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THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015_{OVERVIEW} AND TOOLS FOR PROTECTION OF THE RIGHTS OF WOMEN AND CHILDREN

The Administration of Criminal Justice Act (ACJA) 2015 is geared towards curing most of the anomalies and lacuna in the existing criminal laws. Major innovations as contained therein most especially for the protection of women and children are looked at in this paper.



INTRODUCTION:

The Legal foundation for administration of justice in our country Nigeria, is the 1999 Constitution (as amended), particularly the part that deals on the powers of the court¹, or Jurisdictional mandate of the Court. Further, sections of the constitution that deals with fundamental rights² are central to administration of Justice, mostly the provisions on right to personal liberty³, right to fair hearing⁴.

The issue of reforming the administration of Justice, especially the criminal Justice sector in Nigeria has over time, engaged the attention of criminologists, legal practitioners, Judges, academic writers, legislators, police officers/prosecutors, correctional centre officials, other government officials, the media and members of the general community. Ideals have been put together on the definition/ingredients of crime, the penal policy, the issue of payment of compensation to victims of crime, sentencing practices, the correctional service system, the police force, human rights and the issue of a uniform system of criminal Justice in Nigeria.⁵ This gave birth to the Administration of Criminal Justice Act (ACJA) 2015 which introduced far reaching innovations that have addressed most of the common challenges in the system of administration of criminal justice.

OVERVIEW OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015:

The Administration of Criminal Justice Act (ACJA) 2015 is without doubt, the most sizzling law in Nigeria presently and it is due to its wide applicability and revolutionary nature. The law is very useful for both lawyers and non lawyers. The Administration of Criminal Justice Act (ACJA) enacted in May 2015 provides for the administration of criminal justice and for related matters in the courts of the Federal Capital Territory and other Federal Courts in Nigeria.⁶ The unified law is applicable in the Federal Capital Territory, in all federal courts and with respect to offences contained in Federal Legislation⁷. The law repeals the Criminal Procedure Act (CPA)⁸ which applied in the South and the Criminal Procedure (Northern States) Act⁹ and the Administration

¹ See Section 6 of the 1999 constitution (as amended)

² See chapter 4 of the constitution, comprising Sections 33-44

³ Section 35 1999 constitution (as amended)

⁴ Section 36 1999 constitution (as amended)

⁵ An overview of the Administration of Criminal Justice Act, 2015 by Professor Yemi Akinseye-George, SAN

⁶ Nigeria's Administration of Criminal Justice Act (ACJA) 2015: innovations relating to women and children by Dr. (Mrs) Rose Obiama Ugbe, Ann Uruegi Agi and Justine Bekehnabeshe Ughe

⁷ ACJA 2015, s2(1)

⁸ Cap C41, LFN 2004

⁹ Cap C42, LFN 2004

of Justice Commission Act¹⁰ which applied in the North and merges the main provisions of the CPA, the Criminal Procedure (Northern States) Act and CPC into one principal federal enactment, which applies to all Federal Courts across the Federation as well as all courts of the Federal Capital Territory (FCT)¹¹; but it does not apply to a Court Martial¹². To this end, the ACJA is to be uniformly applied throughout the nation where law enforcement agencies created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) or other Federal legislation are empowered to operate.¹³

The ACJA 2015 seeks to transform the nation's criminal structure to actualize the demands of a democratic society by eliminating delays in disposing of criminal cases and improving the overall efficiency of criminal justice administration in such a manner as to show the true intents of the Constitution.

In ACJA 2015 there is a deliberate effort to transform the criminal justice system from its present state of retributive justice into a justice system which is restorative and which attentively prioritizes the needs of the victims of crime, vulnerable persons, human dignity and the society. The general tone of the Act puts human dignity first, from the adoption of the word defendant (instead of accused), to its provision for humane treatment during arrest, to its numerous provisions for speedy trial, to suspended sentencing, community service, parole, compensation to victims of crime etc.

The provisions of the Act are progressive in nature as regards women and children. It addresses discrimination against women, protects them and their property and has several provisions also

¹⁰Cap A3, LFN 2004

¹¹ACJA 2015, s493

¹²ibid, s2(2)

¹³ Supra fn 6

protecting children. There are 27 notable innovations in ACJA 2015¹⁴, but the main thrust of this paper is the innovations on women and children.

The ACJA has 495 sections, divided into 49 parts by which it spreads across every major aspect of criminal Justice system. More so, the Act regulates more than just criminal procedure, it covers, in most part, the entire criminal Justice process from arrest, investigation, trial, custodial matters and sentencing guidelines.

SOME OF THE INNOVATIONS OF THE ACJA 2015:

1. UNLAWFUL ARREST:

This is one provision that is very much welcomed in the sense that under Section 10 (1) of the CPA, the Police could arrest without warrant, any person who has no ostensible means of sustenance and who cannot give a satisfactory account of himself, which provision was greatly abused by the police as a ground to arrest people indiscriminately but has been deleted by the ACJA, 2015. The police now, cannot arrest persons in lieu of suspects¹⁵, where actual arrest is entitled to notification of cause of arrest¹⁶ and shall be accorded humane treatment, having regard to dignity of his person¹⁷. Furthermore, gone is the era where the police gets involved in civil matters or even simple contracts and use their power of arrest as a weapon to intimidate or oppress parties. It is now illegal for the police to arrest parties over a civil wrong or contract under the ACJA.¹⁸

2. PLEA BARGAIN:¹⁹

¹⁴Mohammed Lawal Garba, 'Administration of Criminal Justice Act 2015: Innovations, Challenges and Way Forward' (2017): Text of a paper delivered by the Presiding Justice, Court of Appeal, Lagos Division, Justice, at the 2017 lecture of the National Association of Judiciary Correspondents <<http://www.lawyard.ng/administration-of-criminal-justice-act-2015-innovations-challenges-and-way-forward/>> accessed 7 november, 2020.

¹⁵ Section 7 ACJA 2015

¹⁶ Section 6 ACJA 2015

¹⁷ Section 8(1) ACJA 2015

¹⁸ Section 8(2) ACJA 2015

¹⁹ Section 270 ACJA 2015

Under the ACJA 2015, plea bargain means the process in criminal proceedings where the defendant and the prosecution work out a mutually acceptable agreement as to a lesser offence than what was actually charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than for a higher charge subject to the courts approval.²⁰ This saves the time and resources that would have been wasted in trial hence ensuring quick dispensation of justice.

3. TRIAL OF CORPORATION:²¹

By virtue of provision of the ACJA,²² a corporation can now be sued for criminal matters through its representative, which was not so before. A company is treated as an adult ‘defendant’ for any offence without exception.²³

4. SUSPENDED SENTENCE AND COMMUNITY SERVICE:²⁴

Pursuant to its restorative and reformatory approach, the ACJA 2015 provides that a court, in furtherance of decongesting the correctional centres and rehabilitate prisoners, can make them undertake productive work and prevent convicts of simple offences from mixing with hardened criminals. This can be achieved by suspending the sentence of the said convict or the convict may be asked to carry out community service in a community chosen by the court.

5. SPEEDY TRIALS:

The ACJA 2015 makes the following provisions, to help expedite trials-

(a) Stay of proceedings:²⁵

²⁰ Section 494 ACJA 2015

²¹ Section 477 ACJA 2015

²² IBID section 477

²³ Section 484 ACJA 2015

²⁴ Section 460 ACJA 2015

²⁵ Section 306 ACJA 2015

This is a new provision in the ACJA 2015 that discourages application for stay of proceedings in a criminal matter before the court. This puts a gag on delays which can be caused to the trial process by interlocutory applications to stay proceedings pending appeal on preliminary matters even when the substantive issues are yet to be tried on the merits. **SEE FRN V LAWAN**²⁶ where **UWA, JCA** stated in p. 33, paras A-F, I quote: ‘ the essence of the Administration of Criminal Justice Act, 2015 was to ensure amongst others, speedy trial and quick disposal of criminal cases in the interest and as of right, of a suspect, the defendant, the victim and in fact the society at large. Section 98 (2) of the ACJA was put there to ensure that part heard criminal matters do not suffer unnecessary transfers from one court to the other for whatever reason, where an unsatisfied party has the option of an appeal if not satisfied with the outcome of the trial. I would add the popular saying that, justice delayed is justice denied or no justice at all. In some cases, some of the accused persons do not live to see the end of their trials for offences alleged to have been committed by them, due to long and unending trials. To curb this trend is the essence of the ACJA.’

(b) Day to Day trial:²⁷

Once arraigned, the trial of the defendant will proceed from day to day until conclusion. Where this is not possible, the Act provides that parties are entitled to only five (5) adjournments each, the interval for each adjournment shall not exceed two weeks. Where this does not conclude the trial, the interval for adjournment will be reduced to seven (7) days each.

(c) Assignment of Information and Issuance of Notice of Trial:²⁸

²⁶ (2018)LPELR-43973 (CA)

²⁷ Section 396 ACJA 2015

²⁸ Section 382 ACJA 2015

Information filed are to be assigned by the Chief Judge within fifteen (15) days and the Judge is to issue notice of trial within Ten (10) working days of the assignment of the information to his court.

(d) Objection to the Validity of Charge:²⁹

Any objection as to the validity of the charge or information raised by the defendant shall only be considered along with the substantive issues and a ruling therein made at the time of delivery of judgment.

6. ELECTRONIC RECORDING OF CONFESSIONAL STATEMENTS:³⁰

To avoid denial by the defendant of making a confessional statement voluntarily, the ACJA 2015 has made a provision for recording of such statements of the defendant electronically in a retrievable video compact disc or such other audio virtual means.³¹

7. REMAND TIME:³²

In time past, suspects were remanded at will or sometimes indefinitely. , leading to the congestion of the correctional centres. However, the ACJA 2015 provides that a suspect shall not be remanded for more than fourteen (14) days at the first instance and renewable for a time not exceeding fourteen (14) days where ‘good cause’ is shown. At the expiration of the remand order, if the legal advice is still not issued, the court can go ahead to issue a hearing notice to the Inspector General of police and Attorney General of the Federation or the Commissioner of Police or any other authority in whose custody the suspect is remanded to inquire into the position of things and adjourn for another period not exceeding fourteen (14) days for the above mentioned officials to come and explain why the suspect should not be released unconditionally.

8. COMPENSATION TO VICTIMS OF CRIME:

²⁹ Section 396 (2)

³⁰ Section 15 (4) ACJA 2015

³¹ Ibid section 15(4)

³² Section 296 ACJA 2015

The Act has brought relief to victims of crime by awarding compensation to them once the defendant is found guilty of the crime. The court may within the proceedings, or when passing judgment, order the convict to pay compensation to any person injured by the offence.³³

This is very commendable for it does not only seek to punish the offender, but also cushions the hardship occasioned by the commission of the offence by ensuring justice is served both ways.

TOOLS FOR PROTECTION OF THE RIGHTS OF WOMEN AND CHILDREN

UNDER THE ACJA 2015

INNOVATIONS RELEVANT TO WOMEN:

- (a) Unlawful Arrest³⁴**
- (b) Women as sureties³⁵**
- (c) Women as competent witnesses³⁶**
- (d) Witness Protection³⁷**
- (e) Searches of Persons³⁸**
- (f) Sentencing in the cases of pregnancy**
- (g) Remedies of a married woman against her husband/others in respect of her person/ property**

UNLAWFUL ARREST:

Section 7 of ACJA, 2015, states that a person shall not be arrested in place of a suspect; this is a prohibition of arrest in lieu. This provision of the ACJA puts a stop to the usual practice of

³³ Section 319(1) ACJA 2015

³⁴ ss2 – 7 of the ACJA, 2015, sets out the procedures to follow when arrests are carried out by the Police.

³⁵ ACJA 2015, s167(3)

³⁶ Section 191 and 192 ACJA 2015

³⁷ ACJA 2015, s 232

³⁸ ACJA 2015, ss 9 & 12

the Police arresting wives/mothers in lieu of their husbands/sons when they cannot be found, even when they are not linked in any way to the crime committed.

WOMEN AS SURETIES:

Section 167 of ACJA, 2015 states that a defendant released on bail may be required to produce surety/sureties. Section 167 (3) particularly provides that: “[A] person shall not be denied, prevented or restricted from entering into a recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman”. The discrimination against Women standing as sureties, which is a violation of Section 41 of the Constitution had gone on unchecked long enough and it is commendable that ACJA 2015 has boldly settled the issue once and for all,³⁹ which is laudable as it conforms also with the Convention on the Elimination of Discrimination against Women (CEDAW) which has been ratified by Nigeria.⁴⁰

WOMEN AS COMPETENT WITNESSES:

Just as a husband, a wife shall be a competent and compellable witness in any proceedings taken under Section 191 of ACJA in accordance with the provisions of the Evidence Act, 2011⁴¹. Section 191 provides that a woman who has contracted a valid marriage shall have in her own name against all persons, the same remedies and redress by way of criminal proceedings for the protection and security of her person or her own separate property as if such property belonged to her as an unmarried woman.

This is a great tool of protection for the rights of WOMEN under the Act as the dignity of a woman as a competent witness, especially as it concerns her person and property, is sure. This provision applies to all valid marriages, statutory and customary, unlike the case under section 148 of the CPA which limits the marriage to that contracted under English law or the Marriage Act.

³⁹ Supra fn 6

⁴⁰ Supra fn 5

⁴¹Evidence Act (EA) 2011, s 175

WITNESS PROTECTION:

This is provided for in section 232 of the Administration of Criminal Justice Act 2015 where different circumstances where the witness should be protected are discussed. This Section of the ACJA permits witnesses to some offences to give evidence in camera. These include sexual related offences, terrorism offences, offences relating to Economic and Financial Crimes, trafficking in Persons and related offences, and any other offence in respect of which an Act of the National Assembly permits the use of such protective measures.

This provision is most commendable because it protects the victims of sexual crime who are mostly women and children and who had previously been reluctant to come out publicly for fear of ridicule and shame.

SEARCH OF PERSONS:

Section 9(3) of the Act provides that the search of a suspect shall be made decently and by a person of the same sex. In reference to women, this is a great development as it ensures that a woman is searched only by another woman decently.⁴²

Again, Section 12 of the Act provides that where a suspect enters a house or place where a woman occupies and where such woman by custom or religious practice does not appear in public, the person making the arrest shall before entering the house give notice to the woman that she is at liberty to withdraw and afford her the opportunity and facility for withdrawing, but the notice shall not be necessary where the person making the arrest is a woman.⁴³ This is also another area where the Act exhibits respect for women and a great desire to protect female decency and sexuality. Of further relevance is section 466 of the Act which provides that the supervising officer in respect of a female convict shall be a female.⁴⁴

⁴²s9(3) however provides an exception stating that: "...unless the urgency of the situation or the interest of due administration of justice makes it impracticable for the search to be carried out by a person of the same sex". This contemplates a situation where a female officer is not available to conduct the search.

⁴³ ACJA 2015, s 12(3)

⁴⁴ Supra fn 6

SENTENCING IN THE CASE OF PREGNANCY:

In the case of pregnancy, Section 404 of the ACJA, 2015 provides thus: “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”.

It is noteworthy that in Section 368(2) of the Criminal Procedure Act,⁴⁵ Sections 270 and 271(3) of the Criminal Procedure Code and Section 302 (2) of the Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State, 2011, when a woman found guilty of a capital offence is ascertained pregnant, the sentence of death shall not be passed on her but shall be substituted with sentence to imprisonment for life.

It is the position of this paper that the ACJA has, by sentencing a pregnant woman to death and staying execution till delivery and weaning of the baby, proved more retributive than all the other legislation, when it should have been restorative. By providing for execution of an erstwhile pregnant woman after the baby is weaned, the Act does not consider the welfare of the child. A child needs motherly attention and should not be so deprived of his birth mother’s attention except it is shown that the child will come to harm. Furthermore, the trend internationally is a departure from death penalty. Many jurisdictions have taken the position to abolish death penalty and thus the provision of sentencing a pregnant woman to death is more a digression from the internationally accepted trend and should be amended. While 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; the said provision is also thus against the restorative spirit of the Act.⁴⁶

⁴⁵CAP C41, LFN 2004

⁴⁶ See fn 44

Section 415(1-4) of ACJA outlines the procedure to be followed where a woman convicted of a capital offence is alleged to be pregnant or who becomes pregnant; the court shall before the sentence is passed, determine the question of whether or not she is pregnant on such evidence as may be presented to the court by the woman or on her behalf or by the prosecutor.

REMEDIES OF A MARRIED WOMAN AGAINST HER HUSBAND AND OTHERS IN RESPECT OF HER PERSON OR PERSONAL PROPERTY:

By section 191 of ACJA, a woman who has contracted a valid marriage shall have in her own name against all persons including the husband of the marriage, the same remedies and redress by way of criminal proceedings for the protection and security of her person or her own separate property as if such property belonged to her as an unmarried woman.

In *Nnanyelugo v. Nnanyelugo*⁴⁷, two brothers attempted to get the land of their deceased brother, their reason being that a widow has no business with the property. The Court of Appeal ruled that they would no longer allow the males to take advantage of the vulnerable position of the widows and young children. According to Denton-West JCA: “The courts now are poised to do substantial justice and not allow repugnant traditions, customs and traditional law of inheritance or even technicalities distract them from achieving substantial justice.”⁴⁸

INNOVATIONS RELEVANT TO CHILDREN:

Section 494 which is the Interpretation Section of ACJA defines a child as “a person who has not attained the age of 18 years”⁴⁹. Thus anyone who has not attained 18 years is a child. This

⁴⁷[2008] ALL FWLR (Pt. 401) 897 at 916, para. A (CA)

⁴⁸See also the Supreme Court case of *Ukejev.Ukeje* [2014] 11 NWLR (PT 1418) 384 where the court held that the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father’s estate, is a breach of Sections 42 (1)(a)and(2) of the 1999 Constitution of the Federal Republic of Nigeria on the fundamental freedom from discrimination granted every Nigerian. See also *Dapialong v. Dariye* [2007] All FWLR (Pt. 373) 81, [2007] 8 NWLR (Pt. 1036) 332; *Nzekwe v. Nzekwe* [1989] 3 SCNJ 167; *Nishizawa Ltd v. Jethwani* [1984] 12 SC 234.

⁴⁹ACJA 2015, s 494(1)

provision can be used in court to determine the marriageable age and resolves the lacuna surrounding Section 29(4) (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).⁵⁰ The Act goes on to clearly explain other terms in relation to children. Such terms include a definition of an “infant”,⁵¹ “Guardian”,⁵² “Legal Guardian”,⁵³ and a “Place of safety”.⁵⁴

Murder of a child and infanticide

Sections 234 and 235 of ACJA, 2015 provide for the crime of murdering a child/infanticide. While Section 234 on the one hand provides that where either is charged but none is proved, but from the evidence concealment of birth is proved, the defendant may be convicted of concealment of birth, Section 235(1) provides that where murder is charged but infanticide is proved, the defendant may be convicted of infanticide. This has expanded the scope of persons that can be charged for the killing of a child. It is an improvement over Section 178 of the CPA which provides for what to do where murder is charged and infanticide proved as regards only the mother of the child. The Act however failed to define infanticide so as to clearly distinguish it from the murder of a child, neither is ‘concealment of birth’ defined. An amendment in this regard is recommended.⁵⁵

Recognizance by parent or guardian of a child⁵⁶

Section 160 (1) and (2) of ACJA provides that where a child is arrested with or without a warrant and cannot be brought forthwith before a court, the police officer in immediate charge for the time being of the police station to which the child is brought shall, inquire into the case

⁵⁰By Section 29(4)(b) CFRN (as amended), “full age” also means any woman who is married. This provision has caused some discomfort as it seems to imply that once a person of less than 18 years gets married, he/she automatically becomes an adult of “full age”. Section 494 of ACJA thus aids in expressly providing that a child is a person who has not attained the age of 18 years.

⁵¹ACJA 2015, s 491(1)

⁵²ibid

⁵³ibid

⁵⁴ibid

⁵⁵ Supra fn 6

⁵⁶ibid

and except where the charge is one of homicide or the offence charged is punishable with imprisonment for a term exceeding three years, or it is necessary in the interest of the child to remove him from association with any reputed criminal or prostitute, shall release the child on a recognizance entered into by his parent or guardian, with or without sureties. The parents or guardian of the child shall execute a bond for such an amount as will in the opinion of the officer secure the attendance of the child for the hearing of the charge.

Protection of children as victims/witnesses

By Section 232 of ACJA, trial for offences under section 231 of the Act (which include rape, defilement, incest, unnatural or indecent offences)⁵⁷ may not be held in open court if the Judge so determines. This is a healthy provision as it protects the identity of children who have been defiled and raped by friends and even relatives and for fear of stigma and shame. Other offences mentioned in Section 232(4) where trial can be held in camera are offences relating to terrorism, the economic and financial crimes, and human trafficking⁵⁸.

- **Concealing the identity of witnesses**

Section 232 of the Act which lists a wide range of possible scenarios where the witness should be protected permits witnesses to some offences to give evidence in camera. These include sexual related offences and trafficking in persons and related offences, and any other offence in respect of which an Act of the National Assembly permits the use of such protective measures or as the Judge may consider appropriate in the circumstance⁵⁹. Under this provision, the name and identity of the victims of such offences or witnesses shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witnesses with a

⁵⁷ibid, s 231

⁵⁸ibid, s 231(4)

⁵⁹ibid, s 232(4)(a)–(e)

combination of alphabets⁶⁰. It further provides that where in any proceedings the court determines that it is necessary to protect the identity of the victim or a witness, the court may receive evidence by video link, permit the witness to be screened or masked, receive written deposition of expert evidence and take any other measure that the court considers appropriate in the circumstance⁶¹. This will be so where the proceedings relate to an offence against or any conduct contrary to decency or morality.

The Act is fiercely protective of these provisions as it further provides in Section 232(5) that anyone who contravenes the provisions stating that the names, addresses, telephone numbers and identity of the victims of such offences or witnesses shall not be disclosed, shall have committed an offence and liable on conviction to a minimum of one year imprisonment!⁶² This commendable provision protects women and children who are mostly victims of sexual crime.

- **Exclusion of all unrelated parties when a child is giving evidence in court**

The provisions of Section 260 of ACJA, 2015 is to the effect that where a person who in the opinion of the court, has not attained the age of eighteen years is called as a witness in any proceedings in relation to an offence against or any conduct contrary to decency or morality, the court may direct that all or any persons not being members or officers of the court or parties to the case, their legal representatives or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of such person.⁶³

- **Trials involving children:**

i. Application of the Child Rights Act to criminal proceedings against children, except for bail:

By virtue of Sections 371 and 452(1) of ACJA, where a child is proceeded against before a

⁶⁰ibid, s 232(2)

⁶¹ibid, s 232(3)(a)–(d)

⁶²ibid, s 232(5)

⁶³ibid, s 261(1)(a)–(b). it should however be noted that by this section, the order made under Sections 259 and 260 of the Act excluding the public from a court shall not unless specifically stated authorize the exclusion of bona fide representatives of a newspaper or news agency or apply to messengers, clerks and other persons required to attend the court for purposes connected with their employment.

court for an offence, the court shall have regard to the provisions of the Child Rights Act. However by Section 452(2) of the Act, the provisions of ACJA relating to bail shall apply to bail proceedings of a child offender. This is beyond the initial limited provisions contained in the Criminal Procedure Act (CPA) on trial of children and shows a clear desire to protect children.

ii. Prohibition on Children being present in court during the trial of other persons:

Furthermore, by the provisions of Section 262 of the Act, an infant other than an infant in the arms of a parent or guardian or child shall not be permitted to be present in court during the trial of a defendant charged with an offence or during any proceedings preliminary to the trial except he is the defendant charged with the offence or he is a witness or his presence is required for the purposes of justice in which event he may remain to the extent that his presence is necessary⁶⁴.

iii. Determination of the age of a child during proceedings:

By Section 264 of the ACJA, where the age of a person is in issue in any criminal proceedings, the court may determine the question by taking into account the physical appearance of the person concerned or any evidence in relation to the age of the person concerned, received by the court in accordance with the provisions of the Evidence Act, the Child Rights Act or any law in force. By 264(2), the evidence of a witness who is not an expert within the meaning of Section 68 of the Evidence Act, 2011, shall be admissible for the purposes of the Section.⁶⁵ Section 264(3) states that an order or judgment of the court shall not be invalidated by any subsequent proof that the age of the person has not been correctly stated to the court, and the

⁶⁴ACJA 2015, s 262(a)–(b)

⁶⁵Section 68 of the Evidence Act provides: “When the court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible; (2) Persons so specially skilled as mentioned in sub - section (1) of this section are called experts.”

age presumed or declared by the court to be the age of that person shall for the purpose of the Act be deemed to be the true age of that person.

- **Sentencing of child offenders:**

Life Imprisonment for Child Offenders found guilty of capital offences:

Section 405 of ACJA provides that no sentence of death shall be pronounced or recorded on a child offender who had not attained the age of 18 years at the time the offence was committed, but in lieu of it, the court can sentence such a child to life imprisonment or to a term as the Court may consider appropriate in consideration of the principles in section 402 of the Act.

While this is a welcome development as it provides that the age at the commission of the offence is the determining age for the purposes of sentencing a child and preserves the life of a person who commits a capital offence when he was a child, it is the position of this paper that there is need to amend the provisions of Section 405 of the Act. Its provisions for life imprisonment for a convict who at the time he committed the offence had not attained maturity is harsh even from the sound of the word and is retributive. It is recommended that the Section ought to have borrowed a leaf from the CPA, CPC and Administration of Criminal Justice Act of Lagos State, 2011 whose provisions on the issue are more restorative minded.

The CPA in Section 368(3), the CPC in Section 272(1) and Section 302(3) of the Administration of Criminal Justice (Repeal and Reenactment) of Lagos State in Section 302(3)⁶⁶ in the scenario of Section 405 of ACJA, 2015, took a softer position, namely, detaining the convict until the pleasure of the governor is known. This is a much more humane position as there is hope that the Governor may consider a lesser sentence bearing in mind the age of the child and the circumstances that led to the child committing the offence.

⁶⁶ACJL, Lagos State 2011

However all hope is not lost for Section 405 as the Section goes on to provide that apart from life imprisonment, the court may sentence the child offender to such other term as the court may deem appropriate in consideration of the principles in section 401 of the Act⁶⁷. The said section 401(2) prescribes the objectives the court may have in mind when determining a sentence and one of such objectives is “rehabilitation, that is, the objective of providing the convict with treatment or training that will make him into a reformed citizen”⁶⁸ One can only hope that in applying the provisions of Section 405 of the Act to children found guilty of capital offences, the courts will always bear in mind Section 401 (c) when it comes to child offenders and measures should be taken to ascertain the psychological disposition of that child at the time he committed the offence and possible correctional measures to reform the child other than imprisonment.

iv. Rehabilitation and correctional sentencing:

By virtue of section 467 of the Act, courts may sentence and order a convict convicted of an offence triable summarily to serve the sentence at a Rehabilitation and Correctional Centre established by the Federal Government in lieu of imprisonment⁶⁹. The court in making an order of confinement at a Rehabilitation and Correctional Centre shall have regard to the age of the convict, the fact that the convict is a first offender and any other relevant circumstances necessitating an order of confinement at a Rehabilitation and Correctional Centre⁷⁰. The section further provides that the court may make an order directing that a child standing criminal trial be remanded at a Rehabilitation and Correctional Centre⁷¹. This provision is commendable as it protects the child from further indoctrination from hardened criminals the child would have

⁶⁷ACJA 2015, s 401(c)

⁶⁸ibid, s 461

⁶⁹ibid, s 467

⁷⁰ibid, s 467(2)

⁷¹ibid, s 467(3)

been exposed to, if sentenced to serve in a regular prison. However, the current state of these Rehabilitation and Correctional institutions where they exist is unsatisfactory. Thus for the objectives of the ACJA to be realized, significant institutional investments should be made for reviving and revamping them these institutions.

It is necessary to point out that this section provides that a Court may make an order directing that a child offender standing criminal trial be remanded at a rehabilitation and correctional Centre during trial, but says nothing about where such a child will be imprisoned if he is convicted and sentenced.⁷² Thus the reasonable assumption would be that the child will be imprisoned there too as by the provisions of Section 467(1) of the ACJA, 2015, the Centre is only for defendants convicted of an offence triable summarily,⁷³ and a child offender standing trial for a capital offence is not tried summarily. However, this assumption does not apply to a child offender standing trial for a capital offence as this offence is not tried summarily. It is therefore not clear from ACJA where such child after conviction will be imprisoned.

It is the position of this paper that a more restorative provision would have been that a child offender found guilty of a capital offence be sentenced and ordered to serve at the Rehabilitation and Correctional Centre until the pleasure of the President is known. This it is submitted, will pacify the victims of the child's offence, as well as rehabilitate, reintegrate and restore the child to the society as a responsible individual.

v. Probation and non-custodial alternatives:

By the provisions of section 454 of ACJA, where a defendant is charged before a court with an offence punishable by law and the court thinks that the charge is proved but is of opinion that having regard to the character, antecedent, age, health or mental condition of the defendant charged, the trivial nature of the offence or the extenuating circumstances under which the

⁷²ibid

⁷³ibid, s 467(1)

offence was committed, it is inexpedient to inflict a punishment or any order other than a nominal punishment, or that it is expedient to release the defendant on probation, the court may, without proceeding to conviction make an order dismissing the charge or discharging the defendant conditionally on his entering into a recognizance with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding 3 years as may be specified in the order⁷⁴.

In addition to the order, the court may order the defendant to pay damages for injury or compensation for any loss suffered by a person by reason of the conduct or omission of the defendant and to pay costs of the proceedings as the court thinks reasonable and the parent or guardian of the defendant to pay the damages and costs/compensation specified where the defendant has not attained the age of 18 years and it appears to the court that the parent or guardian of the defendant has condoned the commission of the offence⁷⁵.

Section 455 of the Act further provides that a recognizance ordered to be entered into shall where the court so orders contain a condition that the defendant be under the supervision of such person or persons of the same sex, called a probation officer⁷⁶. The above mentioned provisions are all geared towards protecting child offenders from incarceration due to their age or where the offence committed is trivial or there are some extenuating circumstances under which the offence was committed.

RECOMMENDATIONS:

Having discussed the provisions of the Administration of Criminal Justice Act, 2015 as it relates to women and children, the following recommendations are suggested:

⁷⁴ibid, s 454(1)-(2)

⁷⁵ibid, s 454(3)-(4)

⁷⁶ibid, s 455(1)&(2)

- a) The Act in Section 234 and 235 failed to define infanticide so as to clearly distinguish it from the murder of a child, neither is 'concealment of birth' defined. An amendment in this regard is advocated.
- b) The provision of Section 404 of the ACJA, 2015 which provides for the execution of a pregnant woman found guilty of a capital offence to be suspended until the baby is delivered and weaned is too retributive. There is a need to amend the said section to substitute same with a sentence of imprisonment for life. This is more in tune with international practices where the death sentence is abolished and more restorative as she may become reformed.
- c) The provisions of Section 405 of the Act which state that a child who has committed a capital offence can be sentenced to life imprisonment needs to be amended to provide a more restorative sentence. Its provisions for life imprisonment for a convict who at the time he committed the offence had not attained maturity is harsh even from the sound of the word and is retributive. It is recommended that detaining the child until the pleasure of the Governor or President is known as provided in the CPA, CPC and Administration of Criminal Justice Act of Lagos State, 2011 is a much more humane position as there is hope that the Governor or President may consider a lesser sentence bearing in mind the age of the child and the circumstances that led to the child committing the offence. In the alternative, the Chief Justice of the Federation may consider issuing a practice direction that all courts shall as a matter of priority always bear in mind Section 401 (c) of ACJA when it comes to child offenders and measures should be taken to ascertain the psychological disposition of that child at the time he committed the offence and sentence the child offender to other possible correctional measures to reform the child other than imprisonment.

- d) Rehabilitation and correctional sentencing: Section 467 of the Act which provide that courts may sentence and order a convict convicted of an offence triable summarily to serve the sentence at a Rehabilitation and Correctional Centre established by the Federal Government in lieu of imprisonment and which further provides that the court may make an order directing that a child standing criminal trial be remanded at a Rehabilitation and Correctional Centre says nothing about where such a child will be imprisoned if he is convicted and sentenced.⁷⁷ This is because by the provisions of Section 467(1) of the ACJA, 2015, the Centre is only for defendants convicted of an offence triable summarily, and a child offender standing trial for a capital offence is not tried summarily. The assumption would be that the child will be imprisoned there too. However, that is a mere assumption as the Act does not clearly state where such child after conviction will be imprisoned. It is therefore imperative that the Act be amended to clearly provide that the place of incarceration of a child offender who is not summarily tried and who is found guilty of a capital offence shall be the Rehabilitation and Correctional Centre until the pleasure of the President is known. This, will pacify the victims of the child's offence, as well as rehabilitate, reintegrate and restore the child to the society as a responsible individual.
- e) It is further recommended that as the current state of the nation's Rehabilitation and Correctional institutions are unsatisfactory, significant institutional investments should be made for reviving and revamping these institutions if the objective of the ACJA is to be realized.

CONCLUSION:

⁷⁷ibid, s 467(3)

The Act as it relates to women and children is progressive in nature. If effectively enforced, the rights of women and children, whether they be defendants, complainants or relatives to defendants and complainants will be enhanced.⁷⁸

The ACJA 2015 presents an opportunity to entrench common standards and principles in Criminal justice Administration. Therefore States should make efforts to adopt the ACJA as it is the new uniform criminal procedure legislation and its provisions on women and children should be widely applied in all States of the Federation. Already States like Lagos, Ekiti, Ondo, Cross River, Edo, Rivers and Bayelsa, have their Administration of Criminal Justice Law. All stakeholders involved in the administration of criminal justice are urged to collaborate to ensure the intents and purposes of the law are successfully and effectively implemented.

⁷⁸ See fn 6