

An Analysis of the Strategic Roles of the Police under the Administration of Criminal Justice Law of Benue State, 2019

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Abstract

The police undoubtedly remain an indispensable stakeholder in the administration of criminal justice. The focal point of this article is to appraise the strategic roles of the police under the Administration of Criminal Justice Law of Benue State (ACJL), 2019. The article utilised the doctrinal research methodology for information. It has been shown that the police play crucial roles in enhancing law and order through the performance of a constellation of functions such as prevention of crime, detection and investigation of crime, apprehension of offenders, and enforcement of the law. These veritable responsibilities are, however, attenuated by dearth of equipment, and resources to work effectively. The article found that the ACJL of Benue State enacted in conformity with international best practices is good; the problem is with its implementation. It is, therefore, recommended that the police and relevant stakeholders should undertake a meticulous implementation of the law and there is need for the provision of adequate resources in order to enable the police carry out its statutory functions effectively.

Keywords: Police, roles, administration of criminal justice, Benue State

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Introduction

A criminal justice system includes the agencies and personnel who are charged with the responsibility of enforcing criminal law including law enforcement, judiciary and corrections.¹ In Nigeria, these consist of the police, courts and correctional services and it is on this premise that the Administration of Criminal Justice Law of Benue State, 2019 (the Law)² assigned independent functions to these stakeholders to aid the delivery of justice.³ The purpose of the Law is to ensure that the agencies and institutions responsible for the administration of criminal justice in the state are efficiently harmonised and managed to ensure speedy dispensation of justice, protect the society from crime and protect the rights and interests of both the victim and offender.⁴ The law was enacted to enhance the administration of criminal justice in the state in line with the Administration of Criminal Justice Act, 2015⁵ which had a limited jurisdiction since it applied only to federal institutions involved in criminal justice administration. The need to adopt the Act,⁶ led to the enactment of the Benue state law.

The success of any system of criminal justice administration depends on the level of efficient performance of responsibility imposed by law on agencies involved in criminal justice delivery.⁷ This article focuses on the roles of the police under the Law because they (like all other law enforcement agents) are an integral part of the criminal justice system, and the success of the system is anchored on

¹ Other stakeholders like officials in law enforcement agencies aside from the police and legal practitioners who prosecute and defend suspects are also noteworthy.

² Hereinafter referred to as the Law or the ACJL.

³ TA Omole, 'Towards an Efficient Administration of Justice: New Responsibilities for the Police under the Administration of Criminal Justice Act, 2015' in A Adekunle, SO Oyakhire and C Nwabuzor (eds), *Issues on Criminal Justice Administration in Nigeria*, (Nigerian Institute of Advanced Legal Studies, 2016) 190.

⁴ ACJL, s3.

⁵ Hereinafter referred to as the ACJA.

⁶ VV Tarhule, 'The Administration of Criminal Justice Act as an Instrument for Fast Tracking Criminal Justice Delivery in Nigeria', [2016](17) *Calabar Law Journal* 32.

⁷ CJ Dakas, 'Administration of Criminal Justice Act, 2015: The Requirements for Successful Domestication and Implementation in a State', [2017] paper presented at the Nigerian Bar Association-MacArthur Foundation Workshop on Promoting the Domestication and Implementation of the Administration of Criminal Justice Legislation across Nigeria, on November 9, 2017, at TransCorp Hilton, Abuja .

them. The police present the entry point into the criminal justice system either through reports from the public or on its own investigation and surveillance. It is, therefore, a fact that an average citizen has contact with the police more than with any other agency for administration of criminal justice. In addition, the first contact a suspect has with the criminal justice system is with the police and the manner in which the police carry out their duties depend on whether or not the suspect will obtain justice. The police officer is the one responsible for arresting, investigating and arraigning the suspect to determine whether or not he is guilty, and government whose main function is to maintain law and order as well as protect lives and property, need the police to monitor and checkmate criminal activities. It is, therefore, imperative for all of them to be fully abreast of the laws and best practices that are required in the process of administering criminal justice as provided by the Law because a poorly managed case is a potent instrument for convicting the innocent and acquitting the guilty thereby affecting the quality of the system and effectiveness of the government in the state.⁸

The Nigeria Police Force is established by Section 214(1) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended)⁹ and the same section goes further to prohibit the establishment of any other police force in and within Nigeria. It further provides for the National Assembly to make laws for its organisation and administration,¹⁰ hence, the enactment of the Police Act.¹¹ Section 4 of the Police Act provides, among others, that the police shall be employed for the preservation and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property, and due enforcement of all laws and regulations. The ACJL which repeals the Criminal Procedure Code Law,¹² provides the procedures in which the police are to carry out their functions in order to achieve their mandate.

⁸ YOU Hambali, *Practice and Procedure of Criminal Litigation in Nigeria* (Feat Print and Publish Limited, 2013) 1.

⁹ Hereinafter referred to as the CFRN.

¹⁰ ACJL, s214(2)(a).

¹¹ Cap P19, Laws of the Federation of Nigeria (LFN) 2004. Hereinafter referred to as the PA.

¹² Cap 51, Laws of Benue State in force since 1960.

The Roles of the Police as Provided under the Law

Prevention of Crime

The role of preserving law and maintaining peace/order which is one of the major functions of government is majorly carried out by police officers in their roles of detecting and preventing crime.¹³ Even though it is everyone's business to maintain peace, the focal point lies on the police force. Section 52 of the Law provides that a 'police officer may intervene for the purpose of prevention and shall to the best of his ability, prevent the commission of an offence'. Section 52(2) further provides that the police officer may intervene to prevent injury attempted to be committed in his presence to any public property whether movable or not. Thus, the first role of police is to prevent crime by detecting when a crime is about to be committed and nip it in the bud before it is actually committed.¹⁴ It is often said that 'prevention is better than cure', thus if crime prevention is carried out, it is cheaper, safer and healthier for the state than having to treat its victims, deal with perceptions and lose civic health and productivity.¹⁵ Section 54 of the Law gives a police officer power to arrest a suspect even without a court order where there is reasonable suspicion of a design to commit an offence, if the commission of the offence cannot otherwise be prevented. It can be deduced from the above, that the law gives police officers the necessary legal backing to use all lawful means to avert or suppress the commission of crimes.

Detection/Investigation of Crime

In developing countries like Nigeria, effective administration of criminal justice is majorly hampered by the detection and investigation of crime and criminals especially because of the poor level of technological advancement.¹⁶ The duty to detect crime compliments crime prevention. Because detection refers to the investigatory power of police to discover the commission of crime

¹³ Police Act, s4. Also *FRN v Osahon* (2006) 24WRN 1 (SC).

¹⁴ AM Adebayo, *Administration of Criminal Justice Administration Act, 2015: Annotated with Cases and Comprehensive Notes* (Princeton Publishing Co., 2016) 2.

¹⁵ Ibid 118.

¹⁶ AM Adebayo, *Role of Police Officers in the Administration of Criminal Justice in Nigeria* (Princeton Publishers Co., 2012) 1.

and identify persons involved while prevention expresses the mode of discovering the crime and preventing it from happening.¹⁷

When a crime is committed, it is the responsibility of the police to investigate and identify the suspected criminals and collect sufficient evidence necessary to prosecute the case.¹⁸ If an investigation is poorly carried out, it hampers the administration of criminal justice and negatively affects the whole system.¹⁹ Section 116(6) of the Law provides, among other things, that after a complaint is made concerning the commission of an offence, the police officer shall proceed to the scene and investigate the case and may take steps necessary to discover and arrest the suspect.²⁰ This power given to police officers has been held to be very wide²¹ since they can search any premises, question anybody and seize any property which may provide useful information on the investigation.²² The police cannot be prevented by the court in carrying out its investigative functions because it would be considered as an interference with the powers given by law to police officers to investigate and prosecute crimes²³.

Procedure for Receiving First Information Reports (FIR)

Section 116 of the ACJL, 2019, provides that once a complaint is brought before a police officer in charge of a Police Station concerning an offence authorizing an arrest without warrant²⁴ and triable by a court (Magistrate or Area) within jurisdiction,²⁵ the complaint must be reduced to writing in the Police Diary, read over to the complainant and signed by the police officer.²⁶ This report is to be known as the First Information Report (FIR)²⁷ and is significant because it is made early immediately after the occurrence of a crime

¹⁷ Omole, (n3) 195.

¹⁸ PA, s4 and the case of *Onah v Okenwi* (2010) LPELR-478

¹⁹ *Dele v The State* (2011) 1NWLR [pt. 1229] 508 at 541 (CA).

²⁰ ACJL, s116 (6)(a).

²¹ *Oforlette v The State* (2000)12 NWLR (pt. 6811) 415 (SC).

²² *Joshua v The State* (2009) LPELR - 8189 (CA).

²³ *IGP v Ubah* (2014) LPELR-23968 (CA).

²⁴ ACJL, s116(1)(a).

²⁵ ACJL, s116(1)(b)

²⁶ ACJL, s116(2).

²⁷ Adebayo, (n, 14) 196.

and the facts are still very fresh within the informant's memory. This report leads to the investigation of the case²⁸ or the direction of the police officer to the complainant to refer the case to court²⁹ or another police station.³⁰

Apprehension of Offenders

A police officer under section 5 of the Law is empowered to arrest anybody suspected to have committed an offence.³¹ The innovation under the law is not in this power but in the mode and circumstances to which the police officer can arrest.³² These circumstances are listed below:

Instances Where Police can Arrest a Suspect

Section 20 of the ACJL has done away with section 27 of the CPC which provided that a police officer could arrest without warrant, any person who has no ostensible means of subsistence and who could not give a satisfactory account of himself. This led to a lot of indiscriminate arrests due to the wide discretion given to police officers in the exercise of this section. However, section 20 has provided specific instances under which a police officer can arrest without warrant. Some of the major instances include where there is reasonable suspicion that the suspect has committed an offence,³³ where the offence is committed in the presence of the police officer,³⁴ where suspect is in possession of stolen property³⁵ or obstructs the police officer while in the execution of his duty³⁶ among other listed instances. In examining these instances, the court has been enjoined (while carrying out its judicial oversight function)

²⁸ ACJL, s116(6).

²⁹ ACJL, 116(4).

³⁰ ACJL, s116(5).

³¹ ACJL, s50.

³² Adebayo, (n, 14) 198.

³³ ACJL, s20(1) (a) – Note that this provision is limited only to situations where the law creating the offence has directly provided that the suspect cannot be arrested without warrant.

³⁴ ACJL, s20(1) (b) – Note that Section 20(2) of the Law provides that this arrest can be carried out notwithstanding the fact that the law creating the offence provides that the suspect cannot be arrested without a warrant.

³⁵ ACJL, s20(1)(d).

³⁶ ACJL, s20(1)(c).

to be circumspect in the delicate balancing act between protecting the fundamental rights of citizens on the one hand, and providing sufficient space to law enforcement agencies to carry out their statutory duties on the other hand.³⁷

Under section 20, the test to be applied is an objective test of a reasonable person acting without passion or prejudice.³⁸ In criminal trials, suspicion is the feeling or thought without factual proof that someone is guilty of an offence and it is important to give power to arrest on reasonable suspicions to be exercised with due caution so as to hamper police activities.³⁹ The police power of arrest (with or without warrant) is a necessary tool for law enforcement due to the increased rate of organized and violent crimes. As a result, police officers have the discretion to address instant criminal conducts without the inhibition of undue legal technicalities.⁴⁰

A police officer can also arrest by a warrant made upon a complaint on oath by a material witness or complainant himself.⁴¹ In the case of *Fayose v The State*,⁴² the court held that for a court to grant an application for warrant of arrest, there must be a statement on oath filed before the court, stating all the material facts necessary for the court to exercise its discretion for the grant. However, an arrest may still be executed notwithstanding the fact that the warrant is not in the possession of the person executing it, but is shown on demand to the suspect as soon as practicable after his arrest.⁴³

Method of Arrest

Section 6 of the Law provides that a police officer, in 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. The purpose of an arrest is to bring the suspect before a court

³⁷ *Fabian v IGP and 2 Others* CV/1976/2016.

³⁸ Adebayo, ACJA (n, 14) 91.

³⁹ Ibid 92.

⁴⁰ Obiagwu, *The New Criminal Law and Procedure of Lagos State* (LEDAP, 2016) 81.

⁴¹ ACJL, ss39 and 37.

⁴² (2010) LPELR - 8658 CA.

⁴³ ACJL, ss 44 and 46.

or secure the administration of the law.⁴⁴ An arrest was defined in the case of *Yakundue and Others v Ekperieren and Others*⁴⁵ to mean a seizure, forcible restraint or keeping of a person in custody by legal authority in response to a criminal charge for the purpose of securing the administration of the law. Therefore, there is no arrest where there is no restraint and the restraint must be under real or pretended legal authority.⁴⁶ In *Sadiq v The State*⁴⁷ the appellant who initially refused to honour an invitation by the police was charged and convicted upon a charge of resisting arrest. The Court of Appeal quashed the appeal holding that the charge of resisting arrest was not made out because the appellant was never arrested. Thus, mere invitation to the police station does not constitute an arrest as such, words or action that shows intention to confine the person into custody must be expressed.⁴⁸ From the above, an arrest may occur by touching the suspect, by any act or intention to take the suspect and subject him/her to the control of the police officer or by the consent of the person to be arrested.⁴⁹

Unlawful arrest is one of the major problems of criminal justice administration in Nigeria leading to so many cases of human rights violations as well as overcrowding of prisons and detention centres. In the case of *Okafor v IGP and 1 Other*⁵⁰, the court provided that the deprivation of any citizen's liberty for any length of time without lawful excuse amounts to false imprisonment and a violation of the person's personal liberty.

Arrest must not be Carried Out with Unnecessary Restraint

One universal rule police officers must follow in making arrests is that they are not allowed to use excessive force or treat

⁴⁴ Ibid 16.

⁴⁵ (2012) LPELR - 2007 1 (CA).

⁴⁶ Adebayo, (n, 14) 17.

⁴⁷ (1982) 2 NCR 142 (CA).

⁴⁸ Obiagwu, (n, 40) 53.

⁴⁹ Ibid.

⁵⁰ FCT/HC/CV/5/2015.

suspects cruelly.⁵¹ Under section 7 of the Law, a suspect may not be handcuffed, bound or restrained except on three conditions.

- a) Where there is reasonable apprehension of violence or an attempt to escape; or
- b) The restraint is considered necessary for the safety of the suspect; or
- c) By order of a court.

The effect of this provision is to ensure less potential for allegations of torture and inhumane or degrading treatment. However, a police officer going to effect an arrest must envisage some form of resistance from the suspect especially where the offence committed is serious in nature, in which situation, the police officer is entitled to use such force as may be reasonably necessary to overcome any force or defence that may be used in resisting arrest by the suspect.⁵²

Under section 14 of the Law, a police officer may enter into the residence of a third party to effect the arrest of a suspect. If he reasonably believes the suspect is within the premises or has a warrant of arrest.⁵³ Where he cannot obtain admittance, he may even break into the premises⁵⁴ and break out to liberate himself.⁵⁵ In *Ibikunle v The State*⁵⁶ however, it was held that the throwing of teargas into a room where entry is sought does not come within the provisions of the law on this matter.

Notification of Cause of Arrest

Section 8(1) of the Law provides that except the suspect is arrested in the course of committing an offence, or has escaped from

⁵¹ Reflects the Provision for Fundamental Rights to Dignity of the Human Person enshrined in so many universal human rights documents like the UDHR (Universal Declaration of Human Rights), ICCPR (International Covenant on Civil and Political Rights) and so on. See particularly, Section 34(1) CFRN.

⁵² Adebayo, (n16) 14 Sec. 33(2)(b) CFRN – This provision applies even by killing the suspect in situations of escape where capital punishment or imprisonment of more than 7 years and suspect can by no other means, be arrested.

⁵³ ACJL, s14(1).

⁵⁴ ACJL, s14(2).

⁵⁵ ACJL, s15.

⁵⁶ (2007) LPELR – 8086.

lawful custody, the police officer shall inform the suspect immediately of the reason for the arrest.⁵⁷ The requirement need not be in the exact charge contemplated or in technical or precise language but with reasonable, sufficient information such as date, place and act in question.⁵⁸ In *Ndukwe v LPDC*,⁵⁹ the Supreme Court reiterated the fact that the police officer is duty bound to inform the suspect the details of the nature of the offence in a language he understands so as to caution the suspect before he volunteers a statement in answer to the charge or allegation against him. The information to be given by the police officer to the suspect must be sufficient enough to enable him make an informed decision about whether or not to waive his right to counsel.

Where this provision is breached, a suspect may seek redress in court against police officer who denied him of that right.⁶⁰ Regulation 341 of the Nigerian Police Regulation⁶¹ provides that in the individual exercise of his power as a police officer, every police officer shall be personally liable for any misuse of his powers or for any act done in the exercise of his authority. In addition, the Supreme Court in the case of *Rufia v The State*,⁶² held that a trial may be voided where it is not shown that an accused person was informed of the nature of the offence in a language, that he understands. The court in *Vincent v COP and 2 Others*⁶³ provided that where a person is arrested upon reasonable suspicion of having committed a criminal offence, such arrest or detention becomes only illegal where reasons of his arrest or detention is not given after 24 hours.

Notification of the Rights of the Suspect

Under section 10(2), the police officer in charge of a police station shall inform the suspect of his rights to:

⁵⁷ ACJL, s6(1) ACJA or CFRN, s35(3), CFRN, s36(6)(a).

⁵⁸ Adebayo, (n, 14) 22.

⁵⁹ (2007) LPELR - 1978 (SC).

⁶⁰ Section 35(6) CFRN provides that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person responsible for the unlawful arrest, s10 ACJL.

⁶¹ Made Pursuant to PA, s46.

⁶² (2001)7 SCNJ 122 (SC).

⁶³ FCT/HC/CV/46/2015.

- a. Remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his choice⁶⁴
- b. Consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest⁶⁵ and
- c. Free legal representation by the Legal Aid Council of Nigeria where applicable.

The Law further provides that 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.⁶⁶ This provision is an innovation to the CPC which had no similar provision and was short of the constitutional requirement. These rights accorded to suspects gained wide recognition in common law jurisdictions⁶⁷ with the 1966 judgement of the United States Supreme Court in *Miranda v Arizona*⁶⁸ which gave rise to what is now popularly known as “Miranda rights”. The provision of this requirement in the law in line with the ACJA brings the criminal justice system in the country in line with international best practices as it does away with self-incrimination especially by vulnerable suspects under long police interrogations.

Thus, a suspect’s right to silence⁶⁹ includes the right to be informed of that right and to refrain from making statements (verbal or written) up until after the determination of the trial in court while the right to legal representation⁷⁰ enhances the representation of the accused person to have access to information and advice on technical matters. Where several reasonable attempts have been made to reach a counsel of choice or family member and have been unsuccessful, then the police officer should inform the suspect of free legal

⁶⁴ Also CFRN, s35(2).

⁶⁵ Also CFRN, s36(6).

⁶⁶ ACJA, s6(2), CFRN, s35(2).

⁶⁷ Obiagwu, (n, 40) 57.

⁶⁸ 384 US 436 (SC) – The Miranda rights in countries like the United States are a type of notification customarily given by the police to suspects who are arrested of their right to silence, or to have an attorney present before answering questions or providing information.

⁶⁹ ACJA, s8(2)(a).

⁷⁰ ACJA, s8(2)(b) & (c).

representation by the Legal Aid Council of Nigeria where applicable. Note that even though the law is silent on the effect of not informing suspect of his rights, the court may reject any statement elicited from the arrested person by the police as involuntary statement.⁷¹

Abolishment of Arrest in Lieu

Section 9 of the Law prohibits arrest in lieu of a suspect. It was formerly the practice whereby police officers would hold relatives, associates or acquaintances of a suspect in detention until the suspect makes himself available. This practice was greatly condemned because it was mostly abused and seen as antithetical to natural justice.⁷² In the case of *Zubairu v The State*⁷³ the court emphasised the two fold aim of criminal justice which are that the guilty shall not escape justice nor the innocent suffer ridicule. With the implementation of the section, congestions in many detention centres and prisons will be greatly reduced.

Provision of Humane Treatment to Suspects

Section 10 of the Law provides that a suspect shall be accorded humane treatment,⁷⁴ not be subjected to any form of cruel, inhumane or degrading treatment,⁷⁵ not be arrested merely on a civil wrong or breach of contract,⁷⁶ be brought before the court as prescribed by law or released conditionally or unconditionally⁷⁷ and be tried in accordance with the provisions of the law.⁷⁸

Any inhumane treatment of criminal suspects defeats the cardinal principle of criminal justice which is the presumption of innocence of an accused person until guilt is proved.⁷⁹ The only treatment permitted by law against person who are arrested, is the

⁷¹ Adebayo, (n, 14) 32.

⁷² See the case of *Continental Bank Limited v Okonkwo* (1997) 1 NWLR [pt. 48] 197 where the court judicially reprimanded police officers who arrest others in place of suspects.

⁷³ (2015) 16 NWLR [pt. 1486] 524 (SC).

⁷⁴ ACJA, s10(1)(a); ACJA, s(1)(a); CFRN, s34(1).

⁷⁵ ACJA, s10(1)(b); ACJA, s8(1)(6); CFRN, 34(1)(a).

⁷⁶ ACJA, s10(2), ACJA, s8(2).

⁷⁷ ACJA, s10(3); ACJA, 8(3); CFRN, 35(4).

⁷⁸ ACJA, s10(4); ACJA, s8(4).

⁷⁹ Obiagwu, (n, 40) 55. Also CFRN, s36(5).

deprivation of liberty.⁸⁰ Thus, the practice of brutality, extra judicial killings, rape, threats, psychological and physical assaults are highly condemned and criticized. Others like the provision of minimum floor space, cubic content of air, adequate sanitary facilities, sleeping facilities or nutritional food supplies⁸¹ are advised to be provided in detention centres by the government to ensure the dignity of the arrested suspects as provided for under the law as well as international standards.

Under this provision, a person is not to be detained indefinitely but only as provided for by the law.⁸² The CFRN⁸³ provides that an arrested suspect be charged before a court of law within a maximum time of 48 hours.⁸⁴ In the case of *Ashinzer v EFCC and 3 Others*,⁸⁵ the court held that the arrest, detention and continued detention of the suspect without granting him administrative bail within the stipulated 24 or 48 hours of his arrest are illegal, wrongful, unlawful and constitute a blatant violation of his fundamental rights. Similarly, the court held in *Mclaren v Jennings*⁸⁶ that where police officers arrest suspects for civil wrongs or breach of contract and are sued for damages, they are considered unlawful, wrongful and illegal because they have acted outside the purview of the law, on frolics of their own. In addition, the court held in *AC (O.A.O) Nig. Ltd. v Umanah*⁸⁷ that the statutory duties of the police under the PA is to maintain peace, law and order in the society and that debt collection or loan recovery is not within the purview of their statutory duty.

⁸⁰ Adebayo, (n14) 38.

⁸¹ As Provided for under the Standard Minimum Rules for the Treatment of Prisoners, Adopted by the UN in 1955 and cited in Adebayo (n14) 39.

⁸² PA s27, ACJL, ss30 and 32. These provisions only apply where the offence is not capital in nature.

⁸³ CFRN, s35(5).

⁸⁴ Where court of competent jurisdiction is within a radius of forty kilometres, 24 hours suffices.

⁸⁵ FCT/HC/CV/1099/2016 (HC) – also *Shagari v COP* (2007)5 NWLR [pt. 1027] 257 at 299 (CA).

⁸⁶ (2002) LPELR -5784.

⁸⁷ (2013) 4 NWLR [pt. 1344] 323 (SC).

Granting of Bail to Suspects in Detention

Closely associated with the provision above is the issue of bail. Section 32 of the Law provides that where a suspect has been arrested without warrant for a non-capital offence and it is impracticable to bring him/her before a court having jurisdiction within 24 hours, then he shall be released on bail subject to his entering into recognizance with or without sureties for a reasonable amount.⁸⁸ Based on this provision which is in tandem with section 27 of the Police Act, a police officer may release a suspect arrested free on bail pending the conclusion of investigation or arraignment in court. It is, therefore, very important to note that according to the law, bail in police stations ought to be free.⁸⁹ However, one of the causes of congestions in detention centres as well as congestion of criminal cases in Nigerian courts is the indiscriminate arraignment of criminal cases in court⁹⁰ due to the vindictiveness of some officers who charge suspects whether innocent or not, to courts for refusal to pay for bail.⁹¹

In *Shagari v COP*,⁹² suspects who were arrested in May for non-capital offences were detained till September without bail. They were even arraigned before a Chief Magistrate Court and later, to a High Court on appeal but were at each point, denied bail. On further appeal to the Court of Appeal, this practice was condemned and described as an improper use of power as well as an unlawful and unjust detention of suspects. In *IGP v Duru and Another*,⁹³ the court urged that the import of the provision on bail is to secure the presence of a suspect at trial and should not be withheld as a means of punishment. In addition, the court held in *Kayode v EFCC*,⁹⁴ held that the provision of the law that gives police officers power to grant bail has restricted the terms to ‘entering a recognizance with or without sureties for a reasonable amount’. As such, it is unlawful and

⁸⁸ ACJL, s32(1) & (2).

⁸⁹ Note also Regulation 354 of the Nigerian Police Regulation which prohibits police officers from receiving gifts in the course of their duties.

⁹⁰ Adebayo (n, 14) 104.

⁹¹ Ibid.

⁹² (2005) All FWLR [pt. 262] 450 (CA).

⁹³ FCT/CR/201/17. Also the case of *FRN v Forecom Network Ltd and 2 Others* FCT/HC/CR/289/2016.

⁹⁴ FCT/HC/CV/1767/2016.

illegal to impose stringent bail conditions that only a court of competent jurisdiction is entitled to impose. Therefore, any protracted detention of a suspect on the excuses of non-fulfilment of bail conditions imposed by the officer is unjustifiable under any law.

The remedy available to any suspect who is arrested for a non-capital offence and is not released on bail after 24 hours is to notify by application (either orally or in writing)⁹⁵ to a court having jurisdiction with respect to the offence which shall order the production of the suspect, inquire into the circumstances and grant bail if it deems fit.⁹⁶ In the case of *Suleman v COP*,⁹⁷ the court emphasized that in considering the application, the criteria to be followed by the court includes considering the nature of the charge, strength of evidence, gravity of punishment, previous criminal record of the suspect, possibility of suspect not appearing in court, likelihood of interfering with witnesses or suppressing evidence, likelihood of further charge and necessity to procure medical or social report pending final disposal of the case. In the case of *Akpa v FRN*,⁹⁸ the court held that any person who is unlawfully arrested and detained is entitled to compensation and public apology.⁹⁹

Under Section 16 of the Law, the police officer has a duty to take the suspect to a police station immediately after an arrest¹⁰⁰ and furnish him with everything reasonably necessary to assist the suspect exercise his legal right to legal advice, bail and defence.¹⁰¹ It is advised that the government should produce and make available such facilities like money, recharge phones and others which may aid the effect of this provision.

Searching and Seizing of Property

Section 11 of the Law, provides that when a person is arrested, he may be searched using force as maybe reasonably

⁹⁵ Usually done on behalf of the suspect by his legal practitioner or relative.

⁹⁶ s34(1)(2) & (3).

⁹⁷ (2008) LPELR - 3126 (HC).

⁹⁸ (2012)1 NWLR [pt. 1281] 403 (CA).

⁹⁹ Also regulation 341 of the Nigerian Police regulation which provides that a police officer shall be personally liable for any misuse of his power (n, 38).

¹⁰⁰ ACJL, s16(1).

¹⁰¹ ACJL, s16(2). *Okoye and Others v COP and Others* (2015) LPELR - 24675

necessary¹⁰² and all articles found on him be placed in safe custody.¹⁰³ If the articles found have any connection with the crime committed, they may be detained until his discharge or acquittal and it does not matter if the suspect is granted bail within the period of trial or not. These items are usually kept with the police exhibit's keeper who has the responsibility of custody of items recovered from suspects.¹⁰⁴ If after investigation by the police, no offence is discovered, then the suspect can sue to recover the items if the police have refused to return them after request.¹⁰⁵ According to the Law, the search is to be carried out decently and by a person of the same sex.¹⁰⁶ Thus, it is usually always in the interest of justice for a male police officer to search a male suspect and a female police officer to search a female suspect because as has already been stated, everybody has a fundamental right to his/her dignity and privacy and since this process may be easily abused or even misconstrued, it is always better to abide by the provisions of the law.

Mandatory Inventory of Property of Arrested Persons

Section 12 of the Law, mandates the police officer upon arrest to take an inventory of all items recovered from suspects during the arrest,¹⁰⁷ duly sign the inventory along with the suspect and give the suspect or his representative a copy of the inventory.¹⁰⁸ It further stipulates that the police officer may release such property on bond to the owner or person having interest pending the arraignment of the suspect in court¹⁰⁹ or make a report to the court of that fact where the police officer refuses the request¹¹⁰ in which case the court will decide appropriately.¹¹¹

¹⁰² ACJL, s 11(1)(a).

¹⁰³ ACJL, s11(1)(b). Except his wearing apparel.

¹⁰⁴ Adebayo, (n, 16) 22.

¹⁰⁵ Ibid 23.

¹⁰⁶ ACJL, s11(3). Except where it is urgent or impracticable in which case, the officer shall first be searched

¹⁰⁷ ACJL, s12(1)(7).

¹⁰⁸ ACJL, s 12(2). However, inventory is not invalidated where suspect refuses to sign.

¹⁰⁹ ACJL, s 12(4).

¹¹⁰ ACJL, s12(5).

¹¹¹ ACJL, s12(6).

In the case of *Abah v Jabusco*,¹¹² the court held that where goods are taken by police officers under this provisions they become bailees of the goods kept in their custody and are under the obligation to return the goods to the bailor at the end of the period of the bailment unless they can show good cause for not returning them. There have been embarrassing situations where items recovered by police officers or exhibits necessary for prosecution are either converted to personal use or get missing.¹¹³ In *FRN v Urom and Another*,¹¹⁴ the court held that a person is entitled to apply for delivery of property which has been seized during arrest or investigation even before trial commences and need not wait until termination of trial before applying.

Records of Arrest

Section 17 of the Law, provides that records of arrest shall be taken in a prescribed form¹¹⁵ within a reasonable time not exceeding 48 hours.¹¹⁶ The particulars of record should include the alleged offence,¹¹⁷ date and circumstances of arrest,¹¹⁸ full name, occupation and residential address of arrested suspect¹¹⁹ as well as his height,¹²⁰ photograph,¹²¹ fingerprints,¹²² other means of identification¹²³ and any further action in respect of the suspect arrested.¹²⁴

This provision is commendable as it aims at preventing unreasonable and abusive pre-trial practices¹²⁵ as well as removing doubt as to the identity of the arrested suspect especially as regards past criminal records for future use. However, the ability of the

¹¹² (2008)3 NWLR [pt. 1075] 526 at 567 (CA).

¹¹³ *Adekunle v The State* (2006) ALL FWLR [pt. 332] 1452.

¹¹⁴ FHC/LKJ/66C/2014.

¹¹⁵ ACJL, s17(1).

¹¹⁶ ACJL, s17(2).

¹¹⁷ ACJL, s17(1) (a).

¹¹⁸ ACJL, s17(1)(b).

¹¹⁹ ACJL, s17(1)(c).

¹²⁰ ACJL, s17(1)(d)(i).

¹²¹ ACJL, s17(1)(d)(ii).

¹²² ACJL, s17(1)(d)(iii).

¹²³ ACJL, s17(1)(d)(iv).

¹²⁴ ACJL, s17(3).

¹²⁵ Like mischievous and indiscriminate arrests as well as arrest in lieu of suspect.

police is limited by lack of equipment and independent laboratories to conduct forensic investigation.¹²⁶ It is advised that finger print equipment and cameras be made available at each police station with the requisite training for police officers to be able to use them. It is also suggested that in future, DNA databases be provided and included in the law to facilitate this provision.

Records of Statement

Section 17(4) of the Law, further provides for the mandatory writing of confessional statements by police officers which may also be electronically done.¹²⁷ However, the law goes further to state that an oral confession not in writing but in accordance with the Evidence Act¹²⁸ shall be admissible in evidence¹²⁹. This provision will go a long way to reduce the cases of trial within trial which usually prolong criminal trials¹³⁰ thereby proving the voluntariness of the statement and curbing all allegations of violence and torture.¹³¹ Again, it is advised for these facilities to be made available at each police station with available alternative power or battery supplies for use at all times.

Section 19 of the Law, provides that even where the statement is not confessional, the police officer shall still record the statement where the suspect wishes to make one¹³² but in the presence of his chosen legal practitioner.¹³³ See the case of *Ola v Alaka*¹³⁴ where it was held that denying a party the right to a lawyer of his choice is like denying him a fair hearing. The Law, however, does not categorically state penalties or consequences of not abiding

¹²⁶ Ngboawaji Daniel Nte, 'An Evaluation of the Challenges of Forensic Investigation and Unresolved Murders in Nigeria' [2012] (12) *African Journal of Criminology and Justice Studies*; 157.

¹²⁷ On a retrievable video compact disc or such audio visual means.

¹²⁸ Especially sections 27 and 28 of the Act.

¹²⁹ ACJL, s17(5) also *Admau v The State* CA/K/373/C/2013 and *Dawai v The State* LPELR-20759 (CA).

¹³⁰ *Ibeme v The State* (2013)10 NWLR [pt. 1362] 33 at 371.

¹³¹ EA, s29.

¹³² ACJL, s19(1).

¹³³ or Officer of the Legal Aid Council of Nigeria, Civil Society Organisation or Justice of Peace all of which may not interfere with the making of the statement except for the purpose of discharging roles as legal practitioners. Also ACJL, s19(2).

¹³⁴ (2000)5 WRN 113 at 124 (CA).

by its provisions. In addition to the above, the Law provides that where the suspect does not understand English, an interpreter shall record and read over the statement to the understanding of the suspect before they both endorse the statement.¹³⁵

Data Collection and Reports

In line with the furtherance of transparency and accountability, the Law makes provisions for data collection and reports by the different stakeholders in the criminal justice system of the country. These provisions are outlined below:

Establishment of the Central Criminal Records Registry (CCRR)

A very commendable and highly innovative provision of the Law is the establishment of the Nigerian Police Benue State Command Central Criminal Record Registry¹³⁶ as well as the establishment of a Central Criminal Records Registry at every Divisional Police Headquarters in the State to keep and transmit all records to the CCRR¹³⁷ and to also transmit decisions of courts in criminal trials within 30 days of judgement.¹³⁸ Even though the Law is silent on the mode of transmission between these bodies, it may be inferred that in this jet age and to ensure a uniform and speedy process, the transmission should be electronically done. This will aid the availability and accessibility of knowledge about past criminal records of a suspect during investigation, prosecution and trial before conviction and hence enhance the quality of delivery of criminal justice in the country.

Monthly Reports by Police to Supervising Magistrate

In order to ensure a collective check on the activities of law enforcement agencies and foster cooperation among stake holders of the criminal justice system,¹³⁹ section 35 of the Law provides that on the last working day of every month, an officer in charge of a police

¹³⁵ ACJL, s19(3), (4) and (5).

¹³⁶ ACJL, s18(1). Note that the ACJA under Section 16 has already established a CCRR for the entire country in the FCT and provided that a State Registry is to be established at every state police command.

¹³⁷ ACJL, s8(2).

¹³⁸ ACJL, s18(3).

¹³⁹ As stated under ACJL, s3 which provides the purpose of the Law.

station or any agency authorized to make arrests, shall report all cases of arrests without warrants made within the limits of their respective stations or agencies to the nearest magistrate whether or not the arrested suspect has been admitted to bail.¹⁴⁰ This report according to the Law, shall be made available to different stakeholders of the criminal justice system within the state¹⁴¹ and where no report is made by the officer, the magistrate shall report same to the Chief Judge of the State for appropriate remedial action. Even though the remedial action mentioned in this provision is not categorically provided for, it may be deduced that the word refers to a punitive measure that may be taken against the PO by the Chief Judge. It is, therefore, suggested that this provision should not be taken lightly and be adhered to by all POs in charge of Police Stations.

Quarterly Reports by the Benue State Commissioner of Police to the Attorney General of the State

In addition to the above, section 31 of the Law provides that the Commissioner of Police (CP) in the state shall remit quarterly reports to the Attorney General (AG) of Benue State of all records of arrest¹⁴² (with or without warrant) in relation to state offences or offences committed within the state.¹⁴³ In furtherance to this, the AGS shall establish an electronic and manual database of all records of arrest within the state.¹⁴⁴ Note that this provision will also aid access to information as to past criminal records and provide data as to the statistics of crime in the state.

¹⁴⁰ Section 35(2) Provides that the report shall contain particulars of the suspects as provided for in Section 17.

¹⁴¹ According to ACJL,s 35(3), the Magistrate is to forward the report to the Criminal Justice Monitoring Committee which shall analyze the reports and advice the AG of Benue State as to the trends of arrests, bail and related matter. In addition, ACJL, 35(4) provides that the AG of Benue State shall upon request, make the report available to the National Human Rights Commission, the Legal Aid Council of Nigeria or any Non-Governmental Organisation. The Police Commissioner is also a member of the Criminal Justice Monitoring Committee.

¹⁴² As provided for under Section 17.

¹⁴³ ACJL, s31(2).

¹⁴⁴ ACJL, s31(5).

In furtherance to this section,¹⁴⁵ and section 18¹⁴⁶ of the Law, Section 31(4) of the Law provides for a register of arrests at every police station containing particulars of all arrests made (with or without) warrant within the local limits of the station by the officer in charge of the station as soon as a suspect is brought to the station or agency.

Conclusion

The enactment of the ACJL is a progressive and timely step because it is a modeled provision after the ACJA to facilitate the process of administering criminal justice in Benue State by repealing the CPC whose provisions had become obsolete. The provisions of the Law are highly commendable because they aim at addressing most of the problems associated with the administration of criminal justice in the era of the CPC by ensuring the protection of human rights, fast-tracking criminal justice delivery and so on. The Law provides independent functions to all stakeholders of criminal justice and this paper dealt with those functions addressed to the police who are the entry point of the system and have the major function of enforcing criminal laws. Most of the functions include providing humane treatment to accused persons, standard rules of interrogations, electronic recording of statements, inventory of properties as well as data collection and reports to mention but a few. It is hoped that if these provisions are well implemented, the objectives and purpose of the Law will be achieved leading to peace, development and progress in the state and the country at large.

Recommendations

1. There is no doubt that the provisions of the Law are geared towards curbing the lacuna in the existing Law (CPC) and that it is in conformity with the ACJA and international best practices around the world. The problem, however, is not with the enactment of the Law but with the implementation. The best rules may not achieve the desired results if the practitioners are

¹⁴⁵ ACJL, s31.

¹⁴⁶ Which provides for the establishment the Benue State CCRR.

not willing to make it work. It is suggested that all stakeholders especially police officers must respect and abide by the provisions of the Law thereby dispensing their roles diligently as provided for under it since it does not state the penalties or consequences of not abiding by its provisions.

2. In addition, the state government in liaison with the federal government can aid the funding of some of the police stations within the state providing facilities like alternative power sources, computers, electronic recording equipment, fingerprint detecting equipment and others to these stations to facilitate the implementation of the Law.
3. The police officers need to be trained on the use of all the equipment provided so as to aid the effective discharge of their roles as provided for under the Law. There is need for continuous training and orientation of police officers and other law enforcement agents within the state to keep them abreast with the provisions of the law and educate them on their respective roles as provided for under it.
4. In line with the above, public awareness about the Law and enlightenment of the rights of suspects as provided by the Law should be made to all citizens within the state through continuing educative workshops and seminars organized by the state government and aimed at sensitizing members of the public.
5. There is the need for cooperation and synergy between all stakeholders of the criminal justice system within the state including police officers, other law enforcement officers, lawyers, judges, magistrates, members of NGOs, prison officials, state counsels, Legal Aid Council of Nigeria, Benue State and so on to aid access to information as well as ensure the smooth implementation of the Law.