Justice Act 2015

### 5.1 The Role of the Act in Promoting Justice in Nigeria

The main purpose of the Administration of Criminal Justice Act 2015 is captured in part 1 of the Act thus: The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the right and interest of the suspect, the defendant and the victim.

The Act also alludes to the fact that the courts, law enforcement agencies and other stake holders in the administration of criminal justice should ensure that the provisions of the Act are complied with, in order to achieve the purpose for which the Act was made in the first instance, and in summary to ensure improved administration of criminal justice in Nigeria.

In the bid to promote justice, section 5 of the Administration of Criminal Justice Act, 2015 provides that there shall be no unnecessary restraint. The conditions necessary for a suspect or defendant to be handcuffed or restrained are when there is reasonable apprehension of violence or an attempt to escape. The restraint is considered necessary for the safety of the suspect or defendant except by an order of the court.

It is noteworthy that in the course of taking the statement of a suspect, the police are duty bound to inform such a person of his right to remain silent until he consults with his legal practitioner or have free legal representation by the Legal Aid Council and the authority having custody of the suspect shall notify his family[9]. The Act also prohibits the arrest of a person in lieu of the suspect who actually committed the offence.[10] It is a recurrent fact that the law enforcement agents usually arrest and detain relatives of suspects who are at large, with the hope that by so doing, the suspect will make themselves available. The section is to prevent a situation where innocent individuals will be made to suffer unjustly for the offence(s) which they did not commit.

It is also the usual practice for the police to arrest suspect for matters which ordinarily fall within civil wrong or breach of contract.[11] In pursuit of justice, the section has provided that no person should be arrested for civil wrong. The courts have held severally that the police should not turn themselves into debt collectors.

In order to prevent a situation where individuals take the law into their own hands, the Act has provided that when a suspect is arrested by a private person, such a suspect should immediately be handed over to the police[12]. Section 14 the of Administration of Criminal Justice Act 2015 provides that a suspect who has been arrested with or without a warrant should immediately be taken to the police station and should be informed in the language he

[8] Titi Ogunye, "Synoptic Review of Administration of Criminal Justice Act, 2015", *Nations Newspaper*, 2016.
[9] Section 6 (2) (a) (b) & (c) of Administration of Criminal Justice Act 2015
[10] Section 7 of the Administration of Criminal Justice Act 2015
[11] Section 8 (2) of The Administration of Criminal Justice Act 2015
[12] Section 9(1) of Administration of Criminal Justice Act 2015

understands of the allegations against him. The police or any agency involved in the arrest of suspect is expected to record the following in the prescribed form;

(a) the alleged offence(s),

(b) date and circumstances of his arrest,

(c) full name, occupation, residential address and for the purpose of identification which shall include his height, photograph, full finger print or such means of identification[13]. The said recording of the statistics mentioned above is also expected not to exceed forty eight hours.[14]

Also to promote justice, statements of suspect shall be in writing and may be recorded electronically or retrievable video compact disk or such other audio visual means.[15] By virtue of section 17(2) of the Act, statements of suspect may be taken in the presence of a legal practitioner of suspect's choice, officer of the Legal Aid Council of Nigeria, Justice of Peace, officer of a civil society organization or any other person. If however, the suspect does not understand English language an interpreter shall record the statement which shall be read over and interpreted to the suspect. The suspect shall endorse the statement as being the same attested to by him.[16]

A person is under a duty to assist a judge, magistrate, justice of peace, police officer and any other person reasonably requiring his assistance to aid arrest or prevent escape of a suspect[17]. Also any person with authority to effect an arrest may pursue a suspect into any part of the country and arrest such a person for the purpose of bringing the suspect to book.

In the interest of justice, the Inspector- General of Police is expected to remit quarterly to the Attorney General of the Federation, records of arrest made with or without warrant in Nigeria[18]. This provision has been hailed by lawyers and experts in the administration of criminal justice system, because with it, the office of the Attorney General of the Federation and Honourable Minister for Justice will be able to monitor cases of arrest by the police and possibly give necessary recommendations or legal advice especially on the necessary steps or action to be taken. Again such a step will likely curb the abuse of power by the police who often use their power to cover up some cases at the police stations against the interest of the complainant.

The police is also empowered to grant bail to anyone arrested without warrant if it is impracticable to bring the suspect before a court of competent jurisdiction within 24 hours as long as the offence does not involve causing death.[19] There is also remedy for suspect detained in custody, if he is not released within 24 hours. An application can be made to court orally or in writing for the release of such a suspect.

In furtherance of the interest of justice, an officer in charge of an agency authorized to make arrest is mandated to report to the nearest magistrate on the last date of every month of suspects arrested without warrant for the purpose of letting the magistrate know whether the suspects have been admitted to bail or not.[20] Magistrate within the police jurisdiction is mandated to at least, once in a month conduct inspection of police stations with the aim of inspecting record of arrest, direct the arraignment of suspect or possibly grant bail to the suspect. However, if it is a federal government agency, the high court having jurisdiction shall visit such detention centre. Every person

[13] Section 15 (1) of Administration of Criminal Justice Act 2015
[14] Section 15 (2) of Administration of Criminal Justice Act 2015
[15] Section 15 (4) of Administration of Criminal Justice Act 2015
[16] Section 17 (3) of Administration of Criminal Justice Act 2015
[17] Section 27 of Administration of Criminal Justice Act 2015
[18] Section 29(1) of Administration of Criminal Justice Act 2015
[19] Section 30 of Administration of Criminal Justice Act 2015
[20] Section 33(1) of Administration of Criminal Justice Act 2015

is also duty bound to assist a judge, magistrate, police officer or any public officer requiring his assistance to prevent commission of crime, suppression of breach of peace, prevention of damages etc.

In the interest of justice, offence is to be inquired into or tried by a court within the jurisdiction where the offence was wholly or partly committed, consequences of the offence has ensued, offence committed by reference to which offence is denied or a person against whom or property in respect of offence committed was found. Except when it is established that it is not convenient to try an offence where it was alleged to have been committed, that is when the offence will be tried outside the jurisdiction.

In pursuance of justice, the Chief Judge of a State High Court may transfer case from one court to another,[21] provided that such a transfer shall not be done if prosecution has called his witnesses.[22]

The Act also empowers a court to send the case file by way of transfer to any court that has the required jurisdiction in the interest of justice. Also, if the issue of jurisdiction is raised, in order not to defeat the essence of justice, the court is also empowered to transfer. Also, in the interest of justice, in certain circumstances, a judge or magistrate of a division may assume jurisdiction in a matter even if the person arrested committed the offence in another jurisdiction and is in custody on the charge or if the suspect appears to answer summon against him and having regard to accessibility and convenience.

In furtherance of the pursuit of justice, the Comptroller General of Prisons is expected to make a return to the Chief Judge of Federal High Court, Chief Judge of the Federal Capital Territory. President of National Industrial Court and the Chief Judge of a State in which a prison is located and to the Attorney General of the Federation of persons awaiting trial who are in custody.[23] It goes further to provide that the particulars of details shall include names of persons in custody or awaiting trial, passport photograph of the suspect, date of arrangement or remand, date of admission to custody, particulars of the offences, court arraigned, name of prosecuting agency and any other relevant information. It is necessary to note that the rationale for this provision is to ensure that the issues necessary to be attended to are addressed by the respective recipient.

It is an offence for a person to refuse to receive a summons. Such a person may be arrested and possibly detain in custody or even committed to prison for a period not exceeding fourteen days.[24] This is essentially to prevent a situation where a suspect will avoid being brought to justice by refusing to collect summons from the bailiff.

Under section 222 of the Administration of Criminal Justice Act 2015, an error in stating the offence or the particulars of the offence shall not affect the substance of the case. This is to discourage the defendant from relying on technicalities to avoid the content of the charge against him. If the person is being tried for a lesser offence, whereas it is a higher offence that is proved, the person will then be tried for the higher offence and will be treated as if he has not been tried initially for lesser offence.[25] This provision is to ensure that justice is not only done but must be seemingly seen to be done.

Witnesses are also duty bound to attend a case that is adjourned to enable them testify. If a witness defaults, he may be treated as if he refused to attend and testify.[26] Provision has also been made for witness's expenses. If one attends as a witness for the state, such a person is entitled to payment of reasonable expenses prescribed by law.[27] Even if the witness comes to testify for the defence, in the interest of justice, the court may on application and in

[21] Section 98(1) of Administration of Criminal Justice Act 2015

[22] Section 98(2) of Administration of Criminal Justice Act 2015

[23] Section 111(1) of Administration of Criminal Justice Act 2015

[24] Section 129 of Administration of Criminal Justice Act 2015

[25] Section 225(1) & (2) of Administration of Criminal Justice Act 2015

[26] Section 247 of Administration of Criminal Justice Act 2015

[27] Section 251 of Administration of Criminal Justice Act 2015

its discretion order that reasonable sum of money be paid to him for his expenses.[28] Section 260 of the Administration of Criminal Justice Act 2015 provides for the courts power to exclude certain persons from the venue of a proceeding when taking the evidence of a child or young person.

The court is also empowered in the interest of justice to visit any place, person or thing connected with the case and, may adjourn to continue sitting in the place. The defendant shall also be present when such a person or thing is being viewed.[29] The provision for medical examination for a person suspected to be of unsound mind is essentially in the interest of justice.[30] It will help the court to determine whether the defendant can make a defence to the allegation against him or her. It is also provided in the Act that where there are no express provisions in this Act, the court may apply any procedure that will meet the justice of the cases.[31] This provision is really commendable, because apart from the statutory provisions on the powers and functions of judges and magistrates, it further strengthens the application of discretion in the course of performing their duties.

Through the provisions discussed above and many others contained in the Administration of Criminal Justice Act 2015, it has been shown how the Act has helped in ensuring that justice, equity and fairness is not only promoted but also discharged.

**6. Powers of Judges or Magistrates in the Act**

The Judicature is provided for in the Constitution of Nigeria.[32] Under this are the respective courts provisions for the establishment, appointment of person to the exalted position of a judge, jurisdiction of the various court and in some cases the appellate jurisdiction. In a bid to promote the very essence of the Act, it provides for powers, role and duties of the court. The first in several series contained in the Act is section 2, which enjoins the court among other things to ensure compliance with the provisions of the Act for the realization of its purposes. Under the Act, a judge is empowered to order the return of property seized from a person who was arrested by the police to the owner of that property in the interest of justice upon a report made to the court.[33]

A judge or magistrate within the jurisdiction where they sit is empowered to make arrest himself or directed that such a person be arrested.[34] After arresting any person who has committed an offence, the judge or magistrate is bound to hand over such a person to the police who shall then proceed with necessary actions.[35] The Judge is empowered to grant bail under the Act and to that effect a section in the Act provides thus:[36]

Where a suspect taken into custody in respect of non-capital offence is not released on bail after twenty four hours, a court having jurisdiction with respect to the offence may be notified by application on behalf of the suspect. The court shall order the production of the suspect detained and inquire into the circumstances consisting the grounds of the detention and where he deems fit admit the suspect to bail. An application for bail under this section may be made orally or in writing.

The magistrate is empowered to receive report of cases of suspects arrested by the police or any agency authorized to make arrest within its jurisdiction on the last working day of every month and forward the said report to the

[28] Section 252 of Administration of Criminal Justice Act 2015
[29] Section 263(1) & (2) of Administration of Criminal Justice Act 2015
[30] Section 278(1) of Administration of Criminal Justice Act 2015
[31] Section 292(3) of Administration of Criminal Justice Act 2015
[32] Chapter VIII of the Constitution of Nigeria, 1999
[33] Section 10(6) of Administration of Criminal Justice Act 2015
[34] Section 24 & 25 of the Administration of criminal Justice Act 2015
[35] Section 26 of Administration of Criminal Justice Act 2015
[36] Section 32 (1) (2) & (3) of Administration of Criminal Justice Act 2015

**Original Article**

Criminal Justice Monitoring Committee. The report shall be analysed for the advice of the Attorney General of the Federation as to the trend of arrest, bail or related matters.[37]

Under the Act, a court is empowered to issue a warrant of arrest and in so doing, the court is at liberty, when the execution of the warrant of arrest is necessary and no police officer is available to execute it, direct that any other person or persons shall execute it and such execution shall conform with any requirement placed on a police officer.[38]

The court is also empowered to publish summon for person absconding. By virtue of this provision, if a warrant of arrest is issued by the same court or Justice of Peace and the court have reasons to believe that the suspect is concealing himself, then the court can publish it.[39]

A public summons shall be published in any of the following ways:

*(a)* In a newspaper that enjoys wide circulation or circulated in any other medium as may be appropriate

*(b)* By affixing it to some conspicuous part of the house or premises or to some conspicuous place in the town or village, in which the person ordinary resides or

*(c)* By affixing a copy to some conspicuous part of the High court or magistrate court building

A statement in writing from the judge of the High Court or a Magistrate to the effect that the public summons was duly published on a specified day shall be conclusive evidence that requirements of this section have been complied with and that the summons was published on such day.

A judge or magistrate also has the responsibility for maintaining law and order and by so doing may intervene for the purpose of ensuring the prevention of the commission of an offence.[40] This provision places a responsibility on the judge or magistrate, just like every other person to intervene, for the purpose of preventing the commission of an offence. The magistrate is also empowered to dispense with personal attendance of a suspect called to show cause why he should not be ordered to enter into recognizance for keeping peace and may permit a legal practitioner to appear on his behalf. The magistrate is also empowered to conduct inquiry on the truth of information about a person brought before the magistrate on a warrant of arrest.[41]

A court has the power to refuse to accept any surety offered by a suspect on the ground that for reasons recorded by the court, the surety is an unfit person. The court is also empowered to release suspect imprisoned for failure to give security especially if it will be without hazard to the community.[42] The High Court is also empowered to cancel recognizance for keeping peace or good behaviour for any sufficient reasons. This is to be done by recording it in writing.[43]

The court is further empowered to impose conditional order for removal of nuisance. In pursuance of this duty, the court may make a conditional order that the suspect should cease committing the offence, remove the cause of the nuisance or the court may order the suspect to appear before the court and ask the order be set aside or modified. The court is also empowered to make an order pending inquiry especially when there is immediate danger or imminent injury to the public which ought to be prevented.[44]

[37] Section 33 (3) of Administration of Criminal Justice Act 2015
[38] Section 40 (2) of Administration of Criminal Justice Act 2015
[39] Section 42 (1) (a), (b) (c) & 42 (2) of Administration of Criminal Justice Act 2015
[40] Section 53 (1) of Administration of Criminal Justice Act 2015
[41] Section 63 (1) of Administration of Criminal Justice Act 2015
[42] Section 69 of Administration of Criminal Justice Act 2015
[43] Section 70 Administration of Criminal Justice Act 2015
[44] Section 78 of Administration of Criminal Justice Act 2015

**Original Article**

The court is further empowered to execute a bond with or without sureties for suspect appearance before a court. The court is empowered to compel the attendance of a suspect within jurisdiction. This implies the power of the court to bring a suspect before the court to face the charge against him.[45]

The court is empowered to remit or transfer a case to another court when the court is of the opinion that the matter ordinarily ought to be inquired into by another court or when complaint arose out of the jurisdiction of the court.[46]

The magistrate is empowered to sign a search warrant and possibly direct that the search be made in his presence. A judge of the High Court may review the bail condition imposed by the magistrate court or that a defendant in custody be admitted to bail.[47]

Under section 180 of the Administration of Criminal Justice Act 2015, the court is empowered to mitigate forfeiture. The court is also empowered to make regulations for registration and licensing of corporate bodies or persons to act as bond persons within the jurisdiction of the court in which they are registered. By virtue of section 216 of the Administration of Criminal Justice Act 2015, a court may allow or permit alteration or amendment of a charge at any time before judgment. The court is also empowered to exclude certain cases like taking the evidence of children. A person present in court may be compelled to give evidence though the person is not summoned for that purpose;[48]

A person present in court and compellable as a witness whether a party or not in a cause may be compelled by a court to give evidence and produce any document in his possession or in his power in the same rules as if he had been summoned to attend and give evidence or to produce the document and may be punished in like manner for any refusal to obey the order of the court.

This provision has been criticized because a person may be present in court for entirely different matter not necessarily related to the case in question. To make an individual testify in a case when such an individual is not psychologically prepared for it would be unfair not only to him but to the entire justice system. To our mind, this is a form of ambush on the person called to testify, when he has not been previously summoned to do so, most importantly, when such a person is not prepared for it.

The court is empowered to grant adjournment subject to witness cost. It is the duty of the court to ensure that in a situation where a suspect is facing a capital offence he must be represented by a counsel, however if the accused person refuses to be represented by a counsel, the court will then have no option than to inform him of the attendant risk associated with his decision to defend himself.[49]

Under the Act, the judge or magistrate is empowered to make an order directing that any money, asset or property agreed upon to be forfeited under a plea bargain agreement should be transferred to and vested in the victim or his or her representative. Essentially, the provision is to give effect to the plea bargain agreement reached by the parties, even though the judge or magistrate is not expected to participate in it. The court is empowered to remand a person suspected to be of unsound mind for period not exceeding one month, for observation by a medical officer, who will at the end of his observation, give to the court an opinion in writing as to the state of mind of the person remanded for observation.[50]

By virtue of section 305 of the Administration of Criminal Justice Act 2015, the court is empowered to refer a matter that affects the validity of the Constitution to the Court of Appeal. This is to enable the Court of Appeal

[45] Section 87 of Administration of Criminal Justice Act 2015
[46] Section 99 and 101 of Administration of Criminal Justice Act 2015
[47] Section 168 of Administration of Criminal Justice Act 2015
[48] Section 248 of Administration of Criminal Justice Act 2015
[49] Section 267 of Administration of Criminal Justice Act 2015
[50] Section 278 (3)& (4) of Administration of Criminal Justice Act 2015

consider and decide on the issue referred to it. The judge or magistrate is empowered to record his judgment not only in writing but shall date and sign same.[51] We are of the opinion that this provision of the law promotes certainty. The court is empowered to make a recommendation for merely when recording the sentence of the court. Under section 319 (1) of the Administration of Criminal Justice Act, 2015, the court is empowered, while passing judgment to order payment of expenses or compensation to the party that deserves it. The court is also empowered to order for restitution[52]. The court is further empowered, upon conviction, to order for the destruction of seditious, prohibited or obscene publications and objects. The court is empowered to order the sale of perishable property if the person entitled to its possession is unknown or absent, the court may order the sale of the items.
The court is empowered to try a person summarily if the person commits perjury in a proceeding before it.[53] The court has a duty to inform a defendant of his right to a legal practitioner of his choice, whether he wishes to engage any or a legal practitioner engaged for him.[54] The court is empowered to make a recommendation for deportation especially of foreigners where it appears to the court to be in the interest of peace, order and good governance.[55]
A court can make an order for a convict to be on probation pursuant to section 455 (1)(2)&(3) of Administration of criminal Justice Act 2015. Court is also empowered to direct the release of prisoner before completing his period of sentencing if the Comptroller-General of Prisons makes a recommendation to the court stating that the prisoner is of good behaviour and has served at least one third of his prison term when the prisoner is sentence to a term of at least 15 years or where he is sentenced to imprisonment for life.[56]
A court is empowered to sentence a person found guilty to term of imprisonment or sentence to any punishment provided by the law, while an accused person not found guilty is to be discharged and acquitted. The importance of the role of judges transcend beyond their functions in terms of their roles contained in the Administration of criminal Justice Act 2015. It is therefore not surprising that a former Chief Justice in a jurisdiction outside Nigeria, while addressing newly appointed judges, by way of advice has this to say:[57]
I must begin by offering to each of the newly-appointed judges my congratulations - not, as is ordinarily said, on your elevation but on your acceptance of an office which is of pivotal importance and your willingness to expend much of your time and energy and all your talents in performing its duties…. A Judge's role is to serve the community in the pivotal role of administering justice according to the rule of law… It is not necessary for a judge to demonstrate mastery of the issues by the making of informed comments on the running of the case. The judge's role is to keep the ring, not to enter the fight. By all means let the relevant rules be understood, but then the judicial duty is to retreat to the calm isolation of the judgment seat. When the hearing is complete, the lonely moment of decision-making has arrived. Nobody but you can make the decision or frame the reasons. The competent and conscientious performance by judges of the duties of their office is the most effective way to maintain respect for the rule of law. Then it is necessary to remember that one's own reputation is not advanced by derogating from the reputation of another judge of the Court: rather, individual reputation is enhanced with the enhancing of the reputation of the Court to which the judge belongs. Be not uncaring about the small courtesies and conventions of judicial life. Be of good and honourable heart, and all will be well..."

[51] Section 308(1) of Administration of Criminal Justice Act 2015
[52] Section 321 (a) & (b) of Administration of Criminal Justice Act 2015
[53] Section 347 (1) of Administration of Criminal Justice Act 2015
[54] Section 349(c) a & b of Administration of Criminal Justice Act 2015
[55] Section 440 of the Administration of Criminal Justice Act 2015
[56] Section 468 of the Administration of Criminal Justice Act 2015
[57] Sir Gerald Bennan, Former Chief Justice of Australia, while addressing the National Judicial Orientation Programme, Wollongong, Australia, 13th October 1996.

**Original Article**

## 7. Critique of the Act

The Administration of Criminal Justice Act 2015 has been said to be an excellent piece of legislation which has proved to be dynamic.[58] It has been commended for taking care of the ills and lacunas contained in the previous enactments on the administration of criminal justice. Section 493 of the Administration of Criminal Justice Act 2015 provides as follow; The Criminal Procedure Act (cap C41 LFN 2004, Criminal Procedure Northern States) Act Cap C42 LFN 2004 and the Administration of Justice Commission Act Cap A3 LFN 2004 are hereby repealed.[59]

With this provision, the Criminal Procedure Act and the Criminal Procedure Code are no longer part of the law on the administration of criminal justice. And anyone who cite the laws is merely citing a defunct or nonexisting law. The Supreme Court of Nigeria per Niki Tobi JSC (as he then was) captured the very essence of a repeal law in the following words:

Let me pause here and deal briefly with learned Senior Advocates reference to the repealed Corrupt Practices Decree 1975. It is wrong in law to refer to a repealed law in the way learned Senior Advocate did. A repealed law no more has legal life as it does not exist any longer, it cannot be cited as if it still exists. If it must be cited at all, it must be cited as a repealed taw which have no life to influence an argument. A repealed law cannot be basis for any comparison with existing law. It cannot be quoted side by side with existing law as learned senior advocate did.[69] However, despite the kudos that have trailed the passage of the Administration of Criminal Justice Act 2015, it is not without its short comings and it is in the light of this that we intend to highlight some of them. The first and major issue arising from its enactment can be found in the commencement section. It states as follows:

An Act to make provisions for the Administration of Criminal Justice and for Related Matters in the Court of Federal Capital Territory and other Federal Courts in Nigeria 2015.

As we found out, when the commencement clause is compared with what is contained in most of the body of the Act, the problem becomes more glaring. From the provision in the commencement clause, the Act is expected to be applicable to federal courts and courts in the Federal Capital Territory. This is in contrast with several provisions in the body of the Act which made references to state controlled courts or situations.[60]

No doubt, the mention of the Federal Capital Territory is understandable because it is virtually under the control of the Federal Government of Nigeria. In the Federal Capital Territory, magistrate courts fall under the federal judiciary. The question now, is which law will now apply to states which previously relied on Criminal Procedure Act and Criminal Procedure Code before the abrogation? Especially for the fact that the commencement provision of the Administration of Criminal Justice Act 2015 makes it only applicable to Federal Courts and those in the Federal Capital Territory. The fact that courts under the Federal Capital Territory are under the Federal government of Nigeria is provided for by the Constitution thus:[71]

The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation: and accordingly (a) all the legislative powers, the executive powers and the Judicial powers vested in the House of Assembly, the Governor of a State, and in the court of a State shall respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja.

---

[58] Iheanyi Chukwu Marazu, "A Critique of the Administration of Criminal Justice Act, www,nigerianlawguru.com (Accessed on the 23rd February, 2023.

[59] Section 493 of Administration of Criminal Justice Act 2015 [69] In *Re Olafisoye* (2004) 1 SC. Part 11, Page 21 at 41.

[60] Sections 96 (a) & (b) & Sections 113 of Administration of Criminal Justice Act, 2015 etc. [71] Section 299 of the Constitution of Nigeria 1999 as amended.

**Original Article**

A renowned Senior Advocate of Nigeria Professor Yemi-Akinseye George said while commenting on the Administration of Criminal Justice Act 2015 thus; The Act merged the provisions of the two principal legislation (CPA & CPC) into one principal Federal Act which is intended to apply uniformly in all Federal courts across the entire Federation.[61]

Making reference to state courts in a law which provides for its application to court of the Federation Capital Territory and other Federal Courts amount to legislative rascality. In other words, some provisions of the Administration of Criminal Justice, Act 2015 are contradictory. Section 29 (2) of the Act provides that the Commissioner of Police of State or any agency authorized to arrest an offender shall remit quarterly to the Attorney- General of that state, records of arrest without warrant in relation to state offences or arrest within state. To our minds, this provision is an attempt by the federal law makers to make law on an issue that pertain to state offences and to some extent institutions that belong to the state and this negates the much taunted federalism which Nigeria claims to be practising.

The provision on electronic recording of statements of suspect is a big issue. Considering the level of illiteracy in Nigeria, our technological development and the daily cry of the federal government about economic recession, the provision and maintenance of the equipment would pose great challenge to the police. Spare parts for this equipment are not readily available and it is highly capital intensive.

In most cases, confessional statements are usually denied by the suspect, thereby leaving the court with no option than to conduct trial within trial. The Act does not make the recording of confessional statement mandatory.[62] According to the provision; 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 retrievable video means.

The making of confessional statement optional has created a loophole which is susceptible to being exploited by not only the police, but other agencies that are involved in the arrest of suspect. Again, the law is not fully settled on the mode of tendering statement that is electronically recorded. It will however save the time of the court, especially when the involuntariness of the statement is in issue.

The Administration of Criminal Justice Act 2015 does not put into consideration the paucity of not only judicial officers but lawyers. The provisions of the Act have provided that the policemen and personnel of other agencies involved in arrest and prosecution of offenders who are not lawyers have lost the right to prosecute offenders.[63] The gap created by this provision must be addressed if the purpose of the Act is to be served. Failure to do so is capable of creating serious gaps which will become problem in future. The Administration of Criminal Justice Act 2015 does not help the situation by its failure to specifically repeal section 23 of the Police Act which gives the police powers to prosecute offenders in court of law.

This is another loophole that the police may want to use in exercising discretion regarding whether to respect the provision of the Administration of Criminal Justice Act 2015 or the Police Act as it relate to the prosecution of offenders. It is our humble opinion that even if the Administration of Criminal Justice Act 2015 had repealed section 23 of the Police Act, it would not have been enough for policemen who are not lawyers to stop the prosecution of offenders because the constitutional provisions on the powers of the Attorney-General of the Federation and State to institute and discontinue prosecution respectively envisage the power of other authorities or persons to prosecute offender,, except if the office of the Attorney General of the Federation or State think otherwise. The Act also provides that the Director of Public Prosecution should issue legal advice brought to him

[61] Yemi-Akinseye George "Innovative provisions of the Administration of Criminal Justice Act 2015" *Nation Newspapers*, 2015.
[62] Section 15(4) of Administration of Criminal Justice Act, 2015.
[63] Section 106 of the Act

within two weeks of receiving case file. Even though this provision appears commendable, some legal experts are of the opinion that 2 weeks is too short for quality legal advice. Besides the provision mentioned above, there is no specific time which the case file must be forwarded by the police to the Director of Public Prosecution. In other words, the Police can decide to keep the file as 1ong as they can before sending it for legal advice. It is our humble opinion that failure of the Act to provide for a time within which the case file must be forwarded by the police will impact negatively on the administration of criminal justice system. Another provision worthy of criticism is section 396 (7) of the Administration Criminal Justice Act 2015. It provides as follows:

Notwithstanding the provision of any other law to the contrary, 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 and shall conclude the same within a reasonable time, provided that this subsection shall not prevent him from assuming duty as a Justice of the Court of Appeal.

This provision is contrary to the constitutional provisions on the appointment of Justices of the Court of Appeal. On appointment, a judge shall begin to assume the duties of his office.[64] The mode and qualification for appointing a Justice of the Court of Appeal and that of the High Court are not only distinct but are different. For a Justice of the Court of Appeal to continue to sit as a High Court Judge under the law after his appointment or elevation to the Court of Appeal will raise issues bothering on jurisdiction. Though the intentions of the drafters of the law may be good, but it violates all reasonable logic especially against the legal grounds for such provision. Particularly, when the provision of section 396 (7) of the Administration of Criminal Justices Act 2015 is placed side by side with section 257 (1) of the Constitution of the Federal Republic of Nigeria (as amended), the constitutional violation is glaring. For the avoidance of doubt, the provision of the Constitution state as follows;[65]

Subject to the provisions of section 251 and any other provisions of this constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High court of the Federal Capital Territory, Abuja shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privileges, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture punishment or other liability in respect of an offence committed by any person.

In the same vein, section 255(1) & (2) of the Constitution of the Federal Republic of Nigeria 999 (as amended) provides that there shall be a High Court of Federal Capital Territory. Abuja and that the High Court of the Federal Capital Territory shall consist of:

(a) A Chief Judge of the High Court of the Federal Capital Territory, Abuja,

(b) Such number of Judges of the High Court as may be prescribed by an Act of the National Assembly.

This same position is also replicated with respect to Federal High Court and its Judges.[66] A Similar provision is made under the constitutional provision of the High Court of a State.[67] The question to ask in this case, is whether by virtue of the provisions of the Administration of Criminal Justice Act 2015, a federal law made for Federal Courts, whether the numbers of Judges of High Courts of a State can be increased through the backdoor, under the guise that it will help avoid delay in the administration of criminal justice system, especially when the constitution has already provided for a specific number to sit on matters before the High Courts of a State? Another issue likely to arise under the Administration of Criminal Justice Act 2015 is in relation to section 492 (3) which provides that:

[64] Section 288(2) & (3) of the Constitution of Nigeria, 1999 as amended
[65] Section 257(1) of the Constitution of Nigeria 1999 as amended
[66] Section 249(1) & (2) of the Constitution of Nigeria, 1999 amended
[67] Section 270(1) & (2) (a) & (b) of the Constitution of Nigeria, 1999 amended

**Original Article**

Where there are no express provisions in this Act the court may apply any procedure that will meet the Justice of the case".

This provision is susceptible to abuse. If this provision is followed intoto, what will amount to justice of a case will be subject to the whim and caprices of whoever is presiding over the case. Law must be definite, any vacuum created will be subject it to abuse and as humans we have weaknesses which the law must also assist in avoiding. The provision of section 19 leaves a vacuum in the sense that it provides for the power of court to order payment of expenses or compensation. It does not address the issue of what should be done to the person who has failed to pay compensation.

If the person is to be kept in prison, the aim of the Administration of Criminal Justice Act 2015, which is to ensure decongestion of prison would have been defeated. But imprisonment for such an individual is a mere speculation as there is no express provision to that effect.

**8. Recommendations**

There is hardly any perfect document and just like others before it, the Administration of Criminal Justice Act 2015 is not immune to imperfection. Having identified the shortcomings associated with the Administration of Criminal Justice Act 2015, it is only necessary that machinery be put in place to correct the anomalies associated with the Act. It is on this basis that we make the following recommendations;-

(a) The short title is restrictive. It should be amended to give room for states that wish to use the provisions of the Administration of Criminal Justice Act 2015 as the law guiding their criminal justice system, without necessarily having to go through the process of amending the state law on administration of criminal justice.

(b) Promotion of awareness of the Act to the practitioners and the general public. More than ever before, there is urgent need to educate the citizens about the provisions of the Act. The Act has come with several innovations that virtually everybody ought to be abreast with. This can be done through stakeholders meetings, symposiums, workshops, and electronic media and through the use of internet.

(c) Promotion of interagency cooperation and intelligence gathering. There is need for interagency cooperation amongst the different security agencies, members of the judiciary and the citizens in general. The establishment of neighbourhood watch in cities in United Kingdom has helped in promoting sound administration of criminal justice system in that country. The era of mutual suspicion and refusal to share information among the security agencies should henceforth be a thing of the past. On the long run, the society and the system will be better for it.

(d) Need to expunge the provisions on holding charge. The provision on holding charge as contained in the Administration of Criminal Justice Act 2015 should be expunge from our statute books. Apart from several judgments of the court that has stated that holding charge is unconstitutional and that it violates the principle of presumption of innocence, giving legal effect or justification to holding charge is a serious setback too many for our criminal justice system. It is not of any help to an accused person. A situation where a suspect is arraigned for remand purpose in a court which does not have jurisdiction to hear the mater and possibly without substantial evidence to establish the crime against the suspect at the time of arraignment, while the state or the agency shop for evidence to nail the accused person, after the suspect has been remanded in prison custody does not promote fairness or rules of equity.

(e) Sections in the Act that are contrary to the provisions of the constitution should be expunged from the Act. For example section 396(7) of the Administration of Criminal Justice Act 2015 raises constitutional issues as to the proprietary or competence of the Justice of Court of Appeal to sit on a matter being heard at the High Court after being elevated as a justice of the Court of Appeal. The likely constitutional issues that could arise as

a result of attempt to implement this section will have far reaching implications on our judiciary system and the administration of criminal justice in particular.

(f) Training, re training and professionalization of personnel in the administration of criminal justice sector. This will do a whole lot of good to the system. There is the need to train personnel of the police, the judiciary and other security agencies. Without the needed training, the aim of the Act will be defeated. At the moment there is a general ignorance about the provisions of the Act on the part of those involved in the administration of criminal justice and the public in general. There are issues associated with investigation, arrest, searches and emerging changes in technology.

(g) Adequate funding of the administration of criminal justice system. A close look at the Act will show that there are various statutory provisions in forms of committees in the Act. For efficient discharge of their functions, there is need for adequate funding of the committees. If they are not well funded, it will hinder the proper functioning of the committees in particular and the administration of criminal justice in general.

## 9. Conclusion

There is no disputing the fact that every law is to serve a purpose. The Administration of Criminal Justice Act 2015 is the contemporary law at the moment. It has 495 sections. It not only repealed the Criminal Procedure Code and Criminal Procedure Act, it has gone ahead to provide for and cover other areas that appear to be neglected by the previous laws. A critical look at the provisions of the law shows that the very essence of the Act is to promote efficiency in the management of the criminal justice system, its institutions, the relationship between the parties involved in criminal justice system and also to promote speedy dispensation of criminal justice in general. With the new law, issues of delay in the administration of criminal justice is expected to be a thing of the past. It is not expected to rear its ugly head again in our country's criminal justice system. The Administration of Criminal Justice Act 2015 covers virtually all aspects of the criminal justice system ranging from arrest, bail, and prevention of offences, search warrant, sentencing, charge and a whole lot of others. The Act has come under serious scrutiny, not only because of its relevance and importance, but because it affect everybody in Nigeria in one way or the other. Every aspect of the law has its social and to some extent psychological implication on those who are opportune to face its impact directly or indirectly, especially relatives of those that has come in contact with its implementation. As varied as issues addressed by the Act, so also are criticisms of some provisions of the Act. No doubt, one of the very essence of the Act is the decongestion of prisons.

It is a common knowledge that Nigerian prisons are unfit for the worst criminals. The situation in Nigerian prisons negates the very essence of the reformatory justice which prison system is expected serve. In advanced countries, the prison is an institution that help to shape the lives of prisoners for good and usually when they come out of prison, they become responsible and very useful members of the society. When compared with the advance countries, the Nigerian prison has a very long way to go. And if it continues this way, the innovations introduced into the Administration of Criminal Justice Act 2015 will just be on paper without the necessary and much desired effect on the system. The impact of the Administration of Criminal Justice Act 2015 on the country in general will be such that it will re-invigorate other segments of the society. The Administration of Criminal Justice Act 2015 goes beyond that of regulating criminal procedures. Virtually all the provisions of the Act are tailored towards an efficient management of the criminal justice institution and the protection of the competing interest in the administration of criminal justice system. What is left is for the stakeholders in the administration of criminal justice system in Nigeria is to play their part with the much needed sincerity, fairness and a sense of commitment.