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Prospects and Challenges of the Administration of Criminal Justice Act (ACJA), 2015

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Abstract: *The Administration of Criminal Justice Act (ACJA) 2015, came like a messiah, ushering new hopes and reiterating existing rights and principles in the Nigerian Criminal Justice System which before now, had attracted so much odium and contempt from within and outside Nigeria. Ten (10) years after its enactment, it has become necessary to take stock of the gains as well as the shortcomings of the act; to see if has been able to achieve its objectives. This research adopted the Doctrinal research method. Although this research agrees that the ACJA 2015 is a bold and innovative intervention in the administration of criminal justice system, it found out that there still exist some challenges which if not tackled would make a folly of the entire process of the enactment of a new act for criminal justice administration.*
Keywords: prospects, challenges, administration, criminal justice act (ACJA), 2015

INTRODUCTION

The biggest achievement of Nigeria in recent times in its criminal justice system, is the emergence of the Administration of Criminal Justice Act, 2015 (ACJA). Prior to the enactment of the ACJA in 2015, the Criminal Justice System in Nigeria was largely governed by the Criminal Procedure Act (CPA) and the Criminal Procedure Code (CPC) applicable in both the Southern and Northern Regions of Nigeria, respectively. However, despite these existing legal frameworks, the criminal justice system was compounded by delays in trials and congested prisons just to mention a few. Cases (both civil and criminal) took a long time before they were concluded either at the trial or

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appellate courts. This was in addition to many other countless twists and chances strategically-positioned to clog the steering wheel of justice administration and distribution in Nigeria.[1]

A confirmation of these arguments were reflected in several cases. In the case of *Ariori v Elemo*[2], it took twenty years for the case to reach the Supreme Court after which it was sent back to the trial court for trial and hearing. In the case of *Edet Effiong Ukut* v *The State*[3], it took ten years for the case to reach the Supreme Court for conclusion. While in the case of *Al-Mustapha Hamzat* v *The State*[4], the defendant/appellant was arrested in October 1998, and the matter went up to appeal in the year 2013. The life span of the entire case from the trial court to its conclusion at the Court of Appeal was exactly fifteen years. More recently, the case of Colonel Sambo Dasuki (Rtd), the former National Security Adviser (NSA) to President Goodluck Ebele Jonathan-led administration comes to mind. He was arrested on 29th of December, 2015 and released on the 24th of December 2019 from detention. In *Attorney General of Ondo State* v *Attorney General of the Federation*[5] , an attempt was made to impose a time frame within which to conclude corruption cases and it was rejected by the Supreme Court. By that decision, the stage was inadvertently set by the Supreme Court, for the delay of cases early in the country's fight against corruption, and it became the order of the day. Section 40 of the Economic and Financial Crimes Commission Establishment Act 2004, which attempted to regulate the exercise of judicial discretion in respect of the grant of stay of proceedings was also subsequently struck down.

In view of these challenges, it became obvious that there was a need for effective criminal justice reforms which necessitated urgent actions and campaigns that led to the enactment of the ACJA 2015. The ACJA 2015 was enacted to ensure that the administration of Criminal Justice System, promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interest of the suspect, the defendant and the victim.[6]

In the ACJA 2015 a deliberate effort is made to transform the Nigerian criminal justice system from its present state of retributive justice into a restorative justice system. The ACJA 2015 addresses a wide range of issues that had prior to this time, obstructed the efficient flow of justice

[1] Akamba J. Agbor, 'Problems and Prospects of Administration of Criminal Justice Act (ACJA) 2015' (2016) <www.academia.com> accessed 14 August 2021.
[2] SC 80/1981[1983] ANLR 1.
[3] [1995] LLJR-SC.
[4] [2013] LPELR-20995(CA).
[5] [2002] 9 NWLR (Pt. 772).
[6] ACJA 2015, s 1.

delivery which consequentially resulted in poor output in terms of number of dispensed (either convicted, discharged or acquitted) criminal cases by the judiciary and also increased the number of inmates awaiting trial. In achieving its objectives, the ACJA was divided into forty-nine (49) parts, dealing with various aspects of criminal justice administration.[7]

However, despite the laudable provisions contained in the ACJA 2015, there still exists some challenges impeding on the full implementation of this Act. This research therefore seeks to identify the various challenges plaguing the full and efficient implementation of the Act.

INSTITUTIONAL CONSTRAINTS IN CRIMINAL JUSTICE ADMINISTRATION

The administration of criminal justice requires a precise and well-organized supervision and harmonization of the various criminal institutions who are all stake holders in the administration of criminal justice in the country. This is however not the case despite the presence of a seemingly "perfect" law in the form of the ACJA. These institutions includes:

The Police Force

The entire criminal process, starts from the table of the police force. The police serves as the gateway into the world of criminal justice administration either through crime reports by the public, or awareness and discovery of crime by its own resourcefulness. The Police is one organisation that maintains regular and direct contact with the public, which has accorded it the opportunity of being regarded as "omnipotent" and "omnipresent" among the other components of criminal justice administration, institutions[8] or bodies.

Although the duties of the Police are integral in the administration of justice, the police have been found to be starved of resources by their employers and so cannot perform credibly well as their counterpart in developed countries with respect to investigation, crime detection and prevention. The daily reports of killings and endless kidnappings going on across the country without any form of comprehensive prosecution are a clear testimony of the inefficiency of the police force. The police force is inefficient, low-skilled, lacking in discipline, corrupt and also involved in extra-judicial killings. These were the complaints that led to the recent uproar by the End-SARS

[7] Y. Akinseye-George, 'An Overview of the Administration of Criminal Justice Act 2015' < https://nji.gov.ng> accessed 14 August, 2021.
[8] Akamba J. Agbor, 'Problems and prospects of Administration of Criminal Justice Act (ACJA) 2015' , 2016, University of Ibadan, Ibadan, Nigeria.

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Movement[9] led by the Nigerian youths against a section of the Police force who were notorious for being corrupt and oppressive. The Police investigate, prosecute and even pass judgment in their police stations[10]. They aid and albeit criminals from being prosecuted or escape justice by collecting unofficial pay[11]. They are even hired by citizens to violate other people's rights.

In *Ehindero v Federal Republic of Nigeria*[12], the appellant, a former Inspector-General was arraigned before the High Court of the Federal Capital Territory, Abuja with one other by the ICPC for conspiracy to confer corrupt advantage upon themselves and the substantive offence. Although the appeal was upheld and the appellants were later discharged by the Federal High Court, it still does leaves a sour taste in the mouths of citizens when discussing the reputation of police officers.

Another example of police impropriety, is the case of Abba Kyari, the infamous Deputy Commissioner of Police and erstwhile head of the Nigerian Police Intelligence Response Team who was suspended by the Inspector General of Police for his alleged connection with the convicted fraudster named Ramon Olorunwa Abbas, aka Hushpuppi, who is now facing jail term in the United States for engaging in high tech organised crime[13]. The suspended DCP is currently being remanded at a correctional facility in Abuja and facing trial over allegations of drug trafficking. However this case goes, the story of Abba Kyari doesn't do any good to the image of the Nigerian police both locally and internationally.

Lastly, is the case of Mustafa Balogun, who was appointed as the Inspector-General of Police in March 2002 and was forced to retire because of widespread charges of corruption in January, 2005 and adjudged as the most corrupt officer in recent times with a plunder of N16 billion Naira in loot[14]. These are all typical cases of how the Police may well undermine the purpose of the ACJA.

The Judiciary

Judicial personnel are regarded as ministers in the temple of justice and are divided into 2 groups namely; the Bar and the Bench. Members of the Bar are lawyers most of whom are notorious for

[9]End-SARS Movement is a decentralized social movement, involving a series of mass protest against police brutality in Nigeria. The slogan is a call for the end of the Special Anti-Robbery Squad, a notorious unit of the Nigerian Police with a long record of abuse on Nigerian citizens.
[10] Akamba J. Agbor, 'Problems and prospects of Administration of Criminal Justice Act (ACJA) 2015' , 2016, University of Ibadan, Ibadan, Nigeria.
[11] Ibid.
[12] [2018] All FWLR (Pt. 934) 1150.
[13] Rueben Abati, 'Abba Kyari: A Fall From Grace', <https://www.premiumtimesng.com> , accessed August 21, 2022.
[14] Ibid., https://www.thestreetjournal.org accessed on May 2, 2022.

delay tactics ably captured as "stay of proceedings" in respect of criminal matters before the court[15] and unnecessary applications for adjournments, thereby compounding the problems of criminal justice administration. This enigma is illustrated in the story of a lawyer who gave an old file to his son who was recently called to Bar to appear in court. The son came back from court triumphantly in the euphoria that his first baptism was a success. "Dad I have concluded the matter and the judge gave a bench ruling on it". "You did what?!" The father shouted in shock and with a clenched fist he said, "The file paid all your school fees!"

Despite the provisions in the ACJA that completely cancels stay of proceedings in criminal cases and also the provision of a time frame for the conclusion of criminal cases in courts, lawyers still come up with frivolous applications for adjournments. And when such applications are refused, some lawyers would openly disrespect the court by throwing tantrums and casting aspersions on the integrity of the court.

The problem of the Bench on the other hand can be traced to the appointment of judges. In the 1960's, appointment to the Bench was strictly on merit. Legal practitioners with sound knowledge of the law and a reputation of honour and integrity, were invited after at least 10 years in practice to the Bench. These legal practitioners were usually identified and recommended by sitting judges. The provisions of the 1999 constitution as regards the appointment of judges, has no doubt encouraged the politicization of this hallowed position. The appointment of a Justice of the Supreme Court is now done by the President on the recommendation of the National Judicial Council, subject to the confirmation of such appointment by the Senate[16]. This makes the appointment process more politically-inclined and very easy for it to be manipulated to suit the whims and caprices of the political class.[17]

The poor funding of the judiciary is also another challenge. Despite being over-worked, there's no commensurate pay. Whereas, the members of the Executive and Legislature smile home every day with scandalous remunerations and allowances. Recently, the Magistrates in Cross-River State had to embark on a strike over months of unpaid salaries. The conditions under which our Judges have to work are alarming and unhealthy. The courts are inadequate and ill-equipped, Judges sit in one spot for five to six hours at a stretch, preside over cases numbering over 30 daily, write in longhand,

[15] ACJA 2015, s306
[16] CFRN 1999, s. 231.
[17] A.A Babalola, 'Appointment, Promotion and Renumeration of Judges in Nigeria: The Need for Change', *Nigerian Tribune Newspaper*, May 27, 2021, <https://tribuneonlineng.com >, accessed May 2, 2022.

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fully robbed, under a hot courtroom without air-conditioning or sufficient lighting. All these has affected the quality of justice delivery in unimaginable terms.

Furthermore, the military style transfer of judges at the Federal and State High Courts is such that does not give the judges on transfer adequate time to round up part heard cases in their courts and ipso facto throws spanner in the works of such cases[18]. Not only are part heard cases affected, fresh and pending cases are also not spared, as the affected judges immediately freezes actions on them and they are adjourned. The adverse side effects of the abrupt transfer of judges has continued to choke and frustrate speedy dispensation of justice and the entire judicial process[19]. This has in no small way affected the overall performance of the judges not to talk of the cost and security implications of such movements.[20]

Finally, the judicial workers are not left out from the challenges with the judiciary. It has been argued that the trouble with the judiciary is located at the root of its entire structure. From the court gatemen to bailiffs, clerks, registrars, and messengers down to typists and other officials who play equally very important roles in the administration of justice. This is because most times court processes are not served on parties except money changes hands between litigants/counsels and court official or the police and prison official who complain of lack of logistics. All these, and many other reasons for the umpteenth times, has hindered the wheel of justice from grinding on full development.

The Prison Service

The Prison service falls under the Exclusive legislative list under the Nigerian Constitution, which makes it under the control of the Federal government. One of the major problems with this arrangement is that decisions are made without recourse to the state input where the impact is mostly felt. Therefore, the prison services are not properly supported or funded with the needed facilities and resources in the states where these prisons are located. A result of which, there are overpopulated prison cells which has strained existing structures leading to health consequences, pitiable and scanty infrastructure, and miserable sanitation due to overcrowding. The inadequate resources for prison services is a bane to the realisation of the ACJA.

[18] M.E Omirhobo, 'Ways to Make the Transfer of Judges Meaningful and Purposeful in Nigeria', (2021), <https://dnllegalandstyle.com>, accessed May 3 2022.
[19] Ibid.
[20] Ibid.

Secondly, the Black-Maria transport service that conveys prisoners to court, is virtually presently non-existent. Families and relatives of persons who are in prison custody are required to pay for the transportation of the prisoners to court, or they are left behind. The absence of the defendant in court forestalls the trial and makes it impossible to attain speedy dispensation of justice which is one of the major objectives of the ACJA.

The Correctional Service Act 2019 in reaction to the provisions of the ACJA 2015 on sentencing, established the Nigerian Non-Custodial Service which is responsible for the administration of non-custodial measures including community service, probation, parole, restorative justice measures. However, this non-custodial services rendered by the prison service, exists more in its theoretical realm than it does physically. The Federal government is yet to put structures in place that would make it a reality. The courts are still at a loss on how to go about enforcing a judgment when the defendant is given a non-custodial sentence because the non-custodial service department of the Nigerian correction service is yet to swing into full action. There are no community service centres, probation service centers and rehabilitation centers for convicts on parole. So most Magistrates and Judges are still more comfortable with custodial sentencing leading to the continuous over-crowding of our prisons and thereby defeating the restorative justice agenda of the ACJA 2015.

Finally, there are no rehabilitation centres to help discharged prisoners fit back into the systems coupled with the stigmatization of prisoners by the society even when they have been discharged. This leads to depression and re-offending, which in turns impair the efforts of restoration and reintegration.

The Legal Aid Council

The Legal Aid Council has been in existence for over four decades, yet since its establishment and domestication in different states, it has remained largely ineffective. There are issues of poor funding, mismanagement of funds, lack of good staff, and lack of offices in the various states across the Federation. Language barrier is also another problem experienced by the Council, as counsels posted to those offices can hardly communicate in the local languages thereby making it very difficult to interview litigants and their witnesses leading to improper and ineffective representation in court during trial.

The Legal Aid Council is seen as a federal agency, and so does not enjoy the support or funding from the state governments in places where their offices are situated, leading to inadequate supply of resources. Their activities are not properly supervised which leads to situations of delays on account of the absence of legal aid counsel for a defendant and thereby affecting the administration

of justice. In the light of the above, one cannot but wonder the justification for maintaining the council talk less of requiring the ACJA to call for its aid in the administration of justice.

CHALLENGES ARISING FROM THE PROVISIONS OF THE ACJA

There are certain provisions of the ACJA that do not lend themselves to easy interpretation while others are simply impracticable. Even still, the application of some provisions of the ACJA are to an extent incompatible with some constitutional provisions. These challenges includes:

Challenges associated with Arrest

The CFRN 1999[21] provides that every person is permitted to have his personal liberty and cannot be deprived of except in the performance of a court order. This order has to be in respect of a criminal offence. It is either the court has found him guilty of committing a crime or he is being brought before a court for the execution of a court order or where there is a reason to suspect of his having committed a criminal offence, or to prevent him from committing a criminal offence.

The repealed CPA and CPC, provided for arrest before investigation and inquiry into a crime by the various agencies invested with prosecutorial powers. Unfortunately, the ACJA is following in the footsteps of its predecessors. For example, a person may be arrested and taken to the police station or a place of any other agency effecting the arrest and thereafter brought before a court for an order for remand which if granted, the suspect will be held in prison while the police have the excuse of either waiting for the Attorney General or DPP's copy of advice or hunting for evidence.[22] The ACJA allows this on the basis of application for remand provided for under Section 293(1) PART 30 - DETENTION TIME LIMITS which provides thus; "A suspect arrested for an offence which a court has no jurisdiction to try shall within a reasonable time of arrest be brought before a High Court for remand"

Going further, under section 10(7) of the ACJA, a suspect that was not charged before a court, can be released on the ground that there is no sufficient reason to believe that he has committed the offence even after spending countless number of days in custody. The question now is this, what would it have taken the police if proper investigation was conducted before the arrest was made? There have been situations were suspects have had to spend more 3 years locked up in prison custody only for the Department of Public Prosecution to say they have no case to answer. The suspect would have been denied access to justice, his rights suspended, the rule of law derogated

[21] CFRN 1999, s. 35.
[22] ACJA 2015, s.3.

and the dignity of the suspect impugned upon. All these because the cart was placed before the horse in our law.

What this research finds is that as regards the arrests of suspects, the ACJA has retained the old pattern in the previous legislation at the expense of investigation, inquiry and detection of crime. This is one of the major challenges of the ACJA as neither decongestions of prisons and courts nor speedy dispensation of justice will be achieved anytime soon. The importance and publicity given to arrest is more than the effort geared towards unveiling the crime. Thus an accused person is first declared guilty by the system before proven innocent.

Challenges associated with the Recording of Confessional Statements.

One of the major cause of delay in the trial of criminal cases is the denial or disowning of confessional statement by the makers[23]. The confessional statements are often times alleged to have been involuntarily made as it is alleged that the statements were made under duress[24]. Whenever this issue is raised the trial court is compelled to immediately adjourn the main case sine die and then begin a "trial within trial" to determine the voluntariness or otherwise of the alleged statement. The trial within trial must be concluded before the trial court can continue with the main case. This may take weeks and even months to conclude.

In order to ensure that this monster of "trial within trial" is decapitated, the ACJA provided for under Section 15(4) as follows; "where a suspect volunteers to make a confessional statement, the police officers shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means."

However, it is quite unfortunate that the Act made electronic recording of confessional statements optional instead of compulsory or mandatory. This can be seen from the use of the word "May" instead of "Shall" in section 15(4). The use of the word "May" has completely whittled-down what would otherwise have been a wonderful innovation.

In *Edewor v Uwegba*,[25] Nnamani, JSC stated as follows: "Generally the word "may" always means "may". It has long been settled that may is a permissive or enabling expression. In *Messy v Council*

[23] Iheanyichukwu Maraizu, 'Critique of Administration of Criminal Justice Act (ACJA) 2015 (2), The Guardian Newspaper, 30th November, 2015.
[24] Ibid.
[25] [1987] 1NWLR (Pt. 50) 313, 338.

of The Municipality of YASS[26] it was held that the use of the word "may" prima facie conveys that the authority which has power to do such an act has an option to either do it or not to do it"

In law, wherever the word "Shall" is used in a legislation, it connotes a command, and that which must be given a compulsory meaning[27]. Meaning the affected person or authority would not have any other option or would not be allowed to exercise his discretion in that matter. Thus, the Apex Court in *General Muhammadu Buhari v Independent National Electoral Commission*[28] (per Mukhtar, JSC) held that:

> When the word "shall" is used in a statute it connotes the intendment of the legislator that what is contained therein must be done or complied with. It does not give room for manoeuvre of some sort, or evasiveness. Whatsoever the provision requires to be done must be done, and it is not at all negotiable

However, on the other hand, whenever the word "May" is used, it means that the doing of a particular thing is optional and the affected person or authority has other options and can exercise his discretion as regards that issue[29]. This was the decision of the Court in the case of *E.Emopae v University of Benin.*[30]

Going further, the ACJA[31] provides for the recording of the statement of a suspect in the presence of a legal practitioner, an officer of the legal aid council or an official of a civil society organization or a justice of peace or any other person of his choice. Once again, the drafters of the Act choose to use the word "May" making it optional for the police to comply with that section of the Act and thereby rendering the innovation useless.

In *Charles v Federal Republic of Nigeria*,**[32]** the court held that the word "may" in section 17(2) of the ACJA was used to impose a duty on law enforcement officers for the benefit of individuals suspected of committing crimes that in the circumstance, the word would be construed as mandatory. Given also that the sections 15(4) and 17(2) are procedural rules for the benefit of a

[26] [1922] 222 SRNSW 494 per Cullen, C.J 497& 498.
[27] See Achineku v Ishagba [1988] 4 NWLR (Pt. 89) 411 and Bamayi v A.G Fed. [2001] 90 LRCN, 2738.
[28] [2008] LPLER-814(SC).
[29] Iheanyichukwu Maraizu, et. al
[30] [2002] 17 NWLR (Pt. 795) 139 at 150-153.
[31] ACJA 2015, s. 17(2).
[32] [2018] LPELR – 43922 (CA).

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suspect, they must be construed as imperative on the strength of the pronouncement of Idigbe, JSC in *Okegbu v State*[33] .

The court further held that to hold that the word "may" in section 17(2) of the ACJA was merely permissive will not serve to cure the mischief neither will such approach be in the interest of the public.

However in a similar appeal against the involuntariness of a confessional statement in *A.V.M Olutayo Tade Oguntoyinbo v Federal Republic of Nigeria*[34], the Court of Appeal in a split decision of 2-1, dismissed the appeal and held the view that by employing the word "shall" and the permissive word "may" in the same provision, the draftsman had made a distinction between the mandatory and permissive situations and the issue of electronic recording or recording in the presence of a legal practitioner falls in the latter category.

In a bid to breathe life into a rather lifeless provisions of the ACJA on this point, and to resolve the apparent conflict between the two decisions of the Court of Appeal in *Charles v Federal Republic of Nigeria* [Supra] and *Oguntoyinbo v Federal Republic of Nigeria*[35] , the Supreme Court in *F.R.N v Akaeze [2024]*[36] has held that the duty of the law enforcement agencies in Nigeria under sections 15(4) and 17(1)&(2) of the ACJA to record electronically confessional statement of suspect during criminal investigation in an audio-visual format is a mandatory obligation which permits no discretion and that failure to comply with the statutory requirement invalidates the purported confessional statement. With this decision, the apex court in the land finally brought the issue to rest with a final and progressive decision. However, there are still calls for the total amendment of those provisions of the Act by the legislature.

Challenges arising from the effect of the merging of the CPA and CPC into ACJA

The principal enactments regulating the criminal justice sector in Nigeria before the ACJA were the Criminal Procedure Act (CPA) (Southern States) and the Criminal Procedure Code (CPC) (Northern States). These enactments were repealed[37] and the ACJA replaced the two Acts with itself. Thus, making it the principal Act to be applied uniformly in all courts across the Federation. However, the ACJA in its Preamble stated that the Act is to provide for the administration of

[33] [1979] 12 NSCC 157 at 174.
[34] [2018] LPELR – 43925 (CA).
[35] Supra.
[36] [2024] 12 NWLR (Pt. 1951) 1
[37] Ibid., s. 493.

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criminal justice in the courts of the Federal Capital Territory and other Federal Courts in Nigeria, except the Court Martial.[38] From the above, one can simply infer that the state courts will not apply the provisions of the ACJA. The question begging to be answered now is; "What criminal procedure law will therefore apply in the Area Courts, Upper Area Courts and Magistrate Courts of the states seeing that the CPA and the CPC that previously governed these courts have been repealed, and the Federal Government does not regulate these courts , as they are not Federal courts?" This question is pertinent because apart from the FCT where Magistrate Courts are regulated by the Federal Government, other Magistrate Courts were enacted by the Magistrate Courts Laws of the various States of the Federation, Area Courts by the Area Courts Laws of the various Northern States while the High Courts of the various States were specifically created by the Constitution of the Federal Republic of Nigeria, 1999. Meanwhile, not forgetting the fact that the ACJA is yet to be domesticated in all the States of the Federation. What then would be the applicable criminal law in States that are yet to have their own domesticated version of the ACJA? Would they continue to operate on a repealed law?

The provision of the ACJA in Section 86 that the ACJA is applicable to all criminal trials and proceedings, except there is express provision made in respect of any particular court or form of proceeding leaves us further at a loss. The confusion now is whether the ACJA is covering the field in criminal jurisdiction. Covering the Field is a constitutional law principle which is mostly practiced in a Federal system of government in which a State legislative house possess the constitutional power to make laws in that State.[39] It is made manifest in two different situations. Firstly, where the constitution has covered the field on a particular subject matter, the National Assembly cannot make a valid law to that effect again[40]. Secondly, a State House of Assembly makes a law, which subject-matter has already being covered by an Act of the National Assembly, the Federal law supersedes[41] . Assuming but not conceding, that the ACJA is covering the field in criminal jurisdiction, can the Magistrate Court not created by an Act of the National Assembly apply an Act enacted by the National Assembly? If yes, in what cases and how will it apply? How about the several domesticated versions of the ACJA across the federation, in what courts will they apply seeing that the ACJA has already covered the field of criminal jurisdiction?

[38] Ibid., s. 2(1).
[39] Patrick Mgbeoma, 'Critical Analysis: Constitutional Doctrine of Covering the Field and its Applicability', <https://www.aaachambers.com>, accessed August 15, 2022.
[40] See Attorney-General of Ogun State v Attorney-General of the Federation [1982] 2 NCLR 166.
[41] See INEC v Musa [2003] 3 NWLR (Pt 606) 72.

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By the time the above argument is read together with the interpretation section where the ACJA[42] provides that "court" means Federal Courts and the Magistrates Court; and that "Magistrate's Court" means Magistrates courts established under the law of a state or of the Federal Capital Territory, there is a web of confusion created by the evasiveness of the language used in drafting the act. All these questions raised are important as they touch on a fundamental aspect of the administration of criminal justice in Nigeria, which is the jurisdiction of court. There is confusion as to the courts that have jurisdiction under the ACJA because, the constitution that created the State Magistrate Courts, prevents it from entertaining a criminal case where the alleged offence is a federal offence. While the ACJA on one hand, says the Act is applicable to only federal courts but on the other hand, in its interpretation section, includes the State Magistrate Courts as one of the courts that the Act applies to.

Challenges associated with the Prosecution of Cases

Prosecution is the process of instituting and conducting legal proceedings against someone who is alleged to have committed a criminal offence. By this, offenders are made to face the consequences of their actions and it also serves as a deterrent to those who might want to consider illegal acts.

The Nigerian Police is empowered to prosecute criminal cases in courts by the Police Act 2020, which is a law enacted by the National Assembly. Section 66 of the Police Act empowers police officers to prosecute cases before any Court, whether or not the information or complaint is laid in his name. The power given to the Police Force to prosecute cases was judicially-endorsed by the Supreme Court of Nigeria in *Federal Republic of Nigeria v Osahon & Ors*.[43] However, in spite of the clear statutory provision and elaborate judicial decisions on the power of the police to prosecute, there are still controversies on the nature and extent of that power. The controversy is as to whether or not the powers extend to Police officers who are not legal practitioners. The ACJA 2015 further provides under section 106:

> Subject to the provision of the constitution, relating to the powers of prosecution by the Attorney-General of the Federation, prosecution of all offences in any court shall be undertaken by;

(a) The Attorney-General of the Federation or a law Officer in his Ministry or Department;

[42] ACJA 2015, s. 494.
[43] [2006] 5NWLR (Pt. 973) 361.

(b) A legal practitioner authorised by the Attorney-General of the Federation; or

(c) A legal practitioner authorised to prosecute by this Act or any other Act of the National Assembly.

The implication of the above provision is that only the Attorney-General, or a law officer in the Ministry of Justice, legal practitioner authorised by the Attorney-General and legal practitioner authorized to prosecute by the ACJA or any Act of the National Assembly can hold the prosecutorial power in respect of criminal cases in Nigeria. Therefore, policemen and personnel of other agencies who are not legal practitioners but are involved in arrest and prosecution of offenders can no longer prosecute offenders before any court of law.

However, the ACJA unlike what it did with the CPA and the CPC in Section 493, failed to specifically repeal the said Section 23 of the Police Act (2004) (which is now section 66 of the Police Act 2020), thereby allowing the powers of the police to prosecute to still subsist. As a result, we still have police prosecuting cases at the magistrate courts. What then is the effect of the provision of Section 106?

Going further, the Director of Public Prosecutions (DPP) is directed by the ACJA to issue legal advice within two weeks of receiving the case file. In cases involving complicated legal matters, the two weeks provided might be too short for quality legal advice. In addition to that, there is no specific time stated in the Act within which the case file must be forwarded by the police to the DPP. The police can therefore hold unto the file for as long as they deem fit before sending same to the DPP to issue legal advice. Another area of concern as regards the prosecution of cases, has to do with the payment of expenses of witnesses as provided for under sections 251 and 252 of the ACJA. As important as it is, it has been difficult to implement. The reality on ground however, is that the State does not pay money either to the defense witnesses or the prosecution's witnesses citing paucity of funds and this has continued to discourage witnesses leaving a negative impact on criminal trials.

Challenges associated with Remand Order

Remand Order is an order made by the court detaining a person who has been charged with a crime until trial. In *Lafudeju and Anor v Johnson*[44], the Supreme Court of Nigeria, stated that "remand" means to send to prison or send back to prison from a court of law to be tried later after further

[44] [2007] LPELR-1795 (SC).

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inquiries have been made, often in the phrase "remanded in custody". In a remand proceeding, the defendant is brought before the court but the charge is not read to him, neither is his plea taken. However, the Magistrate orders for his remand without arraignment or grants bail pending arraignment. Although the accused person is present in court, a remand proceeding is a one-party affair[45]. The application for an order of remand is brought ex-parte which denies the accused person the right to respond[46].

The ACJA provides for a remand order where an accused person is brought before a court that lacks jurisdiction to try the case. The order is for the person to be remanded in prison custody pending investigation or receipt of legal advice.[47] This research has found that the provisions of the ACJA on detention time limits and order for remand is inconsistent with the provisions of the Constitution which is the grundnorm of the land, and from which other laws derives their validity.

The Nigerian Constitution under section 35 guarantees a person's freedom of liberty and requires that an arrested or a detained person shall within twenty-four hours of his arrest, be informed in writing and in an understandable language of the facts of the arrest or detention. It, also, provides for the arraignment of the suspect before a court within a reasonable time or to be released upon or without conditions. Where the arrest or detention is done in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day is provided by the constitution for the arraignment of the suspect in court.[48] In other cases, a period of two days or even longer may be considered to be reasonable depending on the circumstances.[49] A combined reading of sections 293 to 299 of the ACJA and section 33 to 46 of the Constitution clearly shows the existence of inconsistencies in the Act and the Constitution on detention time limit.

The first section of the Constitution[50] provides for the supremacy of the Constitution to wit; "This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria". This means that the constitution is binding on all citizens of the country, no matter how high or low and including the president of the country. This

[45] The Cable, Home Page: 'Infringing the fundamental rights of a suspect: Addressing remand proceeding in Nigeria', www.thecable.ng, accessed August 16, 2022.
[46] Ibid.
[47] ACJA 2015, s. 293-299.
[48] CFRN 1999 (as amended) s. 35 (5)(a).
[49] Ibid., s. 35(5)(b).
[50] Ibid., s. 1(1).

is the position of the court as seen in *Attorney-General of Lagos State v Attorney-General of the Federation.*[51]

Furthermore, section 1(3) of the Constitution[52] provides that: "If any law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void."

The above provision lends itself to easy interpretation, as it means that any law whose provisions conflicts with that of the constitution shall be inapplicable to the extent of its inconsistency.[53]

This brings to the fore the inconsistency rule in constitutional law. This principle arises in every situation where there exist an inconsistency between the Act of the National Assembly or the law of a State and the provisions of the constitution. At every occasion where such a situation arises, the Constitution is to have predominance over that other law to the point where the inconsistency exists. By implication, even the ACJA is expected to be answerable to the Constitution. The Court while explaining the principle of the supremacy of the constitution[54], had this to say in *Peoples Democratic Party v Congress for Progressive Change:*[55]

> The Constitution of Nigeria is the grundnorm, otherwise known as the basic norm from which all the other laws of the society derived their validity. Each legal norm of the society derived its validity from the basic norm. Any other law that is in conflict with the provision of the Constitution must give way or abate.

Furthermore, where in the exercise of legislative powers, a law is enacted on a subject matter which the constitution has already made provisions covering, the other law must give way to the provisions of the constitution. This principle is recognized as the doctrine of covering the field and it involves any contradiction that may arise from such other laws and the requirements of the

[51] [2004] All NLR, 90.
[52] CFRN 1999 (as amended), s. 1(3).
[53] See Inspector-General of Police v All Nigeria Peoples Party and Ors [2007] 18 NWLR (Pt. 1066) 457 C.A.
[54] Ibid.
[55] [2011] 17 NWLR (Pt. 1277) 485 at 511.

constitution, in any case except the contrary is shown, the constitution will prevail. Hence in *INEC & Anor v Musa*[56] (per Ayoola JSC), the Supreme Court of Nigeria maintained that:

> Some interrelated propositions…flow from the acknowledged supremacy of the constitution… First, all powers, legislative, executive, and judicial must ultimately trace to the constitution. Secondly, the legislative powers of the Legislature cannot be exercised inconsistently with the Constitution. Where it is exercised, it is invalid to the extent of the inconsistency. Thirdly, where the Constitution has enacted exhaustively in respect of any situation, conduct, or subject, a body that claims to legislate in addition to what the Constitution had enacted must show that it has derived the legislative authority to do so from the Constitution. Fourthly, where the Constitution sets the conditions for doing a thing, no legislation of the National Assembly can alter those conditions in any way directly or indirectly, unless, of course the Constitution itself as an attribute of its supremacy expressly authorized.

If the reasoning of the Supreme Court in the above cases is anything to go by, it presupposes that the provisions of section 293-299 of the ACJA is inconsistent with the constitution and as such inapplicable. This would in no small measure create problems in the application and operation of the ACJA.

Furthermore, the ACJA[57] provides that when a person is arrested for an offence, he should be brought before a Magistrate Court for remand within a reasonable time where the court lacks jurisdiction to try the offence. However, the Constitution did not make provision for criminal cases in courts without jurisdiction.

This research finds an *ex parte* application based on the principles of fair hearing particularly: *audi alterem partem* and *nemo judex in causa sua,* strange to criminal law. How will the court examine the reason for the arrest; the request for remand; and become satisfied that there is a probable cause to remand the suspect pending the receipt of a copy of legal advice, without attempt on the nature

[56] [2003] 3 NWLR (pt. 806) 72.
[57] ACJA 2015, s. 293(1).

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and seriousness of the alleged offence? Or reasons whether the accused person is involved in its commission and believe the accused person may abscond without going into the subject matter which it has no power to in *ex parte* application?

Every time a defendant is arraigned before a court for an alleged offence, there is a presumption of innocence until the contrary is proved[58]. The constitutionally guaranteed presumption of innocence is extant and available to an accused person who has been arrested or detained upon reasonable suspicion of having committed a crime until he is properly arraigned, tried and rightly convicted by a court with competence and jurisdiction[59].

In the case of *Ahmed v The State,*[60] the Supreme Court held that:

"It is a cardinal principle in criminal proceedings that the burden of proving a fact which if proved would lead to the conviction of the accused is on the prosecution who should prove such fact beyond reasonable doubt"

Proof beyond reasonable doubt cannot be determined in a court that has no jurisdiction and on the pretext of waiting for a copy of legal advice. The remand application process and the whole gamut in it impedes the purpose of justice and the rights of the accused person. It makes the prosecution irresponsible and lazy about work yet allows them to seek assistance from the court at the expense of the other.

Ideally, before a defendant is brought to court, evidence that shows that he committed the offence for which he is charged must be ready. The case must be ripe for hearing and not for further investigation[61]. The Nigerian criminal jurisprudence is accusatorial and not inquisitional. The detention time limit provided by the ACJA[62] arrogates too much vires and thus contradicts the provisions of the constitution. The ACJA cannot hope to bring a solution by aggravating the process itself.

Unlike the ACJA which allows an arrested suspect to be brought before a Magistrate Court for remand order where it has no jurisdiction to hear the case, the Edo State ACJL[63] provides that such suspect should be arraigned before the High Court for remand. The High Court is a court of

[58] CFRN 1999, s 36(5).
[59] See Ahmed v C.O.P [2012] 9 NWLR (Pt.1304) at 104.
[60] [1999] 7 NWLR (Pt. 612) 641 at 673.
[61] See Omotayo v State [2013] 2 NWLR (Pt. 1338) at 235 and Abru v State [2011] 17 NWLR (Pt. 1275) at 1.
[62] Ibid, Part 30; s. 293-299.
[63] ACJL of Edo State, 2016, s. 293(1).

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unlimited jurisdiction and its jurisdiction can only be altered by the Constitution[64]. This is a much better approach to remand proceedings. Unfortunately, the Edo State ACJL came after the ACJA, making it impossible for the draftsmen of the ACJA to take a cue from it. The new ACJL of Delta State, 2022 following in the footsteps of Edo State ACJL has provided for remand applications to be made at the High Court[65].

Challenges in the sentencing of a Pregnant Woman

Under section 404 of the ACJA 2015, "Where a woman found guilty of a capital offence is pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned".

Criminal legislations[66] in the past provided that death sentence shall not be passed on a woman who is pregnant and convicted of a capital offence, but that her death sentence shall be substituted with imprisonment for life. Recently, the Administration of Criminal Justice Law of Lagos State 2007[67] was also amended to reflect the position of previous legislation.

The provision of the ACJA that allows sentencing a pregnant woman to death but staying her execution until after delivery and weaning of the child, has proven to be more retributive than the previous legislation, when it should have been restorative. The provision of 404 of the Act does not consider the welfare of the child whose interest should have been paramount to the makers of the law. A child thrives from the attention of his/her mother and therefore should not be deprived of his birth mother's attention except it is shown that the child will come to harm.

Recently, the trend internationally is a departure from death penalty. Death penalty has been abolished in many jurisdictions and thus the provision of sentencing a pregnant woman to death is more a digression from the internationally accepted trend and should be amended. Although, one may argue that a woman who takes the life of another has no right to life just because she is nursing a child, that position is clearly more retributive than restorative. Section 404 of the ACJA 2015, is therefore against the restorative spirit of the Act.

[64] CFRN 1999, ss. 257 and 272.
[65] ACJL of Delta State, 2022, s. 158(1).
[66] Criminal Procedure Act, s. 368 (2) and Criminal Procedure Code, s. 270 and s. 271(3).
[67] Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State 2011, s302 (2)

Challenges Arising from Poor Funding

At the centre of most of the challenges discussed earlier, is the issue of poor funding. This disease has eaten deep through all the various institution involved in criminal justice administration and there have been endless complaints from officials of these institutions in this regard. From the training of personnel, to the provision of community service centers, probation service centers, rehabilitation centers for convicts on parole, provision for cost of informing families or next of kin of arrested persons of their arrest, provision of electronic recording device at the police stations, provision of compensation for witnesses, provision of recording equipment for judges, so they do not write in long hand amongst others, all require funding. The continuous failure of government to provide adequate funding for the relevant agencies, has left the implementation of the ACJA in a crippled state. For any progress to be made with the implementation of the Act, it is imperative and very urgent for the Federal and State government to make substantial investment and budgetary provisions in both human and material resources.

Challenges from the failure of the three Arms of Government

Nigeria has three arms of government namely the executive, the legislature and the judiciary. First among the three organs of government, is the executive. It is the arm of government that is responsible for the day-to-day administration of the state[68].

If there is one arm of government that treats court orders with levity, contempt and displays total disregard for the Rule of Law, it is the executive. The investigation and prosecution of suspects in cases involving high profile, corrupt politicians, have had the body language of the leaders and not the rule of law dictating the pace of criminal prosecution. They manipulate the criminal justice institutions under their control against the law and starve them of funds to get them to act in accordance with their personal whims and caprices. If the very arm of government that is supposed to be wary of and enforce the law shows brazen disregard of the law[69] in the face of its citizens, who then will have confidence in the Rule of Law? In the case of *Governor of Lagos State v Ojukwu*[70] the court held thus:

> If the government treats Court order with levity and contempt, the confidence of the citizen in the courts will be seriously eroded and the effect of that will be the

[68] Leke Oluwalogbon, Stephen A. Lafenwa, "Nigerian Politics', (2020), Springer Nature Switzerland AG.
[69] Ibid.
[70] [1986] 1 NWLR (Pt. 18) 621.

> beginning of anarchy in replacement of the rule of law. If anyone should be wary of the orders of the Court it is the authorities, for they, more than anyone else, need the application of the rule of law in order to govern properly and effectively

No matter how beautifully couched the provisions of the ACJA may be, if the executive fails to enforce them and respect the rule of law, the hope for an effective criminal justice system will only remain a mirage.

The legislative arm of government is in charge of law making. The legislature makes the laws that defines the rights obligation of the people and the various arms of government[71]. It defines the rules of conduct of various actions and functions affecting the well-being of the collective good of the society[72]. The legislature is saddled with three major responsibilities to wit; law making, representation of the electorates and overseeing the executive arm of government to ensure that government is held accountable to its people[73]. However, the members of the legislatures have failed in their constitutional responsibilities and have displayed gross incompetence time and time again with the quality of laws made by them. Most of the pieces of legislation we have today, are obviously photocopied and pasted into the system without industry. Thus the laws are filled with loopholes, impracticable and inapplicable provisions, as well as provisions that are at variance with other pre-existing laws. The ACJA 2015, which is the subject matter of this research, is filled with numerous contextual constraints. From the web of confusion created by the evasiveness of the language used by the draftsmen, to provisions whose impact has been greatly whittled down because they were made optional and provisions that appears to challenge the supremacy of the constitution. One cannot but wonder how the Administration of Criminal Justice Bill was able to scale through the microscopic eyes of both chambers of the National Assembly without these constraints spotted before it was passed into law. Regrettably, the Act with all its flaws is still being domesticated hook line and sinker by the various states and so the cycle of ineffective laws continues to run throughout the federation.

[71] Boris Odalonu, 'The Role of Legislature in Promoting good governance in Nigeria', https://www.researchgate.net accessed November 11, 2022.
[72] Ibid.
[73] Ihedioha Emeka, 'The Legislature: Roles, misconceptions and experience in democratic Nigeria, Being extracts from a paper presented by the Deputy Speaker of the House of Representatives, Emeka Ihedioha, at a public lecture organised by the Department of Political Science, University of Lagos, Retrieved from https://www.vanguardngr.com accessed November 11, 2022.

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Furthermore, members of the legislature are handicapped in their role to oversee the executive as they were installed as cronies into positions of authority at the National Assembly by the members of the executive. Thus we see situations where ministers, government appointees and even heads of government institutions would blatantly refuse to honor summons from the House to explain how they manage what they hold in trust for the people and the offices they occupy[74]. Threats to arrest heads of executive government agencies and institutions have yielded no positive result, as no chief executive have been arrested on the order of either the Senate or House of Representatives, thereby making a mockery of the oversight functions given to them by the constitution.

The Judiciary is the organ responsible for interpreting the laws made by the legislature to the general public and punishment of offenders. They serve as the custodian of the constitution and safeguard the right and liberties of citizens. They settle dispute between individuals, organisations and different levels of government[75]. However, the judiciary which is the third arm of government has been placed in such an unfortunate situation where the very law that established them does not grant them total financial independence and autonomy[76]. The 1999 Constitution provides for the funding of both Federal and State Courts under sections 81(3), 162(a) and 121(3)(b). However despite the constitutional provisions and the decision of the Federal High Court, sitting at Abuja, in the case of *Judicial Staff Union of Nigeria v National Judicial Council and 73 ors*[77], the Executive at the State level are reluctant to comply, hence the financial difficulties of the judiciary. The endless strike action embarked upon by judiciary workers have been predicated on this. The judiciary is the main arm of government directly involved in the administration of the justice sector, yet it has continued to suffer suppression and intimidation by the executive[78]. The suppression and intimidation of the judiciary has affected the way and manner justice is dispensed by the judiciary[79]. Sometimes, this plays out as a brazen attack on the judiciary by the executive and it becomes clear to all that it is a frontal attack by the executive[80]. An example of this was the recent invasion of the homes of judges by agents of law enforcement[81]. At other times, the

[74] Leke Baiyewu, 'Reps threaten to arrest ministers, heads of agencies', (2020), The Punch, February 24, 2020.
[75] Princewill Ene, 'Three Arms of Government in Nigeria & their functions',(2021), https://www.walyben.com, accessed November 11, 2022.
[76] Ibrahim Tama Gambo, 'Financial Independence of the Judiciaries: A mirage or a Reality' (2019), Being a paper presented at the National Workshop for Chief Registrars, Directors and Secretaries of Judicial Service Commissions/Committee, September 4, 2019.
[77] Unreported Suit No. FHC/ABJ/CS/667/13.
[78] Benjamin Anyi, 'The Administration of Justice in Nigeria: Issues and Challenges', (2022) https://www.researchgate.net accessed August 23, 2022.
[79] Ibid.
[80] Ibid.
[81] The Guardian, Editorial: 'The curious invasion of Mary Odili's home', November 14, 2021.

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suppression and intimidation of the judiciary is in a more subtle form. In such cases, the executive uses clever and indirect methods to get the judiciary to dance to its tune. This was the situation in the case of *Mazi Nnamdi Kanu v Federal Republic of Nigeria and 7 Ors*[82] where the access road of the Abia State High Court was barricaded and blocked by the Officers of the Department of State Security Service surrounding the entire Court premises. The presiding judge. Hon. Justice Benson C. Anya, who perhaps may have been disturbed by the presence of the Officers, refused to be intimidated by their presence and gave an Order, *suo motu,* restraining them from among other things, further barricading the court premises and from arresting anyone within the court premises. His Lordship further ordered that the military should be withdrawn, leaving only prison officials and policemen, who are statutorily allowed to courts, to reflect the judiciary as a truly democratic institution. This bravery is indeed commendable.

Another factor that militates against the judiciary from reaching its full potential as the custodian of the law, is corruption. Operational corruption is where cherished legal norms and the Rule of Law are sacrificed on the altars of political, economic and financial interests[83]. This type of corruption completely cripples the criminal justice system and leads to miscarriage of justice which has far reaching effects on the larger society. In this wise, the words of Uwais CJN are apt when he stated thus:[84]

> A corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street. The later will be restrained physically, but a corrupt judge deliberately destroys the moral foundation of society and causes incalculable distress to individuals though abusing his office while still being referred to as honorable

The point being made is that the failure of the various arms of government to administer the business of government correctly is what has led to the hydra headed challenges, problems and vices associated with criminal justice administration in Nigeria. It is hoped that the ACJA will be able to remedy the system from self-destruct.

[82] Unreported HC Abia State, HIN/FR/14/2021
[83] Benjamin Anyi, The Administration of Justice in Nigeria: Issues and Challenges,(2022), <https://www.researchgate.net>, accessed August 23, 2022.
[84] Ibid.