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Legal Imperatives for Decongesting Correctional Centres in Nigeria: A Review of Recent Legislative Measures

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Abstract

One of the major drawbacks in the Nigerian criminal justice system is the congestions in correctional centres. Custodial centres are not only the pivot on which the wheel of criminal justice revolves. They are also institutions which provide homes for a technical segment of the society and protection for the general public. Having regard to modern objectives of correctional services, it has become more paramount for custodial or correctional centres to indeed provide platform not only for housing inmates but more importantly as an opportunity to rehabilitate, remould and make lives of inmates more useful whether during custody or after their release. Unfortunately, these objectives are very difficult to realize in Nigeria as a result of several factors accounting for the congestion of Nigerian prisons. It was in the light of this that certain critical legislations were enacted i.e. the Administration of Criminal Justice Act (ACJA) 2015, the Police Act 2020, and the Nigerian Correctional Service Act, 2019 to deliberately arrest some of the major factors which are responsible for why custodial centres have always been overstretched beyond official capacity. Though the ACJA and others were overwhelmingly received with approval by all, it is observed that there is gross lack of will on the part of the government and other stakeholders in the criminal justice sector to fully adhere to and implement the provisions of the laws. The government is urged to increase efforts in empowering relevant and critical stakeholders like the police, the courts and the correctional centres in implementing the laudable objectives of the ACJA and other relevant legislations for a purposeful criminal justice delivery.

Keywords

Correctional Centres, Criminal Justice, Prison, Arrest, Probation, Community Service, Nigeria

1. Introduction

The phenomenon of prison congestion is closely associated with the primary twin factor of arrest and remand (Akhihiero, 2018), and a number of other factors which include delays in criminal trials and increase in population and crime rate without a corresponding increase in the number of correctional centres. The rate of crime is rising geometrically in Nigeria with more youths at the correctional centres (Ajibade, 2022). One of the major reasons for this has been identified as the prevalence of illicit drugs (Editorial, 2020). Whatever the reason is, the resultant effect is increase in arrest, detention and remand. Thus, no meaningful discussion can be held on how to decongest the prisons without first of all addressing the socio-legal implications of the existing law and practices relating to arrest, remand and the issue of pre-trial detention in Nigeria. Though there is currently an elaborate reform going on in the criminal justice system in Nigeria via the enactment and implementation of the administration of criminal justice legislations, much is depended on the various stakeholders in the criminal justice sector in achieving one of the major objectives of the Administration of Criminal Justice legislations, which is prison decongestion. This paper is aimed at analyzing the challenges inherent in the criminal justice system in Nigeria prior to the enactment of Administration of Criminal Justice Act (ACJA). The paper also examines the present reform intended by the enactment of the ACJA, the Nigerian Correctional Service Act, 2019 (NCSA) and the Police Act 2020 and how the obligations in these legislations can be implemented to realize one of the laudable objectives of the ongoing reform in Nigeria which is decongestion of correctional centres.

2. Effect of Arbitrary Arrest on Prisons

Before the enactment of the ACJA, the principal legislations governing criminal procedure in Nigeria were the Criminal Procedure Act (CPA) and the Criminal Procedure Code (CPC). Both statutes applied to the southern and northern part of Nigeria respectively. While these statutes applied, arrest, police detention and remands including holding charges assumed a frightening dimension in Nigeria. It is incontrovertible that detentions and remands are a necessary follow up of arrest, whether arbitrary or lawful. While these two legislations applied, certain provisions of the statutes supplied "legal" backing for arbitrary arrest and inordinate remand request by the police. Armed by some of the provisions of these laws, law enforcement agencies were quick to arrest and request for remand in order not to violate the constitutional detention time limit. The Constitution itself does not place meaningful constraint on the Police as far as the issues of arbitrary arrest is concerned, rather the Constitution is more concerned with the length of time in detention. This, unfortunately, has translated into more remands at custodial centres. For instance, section 35 (4) of the Constitution provides that:

> any person who is arrested or detained, for the purpose of bringing him before a court in execution of the order of a court or upon reasonable sus-

> picion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence, shall be brought before a court of law within a reasonable time, and if he is not tried within a period of: 1) 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 2) three months from the date of his arrest or detention in the case of a person who has been released on bail and he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

Section 35(5) of the same Constitution defines the expression "a reasonable time" to mean: 1) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and 2) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable. In practice, all the police need to do to comply with the constitutional requirements is taking the suspect to a Magistrate's Court even if the court does not have the requisite jurisdiction. The Constitution does not have issue with lawful remand even if the remand were as a matter of course. The constitutional detention time limit has only helped in increasing applications for fundamental right claims in Nigeria without placing a watch particularly on arbitrary arrest. What is more? Even the constitutional provisions against illegal detention are being flouted with brazen disregard.

A suspect must not be detained at the whims and caprices of the arresting officer and arrest must not be arbitrary. It is a major rule in the criminal justice system that arrest must be based on reasonable suspicion except the offender was arrested while committing the offence. Arrest must not necessarily be made because a criminal complaint is lodged. Every petition to the police in Nigeria leads to arrest while a number of arrest leads to remand. This is the beginning of the challenge of overcrowding in Nigerian custodial centres. It has been observed and correctly too that section 10 of the Criminal Procedure Act (2004) and section 24 of the repealed (Police Act, 2004) created unpleasant experiences which is the exposition of helpless citizens to the subjective decision and caprices of arresting police officers (Okpara, 2005). As rightly posited by Achara, "the police powers of arrest without warrant display an insensitive disregard for the right of the individual. They could have been justified when they were made as an alien oppressor's necessary weapons to suppress the reaction of subdued natives…" (Achara, 2005).

Another ill associated with the style of arrest in Nigeria is the approach of arrest before investigation. The loose provisions of the CPA, CPC and the repealed Police Act encouraged the practice of arrest before investigation. These legislations allowed the police to fish for evidence while the suspect was already in detention. This practice has been institutionalised and has continued even though

the Supreme Court per Uwaifo, JSC had stated that "… in a proper investigation procedure, it is unlawful to arrest until there is sufficient evidence upon which to charge and caution a suspect. It is completely wrong to arrest, let alone, caution a suspect, before the police look for evidence implicating him" (Fawehinmi v IGP, 2002). The Police, most times, find it convenient to remove the suspect from their custody for keep in the prison vide an order of court why they are still investigating or yet to investigate the allegation. This was largely encouraged by the old legal framework for the administration of criminal justice system in Nigeria. Even though this set of laws has been repealed, they have created a serious social effect for Nigerian prisons for which the new regime of laws may not be able to address immediately.

3. The New Legal Order for Prison Decongestion

Over the years, defence lawyers, human rights activists, legal aid providers, scholars, etc have agitated for a review of the legal framework for criminal justice in Nigeria. The CPA, CPC and the old Police Act applied in Nigeria for over 6 decades. Worse still is that each state in Nigeria slavishly adopted the CPA or the CPC as state laws with little or no variation, except to adapt it to suit state application. According to George "these laws have been applied for many decades without significant improvement. As a result, the criminal justice system has lost its capacity to respond quickly to the needs of the society: to check the rising waves of crime, speedily bring criminals to book and protect the victims of crime" (Akinseye-George).

3.1. Measures under the Administration of Criminal Justice Act/Laws

3.1.1. Restrictions on Power of Arrest

The ACJA and the Administration of Criminal Justice Law of the various states in attempt to control prison congestion generally begin with restrictions on the power of arrest since there is hardly a remand without arrest. Section 7 of the ACJA provides that a person shall not be arrested in place of a suspect while section 8(2) provides that a suspect shall not be arrested merely on a civil wrong or breach of contract. The ACJA provides for arrest without warrant (Administration of Criminal Justice Act, 2015). Though this section retains the provisions of section 10 of the CPA, it is important to mention that it omits the provisions relating to the power of the Police to arrest "*any person who has no ostensible means of sustenance and who could not give a satisfactory account of himself*."

3.1.2. Remand and Detention Time Limit

The procedure for remand proceedings has been grossly overhauled under the present ACJA and the Laws of the various states. Under the CPA and CPC, remand proceedings were perfunctory and a mere ritual leaving the magistrate with no statutory power to refuse request for remind under any circumstance. There were also no provisions for formal application before the court upon

which the magistrate could exercise any discretion. The process was very automatic and the accused was remanded indefinitely until either the Attorney General issued a legal opinion exonerating the accused or he regained his liberty via an order of court granting bail or the accused was eventually arraigned before a Court of competent jurisdiction.

Under the new regime, remands must be upon a formal application. Section 293 (2) of the ACJA as well as the ACJL of Delta State 2017 for instance state that an application for remand under this section shall be made *ex parte* and shall:

1) be made in the prescribed "Report and Request for Remand Form" as contained in Form 8, in the First Schedule to this Law;

2) be verified on oath and contain reasons for the remand request.

The ACJL of Delta State adds additional condition, that is:

3) be accompanied by the original or certified true copy of the case file containing all the evidence the prosecution intends to rely on.

The provisions of sections 293(3) ACJA give the remanding magistrates the power to exercise his discretion either in favour of, or against granting. Remand applications are therefore no longer automatic. If the magistrate does not find a probable cause for granting a remand order the application must be refused. In forming the opinion whether there is a *probable cause* section 294(2) of ACJA and ACJL of Delta State provides that the court may take into consideration the following:

1) the nature and seriousness of the alleged offence;

2) reasonable grounds to suspect that the suspect has been involved in the commission of the alleged offence;

3) reasonable grounds for believing that the suspect may abscond or commit further offence where he is not committed to custody; and

4) any other circumstance of the case that justifies the request for remand.

Besides, there is now a time limit for the detention of the suspect vide the remand order. The order expires after 14 days except same is renewed for another period not more than 14 days. In some states like Rivers State of Nigeria, the detention time limit is 10 days in the first instance, then another 10 days and the last is 5 days making a total of 25 days (Enebeli, 2020), The section is intended to pressurise the office of the Attorney-General into delivering legal opinion within a limited and stipulated time. The provisions in general are aimed at commencing criminal prosecution almost immediately after remand. Before now, remand proceedings or what is called holding charges became a portent instrument in the hand of complainants to perpetually detain their opponents by conniving with police officers to frame charges which are beyond the jurisdiction of the magistrates' court. Conversely, under the ACJA, the magistrates have power to grant bail upon application if after extending the remand order for the second time the prosecution still has not commenced prosecution or legal advice has not been rendered. By section 296 (4) ACJA, if after the expiration of the second extension of the detention time limit trial has not commenced, the magistrate is

authorised to issue hearing notice to the Attorney-General or Inspector General of Police/Commissioner of Police or any relevant authority in whose custody the suspect is or at whose instance the suspect was remanded to show cause why the suspect should not be released unconditionally, and where good cause is not shown the magistrate with or without application is empowered to release the suspect unconditionally and no further application for remand shall be entertained by the Court.

The import of these provisions is that no suspect shall be remanded beyond total number of 42 days in prison awaiting trial under the ACJA and Law of Delta State and 25 days in River State. It is now an error and a breach of the right to personal liberty for any suspect to continue to remain in prison detention awaiting trial for more than 42 days or 25 days depending on the location. It is rather sad to report that most magistrates in Delta State are not bold enough to exercise the power to release the suspect after the expiration of the prescribed detention time limit even if no charges have been filed in a court of competent jurisdiction or no legal advice has been rendered and no explanation has been offered as to why. Okorodas J. in a ruling on bail application in Sapele, Delta State in Oghale v COP regrettably observed:

> …I think that I should use this opportunity to make a few comments on the need for all stakeholders to begin to adhere to the requirements of the Administration of Criminal Justice Law of Delta State 2017. It appears to me that operators of the criminal justice system find themselves unable to do away with the old ways of doing things. In these proceedings, as in several others that have come before me, I observe that the Police continue to file "holding charges" in respect of capital offences before Magistrates Courts, knowing full well that the Magistrate has no jurisdiction to entertain the case. I find that in such cases, many Magistrates remand suspects in prison custody without any time limits, and without monitoring the process pursuant to the provisions of the ACJL. Therefore, potentially, a suspect could spend years in custody awaiting legal advice from the Attorney General. For an indigent suspect with no means of retaining a legal practitioner to apply for bail in the High Court, it is a frightening scene (Oghale v COP, 2018).

The ACJA and ACJL of Delta State provide for the establishment of Administration of Criminal Justice Monitoring Committee. Unfortunately, this committee only exists on paper in Delta State. This Committee is the regulatory body that would have been able to ask erring operators, in criminal justice sector to offer explanations. Technically, it can almost be said that the old practice of holding charge still holds sway to some extent in Nigeria even after the overhauling of the criminal justice system.

3.1.3. Probation and Other Non-Custodial Alternatives

Criminal punishment is fast shifting from punitive purposes to correction driven. With the current state of our prisons in Nigeria built several years ago, it is

difficult to achieve the corrective objectives of criminal punishment. Minded by the objectives of prison decongestion, the new law makes copious provisions for several circumstances in which the court may make probation order or other non-custodial punishment. Sections 453, ACJA and 455, ACJL Delta State define probation order to mean an order of court containing "a condition that the defendant be under the supervision of such person or persons of the same sex, called a probation officer, as may, with the consent of the probation officer, be named in the order during the period specified in the order." Section 454 ACJA provides that where a defendant is charged before a court with an offence punishable by law and the court thinks that the charge is proved but is of opinion that having regard to: 1) the character, antecedents, age, health, or mental condition of the defendant charged; or 2) the trivial nature of the offence; or 3) the extenuating circumstances under which the offence was committed, it is inexpedient to inflict a punishment other than a nominal punishment, or that it is expedient to release the defendant on probation, the court may, without proceeding to conviction, make an order either dismissing the charge; or discharging the defendant conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding 3 years as may be specified in the order. These provisions of the law are not being utilised. Once a charged is proved, most Magistrates and Judges in Nigeria would proceed not only to convict but to sentence the defendant to a term of imprisonment or payment of fines, the option of probation is very rare.

Today in Nigeria, borstal institutions are few and far between and poorly funded. As a result, even juvenile offenders are sent to adult prisons for menial offences like breaches of street hawking laws, breach of the peace, etc. (Vanguard, 2017). Proper and effective exercise of powers of the court to order probation orders will go a long way particularly in ensuring that children and minor offenders are not committed to prison custody. For instance, the Chief Judge of Lagos State was reported in 2017 to have freed 80 juveniles, who were incarcerated at the Badagry Prison in Lagos State for sundry offences such as street hawking and breaches of the peace. It is imperative to note that the Nigerian governments at Federal and State levels are yet show sufficient commitment to the implementation of the ACJA/ACJL. As at September 12, 2022 the total number of persons in non-custodial centres throughout Nigeria is 358 while those in prison custody is 76,189 (Nigerian Correctional Service, 2022).

3.1.4. Community Service

Another alternative to imprisonment under the ACJ statutes is community service. The ACJA/Law introduces for the first time the practice of Community Service as an alternative to imprisonment for minor offences. By sections 461 ACJA and 453 (4) ACJL of Delta State, where a court has made an order committing the convict to render community service, the community Service shall be in the nature of: 1) environmental sanitation; or 2) assisting in the care of children and the elderly in government approved homes; or 3) any other type of ser-

vice which in the opinion of the Court would have a beneficial and salutary effect on the character of the offender. The court, in exercising its power to order community service under sections 460(4) ACJA and 452(8) ACJL Delta State shall have regard to the need to:

1) reduce congestion in prisons;

2) rehabilitate prisoners by making them to undertake productive work; and

3) prevent convicts who commit simple offences from mixing with hardened criminals.

The benefits of community service practice are overwhelming judging from jurisdictions that have been practising same. Zimbabwe for instance introduced Community Service since 1992 and this alternative has proven to be more humane, less expensive and a more efficient response to crime control. The service rendered to the community is free and valuable while the offender at the same time is relevant to himself. He is humbled by the nature of service and more likely to readjust to normal life. All these are not easily achievable under custodial punishment. It has also been observed that:

> If the primary objective is to attempt to ensure that offenders desist from future crime, there is no evidence that imprisonment does that more effectively than community-based alternative punishments. On the contrary, studies on the comparative impact of different forms of punishment on recidivism suggest that imprisonment makes it hard for offenders to adjust to life on the outside after release and may contribute to their re-offending. Using imprisonment to incapacitate offenders works only to the extent that while they are serving their sentences, they are not re-offending in the community. However, the vast majority of prisoners will return to the community, many without the skills to reintegrate into society in a law-abiding manner. Offenders are incapacitated while serving their sentences, but on release are more likely to commit further crime than those who are not imprisoned as part of their sentence. Thus, relying on sentences of imprisonment to prevent criminal re-offending is not an effective strategy in the long term (Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment, 2007).

3.1.5. Time Limit to Conclude Trial

For the first time, the law prescribes time limit within which to concluded criminal trials. By section 110 (4) ACJA, where trial has commenced, it shall be concluded within a period of One Hundred and Eighty (180) days, and where it is impracticable to do so, an application should be made to the Chief Judge giving him reasons why the trial has not commenced or yet to be completed. This is intended for speedy trials and it is already yielding results even if compliance is not 100 percent. Some states in Nigeria have designated certain High Court Divisions as Criminal Divisions dedicated only to criminal trials. Section 396 (3) of the ACJA also adds that cases are to be adjourned from day-to-day. Where it is impracticable, each party shall be entitled to five (5) adjournments each, which

shall not exceed an interval of fourteen (14) working days, and where the parties have each exhausted their five (5) adjournments, the interval of further adjournments shall not exceed seven (7) days, inclusive of weekends. The ACJA in order to discourage frivolous adjournment has introduced cost, which shall be awarded against a defaulting party (Section, 396(6)). By section 403 of the ACJL of Rivers State, parties are entitled to only 3 adjournments, with an interval of fourteen (14) working days. It is worthy of note that frivolous applications for adjournment is a major challenge to quick justice delivery in Nigeria.

3.1.6. Monitoring of Implementation under ACJA/ACJL

Another giant stride under the ACJ legislations towards prison decongestion is the establishment of the Administration of Criminal Justice Monitoring Committee (ACJMC) in section 469(1) of the Act. The ACJMC is charged with responsibility of ensuring effective and efficient application of the ACJ statutes by the relevant agencies. The Committee has the responsibility to ensure that:

1) criminal matters are speedily dealt with;

2) congestion of criminal cases in courts is drastically reduced;

3) congestion in prisons is reduced to the barest minimum;

4) persons awaiting trial are, as far as possible, not detained in prison custody;

5) 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;

6) collate, analyze and publish information in relation to the administration of criminal justice sector in the State;

7) submit quarterly report to the Chief Judge of the State to keep him abreast of developments towards improved criminal justice delivery and for necessary action; and

8) carry out such other activities as are necessary for the effective and efficient administration of criminal justice.

The committee has a right of access to all the records of any of the organs in the administration of justice sector to which this Law applies; power to serve on any person in charge of any such organs, by notice in writing, requiring that person to furnish information on such matters as may be specified in the notice. By section 467(2) ACJL Delta State, a person required to furnish information as stipulated above is under compulsion to comply with the notice within a stipulated time.

By section 111 (4) of the ACJL of Delta, where a charge is preferred and the trial does not commence within 30 days of bringing the charge, or trial has commenced but has not been completed after 180 days of arraignment on that charge, the Court shall forward to the Chief Judge the particulars of the charge and reasons for failure to commence the trial or to complete the trial. By section 111 (5) the Court seized of criminal proceedings shall make quarterly returns of the particulars of all cases, including charges, remand and other proceedings commenced and dealt with in his Court within the quarter, to the Chief Judge. These returns expectedly should contain incidences of all trials which have not

commenced within 30 days of bringing the charge, or has commenced but has not been completed after 180 days of arraignment on that charge.

The Monitoring Committee has power to obtain these returns made to the CJ for the purpose of ensuring expeditious disposal of cases and for the purpose of carrying out such activities as are necessary for the effective and efficient administration of criminal justice given that the Attorney-General, Commissioner of Police, State Comptroller of Prison, DSS, NBA, Legal Aids Council and the civil society are well represented in the Committee. By section 110 (7) ACJA, the National Human Rights Commission also has access to the returns on request to the Chief Judge. The Controller of Prisons is under obligation to make returns every 90 days to the heads of the Courts i.e. the High Courts and the National Industrial Court in areas where the prison is situated and to the Attorney-General of the Federation of all persons awaiting trial held in custody in Nigerian prisons for a period beyond 180 days from the date of arraignment. This information is intended to aid the Chief Judges in prison visits.

As part of the measures to monitor the pace of criminal trials and check delays, sections 110(5) ACJA and 111(5) ACJL of Delta State respectively place obligation all courts with criminal jurisdiction to make quarterly returns to the CJ of the Federal High Court and the Delta State High Court for their review and action. In reviewing the returns made by a Court, the Chief Judge shall have regard to the need to ensure that:

1) criminal matters are speedily dealt with;

2) congestion of cases in courts is drastically reduced;

3) congestion of prisons is reduced to the barest minimum; and

4) persons awaiting trial are, as far as possible, not detained in prison custody for a length of time beyond that prescribed by law.

Though, in practice, Judges make quarterly returns of all cases, the requirement of the ACJ statute is a statutory and specific obligation with a clear and direct objective. It is therefore suggested that the information to be supplied by courts trying criminal cases should include detailed explanations when there are delays whether on the part of the prison officials for non-reproduction of defendant, or as a result of the conduct of the defence counsel or prosecution for not playing by the rules of the law or as a result of issues having to do with case management or the court. It is further suggested that activities of the ACJMC should be transparent. The Federal Committee should establish a central website for the Committees' activities to enable members of the public access progress report state by state. In some states like Delta State, the ACJMC is very inactive, redundant and existing merely on paper even though the Committee is the pivot on which the implementation of the ACJ statutes revolves. No doubt, the absence of an active Committee is already affecting the quality of criminal justice delivery in many states.

3.1.7. Visitation to Police Cell

One very important provision of the law placing a watch on the power of the Po-

lice to arrest is section 34 of the ACJA (Umukoro & Kore-Okiti, 2022). This provision empowers the Chief Magistrate or any Magistrate designated by the Chief Judge to visit the police stations or other places of detention within their jurisdiction to inspect Records of Arrest, and direct for arraignment or grant bail, where the Police have failed to grant bail to a suspect. As a follow-up, section 33 of the ACJA places a responsibility on the Police to report all cases of arrest without warrant to the Magistrate on the last day of every month. The Magistrate in turn is expected to report to the Criminal Justice Monitoring Committee on the issue. In essence, the role of the Magistrate is very key in the programme for decongestion of prisons. These provisions for visit to detention centres are replicated in section 70 of the Police Act 2020. The beauty of this is that why the ACJA applies only to the Federal Capital Territory, Abuja and federal offences, the Police Act applies generally. The Police Act is also more forceful in terms of hierarchy of laws as the States ACJL cannot competently place obligations on the Police which is a federal institution, though these obligations are replicated in the various state laws. The ACJA by section 34 (4) also gives High Court Judges similar powers to visit other federal government detention centres outside police stations.

The provision for visitation to detention centres is the major check and balance designed under this current criminal justice regime to place the Police under watch. The practice has yielded tremendous results. It is addressing the vexed issue of illegal detention and arbitrary arrest whether on the basis that the suspect has spent more time than the period prescribed by law or that the suspect was not supposed to have been arrested in the first place. In these occasions, visiting Magistrates have had reasons to grant bail immediately, direct immediate release or immediate arraignment, in appropriate occasion.

3.1.8. Attorney-General's Visit to the Prisons

This is a novel practice and it is peculiar to the ACJL Delta State. Under the ACJL, the State Attorney-General (AG) has power to do routine visit to prisons and other detention centres in Delta State where suspects are awaiting trial (Administration of Criminal Justice Law, 2017). The purpose is to review case files and consider the conduct of the prosecution or defendants. This is to avoid unnecessarily long and arbitrary detention without trial. The AG is expected to take action where the review reveals that legal advice has not been rendered or information has not been filed within the prescribed time. As important as this provision, there is no evidence that this visit has commenced in Delta State 5 years after enacting the Law. The reason for the failure may not be unconnected to its novelty and lack of personal interest on the part of the successive AGs.

4. Measures outside the ACJA/ACJL

4.1. The Nigerian Correctional Service Act 2019 (NCSA)

As measures to control overcrowding in Nigerian custodial centres, the NCSA provides that the prison authorities can reject further admission of inmates if the

custodial centre is already filled to capacity. Section 12 (4) of the NCSA states that the State Controller shall within a period not exceeding one week of the facility being full to capacity, notify the relevant stakeholders which include the Chief Judge of that State, the Attorney-General of that State, the Prerogative of Mercy Committee, the State Criminal Justice Committee; and any other relevant body. Upon receipt of the notification, the notified body shall, within a period not exceeding three months, take necessary steps to rectify overcrowding. It is not very clear how the notified bodies are expected to deal with the case of overcrowding within the period. Building of prisons is obviously a long term project and capital intensive. Execution of such project is not also within the responsibility of any of the bodies listed above. It has been said that for about 40 years now no new prison has been built in Nigeria in spite of the increase in population and in crime rate (The Nation, 2021). As if the drafters of the NCSA appreciated the difficulty in resolving the issue of overcrowding within 3 months, the NCSA further provides in section 12(8) that the State Controller of Correctional service in conjunction with the Superintendent shall have the power to reject more intakes of inmates where it is apparent that the Correctional Centre in question is filled to capacity. Though, this provision is innovative and commendable, it does not address the issue of where will the rejected inmates be kept after remand. It is worthy of note however that section 12(11) of the NCSA makes failure to notify the above listed bodies and failure to reject more intakes after the expiration of the notice an offence for which the Controller and the Superintendent would be sanctioned respectively. It is an obvious fact that most Nigerian prisons are overstretched and seriously overcrowded. For instance, it was observed that Abakaliki Prison in Ebonyi State was at a time having over hundred percent extra detainees (Chukwu, 2014). It is noteworthy that the by section 12 (10) of the NCSA there is room for release or diversion of inmates to Non-Custodial Centres. The category of inmates are: 1) inmates sentenced to three years imprisonment and above with less than six months to the completion of their sentence; 2) inmates charged, convicted or sentenced for minor offences; 3) inmates with civil cases; and 4) any other criteria as may be determined by the Chief Judge or the Prerogative of Mercy Committee. Further measure for prison decongestion under the NCSA and a new one in the history of prison service in Nigeria is the provisions in section 37. The section establishes the Nigerian Non-Custodial Service which is responsible for the administration of non-custodial measures which include community service, probation, parole, restorative justice measures, and any other non-custodial measure assigned to the Correctional Service by a court of competent jurisdiction. A National Committee on Non-Custodial Measures is also created to implement these measures. While the NCSA guards against overcrowding, it also provides for opportunities for education, vocational training, as well as training in modern farming techniques and animal husbandry for inmates. The Correctional Service are authorized to run, in designated custodial centres, industrial centres equipped with modern facilities for the

enhancement of vocational skills training for inmates aimed at facilitating their reintegration into society. In spite of these, some have suggested that approval for private prisons is the most effective remedy for prison congestion in Nigeria (Garba, Iliya, & Anthony, 2021).

It is worthy of note that the official capacity of Nigerian prisons as at January 26, 2021 is 50,153 (World Prison Brief) and given that no new prisons have been built and completed between this period and now, it is correct to say that the official capacity remains the same at the moment. The conclusion is that while official capacity is 50,153, actual population of inmates as at 5th of September, 2022 is 75,859 and it is still rising. By this, Nigerian prisons have exceeded their official capacity as at 5th September 2022 by 51.26 percent (Nigerian Correctional Service, 2022).

It is worthy of note that 70 percent of inmates as awaiting trial does not only explain a case of possible overcrowding, it is also not a good sign for any viable criminal justice system. It was therefore very imperative to enact a more progressive piece of legislation like the NCSA. The NCSA is a pretty new legislation. It is premature to adjudge if its application can adequately address the perennial issue of overcrowding of prisons in Nigeria. It is hoped however, that if the Federal Government is committed to the laudable objectives of the Act, the implementation of the NCSA will greatly improve on the conditions of Nigerian Correctional Service Centres and quality of life of the inmates.

4.2. The Police Act 2020

It is an obvious fact that the root of remand is in arrest. Increase in the number of inmates in custodial centres may not necessarily mean increase in crime rate but increase in arrest. The Nigeria Police in the last few years have been criticised for hyper level of arbitrary arrest and illegal detention. The ENDSARS protest in the year 2020 is a historic evidence of police brutality and wide spread arrest particularly of youths, most times for reasons unconnected with crime. The Police Act 2020 does not only provide for circumstances in which arrest may be made, it equally provides for grounds which shall not amount to reasonable suspicion. Section 54 provides that certain personal features shall not be grounds of arrest as they do not qualify as reasonable suspicion. Examples are: "a person's colour, age, hairstyle or manner of dress; previous conviction for possession of an unlawful article; or stereotyped images of certain persons or groups as more likely to be committing offences." This provision is very important to the right of citizens to move freely without fear of molestation by the police. It has also redefined the psychology of law enforcement agents towards the behaviour of people and it is expected to account for reduction in arrest and unnecessary remand or arraignment. For instance, the flashlight of the Police has been more intense on the youths in Nigeria in the last few years majorly because of their ostentatiousness and extravagant look which the police perfunctorily ascribe to the crime of internet fraud (**Table 1**).

Table 1. Summary of inmate population by convict and awaiting trial persons as at 5th September, 2022. Total Inmate Population: 75,859 (Nigerian Correctional Service: Statistic Summary, 2022).

Total Male Inmates	74,467
Total Female Inmates	1392
TOTAL	**75,859**
Total Convicted Inmates	22,379
Convicted Male Inmates	21,992
Convicted Female Inmates	387
Total Awaiting Trial Inmates	53,480
Awaiting Trial Male	52,475
Awaiting Trial Female	1005
Result by Percentage (%) Convicted Inmates	30%
Awaiting Trial Inmates	70%
Male Inmates	98%
Female Inmates	2%

Source: Nigerian Correctional Service Website (Nigerian Correctional Service Statistic, September 5, 2022).

The Police in Nigeria, no doubt, have been infested with the illusion that every flashy young man in the street is a cyber-criminal. This is because of the prevalence of cybercrime among the youths. Nigeria police have been credited with indiscriminate arrest and illegal detention particularly of young people, many of whom now remanded in prison custody, some of the time, on trumped up charges beyond the jurisdiction of the Magistrate's Court. The use of remand detention for young people in some jurisdictions is upon "strong suspicion" (Brink, 2021) as against reasonable suspicion while in some other jurisdictions the "power of arrest must be exercised only in real and exceptional circumstances" (Depthi, 2013). Unfortunately, incidence of raiding and widespread arrest during elections and during peaceful protest, rallies and festive period, use of law enforcement agencies by the government as an instrument for political repression, etc have their rippling effect on the prisons. This is made worse by the practice of confession-oriented investigation of crime by the Police in Nigeria as against evidence-oriented investigation. A number of criminal trials in Nigeria are founded on confessional statement. Armed with confessional statement, the Police are quick to apply for remand. Confession-oriented investigation is an invitation for arbitrary arrest, detention and torture (Faruque & Bari, 2019). The ACJA provides a safeguard against indiscriminate use of confessional statement and torture of suspect in police detention. Section 15(4) ACJA provides that where a suspect elects to make confession such must be made in writing, and may be recorded electronically on a retrievable video compact disc or such other audio visual and in the absence of video facility such confession must

be recorded in the presence of any person of the choice of the suspect. To complement this, the Police Act 2020 provides as part of its objectives that the aim of the Act is to reposition the Nigeria Police to safeguard and protect the fundamental rights of every citizen in Nigeria

Laws must not only protect citizens from "unlawful" arrest and illegal detention, they must extend to protect citizens against "arbitrary laws" (Marcoux, 1998). The central issue in the interpretation of the word "arbitrary" is not whether it simply introduces a qualification of lawfulness, it is whether such laws are in conformity with international instruments on human rights as certain laws do promote arbitrary arrest. For instance, section 10 (1) of the repealed Criminal Procedure Act (2004) provided for the arrest without warrant of "any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself." These provisions provided, and have continued to provide, even after it has been repealed, a legal backing for police indiscriminate arrest and dentition in Nigeria. This law, to say the least, afforded arresting officers under the CPA too much leverage to play with citizen's liberty and it often led to highhandedness. This law accounts for a high number of persons in prison custody awaiting trial without a clear charge hanging over them. This provision has also been criticised as promoting discrimination on account of economic status. The vagrancy provisions in the repealed CPA led to a situation whereby indiscriminate arrest became a norm. Though this type of arrest is lawful, the law is arbitrary. This kind of law does not punish any particular criminal acts but the status of an individual as being poor, homeless or unemployed. Unfortunately, this type of law is very prevalent in Africa. This is what prompted an application by the Pan African Lawyers Union (PALU) in 2018 for an Advisory Opinion on the compatibility of Vagrancy Laws with the African Charter on Human and People's Right and other Human Rights instruments applicable to Africa. The Network of African National Human Rights Institutions (NANHRI) in its comment observed that "enforcement of vagrancy laws often leads to the exacerbation of prison overcrowding and thus worsens the conditions of incarceration (African Charter on Human and People's Rights Advisory Opinion, 2020). The African Court in agreement with PALU, NANHRI and others observers held that Article 1 of the African Charter, Article 1 of the Children's Rights Charter and Article 1 of the Women's Rights Protocol obligate all State Parties to, *inter alia*, either amend or repeal their vagrancy-laws and by-laws to bring them in conformity with these instruments. This would be in line with the obligation to take all necessary measures including the adoption of legislative or other measures in order to give full effect to the Charter, the Children's Rights Charter and the Women's Rights Protocol." As if in response to this holding, the Police Act 2020, though, provides for a range of circumstances in which a person may be arrested without warrant, excludes the vagrancy provision from the list.

Furthermore, section 89 of the Police Act 2020 places a responsibility on the police to keep a record of arrest and visits to the stations by all persons and note their particulars. The police are also to keep a record of persons shot, wounded

and killed by an officer in the course of discharging his duties. Failure to do these attracts disciplinary measures. The Inspector General of Police is required to give a quarterly report to the Police Service Commission of the persons who were detained all over the country, charged and prosecuted in the courts and the outcome of their cases whether they were killed or wounded during police operations across Nigeria or died in police custody. The aim of this provision is to check cases of arbitrary arrest and illegal detention as well as extra judicial killing. While this is commendable, it is doubtful if the police are in compliance.

4.3. Visitation of Correctional Centres by the Chief Judge (CJ) and the Chief Justice of Nigeria (CJN)

The power of the CJ or CJN to release inmates from custody was initially provided for by The Criminal Release from Custody (Special Provisions) Decree No. 19 of 1977 which was later enacted as the Criminal Release from Custody (Special Provisions) Act (CRCSPA). The Act provides that "[w]here in respect of any person detained in any prison in Nigeria not being a person detained in execution of a sentence of a tribunal or court duly constituted by law, the CJN of the federation or the CJ of a state, if satisfied as follows:

1) That the detention of that person is manifestly unlawful;

2) The person detained has been in custody for a period longer than the maximum period of his imprisonment which the person detained could have served had he been convicted of the offence in respect of which he was detained, the CJN of the federation or CJ of a state may issue an order of release to officer in charge of the prison and such officer shall on receipt of the order release the person stated therein." (Criminal Release from Custody (Special Provisions) Act, 2004).

The CRCSPA has been a major source of hope for inmates year in year out in Nigeria since 1977. For instance, in just a quarter of the yearly visit in 2021 the Rivers State Chief Judge released 150 inmates across the State (Chinedu, 2021). This is roughly the kind of exercise that goes on across all the states including the Federal Capital Territory in Nigeria. The CRCSPA is one major legislation aimed at prison decongestion. However, it is observed that this legislation is due for a review. It was reported that the percentage of overcrowding as at 1978 was just 18.61 (Awopetu, 2014) as against 51.26 in September 5 2022. If the conditions for release were effectively sufficient as at 1977 when the Decree was made, it is not at the moment, 45 years after. The conditions for release of inmates under the law are too limited if one recalls the objectives of the visitation exercise. Though, it is admitted that the CRCSPA is not intended to free prisoners as a matter of course, it is not in doubt that its objectives are to decongest the prison. Overcrowding in prisons is a violation of the human rights of inmates. It is suggested that the CRCSPA having been implemented for 45 years with steady rise in the percentage of overcrowding, a review of the law becomes imperative particularly to widened the conditions which must be satisfy before releasing an inmate. It is suggested that the amendment should include detainees arrested for

minor criminal offences and cases of terminally ill inmates, whether or not there are claims that medications are available at the prisons. While inmates with minor criminal offences may not be out rightly released, they should be released from custody to non-custodial centres.

The CRCSPA at the moment has no provision for those in custody for capital offences and those facing life sentences. This is because this type of offences does not easily come under detentions which are manifestly unlawful. The CRCSPA does not define what it means for a detention to be *manifestly unlawful*. This has been left to the whims and caprices of the visiting CJ and CJN. Thus, while some Chief Judges are more liberal in their decision other are very reluctant to release inmates based on some extra consideration like the rate of crime in the society and the fact that the law is not a ticket for release of offenders. It is further suggested that any amendment to the existing law should recognise inmates who have been in custody for a period of time which is equal to 70 percent of the number of years he would have served in prison especially if the records cannot show the possibility that his trial could be completed before he would have completed the full term in prison if he were to be convicted. The review may also give some insight as to what it means by detention that is *manifestly unlawful*. The Merriam-Webster Dictionary for instance gives some synonyms of *manifestly* as "clearly, distinctly, evidently, obviously, patently, plainly, self-evidently" (Merriam-Webster Dictionary). It also gives the meaning of the term as: "readily perceived by the senses and especially by the sense of sight" or "easily understood or recognized by the mind." (Merriam-Webster Dictionary).

Whether a detention is manifestly unlawful is a matter of law, however, laws do not exist in *vacuo*, they are predicated on facts. In practice, Chief Judges have always conducted the exercise as though the term means detentions which on the face of the files are clearly unlawful. The commonest examples are detentions for an alleged wrong which does not amount to a crime in law. Section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that a person shall not be convicted of a criminal offence unless that criminal offence and its penalty is defined under a written law. A written law in this regard means an act of the National Assembly, a law of a State and any subsidiary legislation or instrument under the provisions of a law. These constitutional provisions have been a basis used by law courts for dismissing criminal charges for offences which are unknown to law (Omatseye v FRN, 2017; Bode George v FRN, 2011; Idris v FRN, 2018; Aoko v Fagbemi, 1966). The logical reasoning is that if defendant should not stand trial for offences which are not known to law, they ought not to have been arrested in the first instance for the said "offence" let alone being detained. The arrest and detention are therefore *manifestly unlawful* and the trial an exercise in error. It is hoped that a review of the CRCSPA and the suggested enlargement of the conditions for release of inmates would bring this important piece of legislation to terms with existing realities in the correctional service centres in Nigeria.

5. Conclusion

The law on arrest, remand and awaiting trial may have contributed immensely to the congested state of Nigerian prisons under the old regime, but with the growing awareness on the need to overhaul the criminal justice system in Nigeria and the enactment of the ACJA, NCSA, Police Act 2020 and adoption of the ACJA by states, there is likely to be some relief from the old order and state of helplessness often associated with prison congestion in Nigeria. It does appear that there is also the need to build more prisons given the steady rise of population in Nigeria. While more buildings are expected, the CRCSPA should be reviewed as suggested in this study to bring the Act in line with modern realities. With these, Nigerian correctional centres can be effectively managed and the laws efficiently applied to reduce congestion of prisons to the barest minimum. The courts on the other hand are encouraged to toll the path of non-custodial punishment in deserving cases. Children and simple offenders should not have a home in prison. The AG is urged to liaise with the government at their respective levels to set up Community Service Centres in the various jurisdictions. The government is also urged to inaugurate Administration of Criminal Justice Monitoring Committee at the various levels and properly fund them to enable them monitor the implementation of the ACJ statutes.

Magistrates have great role to play in the issuance of remand order under the new regime. They must exercise their discretion in line with the law and ensure that incompetent and malicious applications for remand are not granted. Remand applications are no longer automatic. The factors which the court should consider have already been set out. Besides, the law has provided detention time limit for every order of remand. The limit provided by the law is the maximum, that is to say, a magistrate can grant remand for a shorter period. Magistrates must not hesitate to discharge the suspect and release him unconditionally in line with the ACJ statutes once the maximum remand duration has been reached and legal advice has not been rendered or information filed in a court of competent jurisdiction. It is believed that these efforts are capable of readjusting the volume of inflow of inmates into Nigerian prisons and detention centres and could reduce the incidence of congestion if the relevant enabling statutes are given the teeth to bite and stakeholders implement them to the letter. As a long term plan, there is also need for the government, NGOs and other relevant groups to continue to sensitise, educate and spread knowledge of the effect and punishment for crime in schools and other places where youths congregate. This will help in redirecting the minds of some of the uninformed young people and by implication reduce their chances of having the prisons as their homes.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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