



Goodwill Message Delivered by

Chief Joe-Kyari Gadzama, OFR, MFR, SAN, FNIALS, FICMC, DipICarb, FNICarb, FCIArb, C.Arb
(Of Lincoln's Inn, Barrister/Life Bencher/Certified Mediator/Regulatory Consultant)
Sardauna of Uba, *Okwulora* of Ukpo and *Bobajiro* of Akure Kingdom,
Founding Principal Partner of J-K Gadzama LLP

On

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At

**THE RULE OF LAW DEVELOPMENT FOUNDATION'S 4TH ANNUAL CRIMINAL LAW
REVIEW CONFERENCE, THEMED: UPDATES AND DEVELOPMENTS IN THE LAST 12
MONTHS ON THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA**

Plot 16b, No 3, P.O.W Mafemi Crescent, Jabi, Abuja.

1.0 PROTOCOLS:

2.0 INTRODUCTION:

It is an honor and privilege for me to stand before you and deliver this message of goodwill at such an important Conference as this 4th Annual Criminal Law Review Conference, themed: Updates and Developments in the Last 12 Months on the Administration of Criminal Justice in Nigeria, as ably organized under the auspices of the Rule of Law Development Foundation.

The theme of this Conference could not be more appropriate or timely given the flurry of reforms in the last 12 months aimed at optimizing Nigeria's criminal justice system on the foundations of rule of law and an efficient/effective justice delivery system. I understand brevity is the soul of wit and hence will only focus on two major developments in the last 12 months. The first is the Lagos State Administration of Criminal Justice (Amendment) Law (ACJL) 2021, and the second is the review session on the proposed amendments to the Administration of Criminal Justice Act (ACJA) organized by the Centre for Socio-Legal Studies (CSLS), a law reform advocacy organization that led the campaigns which resulted in the enactment of the ACJA in 2015, and whose president was my classmate of '86, good friend and learned brother silk, Professor Yemi Akinseye-George, SAN.

I will kick off my goodwill message from these vantage standpoints in light of the far-reaching laws and recommendations, respectively proffered by these major developments in furtherance of an optimal criminal justice system vis-à-vis the urgent need for laws in tandem with the realities of our time. I shall take each matrix of events, one after the other, and highlight key updates and developments to further enrich and broaden the scope of our discussions herein.

3.0 THE LAGOS STATE ADMINISTRATION OF CRIMINAL JUSTICE (AMENDMENT) LAW OF LAGOS STATE, 2021:

It is important to note that Lagos State was the first to adopt the Administration of Criminal Justice Law in Nigeria, way back in 2007 and even further amended in 2011, all before the Administration of Criminal Justice Act of 2015 was passed. Lagos State is definitely not resting on her oars. On September 30, 2021, the

Governor of Lagos State signed the Lagos State Administration of Criminal Justice (Amendment) Law 2021 (ACJL) which effectively amended the Administration of Criminal Justice Repeal and Re-enactment Law of Lagos State, 2015. This effort has further strengthened the administration of justice in Lagos state. I will be highlighting some of these further innovations the ACJL has introduced.

I. Rights of Suspects:

The new ACJL is intended to further strengthen the justice system, and amongst other lofty ideals, put an end to police harassment of innocent citizens in Lagos State. A giant stride towards this goal is the introduction of a new section 17 which provides for the rights of suspect(s): It provides:

A suspect shall-

- a. Be accorded humane treatment, with right to dignity of person;**
- b. Not be subjected to any form of torture, cruel, inhuman or degrading treatment;**
- c. Not be arrested merely on a civil wrong or breach of contract; and**
- d. Be brought before the court as prescribed by this law or any other written law; or be released conditionally or unconditionally.**

II. The Prohibition on Suspects Parade In The Media.

It has been argued that the parade of suspects violates section 36(5) of the 1999 constitution (as amended), which guarantees suspects the presumption of innocence until proven guilty by a competent court of law. Despite court rulings¹

¹ For example, see: *Ndukwem Chiziri Nice v. AG, Federation & Anor.* (2007) CHR 218 at 232 Justice Banjoko held that "The act of parading him (the suspect) before the press as evidenced by the Exhibits annexed to the affidavit was uncalled for and a callous disregard for his person. He was shown up to the public the next day of his arrest even without any investigation conducted in the matter. He was already prejudged by the police who are incompetent, so to have such function, it is the duty of the court to pass a verdict of guilt and this constitutes a clear breach of section 36(4) and (5) of the Constitution of the Federal Republic of Nigeria, 1999 on the doctrine of fair hearing."

declaring the parade of suspects to be unconstitutional, the police have continued with the practice. For example, the infamous media trial and police parade of Chidinma Adaora Ojukwu, the 300 level student of the Department of Mass Communication at the University of Lagos on the alleged murder of Super TV Chief Executive Officer, Michael Usifo Ataga, is a good example.

The ACJL has now created a new Section 9A, which prohibits media parade of suspects as follows:

As from the commencement of this Law the Police shall refrain from parading any suspect before the media.

III. Victim Compensation

Section 372 of the law now empowers judges to award recompense in criminal cases where victims suffered losses or injuries, as opposed to the past, when this only applied to people who suffered financial losses. The ACJL is now amended by creating a new section 372 which provides for compensation to victims in judgement. The section provides:

372(1) notwithstanding the limit of its civil or criminal jurisdiction, a court has power in delivering its judgement to award to a victim commensurate compensation by the defendant or any other person or the State.

2) The Court in considering the award of compensation to the victim may call for additional evidence to enable it determine the quantum of compensation to award under subsection (1) of this section.

IV. Crime Data Registry

Moreso, Section 370 of the ACJL now requires Lagos State to create a crime data registry. This register would also function as a criminal records database, and organizations in the state would be able to apply for criminal records, particularly for sex offenders.

The new section 370 provides as follows:

- (1) There is established a crime Data Register to be known as the Lagos Criminal Information System, which shall be a database of suspects and convicts whether minor or major.**
- (2) The Lagos Criminal Information System shall be an electronic repository of information on suspects and offenders either convicted or awaiting trial who pass through the Criminal Justice System from the point of arrest through prosecution up until when judgement is delivered.**
- (3) The Lagos Criminal Information System shall capture, store and provide access to information on physical, personal, personal, biometric, fingerprint details and photographs of suspects obtained by the Police, Prisons, Judiciary, Ministry of Justice and other relevant Agencies**

V. The Chief Magistrate has the Authority to Visit Police Stations.

A new section 283 has been created which provides for the Chief Magistrate's visit to Police Stations every month. The section specifically provides:

- (1) The Chief Magistrate, or where there is no Chief Magistrate within the police division, any Magistrate designated by the Chief Judge for that purpose, shall at least once every month, conduct an inspection of the police stations or other places of detention within the jurisdiction other than the correction facility.**
- (2) During the visit, the Magistrate may-**
 - a. Call for and inspect the records of arrests;**
 - b. Direct the arraignment of a suspect(s); or**
 - c. 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.**
- (3) An officer in charge of a police station or official in charge of an agency authorized to make an arrest shall make available to the visiting Chief Magistrate or designated Magistrate under subsection (1) of this section-**
 - a. The full record of arrest and record of bail;**

- b. Decisions on bail applications made within the period; and
 - c. Any other facility the Magistrate requires in exercising the powers under subsection (1) of this section.
- (4) Where there is default by an officer in charge of a police station or official in-charge of an Agency authorized to make arrest to comply with the provisions of subsection (3) 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 police officer or official of the agency.

VI. Measures to Protect Victims and Witnesses

A new section 373 is also created to provide for witness protection. The section provides:

373(1) in exceptional circumstances, either of the parties may apply to the court to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the trial court decides otherwise.

2) In the determination of protective measures for victims and witnesses, the trial court may consult the office responsible for the protection of witnesses

3) a court may, *sou motu* or at the request of either party, or of the body or unit in charge of victim or witness concerned, order appropriate measures for the privacy and protection of victims and witnesses:

Provided that the measures are consistent with the rights of the offender.

4) A trial court may hold in camera proceedings to determine whether to order-

a. measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness by such means as:

i. non-disclosure to the public of any records identifying the victim or witness;

ii. giving of testimony through image or voice altering devices, video link or closed-circuit television; and

iii. assignment of a pseudonym.

b. closed session; or

c. appropriate measures to facilitate the testimony of vulnerable victims and witnesses.

VII. The Use of an Audio and Video Conferencing Platform to Conduct Criminal Proceedings

Section 200 of the principal law is deleted and replaced as follows:

(1) Subject to the provisions of sections 202 and 217 of the Principal Law and any other written law specially relating to the room or place in which any trial is to take place, a trial shall be conducted in an open court to which the public generally may have access to, as far as it can conveniently contain them.

(2) Notwithstanding the provisions of subsection (1) of this section, the court may conduct its proceedings, whether wholly or in part via audio virtual, video conference or other facility as may be agreed to by parties, as long as the parties and their legal representatives, as well as interested members of the public take part, using telephone or video conferencing facilities, without the necessity of physical attendance in the courtroom.

(3) Where parties are unable to agree to a particular technological platform, the court shall direct that the matter be heard through a platform of its discretion.

VIII. The Formation of the Lagos State Criminal Justice Sector Reform Committee

The ACJL is amended by creating new section 375 – 387. Specifically, 375(1) established a body to be known as the Lagos State Criminal Justice Sector Reform Committee, the Committee shall consist of:

- a. The Chief Judge of the State, who shall be the Chairman;**
- b. Attorney-General and Commissioner for Justice or a representative not below the rank of a Director on Grade Level 17 in the Ministry;**
- c. the Chairman House Committee on Judiciary, LASIEC, Human Rights and Public Petitions or a representative of that Committee;**
- d. the most senior Judge in the State Criminal Court Division;**
- e. Chief Registrar of the State High Court;**
- f. Commissioner of Police or a representative not below the rank of Deputy Commissioner of Police;**
- g. The comptroller of the Correctional Service or a representative not below the rank of Deputy Comptroller;**
- h. One (1) representative of the Nigerian Bar Association to be appointed by the Chairman on the recommendation of the State Branch Chairman to serve for (2) years only;**
- i. One (1) representative of the academia to be appointed by the Governor; and**
- j. Two (2) Chief Magistrates to be nominated by the Chief Judge.**

By Section 377 of the Act, the functions of the Committee, include ensuring that:

- a. Criminal matters are speedily treated and given necessary attention;**
- b. Congestion of criminal cases in courts is drastically reduced;**

- c. Congestion in the Correctional Services is reduced to the bearest minimum;
- d. Persons awaiting trial are not unduly detained in prison custody;
- e. Cordial relationship and maximum cooperation between the organs charged with the responsibility for all aspects of the administration of justice in the state.
- f. Information is collated, analyzed and published in relation to the administration of criminal justice sector in the State.

4.0 THE EXPERT REVIEW SESSION ON THE PROPOSED AMENDMENTS TO THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) AS ORGANIZED BY THE CENTRE FOR SOCIO-LEGAL STUDIES (CSLS).

On 1st of November, 2021, judges, lawyers, a federal lawmaker, and Civil Society Organizations gathered in Abuja to review the proposed amendments to the Administration of Criminal Justice Act (ACJA) organized by the Centre for Socio-Legal Studies (CSLS).

The CSLS had compiled at least 110 proposed amendments to the Administration of Criminal Justice Act (ACJA) from legislators, the Federal Ministry of Justice, police, and a wide range of other law enforcement agencies.

Justices Olukayode Adeniyi and Abubakar Kutigi of the Federal Capital Territory (FCT) were present, as was the Chairman of the House Judiciary Committee, Hon. Onofiok Luke; Akinlolu Kehinde SAN, who is another Classmate of '86, and other major stakeholders in the criminal justice sector.

Some of the major concerns raised by key amendment suggestions included:

- i. Mandatory Recording of Confessional Statements

It is proposed that section 15(4) and (5) of the ACJA be amended to make electronic recording of suspect confessions mandatory. "The making and taking of" a suspect's confessional statement "must be in writing and **may** be recorded electronically on a retrievable video compact disc or such other audio-visual means," according to the current law.

However, the amendment's proponent wants the word "may" removed from the law, making it essential to write confessional remarks both manually and electronically on a retrievable video compact disc or other audio-visual medium.

I know it could be claimed that the change requiring the recording of confessional statements electronically places restrictions on the police in situations where the availability of suitable infrastructure is uncertain.

The proposed amendment may not achieve its intended goal of preventing confessional statements from being obtained through torture. Torture could be psychological in nature, which would be lost in an electronic recording.

ii. Investigation Before Arrest

Another proposed change is to revise Section 3 of the ACJA to ensure that investigation comes before arrest, in accordance with international best practice. The proposed subsections (2) and (3) are intended to ensure collaboration between investigators and law enforcement officers in order to effectively prosecute criminal cases.

It could be argued, however, that pushing for such an amendment would amount to unnecessary meddling in the internal operations of law enforcement agencies. Keep in mind that certain circumstances may necessitate the arrest of a suspect before the completion of an investigation. Some lawyers may take unfair advantage of the amended provision by filing a fundamental rights enforcement suit to challenge such arrests, even if they are justified. Also, a mandatory provision in the ACJA that requires an investigation to always precede arrest may violate the constitutional provision that allows law enforcement agencies to arrest someone based solely on reasonable suspicion.

iii. Should Magistrates Be Allowed To Issue Remand Orders In Cases Over Which They Lack Jurisdiction?

The amendment to Section 293 was proposed in order to deprive a magistrate of the authority to issue an order for the remand of a suspect arrested for a crime over which the magistrate lacks jurisdiction. The provision has been removed from Lagos State's newly amended Administration of Criminal Justice Law. Only the court with competent jurisdiction should be able to issue an order for the suspect's remand. To obtain remand orders for suspects accused of capital

offenses and other offenses beyond the jurisdiction of magistrate's courts, law enforcement agencies should only apply to High Court judges.

Though several issues have arisen, including the inability of High Court judges to attend to urgent applications for remand orders, and/or the lack of prompt assignment of such applications to judges as soon as possible. to fix this error, such applications should be filed in less crowded divisions of the court.

iv. Part-Heard Matters can be Continued by a New Judge:

New subsections (2) & (3) to section S.364 have been added to provide for procedures where a new judge takes over an on-going criminal matter. The new proposed subsections specifically provide that:

(2) Where a Judge or Magistrate is assigned a part-heard matter previously conducted by another judge or magistrate, the new Judge or Magistrate shall inform himself of the court proceedings conducted by the former judge by watching the court video recordings and requests for parties to address the court on the issue.

(3) Where a Judge or Magistrate complies with sub-section (2) of this section and he is satisfied that he fully understands the proceedings conducted by the previous judge or magistrate, he may continue with the trial from where the previous judge stopped and it shall not be necessary for the new Judge or Magistrate to start the trial de novo.

v. Witness Expenses:

Sections 253 and 254 of the ACJA should make it mandatory for the Attorney-General's office to provide funds to the court for witness expenses. Prosecutors who had to pay the expenses of bringing prosecution witnesses to court out of their own pockets will be compensated. Furthermore, such situations where the prosecution witnesses are unable to appear in court due to a lack of funds and thereby resulting in the government losing many criminal cases will be drastically reduced and possibly eradicated in the long run.

vi. The Requirement for The Defense To File A Defendant's Statement:

Section 379(4) of the proposed amendment provides that:

(4) Not later than two weeks after the prosecution may have provided to the defendant or his counsel the materials as required under this section and under section 350 or 376, as the case may be, the defendant shall file a Defendant's Statement and have copies served on the prosecution and every co-defendant, showing:

(a) the nature of the defendant's defence, including any particular defences on which he intends to rely,

(b) indicating the matters of fact on which he takes issue with the prosecution,

(c) setting out, in the case of each such matter, why he takes issue with the prosecution,

(d) setting out particulars of the matters of fact on which he intends to rely in his defence, and

(e) indicating any point of law (including any point as to the admissibility of evidence or an abuse of process) which he wishes to take, and any authority on which he intends to rely for that purpose;

(5) Where the defendant is not represented by a counsel, the court shall state the requirements in subsection (4) to the defendant and record his responses in the court of the court;

(6) Where a defendant declines or neglects to make a defendant's statement, or if the defendant had failed to mention a fact under questioning under caution or after being charged with an offence, which, in the circumstances then prevailing, he could reasonably have been expected to mention, but he later purports to rely on such fact in his defence at trial, in determining whether the defendant is guilty of the offence charged, the court may draw such adverse inferences from the failure as appear "proper", including an ascription of a consciousness of guilt.

vii. Phasing Out Trial-Within-Trials?

Prosecutors advocated for the elimination of trial-within-trial because it causes delays in criminal proceedings and has been abolished in England from whence we borrowed it. Sometimes a trial-within-a-trial takes years, preventing the main trial from moving forward. Therefore a new subsection to the ACJA is proposed under section 17(7) thus:

The conduct of trial-within-trial to prove the voluntariness or involuntariness of a confessional statement is prohibited

viii. Issuing Blank Warrant:

A new section 35(2) is proposed that before a Court issues a warrant of arrest upon application made to it, it shall satisfy itself that from the evidence on oath before it, there is a probable cause for its issue. In no circumstances shall a Magistrate or Judge issue or sign a blank warrant and that it shall be misconduct for a Magistrate or Judge to sign a blank warrant. I understand this proposed new subsection is inserted to ensure accountability which will address and abolish the practice of issuing blank warrants to law enforcement officers.

5.0 CONCLUSION:

It is my hope and prayer that this Conference will provide further informed discussions, reviews and suggestions on some of the proposed Important amendments to the ACJA 2015. It is my firm believe that if passed, they will put the ACJA back on track to achieve its goals. For example, the proposed elimination of trial-within-trial, the ability for some part-heard matters to be continued by a new judge, the requirement for the defense to file a defendant's statement, and so on, which for long are being practiced in many other jurisdictions, will undoubtedly promote the speedy administration of justice.

I heartily welcome all the conferees to this 4th Annual Criminal Law Review Conference and hope we all take the lessons to ensure a better, faster and more efficient criminal justice delivery system. I wish us all a fulfilling and rewarding Conference

I thank the organizers once again for this great opportunity, thank you all for listening.