PROBLEMS OF ENFORCEMENT IN THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA 2015) IN NIGERIA

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Abstract

The Administration of Criminal Justice Act was enacted in Nigeria in 2015 to reform criminal justice delivery. Criminal Justice resorts to the incarceration of wrongdoers upon conviction. The society after the completion of the process of convicting and sentencing within the criminal justice delivery system is faced with the challenge of what to do with the offender(s) adjudged guilty by court of competent jurisdiction. During the pre-colonial days, convicted offenders were treated informally by means of various psychological and physical punishments. At a point, physical punishment became more severe, humiliating and degrading, reformers decided that corporal punishment should be replaced with confinement or imprisonment. In Nigeria, as in most developing countries the most pronounced, most visible and most common sentence resorted to is imprisonment. Unfortunately, the Nigeria Correctional Service has failed to measure up to the international minimum standards, hence the timely choice to examine the problems of Administration of Criminal Justice Act in Nigeria with a view to making case for reforms. It is still a problem that despite the enactment of the well detailed Administration of Criminal Justice Act in Nigeria for up to a decade, yet its enforceability has not gotten the desired results. This Study adopted the Doctrinal/ Library-based Qualitative research method by analyzing the Primary sources such as the ACJA 2015, Correctional Service Act 2019, Constitution of the Federal Republic of Nigeria 1999, the Police Act, Criminal Code, Penal Code and other Case Laws, we also relied on Secondary sources such as the textbooks, journals and journal articles; the research deployed the analytical and critical approach to examine the roles of the diverse key stakeholders in the administration of justice. This study finds that it is a need for States that have not domesticated the Administration of Criminal Justice Act to speed up the legislative process. Findings were also made on the failure of agencies like the Nigeria Police Force; the Ministry of Justice; Legal

Practitioners; the Judiciary; as well as the legislature and executive to live up to expectation in terms of their various roles in administration of criminal justice in Nigeria.

Keywords: Correctional Service Act, 2019, International Minimum Standard, Conviction and Sentencing, Correctional Centre.

Introduction

The Criminal Justice system is the central mechanism through which a society maintains law and order, protects lives and property and ensures that wrongdoers are brought to justice. In Nigeria, the administration of criminal justice before 2015 was governed by two principal procedurals laws- the Criminal Procedure Act (CPA) applicable in the Southern States and the Criminal Procedure Code (CPC) applicable in the Northern States. These laws were colonial legacies that became outdated, cumbersome, and incapable of meeting the contemporary challenges of crime prevention, efficient prosecution and the protection of the rights of suspects, defendants and victims. Hence, to address these inadequacies, the Administration of Criminal Justice Act (ACJA) was enacted in 2015 as a comprehensive and innovative federal legislation. The ACJA was intended to revolutionize criminal justice administration by providing for efficient management of criminal justice institutions, speedy dispensation of justice, protection of the rights of suspects and defendants, and enhanced cooperation among the various organs involved in criminal justice administration.

One of the ultimate ends of criminal justice is the incarceration of offenders upon conviction. After conviction and sentencing by a court of competent jurisdiction, the society is faced with the critical question of what to do with the offender. Historically, during the pre-colonial era, convicted offenders were treated informally through various psychological and physical punishments administered within the community. At a point, physical punishment became very severe, humiliating and degrading. This led reformers to advocate that corporal punishment be replaced with confinement or imprisonment as a more humane and reformative measure. Today in Nigeria as in most developing countries, the most common form of sentence resorted to is imprisonment. The custodian of this sentence is the Nigerian Correctional Service (Formerly known as Nigeria Prisons Service), which was reformed by the Nigerian Correctional Service Act, 2019. However, despite the laudable innovations introduced by the ACJA 2015 and the Correctional Service Act, 2019, the practical reality shows a wide gap between the law and its enforcement. The Correctional Centre are overcrowded, underfunded and have failed to measure up to the international minimum standards for the treatment of prisoners such as the Mandela Rules.

Furthermore, the enforcement of ACJA is hindered by institutional and structural challenges. The Act is a federal Legislation that applies only to the Federal Capital Territory and federal courts, while States are expected to domesticate it, Many States are yet to domesticate the Act. Also, key Stakeholders in the Administration of criminal

justices such as the Nigeria Police Force, the Ministry of Justice, Legal Practitioners, the Judiciary, the Legislature and the Executive arms of Government- have largely failed to live up to expectations in terms of their statutory roles under the Act. It is against this background that this Research work seeks to critically examine the problems militating against the effective enforcement of the Administration of Criminal Justice Act in Nigeria and make a case for holistic reforms.

Statement of the Problem:

The enactment of the Administration of Criminal Justice Act, 2015 was greeted with great optimism as a panacea to the delays, inefficiencies and human rights abuses that characterized the old Criminal Procedure Act and Criminal Procedure Code. The Act introduced progressive provisions such as front-loading of evidence, non-custodial sentencing, plea bargaining, protection of the rights of suspects against unlawful arrests, prohibition of arrest in lieu, and the Administration of Criminal Justice Monitoring Committee. However, ten years after its enactment, the objectives of the Act remain largely unachieved. The enforcement is bedeviled with numerous problems such as Non-domestication by some States in Nigeria, institutional failures by the key Stakeholders in the Administration of criminal justices, failure of the Correctional System, lack of political Will by both the legislative and the executive arms of government and so on. Therefore the central problem that this Research work seeks to address is , Why has a law so well-conceived as the ACJA 2015 failed in its enforcement? What are the specific institutional, legal, socio-political factors responsible for this failure, and what reforms are necessary to ensure that the administration of criminal justice in Nigeria aligns with international best practices and constitutional guarantees of fair hearing and human dignity?

Introduction of the Problems Emanating from other Arms of the Criminal Justice Delivery System

Criminal justice system is the collective institution through which an accused offender passes until the accusations have been disposed of or the assessed punishment concluded. The system typically has three components; first is the Law Enforcement which includes; Police, Sheriffs and Marshals, secondly is the Judicial process which involves the judge, prosecutors, the defense lawyer; and thirdly the Correctional Centre which involves Correctional service officials, Probation officers, Parole officer.[1] The criminal justices agencies are the main actors in the fight against crime: the police are responsible for detecting crime and apprehending people who violate the criminal law; the courts decide guilt or innocence, and sentence those who are convicted or those who plead guilty; and the prisons or correctional institution carry out the sentence of the court and rehabilitate criminals.[2] The issue however, is that the

[1]B. A Ganer, Black's Law Dictionary, 7th Edition (Dallas USA: West Publishing Co. 2004) p. 3326. See also B. Ayorinde *et al,* an article titled "A Reformatory Approach to the Criminal Justice in Nigeria" Mondaq on twitter last updated 18th February, 2014.

[2] J. Rawls, "A Theory Justice" in A. B. Dambazau, Criminology and Criminal justice (Ibandan: Spectrum Books Ltd, 2007. P. 36.

various institutions involved in the administration of justice in Nigeria are not amenable to the supervision of one agency or institution and this makes it difficult to function harmoniously and optimally. It is believed that with the administration of criminal justice being now in place that the synergy between criminal justice agencies will be enhanced in view of this provision.[3]

Commenting on the problem of the criminal justice system, Alemika E. E. Observed that:

> The Nigeria criminal justice system has been afflicted by several problems that undermine justice, human rights, security of lives and property. These problems may be traced to various factors such as the colonial origin of the system, poverty of the philosophy on which the criminal justice is anchored, the antidemocratic nature of the postcolonial governance, economic inequality and mass poverty; institutional defects as well as inadequacy of human and material resource – both in qualitative and qualitative terms, that are available to the criminal justice institutions. Consequently, at present, the Nigeria criminal justice system is characterized by processes that dehumanize and embitter suspects and offender.[4]

What is deducible from the above, is that there are inadequacies in the Nigerian Criminal Justice system as the percentage of prisoners awaiting trial in remand remains high, unnecessary adjournments prolong disputes, political interference with judicial appointment and judicial decision-making remain an issue, both in the eyes of judicial officers and the Bar, coordination among the various justice sector institution poses continuous challenges. The result of these factors has negatively impacted on the management of the prisons and the treatment meted to the offenders.

The Police

The Police is the biggest, most visible and important sub-system of the criminal justice system.

The police is the "entry point"[5] into the criminal justice system either through crime reports from the public, through personal complaints or its own discovery. The Police is the main institution that is most unique among the other component of the criminal justice system. The uniqueness of the Police border on the fact that the decision of the

[3]Which established a body known as Administration of Criminal Justice Monitoring Committee.
[4]E. E. Alemika, "Penal Policy Prisons Condition and Prisoner's Rights in Nigeria" in B. Angwe and
[5]C. J. Dakas (eds.) Readings in Human Rights (Lagos: Innovative Communications, 2005), p. 108.
Section 4 of The Police Act Cap P. 19 Laws of the Federation, 2004 (previously, Cap 359 Law of Federation of Nigeria, 1990).

policeman on the street is as important as the existence of the criminal justice system. The policemen are the "gatekeepers" of the criminal justice system as they decide who goes into trial and this decision has wider implication for the other system components. Statutorily[6] the Nigerian Police Force is imbued with the responsibility of investigating crimes, apprehension of offenders, interrogation of suspects, granting of bail to suspects on bonds pending the completion of investigation or arraignment in court, serving summonses, execution of warrants of arrest, and prosecution of cases especially at the lower court. Added to the role of Nigerian Police is the power to search and seize properties suspected to be stolen or associated with crime, organization of identification parade, the taking of measurement in cases of accident, photographs and finger prints impression of persons in custody.[7] In summary according to the Nigeria Police Act,[8] the police are employed to prevent and detect crime; they apprehend offenders, preserve law and order, protect life and property, enforce laws and regulations they are directly charged with; and perform such military duties as may be required of them.

The point is that in an effort to execute this enormous duties, responsibilities and functions, the police encounter a lot of problems and in the same process create more, all of which play a rehabilitating roles on the administration of Justice System. As muted in the forgoing it is the responsibility of the police to investigate case, how fast and well this is done determines how long a person may be in detention in prison, especially where the offence charged is capital in nature which statutorily requires the accused being remanded in prison custody.[9] This is believed to be the cause of the overflowing brim of the prison with awaiting trial inmates most of whom have been there for an endless period on the guise that investigation into their matter has not been concluded. In some situations paucity of forensic[10] laboratories hamper speedy investigation of crime. There is also lack of stationeries, transportation, constant transfer of Investigating Police Officers, pure laziness on the part of Investigating Police Officer and/or lack of supervision by the superior Officers, corruption, deficiency in knowledge of the Investigating Police Officers, delay in duplicating the case file, assembling of witnesses, carelessness and/or nonchalant attitude in the prosecution of criminal cases and the like. In some cases the limitation in the training of the police officer, degree of professionalism, personal integrity and his perception of the law cum unwarranted opposition to the temper with their witnesses compound the just administration of the prison.

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[7]Section 4 of The Police Act Cap P. 19 Laws of the Federation

[8]E.E. Alemika, "Democracy and Criminal Justice and Administration in Nigeria" in C. J. Dakas, *et al. (Ed) New Vistas in Law Vol. 2 (Jos: Faculty of Law University of Jos, 2003). P. 307.*

[9]Police Act ibid.

[10]Section 34(1) of the Criminal Procedure Code Cap 30 Laws of Northern Nigerian, 1963 applicable to the Northern State and which provides that "person accused of an offence punishable with death shall not be released on bail.

However, most of these problems have been addressed in Part 2 of ACJA[11] prohibiting unlawful arrests,[12] prohibition of arrest in lieu,[13] provisions of arrest protocols aimed at protecting the rights of arrested suspects,[14] humane treatment of persons arrested[15] and prohibition of arrest for civil cases,[16] mandatory inventory of property[17] and records of arrests,[18] establishment of central criminal record registry,[19] electronic recording of confessional statement[20] and so on. The problem is implementation, this is because after about five (5) of ACJA operation none of the provisions listed above have been implemented to its fullest.

The Ministry of Justice

The Ministry of Justice is another integral part of the criminal justice delivery system. The office of the Director of Public Prosecution (DPP) is imbued with the prosecution of cases in courts in Nigeria. The practice over the years has been that the police transmit to the office of the Director of Public Prosecution some heinous offences for either legal opinion and/or prosecution. The conjecture is that either the DPP or those acting on his instructions has been with utmost respect sluggish in discharging their paid function either in giving legal opinion and/or prosecution of the matter in court; thus intensifying the problem of the prison in keeping detainees for a very long period.

Associated with the delay in giving legal opinion by the office of the DPP is lackadaisical attitude sometimes demonstrated by counsel whom a case file is assigned to in the office of the DPP (Director of Public Prosecution). In most cases, they request for an adjournment unreasonably, ranging from that the counsel handling the matter is on another assignment and therefore wants an adjournment to enable him appear personally, that they have not received the duplicate of the case file from the police and/or that they have asked the police to further investigate the matter with regards to a particular aspect of the case. It could be as well that the department is in shortage of manpower, that they lack fund and necessary logistic such as stationeries, typewriters, computers, photocopiers, mobility and the likes as a yardstick for not performing their function effectively, efficiently and optimally. Whether the aforementioned defenses are real is not the beauty of this research; the truth however, lies in the fact that by abdicating their assigned roles they unwittingly compound the problem of the prisons service administration that has the enormous challenge of keeping in safe custody some of the accused persons sent to prison awaiting trial or trial awaiting conviction and sentencing.

[11]It is regrettable that there is only one Forensic Laboratory for the whole Nigeria Federation. This is far location at the Oshodi axis of Lagos and which caters for all the forensic needs of all Government Department and Security Agencies in the Nigeria.
[12]Section 3 – 34 of the Administration of Criminal Justice Act, 2015
[13]Section 3 Ibid
[14]Section 7 Ibid
[15]Section 6, 14 Ibid
[16]Section 8(1) Ibid
[17]Section 8(2) Ibid
[18]Section 10 Ibid
[19]Section 15 Ibid
[20]Section 16 Ibid

The Lawyers

The bar is said to be co-ministers in the temple of justice and as such play a key function in the administration of justice. It is a fact however that some lawyers are very good in asking for frivolous adjournments either to delay the proceedings so that they would make more money or because of their unpreparedness. As noted by Yemi Osinbanjo[21]

> …many of the prisons are outdated and in some cases anachronistic, Besides, the loopholes in the law and procedure have become so obvious that lawyers especially defense lawyers have become masters in dilatory tactics. It has thus become increasingly difficult to reach close of any kind in many criminal cases. Convictions and acquittals have become exceeding rare.

Need say that the effect of the above is on the prison administration and management. We beg to note that some lawyers are actually unserious with the business of Legal practice and as such hardly let matter go on in court but rather prefer adjournment letters. Upon being confronted with an application in court, the next thing is to ask for adjournment to reply to the application which may ordinary need no reply, sometimes the aim is just to secure more opportunities for appearance fees. In another breath, to exploit the loopholes in the criminal procedure to request for adjournment. Regrettably too, matters are adjourned by lawyers for the inability of their poor clients to pay their professional fee. For whatever this is worth, the truth is that these adjournments prolong the agony of those standing trial and increase the number of those awaiting trial.

The Legislature

It had been noted that the key players in the justice sector are multifaceted; the legislature is one of the agents in the justice delivery system whose action or inaction fundamentally affect the administration of the Correctional Centre. Whether the legislators are aware that their omission or commission is imperative in swelling up the prison population is an issue. It is a known fact that the legislature has the constitutional responsibility of making and amending the laws particularly laws relating to confinement in execution of criminal liability and the terms of imprisonment thereof together with alternative to imprisonment. It has been noted with utmost displeasure that the Nigerian Legislature especially during the military regime lived below honest expectation of the masses. In this regards they failed to promptly amend the various criminal statutes or the procedure for their implementation. It is a known fact that the criminal code[22] which was first introduced into the country in 1904 has since been in operation with little or no major amendment. The Northern part of the country is not

[21]N. Tobi, "The Decision to Prosecute" UniMaid vol. I. L. J. 1981, pp. 15 – 22; N. Tobi, "Delay in the Administration of Justice in C. C. Nweze C. C. (ed). Justice in the Judicial Process: Essay in Honour of Justice Eugene Uboezonu, JCA (Enugu: Forth Dimension Publishing Limited, 2002), p. 151.

[22] When as the Attorney General State and Commissioner for Justice Lagos State (now, the Vice-President of the Federal Republic of Nigeria) addressing the charges of the Criminal Justice in Nigeria.

anything different, in that since the introduction of the Penal Code[23] in 1963 there have been nothing but a cosmetic amendment as touching jurisdiction of Magistrates without more.

While on the surface, it may appear and of course true that we have laws, but the consequences of its stagnancy can be viewed as follows; first, Archaic and complicated procedure still permeate our criminal statutes such as the practice in the North under the Criminal Procedure Code whereby even if an accused person admits to committing the offence, the Area Court Judge even if he were also a Magistrate court convict the person even without hearing and evaluating the evidence.[24] Secondly, there are still many offences which need not be part of the law but which sadly still remain of force.[25]

It obvious that despite the provisions of ACJA as touching alternative to imprisonment by use of non-custodial sentences such as suspended sentence, probation, compensation, restitution, community service orders, parole[26] and plea bargain[26] the Laws in Nigeria are imprisonment inclined. Unlike what is obtainable in most jurisdictions,[27] almost every law made in Nigeria comes with criminal offences that prescribe various terms of imprisonment. A survey of the statutes reveals that in almost every legislation passed in this country, there is criminal sanction and almost every agency is constituted into an arm of criminal justice with power to prosecute and the commonest of punishment prescribed for each of these offences is imprisonment. It is imperative to note that some enactment in Nigeria has some overlapping effect on the other, that is, some enactments has some provision which have been taken care of by both the criminal code and the penal code respectively.[28] Some of this legislations are: The Robbery and Firearms (Special Provisions) Act[29] the Indian Hemp Act[30] the Electoral Act 2010,[32] the Counterfeit and Fake Drug and Unwholesome Processed Foods (Miscellaneous Provision) Act,[33] the Export (Prohibition) Act, Ports (Related

[23]Cap. C38 Law of the Northern Nigeria, 2004.

[24] Cap 89 Laws of Northern Nigeria, 1963

[25]Section 157(3) of the Criminal Procedure Code: Musa Haruna and Ors v. Bornu Authority (1967) N. N L R 19.

[26] For instance, Offence relating to cruelty of criminals as contained in Ss 207 – 209 of the Penal Code, and the offences relating to criminal defamation contained in Section 391 – 395. Defamation should completely be left to the realm of tort.

[27]See sections 319, 321, 453, 455, 460, 461 and 468

[28]Section 270 ACJA

For instance Nether lands Denmark, Sweden and USA, See the Report and Draft Bills for the Reform of Prisons in Nigeria (Lagos Nigeria Law Reform Commission 1991)

[29]M. A. Owoade, "Criminal Justice Administration in Nigeria "in J. A. Yakubu (ed), Administration of Criminal justice in Nigeria: Essay in Honour of Justice Mohammed Leval Uwals (Ikeja: Malthouse Press, 2000) pp. 122 – 113.

[30]Cap R. 11 Laws of the Federation of Nigeria, 2004 [32] Cap 16 Laws of the Federation of Nigeria, 2004 [33] Electoral Act, 2010.

[31]Cap p12 Laws of the Federation of Nigeria, 2004

[32]Cap RE34 Laws of the Federation of Nigeria, 2004

[33] Cap E22 Laws of the Federation of Nigeria, 2004

Offence) Act, Produce (Enforcement of Export Standard) Act; Trade Mal-Practice (Miscellaneous Offence Act,[34] the Dishonored Cheque Offence Act,[35] the Recovery of Public Property (Special Provision) Act,[36] the Failed Bank (Recovery of Debt) and Financial Mal-Practice and other Related Offence Act,[37] the Money Laundering Act,[38] the Corrupt Practices and other Related Offence Act,[39] the Code of Conduct Act[40] and so on. The point is that each of those legislations contains penal sanctions and imprisonment occupies a prime place. With such laws as enumerated above, having imprisonment as its final destination, one would not be so surprise why the prisons are overflowing its inbuilt capacity. It is pertinent to submit that laws should be amended to complement the innovations in ACJA and some State that have not domesticated ACJA should swiftly do so in order to utilize non-custodial sentences.

The Executive

The Executive arm holds the political will of the society and most of the government policies and programs lie in their bosom to implement. The Nigerian Prison Service which was renamed in August 2019 as Nigerian Correctional Service (NCoS) been one of the arms under the executive, the executive equally contribute in compounding the problem of the prison system. For instance, the inability of the executive to release completely the funds needed to finance and run the prison system. In addition to deprivation of revenue, certain actions of government tend to further compound the problem of the Correctional Centre administration and management. Another example is the failure to executive those on the death roll in prison custody. The executive arm has shown much unwillingness in execution of sentences of death passed by the courts resulting in scores of prisoners being endlessly on the death roll. For instance, the study conducted by the Civil Liberties Organization[41] in 1996 revealed that 45 people on death roll in Enugu prison alone with some spending as much as 21 years. The Nigerian Prison Statistics as at 31st October, 2014 reveal that as much as 1588 prisoners were on death roll in Nigerian prisons.[42] Though the number may appear insignificant compared to the total number of inmates in the prison yard, it remains a fact that had the executive mustered enough courage to execute them, it would have created more space for others. Thus, it is arguable that keeping these condemned prisoners endlessly on death roll without execution amount to inhuman and degrading treatment contrary to the spirit and letter of the Constitution.[43][44] One would in the circumstance suggest that Nigeria

[34]Cap P23 Laws of the Federation of Nigeria, 2004
[35]Cap P23 Laws of the Federation of Nigeria, 2004
[36]Cap P32 Laws of the Federation of Nigeria, 2004
[37]Cap T12 Laws of the Federation of Nigeria, 2004
[38]Cap D1 Laws of the Federation of Nigeria, 2004
[39]Cap F2 Laws of the Federation of Nigeria, 2004
[40]Cap M12 Laws of the Federation of Nigeria, 2004
[41]Cap 31 Laws of the Federation of Nigeria, 2004
[42]Established by the Constitution under Sections 66, 102, 172, 173, 209, 292 and 318 as well as the schedule to Constitution of the Federal Republic of Nigeria 1999.
[43]The Civil Liberties Organization Annual Report 1997 P. 36 – 37: Saturday Puck vol. 51, 15th November, 2008 p.
[44]which reported that late President Umaru Yar'adua as pardoning old man aged 57, Ibrahim Aliyu who had spent a total of 25 years in prison, 22 on death roll at the maximum Security Prison, Lagos, and also pleaded with the Governor of Rivers State to pardon a 90 years old man, Nze Enweremedu who has spent 9 years in prison, 2 years on death roll.

should toe the line of other jurisdictions by abolishing Death penalty sentence. For instance, in countries line Denmark,[45] Death sentence has been abolished owing to the fact that no person has been executed since 1998. United States of America has also adopted the same line of action as in Demark. According to Amnesty International,[46] over 110 Countries in the world have abolished the Death penalty /capital punishment for all crimes. The Amnesty International argues that Death Penalty is a violation of human rights and thus the international law frowns at it. Countries like China, Iran, Saudi Arabia, Iraq and Yemen were mentioned as States where Death penalty is used the most.

The Judiciary

Obviously the proper functioning and development of any judicial system depends on the caliber of the personnel appointed to man the courts. Aside the requisite academic qualification and experience, it is vital that only persons of high moral standard and integrity are appointed as Judges and Magistrates. Nothing frustrates the citizenry and erodes their confidence in judicial system more than having a judiciary that cannot be trusted as fair and unbiased Arbiter. The singular reason is that the judicial power in Nigeria being vested in the courts determine to a great extent the management of correctional centres in general and congestion in particular. This accounts to the fact that the courts are constitutionally the arm of the criminal justice that conduct and sentence people to terms of imprisonment and the prison has no power of its own to reject anybody sent to it by the courts of law. It is therefore submitted that the action or inaction of the court becomes crucial in accessing the performance of the Correctional Service system. For proper appreciation of how the action and inaction of the judicial arm of government affect the management of the correctional centre, it shall be x-rayed under the below headings:- (i) Delay in administration of justice, (ii) Problem associated with grant and processing of bail (iii) Inability of courts to optionally utilize available sentencing options.

Bail:

The issue of bail in criminal matter is a constitutional issue anchored on the proposition of the law that an accused is presumed innocent until the contrary is proved.[47] Bail itself is an undertaking to pay to the court a certain sum to secure the release from custody of the accused person temporarily on the guarantee that the person bailed would appear in court on a later date. If the accused however runs away from prosecution in court, the said money is forfeited. Upon this undertaking the State temporally releases the accused on bail to a surety pending the trial and determination of his matter subject upon fulfilment of certain terms.

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[45] http://www.Prison.gov.ng. Accessed 31/10/2017.

[46] Amnesty International Global Death Penalty Report (2025) Death Penalty. https://www.amnesty.org/en/whatwe-do/death-penalty/ Accessed on 2/7/2026

[47] S.N. Imo "Hon. Justice S. M. A. Belgore, GCON, CIN – His Career and Policies" in T. A. Oyeipo, *et al (Ed), Judiciary and Democracy in Nigeria. Essay in Honour of Hon. Justice Saliku Modibo Alfa Belgore CJN. (Rtd) GCON (Enugu: Snaap Press, Ltd, 2007). P 323.*

By this token, bail became both constitutional matter as well as statutory one hinged within the inherent jurisdiction of the court.[48] The rationale for the foregoing is not far-fetched; bail is an integral part of the fundamental right of every citizen enshrined in chapter four of the constitution.[49] Specifically speaking bail touches on the right to movement,[50] personal liberty[53] and fair Apart from the court; police at the investigation stage before the matter is charged to court has the power to grant bail to a suspect. Though bail is a constitutional matter, it is not ranted as a matter of course, it must be based on some certain condition (s) which is aimed at seeing the attendance of the accused person (s) to stand their al in a later date. To fulfill this condition the accused sureties enters into bond with the court who releases the accused person temporally upon fulfillment of the bail bond. It is imperative to note that the sum of money or conditions to be fulfilled for the grant of bail are not codified in the criminal statutes, this means that same, are left to the fluid discretion of the court with a limb warning that it should be both judicially and judiciously exercised. It is to be noted that in the exercise the discretionary power of the court, the court has been noted to impose stringent bail condition which the accused finds difficult to fulfill, resulting in his being remanded in prison custody. Some of these conditions range from the accused to deposit with the court clerk an original certificate of occupancy, produce two sureties who must be directors is State or Federal Ministries, deposit of international passport and an undertaking to pay sums sometime outrageously fixed even for cases ordinarily bailable. In view of the stringent nature of bail in some court, accused person finds it difficult to fulfill the bail condition and process his bail, which failure takes the accused to prison in a charge he would ordinarily not have been taken to correctional. On allegation of capital offence or armed robbery most court hide under the cloak at the offence is capital in nature and therefore not bailable even when proper application is before the court in line with the criminal statutes. The instance of court on not granting bail for capital offences even in cases that are prima facie fanciful and watery gave the police the effrontery to capitalize on legal loophole and judicial trepidation, to charge most suspect under armed robbery to ensure that the accused remain in custody, particularly, where gratification is sought but refused by the accused. It is crystal clear the above views suggests that the Police compound the problems of the Correctional service. It is applaudable the provision ACJA as touching bail which provides for liberal policy with respect to the grant of bail to a suspect though sadly applies to federal courts handling federal offences.

Conclusion

Delay in dispensation of justice in Nigerian remains the most disturbing and major challenging aspect of criminal justice. In the country, criminal trials are often delayed

[48]Section 396 (1) – (7)

[49]Section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria

[50]E. Eko, The Law of Bail: Second Edition (Ibadan: Lifegate Press Publishing Ltd 2005), p. I. [53] Constitution of Federal Republic of Nigeria 1999.

most especially where the person standing trial are able to exploit the weaknesses in the system as a result cause delays or frustrate the trial. This trend in the judicial process is condemnable.

It is submitted that the people who benefit mostly from the deficit in the area of criminal justice system are mainly the politicians and political office holders when they are to stand trial for corruption and abuse of offices. Many of them can afford to employ the services of Legal Practitioners who often drag trials to the point that conviction becomes unlikely as witnesses may no longer be available or where the witness is available some facts relating to the case would have been distorted, or during which the defendant gain immunity due to a political post or winning of election while trial was pending. The country is thus confronted with the unfortunate situation in which the criminal justice system has lost its capacity to conclude criminal trials involving the wealthy and politically exposed persons.

Meanwhile, the population of prisoners, mostly poor people who are held in prison custody without trials is growing. Some other factor that occasion delay in court is obsolete rules of procedure which has been described as "thematic obsolesce of our procedural rules".[51] Another side of the divide is delay coming from the parties themselves due to their inability to produce their witnesses or to personally attend the court to give evidence. Sometimes, it could be as a result of the modus in which the trial judge sit, some sit very late only to rise minutes after for school runs or health issues, while some sit occasionally like three times a week and the likes.[52] Associated with this, is the act of some judicial personnel in adjourning matter for ruling which would have been simply dispensed with by giving bench ruling.

Importantly too, is the fact that our judiciary still takes evidence in long hand as opposed to electronic gadget except for the launch into electronic recordings made by the Lagos State Judiciary in the recent times. What more, the totality of the foregoing factors is the reason why cases in court continue to foot-drag endlessly for years at the detriment of the chagrin of the prison/ correctional service. This is a pointer to the reason why 70% of prison population is filled with awaiting trial inmates. In the light of the foregoing it is submitted that the court directly exacerbates the prison population and by implication occasion problem to the correctional centres and prisoners. What

[51]O. Olatawura. "The Judiciary, the Legislative, the Police and Justice Delivery" in Nigeria Judges Conference. 2003 Op Cit. p. 87; Edet Effiom v. The State (1995)1 SCNJ 1 where the delay spanned 6 years and the accused according to the apex court, had "degenerated to a bag of bones".

[52]O. Obasanjo, "Address at the All Nigeria Judges Conference 2003" in All Nigeria Judge Conference 2003 (Ibandan: Spectrum Books Ltd, 2005), pp. 20 – 30.

may be added strongly is that with ACJA coming into operation and the provisions religiously followed especially as touching speedy trial of cases,[53] we believe these challenges will be a thing of the past. Therefore, every State in Nigeria need to speedily domestic ACJA by their State House of Assembly inorder to tackle this menace of delayed criminal proceedings and over population of the correctional centre.

Recommendation

In view of these obvious challenges, we hereby make recommendations as follows:

1. States that are yet to domesticate the Administration of Criminal Justice Act should do so as a matter of urgency in order to speed up the course of justice.
2. War against corruption should be taken seriously, as it will go a long way in repositioning agencies that are involved in criminal justice delivery.
3. One other angle to reducing overcrowding in the correctional centre is alternative sentencing or suspended sentencing and the most common form of this aspect of criminal justice delivery is one in which those found guiltily of minor offences are sentenced to terms of community service rather than imprisonment.
4. In order to checkmate the activities of the Correctional Centre Officers, it is hereby suggested that there shall be established independent and transparent Correctional Centres Inspectorate with a definite role assigned to them to carry out inspection visits to Correctional centre, Police stations, and State CIDs and publish their findings quarterly. If this posture is taken, the issue of corruption and prisoners' welfare would have been taken care.

References

Alemika, E. E. (2003). Penal Policy, Prisons Condition and Prisoners' Rights in Nigeria: New Vista in Law, Vol. 2 (Jos: Faculty of Law, University of Lagos Publication)

Akpoghomeh, T. U., et al. (2024, December). A decade of the ACJA: Charting the course of Criminal Justice Reform in Nigeria. Law and Society Magazine.

Ayorinde et al, (2009). A Reformatory Approach to the Criminal Justice in Nigeria (19th February, 2009)

B. Ayorinde *et al,* (2014) An article titled "A Reformatory Approach to the Criminal

[53]T. A. Oyeyipo, "Chief Judge Inaugurates Rules Review Panel", The Punch, Wednesday, 2003, p. 10: 1 A, Ayua, and O. Guebadia, Technical Report on the Nigerian Court Project (Lagos: Nigerian Institution of Advanced Legal Studies, 2003), p. 7. P.

Justice in Nigeria" Mondaq on twitter last updated 18th February, 2014.

Black's Law Dictionary, (2004) 7th Edition (Dallas USA: West Publishing Co.)

Cressy, D. R. (2009). Reading in Human Rights in Nigeria (Lagos: Innovative Communications)

Edet Effiom v. The State (1995)1 SCNJ 1

Eko, E. (2005). The Law of Bail: Second Edition (Ibadan: Lifegate Press Publishing Ltd)

Ifowodo, O. (1999). The Nigeria Magistrate and the Offender (Benin City: Ethiopia Publishing Cooperation)

Imo, S.N. (2007). 'Hon. Justice S. M. A. Belgore, GCON, CIN – His Career and Policies' in T. A. Oyeipo, *et al (Ed), Judiciary and Democracy in Nigeria. Essay in Honour of Hon.*
*Justice Saliku Modibo Alfa Belgore CJN. (Rtd) GCON (*Enugu: Snaap Press, Ltd)

Niki Tobi, (2002). 'The Decision to Prosecute' UniMaid vol. I. L. J. 1981, pp. 15 – 22;

Niki Tobi, (2002). 'Delay in the Administration of Justice' in C. C. Nweze C. C. (ed). *Justice in the Judicial Process: Essay in Honour of Justice Eugene Uboezonu, JCA* (Enugu: Forth Dimension Publishing Limited)

Obasanjo, O. (2003). 'Address at the All Nigeria Judges Conference 2003' in *All Nigeria Judge Conference 2003* (Ibadan: Spectrum Books Ltd, 2005), pp. 20 – 30

Okafor, C.N. (2024). Analyzing Access to Justice in Nigeria: A focus on the Administration of Criminal Justice Act, 2015. Zenodo. Zenodo.org

Okoro, A. O., & Obhuo, O. F (2025). Implementation and Challenges of the Administration of Criminal Justice Law, National Open University Journal of Criminology and Security Studies, 6 (1), 1-15

Olatawura, O. (2005) The Judiciary, the Legislature, the Police and the Justice Delivery (Ibadan: Spectrum Books Ltd)

Oyeyipo T. A. (2007) 'Chief Judge Inaugurates Rules Review Panel'. The Punch Newspaper of Wednesday@ P. 10

Owoade, M. A., (2000). 'Criminal Justice Administration in Nigeria' in J. A. Yakubu

(ed), *Administration of Criminal justice in Nigeria: Essay in Honour of Justice Mohammed Lawal Uwais* (Ikeja: Malthouse Press)

Rawls, J., (2007). "A Theory Justice" in A. B. Dambazau, Criminology and Criminal justice (Ibandan: Spectrum Books Ltd, P. 36.

Reports and Official Statistics

Administration of Criminal Justice Monitoring Committee. (2023). Implementation Report on ACJA 2023. Abuja: Federal Ministry of Justice.

CLEEN Foundation. (2024). Study on compliance with ACJA/ACJL in eight States: Edo, Delta, Bauchi, Sokoto, Katsina, Jigawa, KKwara, Cross River-Survey of 1,658 Respondents (MacArthur Foundation Funded Project). Lagos: CLEEN Foundation.

Nigerian Correctional Service. (2024). Annual Report and Statistics on Inmates 2023-2024: *Over 80,000 inmates for 50,000 capacity, 68% awaiting trial*. Abuja: NCoS.

Nigerian Bar Association Criminal Justice Reform Committee. (2022). *NBA Criminal Justice Reform Committee Report* 2022. Abuja: NBA

Legislations /Statutes

Administration of Criminal Justice Act, 2015 (2015), Laws of the Federal Republic of Nigeria

Constitution of the Federal Republic of Nigeria 1999 (As Amended).

Criminal Procedure Code (CPC) Cap C41, Laws of the Federation of Nigeria, 1990.

Criminal Procedure Act (CPA) Cap C42, Laws of the Federation of Nigeria, 2004.

Nigerian Correctional Service Act, (2019). Federal Government of Nigeria.

Nigeria Police Act, 2020, Act No. 2. Pub. L. No. 2, Vol. 107, Extraordinary Federal Republic of Nigeria Official Gazette (2020).