Training Manual for

Divisional Station Officers, Crime Inspectors, Investigating Police Officers and prosecutors

of the

Plateau State Police Command on the Provisions of the Administration of Criminal Justice Law 2018

Rule of Law And Empowerment Initiative
also known as
PARTNERS WEST AFRICA NIGERIA
Supported by the Nigerian Policing program

SUPPORTED BY: US EMBASSY BUREAU OF INTERNATIONAL NARCOTICS & LAW ENFORCEMENT AFFAIRS

PARTNERSGLOBAL

RULE OF LAW AND EMPOWERMENT INITIATIVE,
also known as
PARTNERS WEST AFRICA NIGERIA
No. 46 Mike Akhigbe Way, Jabi, Abuja.
Telephone: (+234)8091257245
Email: info@partnersnigeria.org
https://www.partnersnigeria.org/

Editorial Coordinator
Barbara Maigari-Magaji

Developer and Editor
Dr. Godwin Odo

Production
Nkem Okereke
Hadiza Usman
Barbara Maigari- Magaji

Design
GX Media House

ABOUT PWAN

The Rule of Law and Empowerment Initiative is also known as Partners West Africa Nigeria (PWAN). We are a non-governmental organization dedicated to enhancing citizens' participation and improving security governance in Nigeria and West Africa broadly, which we achieve through our Rule of Law and Citizens Security Program areas.

The organization does this through research, collaborative advocacy, capacity-building, dissemination of information and integrating the implementation of government policies such as United Nations Resolution 1325 on Women, Peace and Security, Second Generation National Action Plan (NAP 2), Prevention and Countering Violent Extremism National Action Plan (P/CVE NAP), Administration of Criminal Justice Act/Laws (ACJA/L), United nations Resolution 2250 amongst others which are complementary to our strategic objectives.

We are a member of the Partners Network, which is a network of 22 like-minded national organizations around the world, united by common approaches including participatory decision-making, collaborative advocacy, consensus-building and social entrepreneurship for democratic governance.

PWAN was part of the Nigeria Policing Program Consortium (NPP) which worked to improve the Nigeria Police Force's contribution to the delivery of safety and security for Nigerians in target states; strengthen internal and external accountability mechanisms; and improve the coherence of security provision among and between formal and informal security actors. As part of the consortium, PWAN has been working with the NPF, policing actors and criminal justice agencies in the FCT, Borno and Kano states to improve policing service delivery to the people, build trust between the public and security agencies and promote transparency and accountability.

PWAN with the support of the MacArthur Foundation and the US Bureau of International Narcotics and Law Enforcement Affairs (INL) has been implementing programs aimed at the adoption of ACJ Laws in various states of the federation which include: Jigawa, Bauchi, Ondo and Plateau states, as well as building the capacity of relevant stakeholders to implement the laws. PWAN has also partnered with the UN Women to promote the adoption and implementation of the United Nations Resolution 1325 on Women, Peace and Security and the National Action Plan.

ACKNOWLEDGEMENTS

PWAN has been involved in criminal justice reform since 2016. The organization has successfully contributed to reform efforts as regard speedy and effective dispensation of justice, promotion of transparency and accountability in the judicial sector, provision of legal aid to less privileged persons, monitoring of compliance to key reform laws, capacity building for justice actors and awareness creation on human rights issues.

In the course of the above, the need to further improve the capacity of divisional station officers, crime inspectors, investigation police officers and prosecutors have been highlighted.

This manual is therefore developed to assist police officers of Plateau State Police Command improve their investigative and prosecutorial skills in the course of delivery of justice.

PWAN wishes to express its gratitude to the US Bureau of International Narcotics and Law Enforcement Affairs (INL) for providing support to this project. Our appreciation also goes to the Plateau State Police Command of the Nigeria Police Force for their partnership and cooperation towards building the capacity of its officers to ensure the implementation of the ACJ Law of Plateau state.

The organization also wishes to thank Dr. Godwin Odo, the consultant who developed this training manual for PWAN.

The efforts and commitment of PWAN staff led by the Rule of Law Program Manager, Barbara Maigari-Magaji, assisted by Hadiza Usman Senior Lawyer and Nkem Okereke Program Assistant is applauded. We appreciate the guidance and leadership of the Executive Director of PWAN – 'Kemi Okenyodo.

PREFACE

The US Bureau of International Narcotics and Law Enforcement Affairs (INL) is implementing a project on Promoting Civil Society Participation in Anti-corruption Efforts in Nigeria (ACCESS Nigeria).

In furtherance of this initiative, the Bureau is partnering with Partners West Africa Nigeria (PWAN), PartnersGlobal BudgIT, Public Private Development Centre (PPDC), CLEEN Foundation, and New-Rule LLC, to 1) strengthen national structures for combating corruption; 2) increase citizen access to government information as a tool to fight corruption in security and justice institutions; 3) leverage citizen participation and technology to advance state and local level anti-corruption efforts in each geo-political zone; and 4) pilot behavioural-based approaches to anti-corruption in local communities to shift deeply-held attitudes and practices of corruption.

The goal of the ACCESS Nigeria project is to: *Advance anti-corruption efforts in Nigeria by establishing a network of reform-minded actors in each geopolitical zone that actively leverages and engages with the justice sector, state and local authorities, civil organizations, media, and citizens to pilot and grow reform efforts.*

.

Specifically, activities will focus on: identifying and addressing vulnerabilities to corruption; assessing corruption in public service delivery; increasing access to information about the status of Pillar 3 implementation; increasing compliance with the Freedom of Information Act (FOIA); advocating for adoption of the Whistle Blower policy and the Administrative Court Justice Act (ACJA); and increasing budget transparency at the national and the state levels.

An element of this project involves building the capacity of law enforcement officials to implement the ACJ Laws of various states.

The development and dissemination of this training manual for station officers, IPOs, crime investigators and prosecutors of the Plateau State Police Command on the ACJL of Plateau state is in furtherance of PWAN's strategic objective of increasing technical and institutional support by 20% to internal and external oversight agencies operating in the criminal justice/security sectors to improve their service delivery to the public.

THEORY OF CHANGE

01 IF our network of Nigerian civil society and government stakeholders are positioned to learn and adapt from recent experiences working on anti-corruption efforts.

02 and IF they expand their efforts to effect broader national, state and local government reforms and influence citizen perceptions in the area of transparency and accountability, and IF there is a mechanism to strengthen coordination and collaboration on these efforts to develop feedback loops that are self-sustaining.

03 THEN institutional transparency and accountability will increase and incentives for corrupt behavior on a societal level will become less favorable.

Contents

CHAPTER ONE

Introduction

The passing of the Administration of Criminal Justice Act by the National Assembly and the assent by President Goodluck Ebele Jonathan in May 2015, and the passage of the various state versions of the Law by the States Houses of Assembly across the Federation marked a turning point in criminal justice administration in Nigeria.

Prior to the passage of the Act, the system was characterised by delays, inefficiency, lack of respect for the rights of persons in conflict with the law and overcrowding in the holding facilities of correctional centres across the country.

The slow pace of criminal trials resulted in high number of awaiting trial inmates in the correctional centres. Consequently, this resulted in undue pressure on the facilities and personnel of the Nigerian Correctional Services.

While the passage of the Act at the Federal level, and Laws at the state levels have been celebrated across the country, its potential to transform the administration of criminal justice will not be realised unless the laws are effectively implemented by all the agencies in the justice sector with responsibilities under the laws.

From 2018 to 2019, PWAN conducted practitioner's surveys to understand the level of implementation of the ACJA by criminal justice practitioners in the FCT, Lagos and Ondo states. In the FCT, only 10% of police officers had read all provisions of the ACJA in 2019; 61% of officers had also not received any training on the ACJA.

Expectedly, the situation at the federal level is also replicated at the state levels as majority of officers of the various law enforcement agencies and other justice sector institutions have not received the relevant training on the provisions of the Laws.

This shows therefore that there is a need for sustained awareness-creation and capacity-building for key actors in the administration of criminal justice. These include the Police and other law enforcement agencies, prosecutors, judicial officers, courts officials and correctional service providers. It is with a view to bridging the existing knowledge gap that this project has been developed.

The Rule of Law and Empowerment Initiative, also known as Partners West Africa, a non-governmental women-led organisation, working towards enhancing citizens' participation and improving security governance in Nigeria and West Africa broadly in collaboration with the United States Bureau of International Narcotics and Law Enforcement Affairs (INL) seeks to build the capacity of Plateau State Command Division Station Officers, Inspector Crimes and Investigative Police Officers on the provisions of the Administration of Criminal Justice Law (ACJL) of Plateau State.

We seek to build the capacity of police station officers, inspector crimes, and investigative police officers and prosecutors with a view to improving the quality of investigation and prosecution of offences in line with international best practices through the development and dissemination of the manual to be used for the training of the officers.

Rationale for the ACJL of Plateau State

Over the years, the criminal justice system in Nigeria has shown signs of inefficiency and ineffectiveness, manifesting in long protracted trials, incessant adjournment of cases, violation of the rights of suspects and a bloated population of awaiting trial inmates in the prisons.

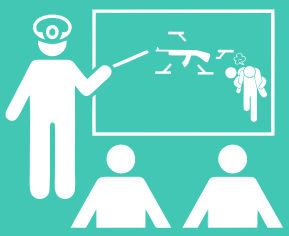
The attendant overcrowding leads to break out of epidemics, overstretching of the detention facilities and personnel and sometimes in jailbreaks or attempted jailbreaks.

This necessitated the revision of the extant Criminal Procedure laws at both federal and state levels resulting in the passage of the Administration of Criminal Justice Act at the Federal level and the Administration of Criminal Justice Laws at the State level.

Loss of confidence in the justice system

The inefficiencies in the justice system culminating in long delays in the trial of cases naturally breeds resentment of the system by members of the general public as their expectations are not met by the justice system.

This ultimately results in a total lack of confidence in the system to deliver justice promptly in a fair and just manner. The consequences of this loss of confidence in the system include resort to jungle justice and self-help as highlighted in the two case studies below.



We seek to build the capacity of police station officers, inspector crimes, and investigative police officers and prosecutors with a view to improving the quality of investigation and prosecution of offences in line with international best practices

The attendant overcrowding leads to break out of epidemics, overstretching of the detention facilities and personnel and sometimes in jailbreaks or attempted jailbreaks.

Case study 1 - Resort to Jungle justice & extrajudicial killing

Mr. X is notorious in his neighbourhood for engaging in criminal activities. He has been arrested twice by members of the local vigilante group in the neighbourhood in the course of committing an offence and handed over to the police and on each occasion, he was seen walking free after a few weeks.

He was arrested a third time at about midnight by the group again, despite not being seen committing any offence as at the time of his third arrest. One of the members of the vigilante group suggested that they should just 'finish' him there and then to ensure that he is not released by the police again if he is handed over to them.

The others agree, so they procure petrol and used tyres and set him ablaze. His burnt copse is seen in the morning and despite rumours about how he died and who killed him, nobody is brought to book and some members of the community hail the vigilante group for taking care of their 'problem' for them.

Little did the community know that despite the allegation against the police of collecting bribe and releasing the suspect, he was charged to court by the police but the presiding Magistrate ordered his release based on the presumption of innocence principle, when the alleged nominal complainant failed to show up in court after several adjournments.

In the second instance, the Investigating Police Office (IPO) who conducted the investigation had been suddenly transferred to another state and despite his willingness to come and testify in the case, no arrangements were made to cover his travel expenses if he came to testify.

The suspect was therefore discharged for want of diligent prosecution as a key prosecution witness could not attend court to testify.

This case study shows how misinformation, misconception and loss of confidence in the justice system could lead to resort to jungle justice by the citizens, which in itself is unlawful.

Case study 2 - Resort to self-help and non-formal justice mechanisms

Mr. A and Mr. B are two landlords whose respective tenants owe them over a year's rent. Mr. A as a law abiding citizen decides to go to court to recover his rent and premises from his tenant. He briefs a lawyer to represent him in the case.

As a retired civil servant he could no longer support his family because of his tenant's non-payment of rent. On the first day the matter was called up in court, it was stated that the case was only for mention and was adjourned to another day.

On the adjourned date, the Court did not sit as a result of the ill-health of the Magistrate. On the next adjourned date, the Court failed to sit again because the date falls into the law week period of the local branch of the Nigerian Bar Association (NBA).

The Court did not sit again on the next adjourned date as the defence lawyer wrote a letter to the Court that he had another case to attend to at the Court of Appeal. So after four visits to the Court in six months without the case being called up for hearing, Mr. A now questions his faith in the justice system.

On the other hand, Mr. B has seen the travails of Mr. A and decides to engage the local O'Odua Peoples' Congress in the neighbourhood to demand justice. He pays what he is asked to pay and was just told to point out the house to them by the OPC group.

Three days later, six rough men show up at the house with several Ghana-must-go bags and knocks on the door. When the owing tenant opens the door, the strangers inform him that because he has not been paying his rent, the landlord had leased the house to them and that they had come to move into the property.

The tenant acknowledges that he had not paid his rent for over a year now, but claims that the landlord had not given him any notice to quit yet. The visitors inform him that they will be coming to take possession of the property in two weeks and that if he was still in the house, he would have himself to blame.

After thinking about the bloodshot eyes of his visitors, and the smell of Indian Hemp that hovered around the house long after they had left, he packs out of the house in twelve days to avoid any confrontation with the strangers.

A bystander who observed the two landlords would agree that though Mr. B's method was illegal, unethical and amounted to self-help, it was nonetheless more effective than the legal, but inefficient process adopted by Mr. A to recover his rent and premises from the tenant.

These case studies aptly portray the effects of the loss of public confidence in the justice system.

The diagnostic study embarked upon by the National Committee on the Reform of Criminal Justice Administration identified obsolete legal regimes, deficiencies in the capacities of the various agencies involved in criminal justice administration and crime archaic investigation techniques amongst others, as factors contributing to the challenges in the justice sector.

The Committee recommended the development of a new legal framework to replace the Criminal Procedure Act (CPA) in the South, and the Criminal Procedure Code (CPC) in the North in order to bring our criminal procedure laws in line with modern trends and international best practices.

This paved the way for the eventual development and adoption of the Administration of Criminal Justice Act 2015 at the Federal level and the Administration of Criminal Justice Laws by the various states of the Federation, including Plateau state.

Purpose of the ACJL of Plateau State

The purpose of the Administration of Criminal Justice Law of 2018 which is aimed at remedying the inadequacies that resulted in the adoption of the law are set out in section 19(1) of the Law as follows:

1. To promote efficient management of criminal justice institutions.
2. To protect the society from crime.
3. To ensure the speedy dispensation of justice.
4. To protect the rights and interests of the suspect, the defendant and the victim.

Compliance and Applicability of the ACJL

Section 19(2) of the ACJL provides that the courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with the provisions of this Law or for the realisation of its purposes.

The provisions of ACJL shall apply to criminal trials for offences established by the Law of the State House of Assembly and other offences punishable in the state, except otherwise provided by any other law.

The Committee recommended the development of a new legal framework to replace the Criminal Procedure Act (CPA) in the South, and the Criminal Procedure Code (CPC) in the North in order to bring our criminal procedure laws in line with modern trends and international best practices.

Innovations introduced by the ACJL of Plateau State

The ACJL as enacted has introduced very far-reaching innovations that have the effect of revolutionising criminal justice administration in Plateau state to improve its efficiency and to ensure that criminal procedure conforms with international best practices as well as protect the rights of suspects, defendants and victims. The laudable innovations introduced by the ACJL are set out below:

Respect for the rights of suspects, defendants and victims

Chapter IV of the Constitution of the Federal Republic of Nigeria provides for the fundamental rights which all citizens are entitled to. Being a suspect, defendant or victim in the criminal justice system does not take away any of those rights. This is because everyone suspected or accused of committing an offence is presumed to be innocent until his/her guilt is proven after a fair trial process.

Besides the presumption of innocence, there are numerous other due process rights to which everyone is entitled from the point of arrest to the conclusion of trial. These constitutional rights are also reiterated in the ACJL and include the following: humane treatment of arrested persons (Section 29); taking an inventory of the property of arrested persons (Section 31); to be informed of the reason for the arrest and what he/she is entitled to (Section 27) as well as the right to consult with a legal practitioner of his/her choice.

Speedy trials with timelines for adjournments and conclusion of trial

One of the objectives of the ACJL is to reduce the delays that characterise the criminal justice system. To achieve this objective, the Act provides for a day-to-day trial of cases after arraignment (Section 405 (3) and where this is not possible, the prosecution and defence are entitled to a maximum of five adjournments and the intervals between these adjournments shall not exceed twenty-one days (Section 405 (4)).

In addition, the law provides a timeframe within which trials must be commenced and concluded in the Magistrate, Upper Area and Area courts. Under section 125 (3) and (4), trials in magistrate courts must commence not later than 30 days from the filing of the charge, and where trial has commenced but has not been completed after 180 days of the arraignment, the Magistrate court shall forward to the Chief Judge of the State the particulars of the charge and reasons for failure to commence or complete the trial.

Electronic recording of confessional statements

One of the challenges faced by investigators of crimes in Nigeria is the absence of technological capacity to aid investigation of crimes. Procedures like finger-print and DNA analysis which have become routine in developed countries are still not readily available. Most investigations rely on the testimony of witnesses or the confession of suspects to prove the commission of the crime. In the

past, when such confessional statements are sought to be admitted in evidence, the defence always raises objection to the admissibility of the confessional statement on the grounds that it was either not made by the defendant, or that it was obtained under duress or torture. If such a situation arises, the Court is required by the Evidence Act to conduct a trial-within-a-trial in order to establish the voluntariness of the confessional statement sought to be tendered. This aggravates the delay in the trial process.

To obviate this problem, the ACJL now provides in section 38 that where a suspect volunteer to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such audio-visual means. Once this procedure is followed, it will assist the court to establish the voluntariness or otherwise of the confessional statement, thereby saving time and ensuring that justice is done.

Provides for a Central Criminal Records Registry

The absence of a central criminal record registry in Nigeria means that crime statistics and records of offenders are not captured. Thus, it becomes difficult to identify persistent offenders either for the purposes of aggravation and mitigation of sentencing, or a searchable database against which fingerprints lifted from crime scenes may be cross matched.

Section 37 of the ACJL provides for the establishment of a Central Criminal Records Registry at the Nigeria Police Force. This if implemented, will aid the management of crime statistics as well as the deployment of logistics for crime prevention.

No stay of proceedings for interlocutory appeals

A common strategy employed mostly by the defence in criminal trials in Nigeria was to appeal against any minor interlocutory ruling that goes against them in the course of the trial up to the Supreme Court, while staying proceedings in the court of trial.

By the time the interlocutory appeal goes all the way to the Supreme Court and back, witnesses may no longer be available or the presiding judge or magistrate may have been transferred or retired and the case will be required to start afresh.

This often results in undue delay and frustration of the trial. Section 319 of the ACJL now provides that an application for stay of proceedings in respect of a criminal matter before the court shall not be entertained. As a result of this provision, interlocutory appeals can no longer be used as an excuse to stay proceedings in a trial court as such an application will not even be entertained.

Plea bargaining

Plea bargains refer to agreements entered into by a defendant with the prosecutor in which he pleads guilty and is convicted for a lesser offence or have a lighter punishment imposed on him in respect of the offences charged. Prosecutors may adopt plea bargaining in order to save time and resources of the state, rather than go

through a full trial without the certainty of a conviction. Because plea bargains are susceptible to abuse, the ACJL in making provisions for plea bargaining in section 284 also provides guidelines to be adhered to in arriving at a plea bargain agreement. Some of the conditions for a plea bargain agreement include:

The evidence of the prosecution in insufficient to prove the offence charged beyond reasonable doubt; the defendant has agreed to return the proceeds of crime or make restitution; where the defendant has fully cooperated with the police during investigation; and where the prosecutor is of the view that it is in the interest of justice, public policy and the need to prevent abuse of legal process.

Periodic reporting and Creation of oversight mechanisms

Some of the innovative provisions of the ACJL introduce the making of periodic returns to certain officials as a means of providing oversight to the institutions that are required to make the returns. It is also a mechanism of accountability as the returns will show whether they have been in compliance with the provisions of the Act or not.

For instance, a magistrate shall conduct an inspection of police stations or other places of detention within his magisterial district on a monthly basis in accordance with section 51 of the ACJL and during the visit may call for and inspect the record of arrests, direct the arraignment of a suspect, and where bail has been refused, admit a suspect to bail.

Remand proceedings and time protocols

The high number of awaiting trial inmates in Nigeria has been put down to the holding charge. The holding charge is a term used to describe the practice where a suspect is charged before a court that lacks the jurisdiction to try the offence, but nonetheless makes an order remanding the suspect in custody pending the advice of the Director of Public Prosecutions (DPP) and the preferment of charges in the appropriate court.

This practice started in order to avoid the detention of a suspect beyond the 48 hours' time limit set by the Constitution without bringing the person before a court. The process has been gravely abused as suspects have been charged remanded indefinitely, while their cases get forgotten in the system.

Under the ACJL, a police officer who intends to remand a suspect must justify to the court the reasons for the remand by bringing an application on oath in the prescribed form stating the reasons for the remand application. If the court is satisfied after due consideration, it may remand the suspect for a period not exceeding 21 days at the first instance.

If an application is brought for the extension of the remand order, the court after good cause is shown may extend the order for a period not exceeding 14 days. At the expiration of this period, the court may cause hearing notices to be issued to the Attorney General and Commissioner of Police or any relevant authority in whose custody or at whose instance the suspect is remanded.

Where good cause is shown, the court may remand the suspect for a final period of 14 days for the suspect to be arraigned before an appropriate court. After an extension of the remand order for another final period of 14 days, the court shall with or without an application to that effect discharge the suspect and the suspect shall be immediately released from custody.

The court is also empowered to grant a suspect bail in the course of a remand proceedings The guidelines and requirements for remand proceedings are set out in sections 307 – 313 of the ACJL.

Alternatives to custodial sentences

Most of the punishment contained in our penal laws require that convicts be imprisoned for a period of time or to pay a specified sum of money as fine or a combination of both.

In some cases, where fines are imposed and convicts are unable to pay the fine, then they remain in correctional custody. This contributes to the overcrowding of the correctional centres. As a means of decongesting the correctional centres, the ACJL contains novel provisions in sections 448 – 462 that allows the courts to impose alternatives to custodial sentences.

These alternatives to imprisonment include: suspended sentence, community service, probation and parole. They result in the reduction of the congestion in prisons, prevent persons convicted of minor offences from mixing up with hardened criminals and rehabilitate convicts by making them undertake productive work for the benefit of the community.

Arrest in lieu of suspect prohibited

Before the coming into force of this law, it had been the practice that where a suspect is sought and is not available or absconds, law enforcement officials would arrest his/her parents, siblings or relatives with a view to eliciting the submission or surrender of the suspect. Under this law, no person shall be arrested in lieu of a suspect because criminal responsibility is personal and non-transferable. (Section 28)

In some cases, where fines are imposed and convicts are unable to pay the fine, then they remain in correctional custody.

Before the coming into force of this law, it had been the practice that where a suspect is sought and is not available or absconds, law enforcement officials would arrest his/her parents, siblings or relatives with a view to eliciting the submission or surrender of the suspect. Under this law, no person shall be arrested in lieu of a suspect because criminal responsibility is personal and non-transferable. (Section 28)

[1]*Police Chief fined in torture case available at: https://www.dw.com/en/police-chief-fined-in-torture-case/a-1433653*

CHAPTER TWO

Arrest, Bail and preventive justice

Provisions of the ACJL dealing with arrest, bail and preventive justice have been designed to address the numerous abuses and human rights violations that have characterised the justice system in the past. Some of the abuses include the following scenarios:

- In developed countries, arrest is usually the last stage of investigation when the police are fairly certain that the available evidence points to the suspect as a person likely to have committed the offence under investigation. In our own case, arrest of suspects is usually the first step in the process of investigation, followed by interrogation before formal charges are brought before the court.

- Arrest and detention of suspects without informing them the reason for their arrest and the rights available to them.

- Arrest of friends and relations in lieu of the suspect, hoping that the suspect will submit himself/herself to the police station.

- Arrest and detention of suspects for cases that are purely civil in nature or as a means to enforce debt recovery.

- Unlawful arrest of suspects, who are then detained indefinitely and refused bail even when the alleged offences for which they have been arrested are bailable offences.

- Sometimes, the fact of arrest of a suspect and the suspects details may not be formally recorded at the police station. This makes it difficult to trace persons who have been declared missing by their families as well as victims of extrajudicial killings.

- Demand for gratification before admitting a suspect to bail even when bail is free.

In the light of the above, the ACJL contains provisions that are aimed at ensuring respect and protection of the right of suspects during arrest, searches, interrogation and prosecution.

Arrest

A suspect or defendant may be arrested, investigated, inquired into, tried or dealt with in accordance with the provisions of the law (Section 24).

Mode of arrest

In making an arrest, the police officer or other persons making the arrest shall actually touch or confine the body of the suspect, unless there is a submission to the custody by word or action (Section 25).

No unnecessary restraint

A suspect or defendant may not be handcuffed, bound or be subjected to restraint except: there is reasonable apprehension of violence or an attempt to

escape; the restraint is considered necessary for the safety of the suspect or defendant; or by order of a court (Section 26). The provision is in line with Section 3 (1) (a) of the Constitution which provides that every individual is entitled to respect for the dignity of his person, and accordingly, no one shall be subjected to torture or to inhuman or degrading treatment.

Notification of cause of arrest and rights of suspect

Under the ACJL, a police officer or any other person making an arrest shall inform the suspect immediately of the reason of his arrest except when the suspect is arrested while committing the offence or is pursued immediately after committing the offence or has escaped from lawful custody (Section 27).

The police officer or the person making the arrest or the police officer in charge of a police station shall inform the suspect of his/her rights to:

- Remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

- Consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest and

- Free legal representation by the Legal Aid Council of Nigeria or the Office of the Public Defender where applicable:

Provided the authority having custody of the suspect shall have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect.

These provisions are not entirely new to the Nigerian legal jurisprudence as they are already contained in the fundamental rights provisions of the Constitution of the Federal Republic of Nigeria. Their inclusion in the ACJL is for emphasis sake, since many violations of these provisions occur in the process of arrest, detention, investigation and trial.

Specifically, Section 36 (5) of the Constitution states that every person charged with a criminal offence shall be presumed to be innocent until he is proved guilty. In addition to the above provision, the Constitution in Section 36 (6) provides that every person charged with a criminal offence shall be entitled to;

(a) Be informed promptly in the language he understands and in detail of the nature of the offence;

(b) Be given adequate time and facilities for the preparation of his defence;

(c) Defend himself in person or by legal practitioners of his own choice;

(d) Examine in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and

(e) Have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

It is therefore incumbent on the officers of all law enforcement agencies, particularly the Nigeria Police Force to observe these constitutional principles in the course of performing their constitutional and statutory duties in the course of investigations, arrest, detention and trial of suspects and defendants who are alleged to have committed any offences.

Prohibition of arrest in lieu of suspect

The ACJL provides that a person shall not be arrested in lieu of a suspect (Section 28). The arrest and detention of a person in lieu of the actual suspect amounts to a flagrant violation of the right to personal liberty of all citizens guaranteed under Section 35(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Humane treatment of arrested suspect

A suspect who has been arrested shall be accorded humane treatment, having regard to his right to the dignity of his person; and not be subjected to any form of torture, cruel, inhuman or degrading treatment (Section 29) This provision of the ACJL reiterates the provisions of Section 34(1) (a) of the Constitution.

In addition, the arraignment and trial of a suspect for a crime shall be in accordance with the provisions of this Law unless otherwise stated in this Law and the following rights shall also be accorded a suspect:

1. A suspect shall not be arrested merely on a civil wrong or breach of contract.

2. A suspect shall be brought before the court as prescribed by this Law or any other written law or otherwise released conditionally or unconditionally.

Inventory of arrested persons

A police officer who arrests a suspect, or whom a suspect is handed over to, shall immediately record information about the arrested suspect and an inventory of all items or property recovered from the suspect. The inventory shall be signed by both the police officer and the suspect and a copy of the inventory shall be handed over to the suspect, his legal practitioner or any other person as the suspect may direct (Section 31).

This provision of the ACJL is informed by the fact that sometimes when suspects are released from custody, there may arise a variation between the property he claims was in his possession as at the time of his arrest and what is being returned to him. It is to cure this mischief that this provision was introduced to enhance certainty of the items taken from a suspect as at the time of his arrest.

Examination of arrested persons

Where a suspect is arrested and there are reasonable grounds to believe that an examination of his person will afford evidence as to the commission of the offence, a qualified medical practitioner or any certified professional with relevant skills may examine the suspect in order to ascertain the facts which may afford the evidence (Section 32).

Taking of suspects to police stations

A suspect who is arrested shall be taken immediately to a police station and shall promptly be informed of the allegation against him in a language he understands (Section 35).

Recording of arrest

Where a suspect is arrested and taken to a police station, a police officer shall cause to be taken immediately, in the prescribed form, the following record of the person arrested: the alleged offence for which he was arrested; the date and circumstances of his arrest; his full name, occupation and residential address; and for the purpose of identification, his height, photograph, fingerprint impressions and any other means of identification (Section 36).

In the absence of video or audio-visual facilities, the said statement shall be in writing and made in the presence of a legal practitioner of his choice

Recording of arrest

Whenever a suspect volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the confessional statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio-visual means (Section 38(2)).

For this provision to be effectively implemented, it would require the provision of the relevant gadgets to enable the police deploy same for the recording of confessional statements in compliance with the provisions of the ACJL.

In the absence of video or audio-visual facilities, the said statement shall be in writing and made in the presence of a legal practitioner of his choice, and in the absence of a legal practitioner of his choice, the statement shall be made in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organisation or the traditional ruler of the locality or any person of his choice.

Most of the cases brought by the police to the courts for prosecution place heavy reliance of confessional statements. Thus, if the confessional statement is declared inadmissible on the basis of non-voluntariness of the confessional statement, the case is bound to fail without other corroborative evidence.

Most defendants either claim that they didn't make the statements sought to be tendered or that they were made under pain of torture or other forms of duress. This novel provision of the ACJL rather than inhibit the work of the police, strengthens their case if implemented because the certainty of the voluntariness of the

confessional statement is put beyond question.

An improvement in the technological capabilities of the police will reduce the over-reliance on confessional statements in the prosecution of cases. The use of torture to elicit confessional statements from suspects is clearly prohibited by the Anti-Torture Act passed in 2015.

Torture is prohibited all over the world that even a mere threat to use torture on a suspect by a police officer can attract sanctions as we can see in the case study below.

Prohibition of Torture

Torture is prohibited all over the world that even a mere threat to use torture on a suspect by a police officer can attract sanctions as we can see in the case study below.

Case Study 3 - Threat to torture a suspect can attract sanctions[1]

In 2002, Magnus Gafgen, a 28-year-old law student in Germany, kidnapped, demanded for ransom and later killed Jon Metler, an 11-year-old son of a Frankfurt Banking Family. Deputy Police Chief Wolfgang Daschner was reprimanded for threatening to inflict 'unimaginable pain' on Magnus if he did not disclose to the police the whereabouts of the little boy.

Out of the fear of the threat of torture, he finally disclosed the boy's location but when the police got there he was already dead.

During trial, the court rejected the confessional statement obtained from Magnus by threat of torture. He later made another confessional statement based on which he was convicted and sentenced to life imprisonment. He filed a civil suit against the police based on the threat of torture and was awarded $4250.00 dollars as damages.

Daschner the Deputy Police Chief was tried and convicted for threat of torture, but was given a caution and a suspended sentence. This case study goes to show that on no account should torture be used to elicit confessional statements from suspects.

Bail

A suspect, arrested on the allegation of committing an offence may be granted bail by the police or by the courts. The essence of bail is to ensure that the suspect or defendant appears at the police station or court whenever he is required to do so in the course of investigation or trial.

A suitable surety is required to sign the bail bond and enter into a recognisance to produce the suspect or defendant anytime he is required by the police or court, on such terms and conditions as may be provided for. Under the ACJL, the court may, while considering an ex parte application for the remand of a suspect, grant him bail (Section 309).

The police and courts are enjoined to ensure that bail conditions given to suspects and defendants are reasonable and may depend on the circumstances of the case. A suspect or defendant charged with an offence punishable with death may be granted bail only in "exceptional circumstances" by the Judge of a High Court.

By virtue of Section 177 of the ACJL, a defendant charged with an offence punishable with a term of imprisonment exceeding three years shall, on application to the court, be released on bail except in any of the following circumstances:

- Where there is reasonable ground to believe that the defendant will, where released on bail, commit another offence;
- Attempt to evade his trial;
- Attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case;
- Attempt to conceal or destroy evidence;
- Prejudice the proper investigation of the offence; or
- Undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system.

In all other cases a suspect or defendant is ordinarily entitled to bail. Bail is a constitutional right that recognises that the suspect or defendant are presumed innocent until their guilt is established by the court of law.

Police may release suspect on bail

Where a suspect is taken into custody for an offence other than that punishable with death, an officer in charge of a police station shall inquire into the case and release the suspect on bail on his entering into a recognisance with or without sureties for a reasonable sum of money to appear before the court or at the police station at the time and place named in the recognisance.

Police may release suspect on bail

A woman shall not be denied, prevented or restricted from entering into a cognisance or standing as surety for any defendant or applicant on the ground only that the person is a woman.

It therefore contravenes section 42 of the 1999 Constitution which deals with freedom

from discrimination the provisions of the ACJA to prevent a woman from standing as surety to a suspect or defendant, either at the police station or in the courts.

Remand and detention time protocols

Section 35 of the Constitution of the Federal Republic of Nigeria guarantees the right to personal liberty. It goes further to set out the exceptions under which this right may be curtailed.

One of the allowable exceptions in subsection (1)(c) is for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.

Any person who is arrested or detained in accordance with the above subsection shall be brought before a court of law within a reasonable time. If he is not tried withi a period of:

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail; shall be released either unconditionally or upon some conditions reasonably necessary to ensure that he appears for trial at a later date.

The Constitution goes ahead to describe a reasonable time as

(a) a period of one day where there is a court of competent jurisdiction within a radius of forty kilometres; and in any other case, two days or such other period as in the circumstances maybe considered by the court to be reasonable. It was in a bid to circumvent running afoul of this provision that law enforcement officials developed the concept of the holding charge by which the suspect is taken before any court, even where the court lacks jurisdiction to entertain the case in order to get him remanded in custody pursuant to an order of court. For some suspects, they are forgotten and abandoned after being remanded. This has led to a situation where pre-trial detainees spend long periods of time in remand without any progress being made with the prosecution of their cases. The new law has changed all that now by setting out a strict guideline for remand and time protocols for remand.

The rationale behind the setting out of time protocols for remand is to ensure that there is a periodic review of the cases of suspects on remand to avoid their being forgotten in the system and leading to overcrowding of the correctional centres.

A police officer who wants to remand a suspect may apply to a magistrate court in the prescribed form and must contain the reasons for the remand request and be verified on oath. The time protocols for the remand of suspect are as follows:

- The court may order the remand of the suspect for a period not exceeding 21 days at the first instance and returnable within the period.
- At the expiration of the period, the court may make an order for further remand of the suspect for a period not exceeding 14 days at the second instance.
- At the expiration of this period, the court may, on application of the suspect grant him bail. If, however the suspect is still in custody at the expiration of the second 14 days' period, and his trial has not commenced, or no charge has been filed at the court having jurisdiction to try the

offence, the court shall issue a hearing notice on the Commissioner of Police and the Attorney General of the State, as the case may be, or any person in whose custody the suspect is, and adjourn for another period not exceeding 14 days. The essence of the hearing notice is to inquire into the position of the case and to show cause why the remanded suspect shall not be released unconditionally.

- Where good cause is not shown, and the suspect is still in custody, the court shall with, or without an application, discharge the suspect and the suspect shall be released immediately from custody.
- Where good cause is shown by the Commissioner of Police and the Attorney General of the State, the court may again extend the remand order for a final period not exceeding 14 days and made returnable within the period. If at the expiration of this final period and the suspect still remains in custody, the court shall with, or without an application, discharge the suspect and the suspect shall be released immediately from custody and no further application for remand shall be entertained by any court (Section 310(6).

See forms for remand proceedings on the next page

FORMS FOR REMAND PROCEEDINGS
(General Title-Form No. 1)

Form No. 8 Section 307

REPORT AND REQUEST FORM FOR REMAND

COMMISSIONER OF POLICE

BETWEEN

Applicants

DIRECTOR OF PUBLIC PROSECUTIONS

AND

XYZ

To: The Registrar of the Court

Respondent

The Court is hereby informed that there is probable cause to order the Remand of XYZ (state particulars of the Respondent namely. age, sex, occupation) of (state details of the Respondent's street address or where there is no precise street address, as near and close description as possible of the location of the Respondent's last known place of abode) in named custody in ..... (state the exact place of custody in which the Applicant proposes to Remand the Respondent such as the name and location of the Prison or other detention place) who is reasonably suspected to have committed the Offence of ..... contrary to Section ..... of the .....within.....

High Court/Magisterial/Territorial District on or about .....(state the date or approximate date or the period of commission of the alleged offence) on grounds stated below:
Dated The.....Day of .....20.....

GROUNDS FOR THE REQUEST FOR REMAND

1. Place, time and circumstance of Arrest:.....
2. Arrested with Exhibit(s).....Yes.....No (tick appropriate) (disregard (3) and (4) if the Respondent was not arrested with Exhibit(s)
3. If arrested with Exhibit(s), state clearly the particulars of the Exhibit(s).....
4. If arrested with Exhibit(s), state clearly how the items are related to or linked with the committal of the alleged Offence.....
5. State particulars of other Evidence or Report linking the Respondent to the committing

of the Offence such as Forensic Evidence, Mark or Finger Prints, etc.

6. *Confessional Statements.....Yes.....No*
7. *Any previous conviction for the same or similar offence ....Yes.....No*
8. *If (7) above is Yes, state the particulars of previous conviction(s).....*
   Found in custody or Offence Weapon, Object or Substance .....Yes.....No
9. *Identification by Victim(s) or Witness(es) .....Yes..... No*
   (State the particulars of such Victim(s) or Witness(es)

i. *Name*
   Age
   Sex
   Address
   Occupation

ii. *Name*
   Age
   Sex
   Address
   Occupation

iii. *Name*
   Age
   Sex
   Address
   Occupation

iv. *Name*
   Age
   Sex
   Address
   Occupation

v. *Name*
   Age
   Sex
   Address
   Occupation

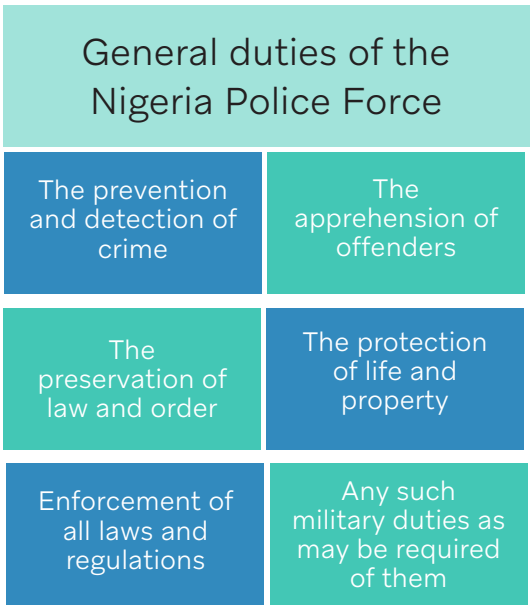
10. *Need for further investigation.....Yes.....No*
11. *Period/duration required for further investigation.....(state approximate days/weeks/months*
   required to complete investigation)
12. *Any further relevant information*

Signed.....
(Commissioner of Police/Director of Public Prosecution/ Law Officer/Police Officer)

CHAPTER THREE

Roles and Responsibilities of the Police under the ACJL

The Nigeria Police Force was established by virtue of section 214 of the Constitution of the Federal Republic of Nigeria 1999 and shall have powers and duties as may be conferred upon them by law. Pursuant to this, the Police Act sets out the general duties of the Nigeria Police Force in section 4 as follows:



From the above, it can be seen that the police have an important and critical role to play in the criminal justice system and these roles have been outlined in the relevant provisions of the ACJL.

Roles and Responsibilities of the Police under the ACJL

A person who is alleged to have committed an offence may be arrested for the purpose of being investigated, and if the investigation shows that there is a prima facie case against the suspect, he/she may be charged and tried in accordance with the provisions of this and other relevant laws.

A suspect may be arrested with or without warrant. Sometimes the law creating an offence may expressly state whether a person who is suspected of having committed an offence may be arrested with or without warrant.

Form and content of a warrant

A warrant of arrest shall be in the prescribed form and contain the following information as well as characteristics:

- The date of issue
- All necessary particulars
- Signature of the judge or Magistrate who issued it
- The offence or matter for which it is issued
- Name or otherwise describe the suspect to be arrested
- Order the police officer or officers to whom it is directed to arrest the suspect and bring him before the court
- Shall not be issued unless the complaint or statement is on oath
- May be issued any day including a Sunday or public holiday
- May be executed any day including a Sunday or public holidays
- May be directed to a particular police officer or to all police officers
- Once executed, shall no longer be valid authority for re-arresting the suspect.

Public summons

Where a court has reason to believe that a suspect against whom a warrant of arrest has been issued, has absconded or is concealing himself in order to avoid the execution of the warrant, the court may publish a public summons in writing, requiring that person to appear at a specific place and time, not less than 30 days from the date of publishing the public summons.

Mode of publication of public summons

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

- **In a newspaper that enjoys wide circulation or circulated in any other appropriate medium**
- **By affixing it to a conspicuous part of the house, premises, town or village in which the person ordinarily resides**
- **By affixing a copy to some conspicuous part of the High Court or Magistrate's court building**

Search warrants

A police officer who is conducting an investigation may apply to a court of the Justice of the Peace within the local limits of jurisdiction for the issue of a search warrant under section 158 of the ACJL. Where the court or Justice of the Peace is satisfied, by an information on oath and in writing, and that there is reasonable ground for believing that there is in any building, ship, carriage, receptacle, motor vehicle aircraft or place:

- Anything upon or in respect of which an offence has been or is suspected to have been committed;
- Anything which there is reasonable ground for believing will provide evidence as to the commission of an offence; or
- Anything which there is reasonable ground for believing is intended to be used for the purpose of committing an offence,

The court or Justice of the Peace may issue a warrant authorising an officer of the court, a police officer or any other person named to search the building, ship, carriage, receptacle, motor vehicle aircraft or place: to seize any such thing or arrest the occupier of the house or place where the thing was found (Section 159).

Just like in the case of arrest warrants, a search warrant possesses the following characteristics:

- **It shall be signed by the judge or magistrate issuing it**
- **It shall remain in force until it is executed or cancelled by the court which issued it**
- **It may be directed to one or more persons, and where directed to more than one, it may be executed by all or by any one or more of them**
- **A search warrant may be executed at any time on any day, including a Sunday or a public holiday.**

A person who resides or is in charge of a building sought to be searched which is

closed, shall on demand of the police officer or other person executing the search warrant, allow him free and unhindered access to it and afford all reasonable facilities for its search (Section 164).

A person executing a search warrant shall draw up a list of all things recovered in the course of the search, and a copy of the list shall be forwarded to the Judge, Magistrate or Justice of the Peace who issued the warrant **(Section 168).**

Where a thing seized under a search warrant is of a perishable and noxious nature or is gunpowder, arms, ammunition, or any other explosive, it may be disposed of in such a manner as the court may direct **(Sections 169).**

Where a place to be searched is physically occupied by a woman, who according to custom or religion does not appear in public, the person making the search shall, before entering the building give notice to the woman to withdraw and shall afford her every reasonable facility for withdrawing, and may then enter the building **(Section 164(6).**

See forms for search warrant on the next page

FORM NO. 7
Section 161

SEARCH WARRANT (TITLE OF PROCEEDING)

In the.....Court of .....in the Judicial Division/Magisterial/Territorial District.

To.....a.nd.....

Whereas information on Oath and in writing this day has been made that there is reasonable ground for believing that there is in (state the place to be searched and state what is to be searched for in the terms of paragraphs (a), (b) or (c) of Section 159 (l) of this Law.)

You are hereby commanded in the name of the State, with proper assistance, to enter the above-named (state the place to be searched) and there diligently search for the things aforesaid and where the same or any part thereof found in search, to bring the things found, and also the said (name the occupier of the place to be searched) before this Court to be dealt with accordingly.

This Warrant may be executed at any time on any day, including a Sunday or Publi c Holiday and may also be executed at any hour during the day or night.
Issued at.....Day of .....20.....

Judge/Magistrate

INVENTORY OF ITEMS RECOVERED DURING EXECUTION OF SEARCH WARRANT IN TERMS OF SECTION 159 (l), 168(2)

A. LIST OF ITEMS DETAINED AND PLACE OF SUCH DETENTION
1.
2.
3.
4.
5.
6.
7.
8.

9.
10.

B. LIST OF ITEMS RELEASED TO THEOWNER(S).
1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

…… ……

NAME/RANK/FORCE *NAME TITLE OF THE OCCUPIER*
No. OF OFFICER *OF THE PLACE SEARCHED*
EXECUTING THE WARRANT

…… ……

NAME/RANK/FORCE *NAME TITLE OF AN*
No. OF ACCOUNTING OFFICER *INDEPENDENT WITNESS*

Dated The ……Day of ……20……

Prevention of offences and security for good behaviour

It is the responsibility of the institutions responsible for the safety and security of citizens to ensure that crime is reduced to the barest minimum. It is safer, cheaper and better to prevent the commission of offences rather than dissipate scarce resources in the investigation, arrest, and prosecution of suspect.

Preventing the commission of a crime

In line with the duties of the police to prevent the commission of crimes, the ACJL contains provisions that advance this responsibility. Thus, a police officer may intervene for the purpose of preventing, and shall to the best of his ability, prevent the commission of an offence. A police officer may of his authority intervene to prevent an injury attempted to be committed in his presence to any public property, whether movable or immovable, or the removal of or injury to any public landmark, buoy or other mark used for navigation **(Section 66).**

Arrest to prevent the commission of an offence

A police officer upon a reasonable suspicion of a design to commit an offence may arrest, without orders from a magistrate and without warrant, a suspect where it appears to the officer that the commission of the offence cannot otherwise be prevented **(Section 68).**

Recognisance for keeping the peace

Where a magistrate is informed on oath that a suspect is likely to commit a breach of the peace or disturb the public tranquillity, or do any wrongful act that may probably occasion a breach of the peace or disturb public tranquillity, the magistrate may require the suspect to show cause why he should not be ordered to enter into a recognisance, with or without sureties, for keeping the peace for such period not exceeding one year, as the magistrate may deem fit **(Section 70).**

Security for good behaviour

Similarly, where a magistrate is informed on oath that a suspect is taking precautions to conceal his presence within the magistrate's jurisdiction, and there is reason to believe that the suspect is taking the precautions with a view to committing an offence, the magistrate may require the suspect to show cause why he should not be ordered to enter into a recognisance, with sureties, for his good behaviour for such period not exceeding one year, as the magistrate deems fit **(Section 71).**

Security for good behaviour for habitual offenders

Where a Magistrate is informed on oath that a suspect within the local limits of his jurisdiction: is by habit an armed robber, a housebreaker, or a thief; is by habit a receiver of stolen property, knowing the same to have been stolen; habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; habitually commits or attempts to commit,

or aids or abets the commission of any offence relating to property; habitually commits or attempts to commit, or aids or abets in the commission of, offence involving a breach of the peace; or is so desperate or dangerous as to render his being at large without security hazardous to the community, such magistrate may require the suspect to show cause why he should not be ordered to enter into a recognisance, with sureties, for his good behaviour for such period not exceeding one year, as the magistrate deems fit **(Section 72).**

It must be stated that while the order to be bound over or to enter into recognisance is the responsibility of the magistrate, the police has the responsibility of identifying such would-be or habitual offenders and informing the magistrate on oath accordingly.

First Information Report (FIR)

The first information report is a procedure through which the complaints of a complainant is received and brought before a magistrate court by a police officer for the purpose of prosecution. A step-by-step guide for the receipt of a complaint from a complainant and the preparation of the First Information Report are set out in section 127 of the ACJL and outlined below:

- Where a complaint is brought before a police officer in charge of a police station concerning the commission of an offence, and it is one which the police are authorised to arrest without warrant, and triable by a magistrate court within which jurisdiction the police station is situated, the police shall if the complaint is made orally, reduce the complaint or cause it to be reduced in writing in the Police Diary.

- The complaint so reduced into writing into the Police Diary shall be read over to the complainant and every such complaint shall be signed by the officer receiving the complaint. Where the office in charge of a police station has reason to suspect the commission of an offence, he shall enter or cause to be entered the grounds of his suspicion.

- On the other hand, where the officer is satisfied that no public interest may be served by prosecuting, he may refuse to accept the complaint provided he notifies the complainant of his right to complain to a court under this law.

- After complying with the provisions set out above, the officer in charge of the police formation shall act as follows:

- He shall forthwith proceed to the scene and investigate the case and if the suspect is not in custody, take such steps as may be necessary for the discovery and arrest of the suspect or he may direct a police officer subordinate to him to do so and report to him;

- In cases involving death or serious injury to any person, the officer in charge of the police station shall arrange, if possible, for the person to be taken to the nearest hospital for such further examination as may be necessary;

- Where the complaint is given against a person by name and the alleged offence is not of a serious nature, the officer in charge of a police formation need not make or direct investigation on the spot;

In the cases mentioned above, the officer in charge of the police station shall record in the book and in the First Information Report to the court his reason for not entering on an investigation or for not making or directing investigation on the spot or not investigating the case;

- Where after the investigation, it appears that the complaints against the suspect are unfounded, the investigation shall be terminated and this fact shall be recorded in the Police Diary mentioned; and

- Where the officer considers that the prosecution of the alleged offence will serve the public interest, the officer shall reduce the complaint into the prescribed form called the First Information Report and the officer shall take the alleged suspect with the First Information Report before a Magistrate within whose jurisdiction the police station is situated.

- Where the suspect appears or is brought before the Magistrate court, the particulars of the offence of which he is accused shall be read to him and he shall be asked if he has any cause to show why he should not be tried by the Magistrate.

- Where upon hearing the information, the alleged suspect admits the commission of the offence contained in the First Information Report, his admission shall be recorded as near as possible in the words used by him and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly and in that case it shall not be necessary to frame a formal charge.

- Where the suspect denies the allegation against him and states that he intends to show cause why he should not be convicted, the Magistrate shall proceed to hear the complainant and take such evidence as may be produced in support of the prosecution and the suspect shall be at liberty to cross-examine the witnesses for the prosecution and if he so does, the prosecutor may re-examine the witnesses where necessary.

- Where the evidence referred to has been taken or at any stage of the case, the Magistrate is of the opinion that there is ground that the suspect has committed an offence triable under this part, which such Magistrate court is competent to try and which, in the opinion of the Magistrate, could be adequately punished, the Magistrate shall frame a charge stating the offence for which the suspect will either be tried by the court or direct that the suspect be tried in another Magistrate court.

- Where in the proceedings before a Magistrate court, the court at any stage before judgment, is of the opinion that the case is one which ought to be tried by the High Court, he shall transfer the case along with the suspect to a High Court for trial upon a charge or information in accordance with the provisions of this Act.

Where the suspect appears or is brought before the Magistrate court, the particulars of the offence of which he is accused shall be read to him

Court oversight of police stations

A Chief Magistrate and where there is none, any Magistrate designated by the Chief Judge for that purpose shall every month, conduct an inspection of police stations or other places of detention within his territorial jurisdiction other than the correctional centres. This is provided for in section 51 of the ACJL.
During the visit, the Magistrate may:

- Call for, and inspect, the record of arrests;
- Direct the arraignment of a suspect;
- Where bail has been refused, grant bail to any suspect where appropriate if the offence for which the suspect is held is within the jurisdiction of the Magistrate.

An officer in charge of a police station or official in charge of an agency authorised to make an arrest shall make available to the visiting Chief Magistrate or designated Magistrate exercising his powers under subsection (1) of this section:

- The full record of arrest and record of bail;
- Applications and decisions on bail made within the period; and
- Any other facility the Magistrate requires to exercise his powers under that subsection.

Magistrate may grant bail to any suspect where appropriate if the offence for which the suspect is held is within the jurisdiction of the Magistrate.

Default to be treated as a misconduct

Where there is default by an officer in charge of a police station or official in-charge of an agency authorised to make arrest to comply with the provisions of subsection of this section, the default shall be treated as a misconduct and shall be dealt with in accordance with the relevant Police Regulation under the Police Act, or pursuant to any other disciplinary procedure prescribed by any provision regulating the conduct of the officer or official of the agency (Section 51(5)).

Police to submit reports to supervising Magistrates

In addition to the monthly visit of Magistrates to police stations, section 50 of the ACJL requires an officer in charge of a police station or an official of any agency authorised to make arrest shall, on the last working day of every month, report to the nearest Magistrate the cases of all suspects arrested without warrant within the limits of their respective stations or agencies whether the suspects have been admitted to bail or not.

The report shall contain the particulars of the suspects arrested and the Magistrate shall on receipt of the report, forward them to the Criminal Justice Monitoring Committee, which shall analyse the reports and advice the Attorney General of the Federation on the trends of arrests, bail and related matters.

The Attorney General of the Federation shall, upon request by the National Human Rights Commission, the Legal Aid Council of Nigeria or a Non-Governmental Organisation, make the report available to them. Where no report is made as required above, the Magistrate shall forward a report to the Chief Judge of the State for appropriate remedial action.

CHAPTER FOUR

Evidence by Witnesses under the ACJL

The role of witnesses in the conduct of trials and determination of cases before the courts cannot be over-emphasized. The assist the presiding judicial officer in arriving at the truth of the matter before the court. However, it not all smooth sailing as there are numerous challenges faced by the court, the prosecution and the defence in trying to ensure the attendance and giving evidence of the witnesses in the cases that come before the courts.

Issue of summons to witnesses

The court may on the application of the prosecution or the defence, issue a summons or writ of subpoena on a witness requiring him to attend court to give evidence in respect of the case, and to bring with him any specified documents or thing relating to them which may be in his possession or power or under his control. Where the prosecutor is not a public servant, the person to whom the summons is addressed is not bound to attend unless his travelling expenses are paid to him **(Section 255).**

Service of court processes in criminal cases

The service of processes shall be undertaken by a process server specifically assigned to the court whose responsibility it is to serve all witness summons, defendants production orders, writs and all other processes issued in the court in respect of all criminal matters. Service of court processes may also be effected by registered reputable courier companies, recognised and authorised by the Chief Judge in accordance with the provisions of this Act **(Section 256)**.

Issue of warrant for arrest of witness after summons

Where a witness who has been summoned to give evidence does not: attend court at the time and place indicated on the summons, and provide any reasonable excuse for his non-attendance, the after proof that the summons was duly served on him, or that the person to be served wilfully avoids service, the court may issue a warrant of arrest and bring him before the court **(Section 257).**

The court may on the application of the prosecution or the defence, issue a summons or writ of subpoena on a witness requiring him to attend court to give evidence in respect of the case

Penalty for witness refusing to attend pursuant to summons

Where a witness refuses, or neglects, without reasonable cause, to attend court in compliance with the requirements of a summons duly served on him, or departs from the premises of the court without leave of the Judge or Magistrate hearing the case, he shall be liable on summary conviction to a fine not exceeding N10,000.00 or to imprisonment to a term not exceeding two months

Manner of taking oath or affirmation

A witness shall take an oath or make a solemn affirmation in such a manner as the court considers binding on his conscience.

Witness expenses

Where a person attends court as a state witness, the witness shall be entitled to the payment of such reasonable expenses as may be prescribed (Section 265). On the other hand, where a witness attends court to give evidence for the defence, the court may in its discretion on application, order payment by the Registrar to such witness of court such sums of money, as it may deem reasonable and sufficient to compensate the witness for the expenses he reasonably incurred in attending court (Section 266).

CHAPTER FIVE

Basic Concepts in Criminal Investigation

The relevance of criminal investigation in the administration of criminal justice in Nigeria cannot be over-emphasized. It is through the outcome of criminal investigation by law enforcement officials that a decision is made as to whether or not a prima facie case has been made out to warrant a prosecution and also whom to prosecute.

The success or otherwise of prosecution depends entirely on the quality of investigation conducted in the case. Where a thorough investigation is carried out, the key elements required to ground an effective prosecution are usually present. The reverse is the case when a very shoddy investigation has been carried out.

This provides loose ends for the defence counsel to exploit in a bid to exculpate his client from being found guilty of the offences charged. When fundamental mistakes are made in the course of investigation, the prosecutor is helpless during the trial stage as he/she cannot add or subtract from the investigation that has been carried out and concluded already.

It is therefore important to ensure that proper investigations are carried out to unearth relevant facts that will inform the prosecutorial decision as well as put together the evidence to be relied on at trial.

Fundamentals of criminal investigation

To carry out effective investigations, there are basic tenets that should be observed and applied to ensure that the quality of the investigation is high. They are as follows:

Crime Scene Investigation

When a crime is committed and a report is made to the police, one of the key steps to be taken in the course of the investigation is to visit the crime scene. On arrival at the crime scene, the first step is to effectively secure and manage the crime scene to avoid the destruction of evidence or contamination of the crime scene.

In some jurisdictions, the crime scene is secured by using a yellow duct tape to secure the perimeter of the scene with the sign 'crime scene, do not enter'. The securing of the crime scene will then allow investigators to get to work and comb the scene for evidence that will assist them in unravelling the crime that has taken place and who may have been responsible for it.

Case Study
The assassination of Funsho Williams

Funsho Williams, a PDP Governorship candidate for Lagos State was killed in his study at home in Dolphin Estate Ikoyi Lagos on the 27th of July 2006. Prior to his assassination, a fractious disagreement had developed amongst the top contenders for the PDP gubernatorial ticket for Lagos State which had degenerated into violence between the supporters of one such candidate and then Minister of Works, Senator Adeseye Ogunlewe and those of Funsho Williams. Some highlights of the investigations:[2]

1. The period between the discovery of the assassinated Funsho Williams and when examination by a forensic pathologist was allowed by the police was 6 hours during which time several persons were allowed into the room where the late Funsho Williams was still lying face down with his hands tied behind his back.

2. A police team had also visited the scene hours before the pathologist arrived but had failed to secure the scene.

3. The three-man detective team from Scotland Yard from where the Federal government had sought help to investigate the case were taken to the home of the deceased, a few days after his death, noted that the crime scene was not preserved at all for forensic investigation. The police even days after the incident had not secured or taken control of the scene and the keys to the room were still in the custody of a family member of the deceased.

4. According to the Scotland Yard team, over 7,000 fingerprints were collected from the scene, including those of policemen. Far too many fingerprints to make much progress.

5. Although media reports suggested he was stabbed to death, largely because a blood-stained knife was found at the scene, and at least one stab wound was identified on his body, the autopsy report shows that Funsho Williams was strangled to death before he was stabbed and that the stab wounds were not the cause of death.

6. Aside from Funsho Williams' political rivals including Senators Ogunlewe and Obanikoro and the Coordinator of the Federal Roads Maintenance Agency Kehinde Oyenuga, 9 other suspects were arrested. The three mobile policemen on guard duties at his home were suspected of complicity on account of their inability to explain their absence from their duty post when the incident occurred.

The above case study highlights the importance of securing a crime scene for effective management and gathering of evidence. Suffice it to say that six suspects were eventually charged to court and after 8 years of detention and trial, they were all discharged and acquitted because the prosecution lacked credible evidence to link the accused persons to the commission of the crime.

[2]Excerpts from Prof Yemi Osinbajo SAN 'The state of criminal justice' Tenth Justice Idigbe Memorial Lecture, December 11, 2009 at University of Benin.

Fingerprint matching

Dusting for fingerprints and matching them against an existing fingerprint database of the prints of all those who from available evidence may have reasons to be suspects is one of the scientific means of narrowing down a crime investigation to likely suspects.

This is because fingerprints are individually unique to everyone and no two people share the same finger print. If for example, theft is committed by money being removed from a safe in a house without any evidence of a break-in.

The dusting of the safe for fingerprints and cross matching the fingerprints found on the safe with that of all persons who were within the household at the relevant time may help narrow down the likely suspect.

Hair and fibre/fabric Analysis

This is usually done in cases where the interest of the police is to late the suspect at the scene of the crime through the identification and analysis of hair follicles or fabrics from the clothes or fabrics worn by the suspect and later found in his possession.

Ballistic analysis

Where the crime in question involves the use of weapons and discharge of projectiles for murder, attempted murder or assault, a ballistic expert may be invited to undertake analysis of the ballistics used or projectiles discharged with a view to unravelling its source, or compatibility with a firearm discovered either at the scene of crime or in possession of a suspect or registered in his name.

DNA profiling and analysis

Many grievous crimes have been solved relying on the use of DNA profiling and analysis. The accuracy of DNA profiling is almost perfect that once it is established that there is a match, there is always a presumption that the suspect may have been involved in the commission of the crime.

In developed countries where the use of DNA is rife, many suspects have either been convicted or acquitted based on DNA profiling and analysis. Given the huge financial outlay involved in the setting up of a laboratory capable of conducting DNA tests, this method of forensic investigation has not taken root in Nigeria.

Forensic data Analysis

For offences involving financial crimes, a forensic analysis of the relevant documents and bank statements may yield the origin and destination funds and the paper trail. This can help in the tracing and recovery of assets for purposes of restitution as well as those who committed the offence

In developed countries where the use of DNA is rife, many suspects have either been convicted or acquitted based on DNA profiling and analysis.

Gathering of evidence

The essence of investigation is to put together evidence that supports the prosecution or otherwise of the suspect. Evidence may be real evidence, for example items or weapons used in the commission of the crime, or they may be testimony of witnesses as to what they saw or witnessed in the course of the offence being committed or documentary evidence. One type of evidence may reinforce another type of evidence in which case they corroborate each other in support of the case.

Identifying possible suspects

From the evidence available, the investigator (and prosecutor where they are working together) may then determine who and who may be categorised as suspects in relation to the crime and then narrow down to individuals of interest who may then be arrested and interrogated in relation to the crime.

Arrest of suspect(s)

Arrest should only be carried out when the available evidence points to an individual as one who may have had a hand in the commission of the offence.

This is contrary to the prevailing norm where arrest of a suspect is the first step in the course of investigation. The burden of proof is then wrongly placed on the suspect to prove his or her innocence and negates the constitutional right of presumption of innocence which a suspect is entitled to by virtue of section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria. It must be noted that the limited forensic capabilities of the Nigerian police have led to more reliance being placed on the testimony of witnesses and confessional statements to establish the guilt of a defendant. Investigators are under a duty to ensure that all rights that accrue to a suspect under the constitution and the Administration of Criminal Justice Law are respected and observed.

Interrogation of suspects

When witnesses are questioned by the investigators, it takes the form of an interview to elicit information in a general sense. However, when one is arrested on suspicion or based on available credible evidence that points towards the involvement of a suspect in the commission of an offence, then interrogation takes place.

It must be restated for the avoidance of doubt that where a suspect elects to make a confessional statement, the provisions of the ACJL relating to the making of confessional statements must be observed. Failure to do so may lead to the inadmissibility of the statement which may weaken or totally destroy the case of the prosecution. In cases where such statements are admitted in evidence pursuant to the Evidence Act, little or no weight may be attached to it by the courts when evaluating evidence in the case.

Whenever a suspect volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the confessional statement shall be in writing and may be recorded electronically on a retrievable video compact disc or

such other audio-visual means (Section 38(2)). For this provision to be effectively implemented, it would require the provision of the relevant gadgets to enable the police deploy same for the recording of confessional statements in compliance with the provisions of the ACJL.

In the absence of video or audio-visual facilities, the said statement shall be in writing and made in the presence of a legal practitioner of his choice, and in the absence of a legal practitioner of his choice, the statement shall be made in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organisation or the traditional ruler of the locality or any person of his choice.

The alternative methods provided by the ACJL for the purposes of establishing or confirming the voluntariness of a confessional statement is in recognition of possible challenges that may be faced in the provision of audio-visual equipment and accessories at the various police stations.

These requirements have been so liberalised, such that it is practically easy for an indigent suspect to satisfy at least one of the requirements. What can be easier than allowing a suspect to nominate any person of his choice to witness the making of a confessional statement.

CHAPTER SIX

Essentials of effective prosecutions

There are certain fundamental principles that constitute essentials required for the carrying out of effective prosecutions. These principles are paramount whether the prosecution is being carried out by lawyers of by policemen who are lay prosecutors within the justice system at the state level.

Prosecutors' powers

The prosecutorial powers of the state are granted to the Attorney General of the Federation and Attorney Generals of the states pursuant to Sections 174(1) and 21191) of the 1999 Constitution. They shall have powers:

(a) To institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial, in respect of any offence created by an Act of the National Assemble or the Law of a State House of Assembly as the case may be:

(b) To take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and

© To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

These powers may be exercised by the Attorneys General in person or through officers of their department and in exercising these powers they shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.

Law enforcement institutions including the police can prosecute offences on behalf of the Attorneys General. In carrying out his duties, a prosecutor shall act in accordance with the law and extant prosecutorial policy and guidelines. It must be noted that the duty of a prosecutor is not to secure a conviction at all costs, but rather to place all relevant evidence before the court, including evidence that helps the case of the defendant.

The role of the prosecutor in criminal proceedings

A prosecutor shall perform the following roles in the course of criminal proceedings:[3]

(a) Where authorised by law or practice to participate in the investigation of crime, or to exercise supervision over the police or other investigators, he shall do so objectively, impartially and professionally;

(b) While supervising the investigation of crime, he shall ensure that the investigator respects legal precepts and fundamental human rights;

(c) The prosecutor shall, when giving advice, do so impartially and objectively;

(d) In the institution of criminal proceedings, the prosecutor shall proceed only where there is prima facie evidence and shall not continue with the prosecution in the absence of such evidence;

(e) Throughout the course of th proceedings, the case shall be firmly and fairly prosecuted and not beyond what is indicated by the evidence;

(f) Where the prosecutor exercises a supervisory function in relation to the execution of a court decision or performs other non-prosecutorial functions, he shall act in the public interest.

[3]Code of Conduct for Prosecutors 2013 in C Obiagwu (ed.) Effective prosecutions (2015) LEDAP, Lagos 313.

Decision to prosecute or not prosecute

The overall consideration for prosecution is whether the offence or the circumstances of its commission are of such nature that a prosecution is required in the public interest and accordingly, the prosecutor shall weigh the contending interests of the community, suspect and the victim in determining whether or not to prosecute.[4]

In arriving at the decision, the prosecutor must consider the gravity of the offence and the strength of the evidence against the suspect.

Charges

Once a decision has been taken that a suspect should be prosecuted, the next step is for the prosecutor to file a charge against the suspect. According to the Black's Law Dictionary, 8th Edition (page 248), a charge means "to accuse a person of an offence". The important thing about a charge in a criminal case is that it must tell the accused person enough, so that he may know the case alleged against him and prepare his defence - *Ogbomor v. State (1985) 1 NWLR(PT.2) 223*.

Guidelines for the drafting of charges

Having regard to the nature and credibility of evidence available, the prosecutor shall select the charges to be proffered against a suspect. In doing so a prosecutor should select charges which:[5]

- Are within the court's jurisdiction;
- Reflect the seriousness and extent of the alleged offence;
- Can lawfully, reasonably and conveniently be tried together or in groups;
- Enable the case to be presented to a court in a clear and comprehensive way;
- Lay the charge under the statutory provisions that provide for adequate punishment reflects the seriousness of the offence; and
- Enable the court to make suitable ancillary orders.

From the above, the importance of the prosecutor working with the investigator has been highlighted. This is so because the outcome of the investigation has a direct bearing to whether or not a suspect may be charged and what he is charged with. In working collaboratively with the investigator, the prosecutor determines whether the elements of the offences to be charged have been satisfied or not, whether there are other leads that need to be investigated promptly.

For instance, if the suspect raises the defence of alibi, which means that he was not at the scene of the crime but somewhere else when the crime was committed, it is the duty of the investigator to investigate the alibi to determine its veracity. If this is not done and the case goes to hearing, the suspect can be discharged and acquitted on that basis alone.

[4] Article 4(1) Guidelines for Prosecutors in the Federal Republic of Nigeria.
[5] Article 6 Guidelines for Prosecutors in the Federal Republic of Nigeria.

Form and content of a charge

A charge is prepared in the prescribed form and sets out the case that the defendant is called upon to answer to during the trial. Where the law creating the offence gives it a specific name, it shall be described in the charge by that name only; if it does not give it a specific name, so much of the definition of the offence shall be stated as to give the defendant notice of the facts of the offence with which he is charged.

The section of the law and the punishment section of the law against which the offence is said to have been committed shall be set out in the charge **(Sections 208 and 209).**

Particulars of a charge

A charge shall contain such particulars as to the time and place of the alleged offence and the defendant, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the defendant notice of the offence with which he is charged **(Section 221).**

Where defendants may be charged jointly

The ACJL in section 223 spells out the circumstances under which two or more defendants, may be charged jointly. The following defendants may be charged and tried together, defendants accused of:

- The same offence committed in the course of the same transaction;
- An offence and another of abetting or being accessory to or attempting to commit the same offence;
- More than one offence of the same or similar character, committed by them jointly;
- Different offences committed in the course of the same transaction;
- Offences which include theft, extortion or criminal misappropriation and another accused of receiving or retaining or assisting in the disposal or concealment of property, the possession of which has been transferred by offences committed by the first named persons, or of abetment of or attempting to commit any of the last named offences; and
- Dishonestly receiving stolen property or assisting in concealment of stolen property, or in respect of stolen property the possession of which has been transferred by one offence, and another accused of offences
- Committed during a fight or series of fights arising out of another fight, and persons accused of abetting any of these offences.

Alteration and amendment of charges

A court may permit an alteration or amendment to a charge or framing of a new charge at any time before judgment is pronounced (Section 231(1) and where a new charge sis framed or alteration made to a charge under this law, the court shall call on the defendant to plead to the new or altered charge as if he has been arraigned for the first time **(Section 231(3)).**

Recall of witnesses when charge is revised

When a charge is altered, amended or substituted after the commencement of the trial, the prosecutor and the defendant shall be allowed to recall or re-summon and examine any witness who may have been examined and to call any further witness, provided that such examination shall be limited to the alteration, amendment or substitution made **(Section 234).**

Common pitfalls in the drafting of charges

Drafting of charges requires a prosecutor to ensure that all the rules guiding the drafting of charges under the ACJL, other extant laws and judicial decisions by the courts are strictly observed.

Separate charge for every distinct offence

A charge sheet can contain multiple counts. For every distinct offence for which a person is accused, there shall be a separate charge. Thus, if in the course of one transaction several offences are found to have been committed, those offences have to have separate charges. This requirement is a matter of procedure and not evidence. *Onakoya v. FRN (2002) LPELR-2670 (SC).*

if the suspect raises the defence of alibi, which means that he was not at the scene of the crime but somewhere else when the crime was committed, it is the duty of the investigator to investigate the alibi to determine its veracity.

Duplicity of charges

A charge is said to be bad for duplicity where in the charge, two or more offences are lumped together in one count. Uket v. FRN (2007) LPELR-3693 (CA). In many cases, a defendant who has been tried and convicted may bring an application for a higher court to quash the conviction of a lower court on the grounds that there was duplicity of charges.

However, it is not in all cases that duplicity of charges will be a ground for quashing proceedings. For charges to be declared bad for duplicity, it has to be established satisfactorily that the defendant was prejudiced. In the absence of a miscarriage or failure of justice, the proceedings will certainly not be quashed. Onwuamadike v. State of Lagos & Anor (2019) LPELR-4898 (CA).

Error in a charge

Sometimes, an error or errors may occur in the course of drafting a charge. Where the effect of an error is such that there is no certainty in the case against the defendant and the allegation against the defendant is rendered uncertain, then it may be a ground for quashing a conviction that is based on that charge. It is not every error on a charge will be a ground for quashing a conviction on the charge.

For example, if the proof of evidence which a prosecutor intends to rely on in support of the charge in practical terms does not disclose or support the offence as charged, then the court is bound to quash the charge. It must however be noted that when an offence is charged but a lesser offence is proven to the court in the course of the trial, the court is empowered depending on the procedural law in force, convict the defendant for the lesser offence proven.

Common intention when multiple defendants are charged

The principle of common intention applies in cases where multiple people are charged for committing an offence. The onus is on the prosecutor through the evidence led to establish that there was a common intention on the part of the defendants to commit an offence.

Where common intention among several participants in a crime is established against those who are jointly charged with committing such crime, it is enough to prove that they all participated in the crime. What each person did in furtherance of the commission of the crime is immaterial. Alao v. State (2015) LPELR-24686 (SC).

See form of a charge on the next page

SECOND SCHEDULE
Section 208
CHARGES
FORM OF CHARGE UNDER THE PENAL CODE
A: CHARGES WITH ONE HEAD

Section 59 PC

(1) (a) I..... .....[name of Presiding Officer of Court} hereby charge you.....[name of the Defendant] as follows:
(b)That you, on or about the.....day of.....20.....at.....being a Public Servant in the Ministry of.....directly accepted from A.B. for yourself [or for another person named CD] a Bribe other than lawful remuneration as a motive for forbearing to do an official act and thereby committed an Offence punishable under Section 79 of the Penal Code and triable by the High Court.

(c) And I hereby direct that you be tried by such Court on the said Charge.

Signature or Seal of the Presiding Officer of Court.

B. CHARGES WITH TWO OR MORE HEADS Charges on Section 204 and 205

(1) (a) I.....[name of Presiding Officer of Court] hereby charge you .....[name of the Defendant] as follows:
(b) First - That you, on or about the.....day of.....20.....at..... committed with Death by causing the death of A.B. and punishable under Section 189 of the Penal Code.

Secondly - That you, on or about the.....day of.....20.....at.....committed Culpable Homicide not punishable with Death by causing the death of A.B. and thereby committed an offence punishable under Section 190 of the Penal Code.

THIRD SCHEDULE CHARGE PRECEDENT

Section 209

STATEMENT OF OFFENCE

Giving false evidence, contrary to Section 120(1) of the Penal Code Particulars of offence

A.B., on the.....day of.....20, in the .....Judicial Division....., being a Witness upon the trial of an action in the High Court in which one .....was Plaintiff. and one.....was Defendant, knowingly gave false evidence that he saw one M.W in the street called at

Rwang Pam Jos, on the.....day of ......, 20 .....

STATEMENT OF OFFENCE - FIRST COUNT
Forgery, contrary to Section 345 of the Penal Code. Particulars of Offence

A.B., on the .....day of.....20 .....in the .....Judicial Division of .....forged a certain Will purporting to be the Will of C.D

STATEMENT OF OFFENCE - SECOND COUNT
Using as genuine a Forged Document, contrary lo Section 347 of the Penal Code. Particulars of Offence
A.B.. on the .....day of .....20.....in the .....Judicial Division fraudulent or dishonestly used as genuine a Forged Will purporting to be the Will of CD which he knew or had reason to believe to be a Forged Will.

STATEMENT OF PREVIOUS CONVICTION
Prior to the commission of the said Offence. the said A.B has been previously convicted of Burglary on the .....day of .....20 .....at the Sessions held at.....

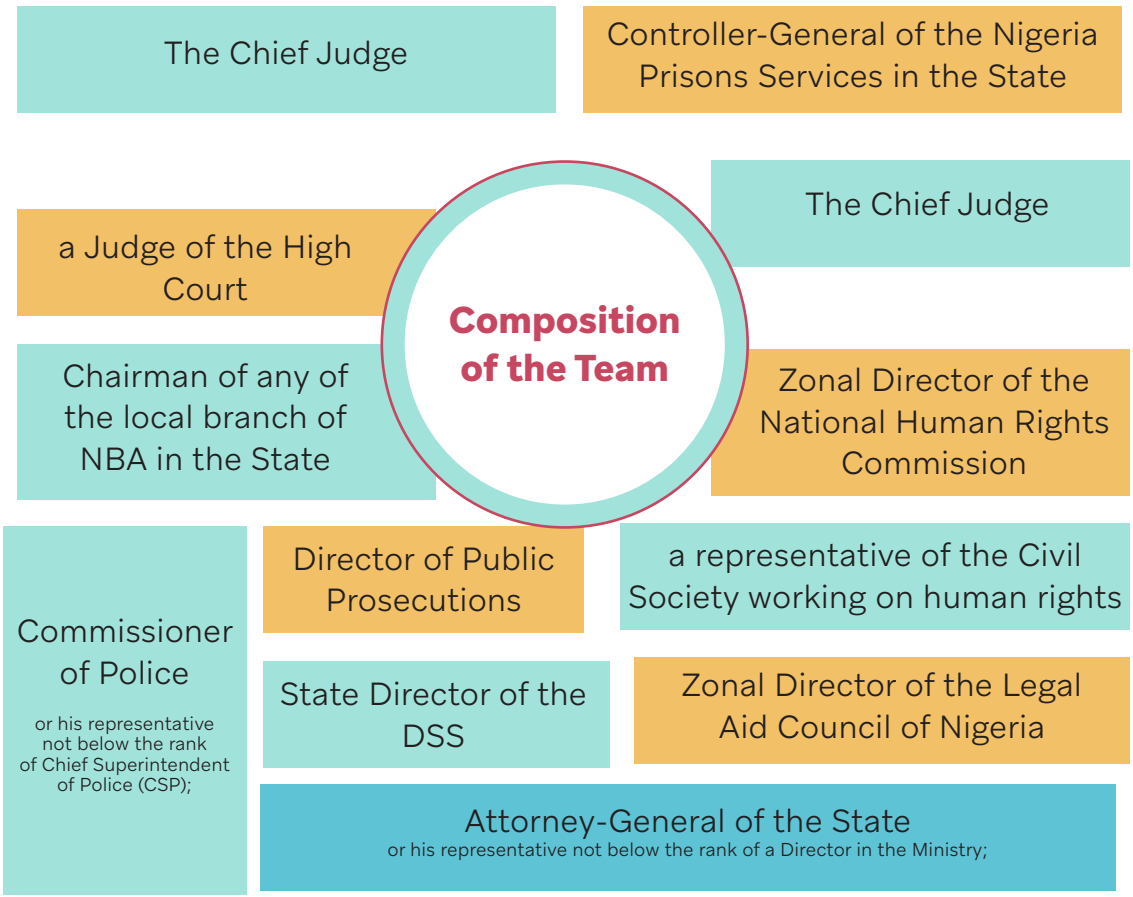
CHAPTER SEVEN

The State Justice Sector Reform Team (SJSRT)

One of the greatest challenges facing the administration of criminal justice in Nigeria is the absence of coordination among the various institutions that make it up. In the past, a coming together by the various agencies had resulted in blame games as to which institution was most culpable for the sorry state of affairs in the justice sector. The establishment of Justice Sector Reform Teams (JSRTs) at both Federal and state levels began to bring the agencies together to work collaboratively towards addressing the challenges of the sector.

Establishment of the SJSRT

In recognition of the important role of a monitoring and coordinating mechanism for the implementation of the Act, the ACJL created the State Justice Sector Reform Team (SJSRT). Section 464 of the ACJL provides that there is established the Administration of Criminal Justice Monitoring Committee (in this Law referred to as "the Team").



Composition of the Team

The Team shall consist of:

- The Chief Judge of the State who shall be the Chairman;
- Attorney-General of the State or his representative not below the rank of a Director in the Ministry;
- A Judge of the High Court;
- The Director of Public Prosecutions;
- The Commissioner of Police or his representative not below the rank of Chief Superintendent of Police (CSP);
- The Controller-General of the Nigeria Prisons Services in the State or his representative not below the rank of Chief Superintendent of Prisons;
- The Zonal Director of the National Human Rights Commission or the officer next in rank to represent him;
- The Chairman of any of the local branch of the Nigeria Bar Association in the State to serve for two years only;
- State Director of the Department of Security Service or his representative;
- The Zonal Director of the Legal Aid Council of Nigeria or the State Coordinator to represent him; and
- A representative of the Civil Society working on human rights and access to justice or women rights to be appointed by the Team to serve for a period of two years only.

One of the greatest challenges facing the administration of criminal justice in Nigeria is the absence of coordination among the various institutions that make it up.

Functions of the committee

The Committee shall be charged with the responsibility of ensuring effective and efficient application of this Law by the relevant agencies and without prejudice to the generality of subsection (1) of this section, the Team shall pursuant to section 465 of the ACJL ensure that:

- Criminal matters are speedily dealt with.
- Congestion of criminal cases in courts is drastically reduced;
- Congestion in prisons is reduced to the barest minimum;
- Persons awaiting trial are, as far as possible, not detained in prison custody;
- The relationship between the organs charged with the responsibility for
- All aspects of the administration of justice is cordial and there exists maximum co-operation amongst the organs in the administration of justice in the State;
- Collate, analyse and publish information in relation to the administration of criminal justice sector in the State; and
- Submit quarterly report to the Chief Judge to keep him abreast of developments towards improved criminal justice delivery and for necessary action; and
- Carry out such other activities as are necessary for the effective and efficient administration of criminal justice.

Secretariat of the SJSRT

The Team shall establish and maintain a secretariat with such number of staff as it considers necessary for the efficient running of its affairs. (Section 466(1). The Secretariat shall be headed by a Secretary who shall be appointed by the Attorney-General of the State on the recommendation of the Team. **(Section 466(2)).**

The Secretary shall be a legal practitioner of not less than 10 years post call experience and shall possess sound knowledge of the practical functioning of the criminal justice system and adequate experience in justice system administration. (Section 466(3). The Secretary shall be responsible for the execution of the policy of the Committee and the day-to-day running of the affairs of the Committee.

The Secretary shall hold office for a term of 4 years and may, subject to satisfactory performance of his functions, be re-appointed for another term of 4 years and no more **(Section 466(5)).**

Fund of the SJSRT

The Team shall establish and maintain a secretariat with such number of staff as it considers necessary for the efficient running of its affairs. (Section 466(1). The Secretariat shall be headed by a Secretary who shall be appointed by the Attorney-General of the State on the recommendation of the Team. (Section 466(2)).

The Secretary shall be a legal practitioner of not less than 10 years post call experience and shall possess sound knowledge of the practical functioning of the criminal justice system and adequate experience in justice system administration. (Section 466(3).

The Secretary shall be responsible for the execution of the policy of the Committee and the day-to-day running of the affairs of the Committee. The Secretary shall hold office for a term of 4 years and may, subject to satisfactory performance of his functions, be re-appointed for another term of 4 years and no more (Section 466(5)).

Fund of the SJSRT

The successful implementation of the provisions of this Act and the monitoring of the compliance with the provisions of the Act requires a lot of funds and resources.

The Law in section 467 establishes for the Team a fund into which shall be paid:

- Budgetary allocation to it through the Office of the Attorney–General of the State;

- Such monies as may, from time to time, may be provided to the Team by any public, private or international organisation by way of grant, support or assistance on such terms as consistent with its functions; and

Such monies as may be received by the Team in relation to the exercise of its functions under this Law.

Annual Report

The SJSRT shall prepare and publish an annual report of its activities (Section 469). The publication of its annual report will help the government and other stakeholders hold the Team accountable while providing a framework for assessing the activities of the Team.

Power to obtain information

The Team shall for the purposes of carrying out the functions conferred on it by the Law, have the right to access all the records of any of the organs in the administration of justice sector to which this Law applies; and may by notice in writing served on any person in charge of any organs require the person to furnish information on such matters as may be specified in the notice.

A person required to furnish such information shall comply with the notice within a reasonable time (Section 470).

Conclusion

From the outset, the rationale that informed the development of this manual was to develop a handy resource and toolkit for police officers, particularly Station Officers, Crime Inspectors, Investigating Police Officers and Prosecutors to guide them in the performance of their duties under the Administration of Criminal Justice Law of Plateau State. No doubt, enormous resources must be invested in the justice sector by the government if the vision and ideals of those who championed the development and passage of the ACJA 2015 and the ACJL 2018 of plateau state among others.

Beyond resource constraints, it is important for all agencies involved in criminal justice administration to embark on a massive re-orientation and behavioural change campaign within their respective institutions. The development and publication of this manual represents a modest contribution of the Rule of Law and Empowerment Initiative with the support of the US Bureau of International Narcotics and Law Enforcement Affairs (INL) in that direction.

Attitudinal change requires a genuine and concerted effort by a critical mass of stakeholders committed to ownership of the reform process. Gradually, but steadily, we shall collectively steer the reform ship of the justice sector in the right direction. It is hoped that the restoration of confidence in the justice sector institutions by members of the Nigerian public will represent a manifestation of the gains of these collective efforts.

Rule of Law and Empowerment Initiative known as Partners West Africa Nigeria (PWAN) is a non-governmental organization working towards enhancing citizens' participation and improving security governance in Nigeria and West Africa broadly. We are located in Abuja, Nigeria's capital and have field offices in the North East-Borno and North-West-Kano and other with national and regional reach.

MISSION: Our organization is dedicated to enhancing citizens participation and improving governance and security in Nigeria and West Africa.

VISION: Robust good governance and accountable institutions in Nigeria and West Africa.

VALUES: Integrity, Inclusiveness, Impact and Professionalism.


www.partnersnigeria.org/


partnersnigeria


partnersnigeria


(+234)8091257245


No. 46 Mike Akhigbe way,
Jabi, Abuja.