REFORMS IN THE NIGERIAN CRIMINAL PROCEDURE LAWS

By

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Introduction

Criminal procedure in Nigeria is largely governed by two principal legislations which are vestiges of our British colonization, namely, the Criminal Procedure Act (CPA)\(^1\) and the Criminal Procedure Code (CPC).\(^2\) Some states have adopted the provisions of these principal legislations specifically as laws of the states while some others have amended some of the provisions of the principal enactments.

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1. The Act which came into being as Ordinance No. 42 of 1945 was re-enacted as ordinance No. 43 of 1948 and was at various times “amended” by ordinances No. 16 of 1950, sections 244 and 6th Schedule No. 22 of 1952; No. 13 of 1953; No. 24 of 1954; No. 10 of 1955, No. 22 of 1955; No. 47 of 1955; No. 76 of 1955; No. 107 of 1955 No. 24 of 1956; No. 52 of 1958; No. 65 of 1958; No. 100 of 1958. No; 2 of 1959; Cap 128 of 1959; 257 of 1959; 258 of 1959; 30 of 1960 Act. Cap 155 of 1960 Act; Cap 40 of 1961; No. v 1962 Act No. 6 of 1963; No. 112 LN. 1964; No.139 L.N. 1965; Decree No. 22 LN. 1966. Decree No. 84 LN. 1966; Decree No. 5 LN 1967; Decree No. 44 of 1970. It was incorporated as Cap 80 Laws of the Federation of Nigeria (LFN) 1990 and later as Cap. C 41 LFN 2004. The Criminal Procedure Act is the principal enactment governing criminal procedure in the Southern States of Nigeria.

2. The CPC was enacted by the Northern Region of Nigeria in 1960 and applied only to the Northern Region and later when states were created, to all the Northern States - See Jones J. R.: The Criminal Procedure in the Northern States of Nigeria, (2nd ed., 1978), p. 1.
This has led to a situation whereby there are minor state variations in terms of the provisions of criminal procedure legislation although in general, the provisions are still substantially similar.\(^3\) Other legislations that have implications for criminal procedure include the *Police Act*,\(^4\) *the Evidence Act*\(^5\) and the *Constitution*.\(^6\)

The issue of reforming the criminal procedure laws has, for several years, engaged the attention of criminologists, legal practitioners, judges, academic writers, legislature, police officers, prison officials, other government officials, journalists and members of the general community. Ideas have been expressed on the definition of crime, the penal policy, the issue of payment of compensation to victims of crimes, the relationship between the culture of the people and the law of crime, sentencing practices, the prison system, the police, human rights and the issue of a uniform system of criminal justice in Nigeria in various writings on criminal justice.\(^7\)

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4. The Act was derived from the *Police Ordinance 1943* incorporated as *Cap. 154 LFN and Lagos 1958*. The 1943 legislation was repealed by the *Police Act (Authority to Reprint) Act Cap. 41 1967*. This was later repealed by *Police (Amendment) Act, Cap. 23 of 1979*. The Act was incorporated as *Police Act Cap. 359, LFN 1990* It is now *Police Act Cap. P19 LFN 2004*. See also NIALS, *Annotated Laws of the Federation, Criminal Justice Laws*, p. 1018.
The three basic legislation have never been subjected to comprehensive review. The difficulty of having two different principal enactments for the North and the South; the fact that some of the provisions of the laws are in need of transformation to reflect the true intents of the Constitution and the demands of a democratic society; and the widespread abuse of the provisions of the laws by the law enforcement agents, notably, the police, prosecutors and lawyers are some of the problems apparent in the system. Former Attorney General of Lagos State, Professor Yemi Osinbajo, SAN, commenting on the inadequacy of the law undergirding criminal justice system, stated:

An effective criminal justice system is fundamental to the maintenance of law and order. Criminal justice, because it addresses behavioral issues, must be dynamic and proactive. … Consequently, many of the provisions are outdated and in some cases anachronistic. Besides, the loopholes in the laws and procedure have become so obvious that lawyers especially defence lawyers have become masters in dilatory tactics. It has thus, become increasingly difficult to reach closure of any kind in many criminal cases. Convictions or acquittals have become exceedingly rare.  

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8. The Criminal Procedure Act, the Criminal Procedure Code, the Police Act and the Evidence Act.

The acknowledgment of the problems enumerated above and many others have culminated in various efforts to reform of the administration of criminal justice. Several workshops and symposia have been held in the past by succeeding administrations with a view to improving the administration of justice generally, and criminal justice in particular. The *Administration of Criminal Justice Bill 2005 (ACJ Bill)*, which is the brain child of the Presidential Committee on the Reform of the Administration of Justice in Nigeria, seeks to merge the provisions of the two principal legislations, *CPA* and *CPC* into one principal federal *Act* to be cited as the *Administration of Criminal Justice Act 2005*. The Bill is still pending at the National Assembly five years after it was drafted.

It is notable that past developmental initiatives by the Federal Government such as the National Economic Empowerment and Development Strategy (NEEDS) have articulated a framework for the reforms that are presently taking place. SERVICOM, another initiative of the Federal

10. See the Short Title, s. 1 of the *Bill*.

11. NEEDS is a nationally coordinated framework of action in close collaboration with the States and Local Governments (with their State Economic Empowerment and Development Strategy SEEDS) and other stakeholders to consolidate on the achievements between 1999-2003 and build a solid foundation for attainment of Nigeria’s long term vision of becoming the largest and strongest African Economy and a key player in the world economy. The NEEDS document recognized that the criminal justice system seems to have lost its capacity to respond quickly to the needs of the society to check the rising waves of crime and bring criminals to book. The document proposed that vigorous efforts will be made towards improving the efficiency of criminal justice administration. This entails an urgent elimination of unacceptable delays in disposal of criminal cases, the possibility of stipulating what would be regarded as “reasonable duration” of hearing and determination of criminal cases. See Chapter 5 of the NEEDS Document available at: NEEDS @ Nigerian economy.com. Last visited on 23/4/2010.
Government geared towards injecting the desired reforms in all areas of governance and administration identified the criminal justice sector as critically needing reform.\textsuperscript{12}

Needed legislative reforms are, however, not being considered at the Federal level only. Lagos State is the first State to initiate reforms in the justice sector. It organized a series of Stakeholders’ Summits where intellectuals gathered to brainstorm on ways to reform the justice sector. Three of these summits were on the administration of criminal justice and culminated in the \textit{Administration of Criminal Justice Law of Lagos State, 2007}. This article endeavours to discuss the novel provisions of the \textit{Administration of Criminal Justice Law (ACJL) of Lagos State, 2007} (hereafter ACJL Lagos, 2007), which is already in operation in Lagos State and the yet to be passed \textit{Administration of Criminal Justice Bill, 2005} (hereafter ACJ Bill, 2005). The reforms in the criminal procedure laws discussed in this article include \textit{inter alia}, reforms on the law on arrest, detention and interrogation; the bail process, remand and time protocol for remand; plea bargain; and alternatives to imprisonment; such as suspended sentence, parole and community service.

\textsuperscript{12} SERVICOM is a social contract between the Federal Government of Nigeria and its people. SERVICOM gives Nigerians the right to demand good service. Details of these rights are contained in SERVICOM Charters which are now available in all government agencies where services are provided to the public. The Charters tell the public what to expect and what to do if the service fails or falls short of their expectation. The SERVICOM Charter of the Federal Ministry of Justice states that its vision statement is to make justice accessible to all and ensure that the legal system responds to the needs of the public in an efficient manner with the ideals of democracy and the rule of law in order to reduce poverty and promote economic growth. It sets a time frame of 1 year for prosecution of criminal cases. Available at: \url{http://www.servenigeria.com//index} (Last visited on 23/4/2010).
Criminal Procedure Laws
The ACJ Bill, 2005 modified some of the provisions of the CPA and CPC and added some new ones where necessary in the bid to give the Criminal Procedure Law at the federal level the international flavour it deserves and also to further strengthen the rights of the accused persons contained therein. Some of the notable innovations in the Bill are discussed below and compared with the provisions of the ACJL Lagos, 2007 where necessary.

Change in Terminologies
The major obvious change both in the ACJL Lagos, 2007 and the ACJ Bill 2005 is the introduction of the term “defendant” which had hitherto been reserved for use in civil trials. A “defendant” is defined as any person against whom a complaint, charge or information is made.13 The drafters of the laws replaced all references to “accused person” with the word “defendant”. The reason for this change may not be unconnected with the desire to diminish the combatant nature of the trial process by adopting a milder term that will also boost the meaning of the principles of the presumption of innocence.

Another change in terminology introduced by the ACJL Lagos, 2007 is in the change in prosecutorial authority. Before the law, prosecutorial authority was exercised in the High Court in the name of the “State”. Section 253 of the ACJL Lagos, 2007 states that prosecutorial authority is to be exercised in the High Court in the name of “People of the State”. This means that an information filed at the High Court is now captioned thus: “The People of Lagos State v. ABC”.14

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14. ABC used in this example is replaced with the real name of the defendant.
This change is an attempt to boost democratic principles by portraying that the offence was committed against the people of Lagos State in whom power is vested.

**Unlawful Arrests**
The criminal process is set in motion mainly through a complaint, which usually is followed by an arrest. Unlawful arrests are some of the problems of the criminal process and it is one of the reasons why police stations and the awaiting trial sections of prisons are congested. Arrests are sometimes made on allegations that are civil in nature or on frivolous grounds. By section 10 (i) of the *CPA*, the police could arrest without a warrant, any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself. This particular provision has been greatly abused by the police who use it as a ground to arrest people indiscriminately. Both the *ACJ Bill 2005* and the *ACJL Lagos, 2007* outrightly deleted this provision.\(^{15}\)

**Prohibition of Arrest of Relatives and Associates of Suspects**
There have been a lot of instances where the police arrest relations or friends and close associates of a crime suspect to compel the suspect to give himself up even though such a person is not linked in any way to the crime the suspect is being accused of. It is believed that this practice occurs more often than is reported in the press.\(^{16}\) Section 4 of the *ACJL Lagos, 2007* provides that no person shall be arrested in lieu of any other person. The *ACJ Bill 2005* also includes a

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15. See section 10 (1) of the Lagos State *Criminal Procedure Law, 2003*, which is the same as section 10 (i) of the *CPA*.
provision which prohibits the arrest and detention of relations and friends of a suspect. Section 14 (4) of the Bill provides thus:

Nothing in this section and in this Act shall be construed as permitting a police officer, private person or officer of any agency to arrest a person by reason only of consanguinity or affinity or association with the person alleged to have committed an offence.

It is notable that this provision is responsive to the fact that there are other agencies with powers of arrest and remand besides the police and who have abused this power to arrest and detain relatives and close associates of criminal suspects in lieu of the suspects where they have challenges in apprehending the latter. It will be recalled that in 1991, when one Chief Great Ogboru was alleged to have financed Major Gideon Okar’s aborted coup, his sister was arrested under Decree No. 2 of 1984. In application to secure her freedom, the court not only declined jurisdiction but resorted to extrajudicial appeals “in the name of God” to the military government while pleading for her release.17

Notification of Cause of Arrest and other Due Process Rights
Section 5 of the CPA and section 38 of the CPC provide that a police officer or a person making an arrest is to inform the person arrested of the reason for the arrest, except when the

17. See Ezezobo J.: “Extra Legal Appeals and Due Process of Law” in Guardian Newspaper, 2nd October, 1991. Arguably, the court felt helpless to act in this case because of the ouster clause in the Decree which denied any court of powers to inquire into anything done under the law.
person is arrested in the course of the commission of a crime or is pursued immediately after the commission of a crime or escaped from lawful custody. These provisions fall short of the contemporary standards which make it mandatory to inform the person being arrested of the reason even when he is being arrested in actual commission of the crime. For example, section 28 (3) of the *Police and Criminal and Evidence Act, 1984, UK* (hereafter PACE) provides that when someone is arrested, they should, at the time of the arrest, be informed in non-technical language, of the reason for the arrest even if the reason is obvious.\(^{18}\)

The *ACJ Bill 2005* retained the provision as contained in section 5 CPA in section 7 (1)\(^{19}\) but added section 7 (2) which provides that the person making the arrest or the police officer in charge of the police station or any law enforcement agency shall inform the person arrested of his rights to:

i. remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his choice,

ii. to consult a counsel of his choice before making or writing any statement or answering any question put to him after arrest,

iii. free legal representation by the legal aid counsel or any organization that offers free legal aid.\(^{20}\)

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18. See also Article 5 (2) of the *European Convention on Human Rights*.

19. Section 3 (1) of the *ACJL Lagos, 2007* also makes a similar provision. This provision is in line with section 35 (3) of the *Constitution* which provides that anybody arrested should be informed in writing within twenty four hours (and in a language he understands) of the facts and grounds for his arrest or detention.

20. Principle 17 of the *United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provides as follows:
a. A detained person shall have the assistance of legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

b. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interest of justice so require and without payment by him if he does not have sufficient means to pay”.

Also, Principle N (2) (b) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, ACHPR/Res. 41 (xxvi) 99 (1999) adopted at the African Commission on Human and People’s Rights meeting at its 26th Ordinary Session held in Kigali, Uganda, from 1-15 November 1999), provides that the accused person has the right to be informed, if he or she does not have legal assistance, of the right to defend himself or herself through a lawyer of his or her own choice. Article 14 (30) (d) ICCPR, Article 55 (2) (c) of the ICC Statute, Article 5 Basic Principles on the Role of Lawyers, section 20 (1) (d) of the Statute of the International Tribunal for Rwanda, sections 20 and 21 of the International Criminal Tribunal for the former Yugoslavia (the ICTY Statute), and section 35 of the Constitution of the Republic of South Africa, all provide that the accused person should be promptly informed of his right to counsel. (See the Constitution of the Republic of South Africa, 1996, as adopted on 8 May, 1996 and amended on 11 October, 1996 by the Constitutional Assembly, Act 108 of 1996.) This right applies during all stages of any criminal prosecution, including preliminary investigation, in which evidence is taken, periods of administrative detention, trial and appeal proceedings. In England, section 6 of the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C) made pursuant to the PACE provides that all detainees must be informed that they may at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone, and that free independent legal advice is available from the duty solicitor.
Section 7 (2) (1) of the *ACJ Bill 2005* regurgitates section 35 (2) of the *Constitution*, which provides that any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

Prior to the *ACJ Bill 2005*, there was no provision in the *Constitution* or any other legislation in Nigeria mandating the police to inform the suspect of his rights to silence and counsel. Atsenuwa, while commending the inclusion of the pre-trial right to silence in our *Constitution*, regrets that nowhere is the police is mandated to inform the suspect of the existence of this right or to inform a person of his choice, the fact that he is in detention.21 The provision requiring the suspect to be informed of not just his right to counsel but to free legal counsel in the *ACJ Bill 2005* is impressive in view of the fact that, besides having the benefit of informed legal advice, the suspect would have the additional advantage of counsel assisting in securing his immediate release on bail and ensuring that trial is expeditious,22 all of which will some way in reducing present situation of prolonged detentions in police cells.

Arguably, the absence of a provision obliging the police to inform any person of the suspect’s choice the fact of his (the latter) arrest is what has led to indifference on the part of the police. In a lot of cases, arrests are made without any person knowing the whereabouts of the suspects. This contributes to the congestion in the police cells and prisons.


22. Section 3 (3) of the *ACJL Lagos 2007*, states that the police officer or the person making the arrest is to inform the person arrested that he may apply for free legal representation from the office of the Public Defender, Legal Aid Council or any such agency.
Both the ACJ Bill 2005, and the ACJL Lagos, 2007 have, however, failed to address this problem. Section 56 of PACE which gives a suspect the right to have someone of his choice, informed of his arrest provides a good example of how to secure this right by legislation.  

It has been noted that there is a general apathy of police personnel towards counsel consulting their clients (suspects) while in police custody. When they allow such consultation, available studies have shown that they do so reluctantly and usually, there is a policeman in attendance and within hearing range and the time allowed is always short. According to Osipitan, nearly all communications between the accused person and his counsel take place in the presence of law enforcement officials, thereby scuttling the free flow of information between the accused and his counsel. This makes nonsense of any confidentiality of communication between the suspect and his counsel and is clearly against the spirit of the Constitution and international norms and practices, particularly, principle 18 of the United Nations Body of Principles for the Protection of All persons Under Any form of Detention or Imprisonment which provides that

23. Section 62 of the English Criminal Law Act, 1977, in existence prior to PACE, provided for a person arrested and held in custody to have intimation of his arrest and of the place where he is being held, sent to one person reasonably named by him without delay, or, where some delay is necessary in the investigation or prevention of crime, or apprehension of offenders, with no more delay than was necessary.


26. Ibid. See also Principle 8, Basic Principles on the Role of Lawyers, ibid; Rule 93 of the United Nations Standard Minimum Rules for the Treatment
interviews between a detained person and counsel may be within sight, but not within hearing of a law enforcement official.\(^{27}\)

From the foregoing, it would have been expedient if a provision was included in the *ACJ Bill 2005* and the *ACJL Lagos, 2007*, like the one contained in principle 18 of the *United Nations Body of Principles for the Protection of All persons Under Any form of Detention or Imprisonment*\(^{28}\) to the effect that interviews between a detained person and counsel may be within sight, but not within hearing of a law enforcement official.

**Prohibition of Arrests in Civil Cases**

The *ACJ Bill 2005* addresses the longstanding problem whereby people employ the machinery of criminal justice wrongly for civil matters. It is not unusual for people to maliciously instigate the arrest and detention of others for a breach of contract, for failure to pay debt owed or for other civil wrongs. These matters, which are evidently civil in nature and outside the jurisdiction of the police are followed

\(^{27}\) Adeyemi, while condemning the police attitude of restricting consultation with counsel, said:

“*The belief in police circles, therefore, can be deduced to be that the consultation with counsel will be a hindrance to investigation or administration of justice, and that it will be permissible for the police to conclude their investigation before permitting consultation with counsel. With respect, while it may be permissible to take such a position in England, the position is untenable in Nigeria. Our constitutional provision prescribes a right to consult with a legal practitioner or any other person of his choice, prior to making his statement or answering a question.*”


\(^{28}\) *Ibid.*
up by them as if they were criminal matters. The Bill endeavored to address these type of abuse of process by providing in section 8 (3) that no person shall be arbitrarily arrested, or arrested on allegations that borders on civil breach of contract, but arrest shall be based on reasonable suspicion that the person arrested committed or is about to undertake a criminal activity punishable as an offence under any law.  

The ACJL Lagos, 2007 does not include such a provision.

**Inventory of Property of Arrested Person**

The new addition on the provisions relating to searches in the ACJL Lagos, 2007 is the introduction of the requirement to take an inventory of property of arrested person. Section 6 (a) of the Law provides that upon arrest, a police officer making the arrest or to whom the private person hands over the person arrested shall record an inventory duly signed by the police officer and the arrested person of the particulars of all items or properties recovered from or about the arrested person. A copy of the inventory is to be given to the person arrested, his legal representative or such other person as the person arrested may direct.  

The mischief which the provision tries cure are:

29. See section 35 (1) (c) of the Constitution on the right to personal liberty. The section provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty except for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence. See also Article 6 of the African Charter on Human and Peoples’ Rights adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982), entered into force on October 21, 1986. Ratified in Nigeria by African Charter on Human and Peoples’ Rights Ratification and Enforcement Act, Cap A 9 Laws of the Federation of Nigeria, 2004.

30. See section 9 (4) of the ACJ Bill 2005.
Reforms in the Nigerian Criminal Procedure Laws

a. cases where police officers take properties from suspects and such properties are converted.
b. the provision puts a check on the police so that the recovered items are kept safe and the suspect can afterwards recover all his inventoried properties
c. to enhance investigations and to ensure that exhibits recovered are properly recorded at the time and place of recovery and signed by the suspect.\textsuperscript{31}

Recording of Arrests
One of the new innovations in the \textit{ACJ Bill 2005} is the provision on recording of arrests. Section 13 (1) of the \textit{Bill} provides that when any person is arrested, whether with or without a warrant, and taken to the Police Station or any other agency effecting the arrest, the police officer making the arrest or the official of the agency making the arrest or the police officer or official in charge of the Police Station or the agency shall cause to be taken immediately, the record of the alleged offence, the physical address of the person arrested, and for the purpose of identification, the physical measurement, the photograph, and the full fingerprint impressions. The recording is to be concluded within a reasonable time but not exceeding 48 hours.\textsuperscript{32}

Establishment of a Police Central Criminal Records Registry
Section 13 (3) of the \textit{ACJ Bill 2005} provides for the establishment, within the Nigeria Police, of a Central Criminal Records Registry. The record of arrests of the

\textsuperscript{32} Section 13 (2) of the \textit{Bill}. 
preceding month obtained as provided by section 13 (1), is to be forwarded to the Central Criminal Record Registry on the first week of every month.\textsuperscript{33} The establishment of this Criminal Record Registry is necessary in order to ensure that all the arrests made are well documented. The recordings and the returns to the Registry will provide a tool for checking arbitrary arrests and detentions or unwarranted detentions. It will go far in helping to stop or minimize cases where people are arbitrarily arrested and detained without any one being able to give adequate account of them. It will, however, be more helpful if such records are computerized and maintained in an electronic database which is accessible by other stakeholders in the criminal justice administration such as the courts who need the information contained in them to make informed decisions, e.g. in determining whether a person is a first offender or how long the person has been in detention, etc.\textsuperscript{34}

**Quarterly Reports of Arrests to the Attorney General of the Federation**

Under the *ACJ Bill 2005*,\textsuperscript{35} the Inspector General of Police and head of every agency authorized by law to make arrests\textsuperscript{36}

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\item Section 13 (3) (b), \textit{ibid.} The section also provides that the person arrested or his legal representative shall have access to all the information in the register with regard to his arrest or information relevant for his defence.
\item This will be akin to the Court Automated Information System (CAIS) set up by the Lagos State Government in all the High Court Divisions. This system automates existing manual processes and creates a database of all cases pending before each judge as well as their current status until judgment and execution. Apart from the internal network (INTRANET) facilities, the system features a public portal which enables counsel and litigants gain access to the cause list, record of proceedings, rulings, judgments and other court information on the internet from the comfort of their offices or homes. See \textit{Justice Sector Reform in Lagos State}, (Lagos State Ministry of Justice, 2007).
\item Section 24 \textit{ACJ Bill 2005}.
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is mandated to remit quarterly to the Attorney-General of the Federation a record of all arrests made with or without warrant in relation to federal offences or arrests within the Federal Capital Territory. Such record is to contain the full particulars of the persons arrested as prescribed in section 13 of the Bill. Section 10(3), of ACJL Lagos, 2007 makes similar provision. It provides that the Commissioner of Police is to remit to the Office of the Attorney General of the State a record of all arrests made within one week of arrest. Under Section 340 of the ACJ Bill 2005, the Commissioner of Police is also to remit periodically to the Attorney-General the following:

(a) Records of all cases being prosecuted by police prosecutors every 3 months.
(b) Records of all convictions or acquittals in cases prosecuted by Police Prosecutors at the expiration of each case.

These developments are quite impressive and it is hoped that other States would emulate the Lagos State Government and put similar measures in place.

Police to Report to Supervising Magistrates
Section 28 of the ACJ Bill 2005 provides that officers in charge of Police Stations or official in charge of any agency authorized to make arrest is to report on the last working day of every month, to the nearest Magistrate, the cases of all persons arrested with or without warrant within the limits of

36. These agencies include: the Economic and Financial Crimes Commission, (EFCC), the Independent Corrupt Practices Commission (ICPC), the National Drug Law Enforcement Agency (NDLEA), the Nigerian Customs Service, and the National Food and Drug Administration and Control (NAFDAC).
their respective stations, whether such persons have been admitted to bail or not. Such report is to contain the particulars of the persons as prescribed in section 13. Upon receipt, the magistrate is to forward the report to the Chief Judge of the Federal Capital Territory. The Chief Judge, upon request by the National Human Rights Commission or the Administration of Justice Commission or Committee, is to make the report available to them. This is another commendable provision as it will serve as a form of check and balance on the activities of the police.

**Humane Treatment of Arrested Persons**

Torture has remained a feature of police interrogation tactics in Nigeria. The evidence obtained at the interrogation stage has a far reaching effect on the eventual outcome of the case as the prosecutor relies greatly on the evidence obtained at this stage. Section 8 of the *ACJ Bill 2005* is a provision which turns the focus on the humane treatment of arrested person. The section re-emphasizes the constitutional human rights provisions on rights to dignity of the human person and personal liberty. Section 8(1) of the *ACJ Bill 2005*, provides that any person arrested shall be accorded humane treatment,

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37. This section existed as section 20 *CPA*. The difference is that the *ACJ Bill 2005* takes cognizance of the fact that there are other officials in charge of agencies authorized to make arrests. It also fixes a time limit for the report as against the *CPA* that did not specify any time limit, i.e. “on the last working day of every month.”

38. Section 28 (2), *ACJ Bill 2005*.

39. This has necessitated the advocacy for a Bill on Torture. See the *Draft Torture Bill for an Act Penalizing the Commission of Acts of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishments, Prescribing Penalties Thereof and For Other Purposes, 2010*.

40. Section 34 (1) of the *Constitution* provides that every individual is entitled to respect for the dignity of his person and accordingly, (a) no person shall be subjected to torture or to inhuman and degrading treatment.
having regard to his right to the dignity of his person. No arrested person shall be subjected to any form of torture, inhuman or degrading treatment.\textsuperscript{41}

Article 5 of the \textit{Code of Conduct for Law Enforcement Officials},\textsuperscript{42} provides that no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

The insertion of a provision on humane treatment of accused persons in the \textit{ACJ Bill 2005} not only domesticates these mentioned standards. It reinforces the existing legal

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\textsuperscript{41} Section 8 (2) of the \textit{ACJ Bill}. See also Principle 1 of the \textit{Body of Principles for the Protection of All Persons under Any Form of detention or Imprisonment}, which provides that all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person. The \textit{United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment} (Adopted by General Assembly resolution 3452 (XXX) of 9 December, 1975) defined torture in section 1 as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment (Article 1 (2) of the \textit{United Nations Declaration on the Protection of All Persons from Being Subjected to Torture}, \textit{ibid}).

\textsuperscript{42} Adopted by \textit{General Assembly resolution 34/169} of 17 December, 1979.
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prohibition of the use of torture in interrogation which has been commonplace in police cells and detention centers in spite of explicit legal provisions against it.\(^{43}\)

In the majority of the cases where torture is used during interrogation, the main aim is to elicit confessional statements from the suspects. By the provisions of section 28 of the \textit{Evidence Act}, the confessions of a suspect, made as a result of any inducement, threat, or promise by a person in authority; where the suspect has grounds to think that he would gain an advantage or avoid any temporary evil by making it, is irrelevant during criminal proceedings. The \textit{Bill} is silent on this thorny issue of involuntary confessions, the challenge of which has often been a critical factor in prolonging the duration of criminal trials.\(^{44}\) Section 9(3) of the \textit{ACJL Lagos 2007}, however tries to respond to this challenge in mandating the Police to ensure that confessional statements are recorded on video and the said recording and copies thereof are to be filed and produced at the trial. In the absence of a video facility, the statement is to be made in writing in the presence of a legal practitioner of the suspect’s choice. Prosecutors in Lagos State now have to present video recorded evidence where they intend to rely on a confession obtained at the police. It is also essential to insert a similar provision in the \textit{ACJ Bill 2005} to make it applicable throughout the Federation and also binding on other prosecutors.

\textbf{Speedy Arraignment}


\(^{44}\) Where the voluntariness of such confessions is contested in court, the court holds a trial within trial to determine its veracity.
Part of the provisions on humane treatment of arrested person is the provision that any arrested person shall be brought to the court for his arraignment and trial within the time prescribed by the Constitution. Section 35 (4) of the Constitution provides that a person who is arrested or detained by the police should be brought before a court of law within a reasonable time.\textsuperscript{45} The following factors have been implicated in hindering the actualization of the right to speedy trial: insufficient personnel; lethargy of some of the personnel; inadequate facilities; unreasonable adjournments; delay in the investigation processes; poor investigation; irregular procedure in dealing with accused persons which diverts attention from the main issues at the trial; delay of files in the Ministry of Justice; delays in receiving laboratory reports; lack of vehicles to convey detainees to court.\textsuperscript{46} Added to these are also, obsoletism of available facilities and equipments, and poor conditions of service.\textsuperscript{47}

Section 20 (1) of the ACJL Lagos, 2007 provides that officers in charge of police stations are expected to report to the nearest Magistrates the cases of all persons arrested without a warrant within the limits of their respective stations, whether such persons have been admitted to bail or not. The Chief Magistrate is to notify the Chief Registrar of the High Court of such reports, which will be forwarded to the Director of Public Prosecutions (DPP) for necessary action.

**Right to Counsel**


\textsuperscript{47} Adeyemi, A. A.: “Police and Human Rights in a Democratic Nigeria”, \textit{op. cit.} note 25, pp. 31.
To quicken trials and avoid delays caused by absence or unavailability of counsel, the following reforms have been put the following in place:

(a) Availability of Free Legal Aid

In addition to the general right to counsel for every one charged with a criminal offence in section 36 (6) (c) of the Constitution, for those that can afford to retain counsel, section 352 CPA guarantees free legal representation for persons charged with capital offences.48 This special privilege of free legal representation for the undefended capital offence suspect is due to the gravity of the offences and the very grave punishment attached to the offences upon conviction, which is death. The Supreme Court, in the case of Josiah v. the State,49 declared the indispensable nature of the right to counsel especially in capital offences.

A defendant who is remanded in prison custody in Lagos State can now fill a form indicating whether he wishes to be represented by a legal practitioner arranged by him or by the Public Defender or Legal Aid Council or any other organization providing legal aid.50 The ACJ Bill 2005, in turn, introduced mandatory provision of legal aid to any one charged with a criminal offence unless he declines to make use of the opportunity. The Bill has also included the old

48. Section 352 Criminal Procedure Act, states as follows:
   Where a person is accused of a capital offence, the state shall, if practicable, be represented by a law officer, or legal practitioner and if the accused is not defended by a legal practitioner the court shall, if practicable, assign a legal practitioner for his defence (The equivalent provision is contained in section 186 of the Criminal Procedure Code).
50. Section 74, (6) ACJL 2007 Lagos.
practice of what is called a “dock brief”, where the court assigns a case of an indigent defendant to a counsel within its jurisdiction.

**Non Appearance of Prosecutor**
Section 236 of the *ACJL Lagos State 2007* provides that where the prosecutor fails to appear in court after having due notice of the time and place of hearing the court is to dismiss the case, unless the court receives reasonable excuse for non-appearance of the prosecutor or his representative, or adjourn the case.

**Non-Appearance of Defendant’s Counsel**
Where the legal representative of the defendant ceases to appear in Court, the Court shall enquire from the defendant if he wishes to engage another counsel arranged by him or a counsel engaged by way of legal aid. Where the defendant fails or is unable to obtain legal representation, the court has power to order that he be represented by way of legal aid.

**Bail**
The *ACJ Bill 2005* provided a general entitlement to bail for all accused persons subject to the provisions of the Bill. Section 29 of the *ACJ Bill 2005* contains a requirement that the Chief Magistrate or any Magistrate designated by the Chief Judge for that purpose is to conduct an inspection of police station(s) or other places of detention within his jurisdiction, other than the prison, at least, every month. During such visits, the Chief Magistrate or designated

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51. Section 237, *ACJL Lagos 2007*.
52. Section 237 (3), *ibid.* See also section 321 of the *ACJ Bill 2005* for a similar provision.
53. Section 149
Magistrate has the power to *inter alia*, review and modify bail decisions by the police and grant bail to any suspect where appropriate.

The *Bill* made specific provisions on bail where a person is charged with a capital offence. Such a person can only be admitted to bail by a High Court Judge under exceptional circumstances. Such circumstance may include:

a. Ill-health of the applicant.
b. Extraordinary delay in the investigation, arraignment and prosecution for a period exceeding 3 years.
c. Any other circumstances that the judge may in the particular facts of the case.

A person charged with an offence exceeding 3 years imprisonment shall upon application to the court be released on bail, except:

a. there is reasonable ground to believe that the defendant if released on bail, will commit an offence punishable with imprisonment for a term exceeding 3 years;
b. he attempts to evade his trial;
c. he attempts to influence, interfere with, or intimidate witnesses, or interfere in the investigation of the case.
d. he attempts to conceal or destroy evidence;
e. he prejudices the proper investigation of the offence;
f. he undermines or jeopardizes the objectives or the purpose or function of the criminal justice administration, including the bail system.\(^{54}\)

These provisions of the *ACJ Bill 2005* regarding conditions for grant of bail in capital offences are clearer and

\(^{54}\) Section 151, *ACJ Bill 2005*. 
more detailed than the provisions of the *ACJL Lagos State*, 2007, which did not set down these conditions.

**Deposit of Money or Other Security**

Apart from the specifying that the amount of bail shall not be excessive, section 154 (2) of the *ACJ Bill 2005* provides that the court may require the deposit of a sum of money or other security as the court may specify from the defendant and or the surety before the bail is approved. Such money or security is to be returned to the defendant or his surety or sureties at the conclusion of the trial or upon application by the surety to the court to discharge the recognizance.\(^{55}\)

The Working Group which worked on the Bill considered that the introduction of cash deposits and other valuables such as title deeds, asset instruments, as other types of security than surety will help to strengthen the deterrence against absconding defendants on bail.\(^{56}\)

**Women Sureties**

The current practice where women are routinely denied the right to stand as sureties for the purpose of entering into recognizance for bail received the attention of the Working Group. The Bill provided in section 156 (3) that no person shall be denied, prevented or restricted from entering into any recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman. Section 118 of the *ACJL Lagos State*, 2007 addressed this long standing problem in exactly the same words as the *ACJ Bill 2005*.

**Professional Bondsmen**

55. Section 116 (2) of the *ACJL Lagos State*, 2007 makes similar provisions.
56. See Summary Comments on Report of the National Working Group p. 84.
The institution of the professional Bondsman originated from the United States of America. The absence of close friends and neighbours during the early days in the vast expanse of sparsely settled frontier lands, made it difficult for the courts to find acceptable sureties.\textsuperscript{57} Section 175 of the Bill makes provisions for professional Bondsmen in the criminal justice system. It provides for the registration and use of Bondsmen and gives the Chief Judge the powers to make regulations in developing the details of the best practices in use of Bondsmen.

Section 138 of the \textit{ACJL Lagos State, 2007} makes provisions for professional Bondspersons in the criminal justice system. It provides for the registration and use of Bondspersons and gives the Chief Judge the powers to make regulations in developing the details of the best practices in use of Bondsmen.\textsuperscript{58} The Bondspersons may undertake recognizance, act as surety, or guarantee the deposit of money as required by the bail condition of any person granted bail by the court within the jurisdiction in which the bondsperson is registered.\textsuperscript{59}

### Public Summons for Persons Absconding

The \textit{ACJ Bill 2005} adopted the provision of section 67 of the \textit{CPC} which provides that if a court has reason to believe that a person against whom a warrant of arrest has been issued has absconded; the court may publish a public summons in writing requiring that person to appear at a specific time. This section on absconding persons was considered important in view of the rampant incidents of absconding defendants and

\textsuperscript{58} Section 175 of the \textit{ACJ Bill 2005} makes similar provision.
\textsuperscript{59} Section 138(5) of \textit{ACJL Lagos State, 2007}. 
Reforms in the Nigerian Criminal Procedure Laws

sureties. Among the mode of publication of the public summons contained in the CPC is that:

   It shall be publicly read in some conspicuous place in the town or village in which the person in respect of whom it is published resides”  

This sub section was deleted and replaced with a provision that the public summons is to be published in a newspaper or circulated in any other medium as may be appropriate.  
Publication in a newspaper is a far better option than reading it in the town or village as provided in the CPC. Newspaper publication is more modern and practicable.

Plea Bargain
Plea bargain is an arrangement in a criminal case where the suspect pleads guilty to a charge or a lesser charge against him or her. In exchange for this plea, the prosecutor may decide to drop the charge, reduce it, or recommend that the trial judge enter a sentence that is acceptable to both parties. Besides other numerous advantages of plea bargain, it provides a release valve for congestion of the criminal justice system and also creates avenue for the prosecution to manage their case load.

There has been much debate about the legality of plea bargain under Nigeria’s legal framework. Commenting in obvious defence of the practice of plea bargain, the Attorney General of the Federation and Minister of Justice, Mr.

60. Section 36 (2) CPC.
61. Section 37 (a) ACJ Bill 2005.
Mohammed Bello Adoke SAN stated that his Ministry recognizes the weakness of the nation’s penal provisions for dealing with high-networth financial crimes as well as the need to ensure the early resolution of the issues in the national interest in order to avoid high legal costs.\textsuperscript{63}

The Economic and Financial Crimes Commission (EFCC) which has widely used the plea bargain leans on section 14(2) of the \textit{EFCC Act, 2004} to avail suspects of plea bargain.\textsuperscript{64} The section provides thus:

\begin{quote}

64. A number of influential Nigerians have benefited from plea bargain, especially when charged with corruption and financial crimes. Plea bargain was kick started in 2005 in the trial of former Inspector-General of Police Mr. Tafa Balogun. Mr. Balogun conceded to plead guilty to an amended eight count charge of corruption and embezzlement of public funds to the tune of 10 billion naira. He gave up most of the funds and got just six months for the offence which attracts a maximum of five-year jail term following a touching allocutus rendered by his lead counsel. Few years ago, former Governor Alamieyeseigha of Bayelsa State was sentenced to 12 years in prison on a six-count charge that bothered on corruption and other economic offenses. He was sentenced two years on each count but all sentences ran concurrently. In accordance with the Criminal Procedure, the sentences ran from the day he was arrested and detained. Also recently, on October 8, 2010, the Economic and financial Crimes Commission (EFCC) charged the Former Chief Executive Officer of Oceanic Bank International Nigeria PLC, Mrs. Cecilia Ibru with a twenty-five count criminal information bothering on financial crimes. However, she entered into a plea bargain with the prosecution and pleaded guilty to a lesser three-count charge. The Court thereafter, convicted Ibru on the three-count charge and ordered the forfeiture of her assets amounting to about ₦191billion. She was sentenced to six months on each of the three counts which are to run concurrently – See generally, Ige I., Available at
\end{quote}
Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.

Sections 75 and 76 of the ACIL Lagos, 2007 provides for plea bargain and sentence agreements. By the provisions of section 75, the Attorney General of the State has the power to consider and accept a plea bargain from a person charged with any offence where the Attorney-General is of the view that the acceptance of such plea bargain is in the public interest, the interest of justice and the need to prevent abuse of legal process. Section 76 makes provisions for plea and sentence agreements. The prosecutor and a defendant or his legal practitioner may enter into an agreement in respect of:

a. a plea of guilty by the defendant to the offence charged or a lesser offence of which he may be convicted on the charge

http://www.vanguardngr.com/articles/2002/features/law/law123122005.html last visited on 10/3/2011). The cases of Emmanuel Nwude and Amaka Anejemba were cases where plea bargain also played a major part.
b. an appropriate sentence to be imposed by the court if the defendant is convicted of the offence to which he intends to plead guilty.\footnote{65}

The prosecutor can only enter into a plea or sentence agreement after consultation with the investigating police officer, and the victim, with due regard to the nature of and circumstances relating to the offence, the defendant and the interests of the community.\footnote{66} The prosecutor, where it is reasonably feasible, is to afford the complainant or his representative the opportunity to make representations to the prosecutor regarding the contents of the agreement and the inclusion in the agreement of a compensation or restitution order.\footnote{67} Such agreements between the parties must be in writing and signed. The presiding Judge or Magistrate is not permitted to be part of the discussions. He may only be approached by counsel regarding the contents of the discussions and may inform them in general terms of the possible advantages of discussions, possible sentencing option or the acceptability of a proposed agreement. After the prosecutor has informed the court of the agreement reached by the parties, it is the duty of the Presiding Judge or Magistrate to inquire from the defendant to confirm the correctness and the voluntariness of the agreement.\footnote{68} After considering the sentence agreed, the presiding Judge or Magistrate may impose the sentence, or impose a lesser sentence.\footnote{69} Where he is of the view that the offence requires a heavier sentence, than the one agreed, he is to inform the defendant of his view. The defendant may decide to abide by

\footnote{65}{See also section 248 of the \textit{ACJ Bill 2005}, which provides for the possibility of a defendant to plead guilty for a lesser offence than offence charged.}
\footnote{66}{Section 76 (2) of the \textit{ACJL Lagos, 2007}.}
\footnote{67}{Section 76 (3). Section 248 of the \textit{ACJ Bill 2005}.}
\footnote{68}{Section 76 (6).}
\footnote{69}{Section 76 (8).}
his plea of guilty and accept the sentence by the Judge or Magistrate, or he may decide to withdraw from his plea agreement. If he does so, the trial proceeds de novo before another presiding Judge or Magistrate. The provision which allows the Judge or Magistrate to decline to be bound by sentence agreed to by the prosecutor and defendant is a safeguard for situations where public sensibility may be offended by the sentence agreed to as in the case of Mrs. Cecilia Ibru.⁷⁰

Remand

“Remand” is a term used to describe a situation where a suspect who is charged with an indictable offence is ordered by a court of law, to be kept in prison custody, pending his bail, ultimate trial or release on the advice of the DPP. The Presidential Committee for the Reform of Criminal Justice Laws identified long awaiting trial detention, associated with the application of the present remand system as the main problem of the administration of criminal justice in Nigeria.⁷¹ The police often take suspects who have committed serious offences to the magistrate courts, which have no jurisdiction to try such serious offences, on a holding charge to be remanded in prison custody, pending the outcome of the legal advice by the DPP, or ultimate prosecution before the High Court. The request for remand is based on a charge sheet not supported by any other document to show grounds for the request. The consequence is that the defendant is committed to prison custody to await proper arraignment. Due to the absence of any protocol in managing the remand process, many defendants, especially the indigent ones, remain in awaiting trial custody for long periods of time. In Lagos State presently, a Magistrate has the power to remand a person

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⁷⁰ See footnotes 64 and 65 above.
⁷¹ See Comments of the Presidential Committee, p. 135.
arrested for any indictable offence after examining the reasons for the arrest and being satisfied that there is probable cause to remand such a person, pending legal advice of the DPP and/or the arraignment of such a person before the appropriate Court or Tribunal.\footnote{72}{Section 268 \textit{ACJL Lagos}, 2007.}

The \textit{ACJ Bill 2005} also contains provisions to the effect that a Magistrate may have jurisdiction to take remand proceedings even though the person is arrested on allegation of having committed an offence, which if charged, he cannot be arraigned before that Magistrate. In other words, the \textit{Bill} conferred jurisdiction to hear remand proceedings on the magistrate, which is unrelated to the jurisdiction to try the substantive offence with which the person may be finally charged with before a court.\footnote{73}{See sections 270 and 271 of the \textit{ACJ Bill 2005}.}

Application for remand is to be made in a specified manner, by filling out the “Report and Request for A Remand Form” as contained in the Appendix to the Bill.\footnote{74}{Section 270 (2), \textit{ibid.}} Section 272 of the Bill expressly provides that the court may grant bail in remand proceedings.

**Time Protocol for Remand Orders**

The new \textit{ACJL Lagos 2007} contains a time frame for remand orders. Under section 268 (5), an order of remand made by a Magistrate shall not exceed a period of thirty (30) days in the first instance. After the expiration of the 30 days, the Magistrate shall order the release of the person remanded unless good cause is shown why there should be further remand order for a period not exceeding one month. At the expiration of the further order, the Magistrate is to issue a hearing notice to the Commissioner of Police and/or DPP and adjourn the matter in order to inquire as to the position of
the case and for the Commissioner of Police and/or the Director of Public Prosecutions to show cause why the person remanded should not be released. The Magistrate is to extend the remand order only if satisfied that there is good cause shown and that necessary steps have been taken to arraign the person before an appropriate Court or Tribunal.

The *ACJ Bill 2005* also contains a time protocol. An order of remand made under section 273 the *Bill* shall be for a period not exceeding 100 days in the first instance and the case shall be returnable within the said period of 100 days. The court may extend the remand period for a period not exceeding 30 days upon hearing an application in writing showing good cause why there should be an extension of the remand period. The proceedings shall be made returnable within 30 days. If after the expiration of this period of 30 days or the initial period of 100 days, the person is still in custody, the court may on application of the person, grant him bail in accordance with sections 149 to 190 of the Bill.

At the expiration of the 100 days or 30 days remand order, if the person is still remanded and his trial not yet commenced, or charge not yet been filed at the relevant court having jurisdiction, the court is to issue a hearing notice to the Inspector General of Police and the DPP of the Federation and adjourn the matter for a period not exceeding 30 days to inquire about the position of the case, and for the Inspector General of Police and/or the Director of Public Prosecutions to show cause why the person remanded should not be unconditionally released. Where good cause is shown, the court may, upon hearing a request for an extension of the remand, extend the remand for a final period

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75. Section 273 (1), *ibid.*
76. Section 273 (2), *ibid.*
77. Section 273 (3), *ibid.*
78. Section 273 (4), *ibid.*
not exceeding 30 days for the person to be arraigned for trial before the appropriate court or tribunal, and shall make the case returnable within the said period of 30 days from the date the hearing notice was issued.\textsuperscript{79}

Where good cause is not shown for the continued detention of the person, pursuant to section 273(4) or the person is still in custody after the extended period of 30 days under section 273(5), the court shall with or without any application to that effect, forthwith discharge the person and the person shall be immediately be released from custody.\textsuperscript{80}

\textbf{Content of Proof of Evidence}
In order to clarify the contents of complete information,\textsuperscript{81} the \textit{ACJ Bill 2005} has included provision on the contents of Proof of Evidence, which makes it an easy reference to the prosecutor. Section 351 of the \textit{ACJ Bill 2005} provides that an information shall be filed in the registry of the court before whom the prosecution seeks to prosecute the offence, and shall include the Proof of Evidence consisting of:

i. The legal advice of the Director of Public Prosecution or a Law Officer in his office.

ii. The list of witnesses and their addresses.

iii. The list of exhibits to be tendered.

iv. Copies of statements of the witnesses.

v. Copies of the statements of he defendant(s).

vi. Any other document, report, or material that the prosecution intends to use in support of its case at the trial.

\textsuperscript{79} Section 273 (5), \textit{ibid}.

\textsuperscript{80} Section 273 (6), \textit{ibid}.

\textsuperscript{81} Section 350, \textit{ibid}, lists the contents of an information. It includes a description of the offence or offences, a statement of offence, particulars of the offence, the law and section of the law against which the offence is said to have been committed.
vii. Particulars of bail or such recognizance, bond or cash deposit if the defendant is on bail.
viii. Particulars of place of custody, if the defendant is in custody.
ix. Particulars of any plea bargain arranged with the defendant.
x. Particulars of any previous interlocutory proceedings, including remand proceedings, in respect of the charge.
xi. Any other relevant document as may be directed by the court.

Case Management by the Chief Judge
Section 101 (c) of the ACJ Bill provides that the trial of a charge is to be commenced not later than 30 days from the date of arraignment upon that charge. The trial of the person brought under the charge is to be completed not later than 180 days from the date of arraignment. Where a Magistrate fails to commence or complete trial within the stipulated time, he shall forward to the Chief Judge the particulars of the charge and reasons for failure to commence the trial or to complete the trial.

Magistrates are to forward quarterly returns of the particulars of all cases including charges, remand and other proceedings commenced and dealt with in their courts to the Chief Judge.\textsuperscript{82} The Bill further provides that the Commission set up under the Administration of Criminal Justice Commission Act shall have power to consider all returns made to the Chief Judge for the purpose of ensuring expeditious disposal of cases. The National Human Rights Commission shall also have access to the said return upon request to the Chief Judge.\textsuperscript{83}

\textsuperscript{82} Section 101 (e) \textit{ibid.}
\textsuperscript{83} Section 101 (g) \textit{ibid.}
These proposals would require prosecutors to be mindful of these time settings and ensure that Magistrates are not unduly delayed in the trial of cases because of failure on their part to pursue the case diligently.

**Suspended Sentence/Parole**

The *ACJL 2007* and the *ACJ Bill* endeavored to address the problem of overuse of imprisonment as a disposal method by introducing some alternatives to imprisonment and fortifying some existing ones.

The *ACJ Bill 2005* introduces suspended sentence, and community service. Section 446 provides that where the court considers it appropriate, it may order that the sentence it imposes on the convict be with or without conditions, suspended, in which case the convict shall not be required to serve the sentence in accordance with the conditions of such suspension if any. Where the Comptroller General of Prisons makes a report to the court recommending that a person sentenced and serving his sentence in prison is of good behaviour, and has served at least two thirds of his prison term if he is sentenced to a term of imprisonment, or at least 15 years if he is sentenced to life imprisonment, the court may order after hearing the prosecution and the prisoner or his legal representative, order that the remaining term of his imprisonment be suspended, with or without conditions.  

**Conditional Release of Offenders/Probation**

Though statutory provisions for probationary sentences existed in our statutes, regrettably, except for juveniles, Judges and Magistrates hardly make use of it. Section 345 of the *ACJL Lagos 2007*, provides for conditional release of offenders and community service. It provides that where the court finds that the charge is proved, but is of the opinion that

84. Section 448 *ibid.*
having regard to the character, antecedents, age, health or mental condition of the defendant, or of the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, it is inexpedient to impose any punishment, or release the offender on probation or community service, the court is to dismiss the charge, or discharge the offender conditionally on his entering into recognizance, with or without sureties to be of good behavior for a period not less than one year and not exceeding three years. The recognition order made by the court may also contain a Probation Order. This order contains a condition that the offender be under the supervision of such person or persons called a Probation Officer.85

The *ACJL Lagos 2007* also made provisions for community service. Such community service shall be in the nature of:

a. environmental sanitation; or  
b. assisting in the care of children and the elderly in Government approved homes; or  
c. any other type of service which in the opinion of the court would have a beneficial and salutary effect on the character of the offender.

The *ACJ Bill 2005* also made provisions on community service. It provides that the court may also sentence the offender to perform specified service in his community or such community or any place as the court may direct, with or without conditions.86 The Chief Judge may issue guidelines

85. See section 346 *ACJL Lagos, 2007.*  
86. See also section 447 (1) of the *ACJ Bill 2005.*
as to the nature and kind of community service to which offenders may be sentenced.  

**Payment of Compensation to Victims of Crime**

A search of our statute books reveals that there are scanty provisions dotted in some statutes dealing with victims remedies. Very little and indeed less than marginal emphasis is placed on victim participation. The *ACJ Bill 2005* broadened the powers of the criminal court to award costs, compensation and damages in deserving cases, especially to victims of crime. The *Bill* adopted and improved on the provisions of section 78 of the *Penal Code*, sections 365-366 of the *CPC* and section 255 of the *CPA*. These are now sections 292 and 293 of the *Bill*.

By the provisions of section 292 of the *ACJ Bill 2005*, a criminal court may within the proceedings or when passing judgment, order that the convicted person shall pay a sum of money as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant, where substantial compensation is in the opinion of the court recoverable by civil suit. The court may order the defendant to pay a sum of money to defray expenses incurred in the prosecution. The court may also order the convicted person to pay some money to compensate an innocent purchaser of any property in respect of which the offence has been committed who has been compelled to give it up. The court may also order the convicted person to pay some money in defraying expenses incurred in medical treatment of any person injured by the convicted person in connection with the

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87. Section 447 (2) *ibid.*
88. Section 292 (a), *ibid.*
89. Section 292 (b), *ibid.*
90. Section 292 (c), *ibid.*
offence.\textsuperscript{91} Section 345 (2) of the \textit{ACJL Lagos 2007} also provides that the court can order an offender to pay such damages for injury or compensation for loss.

Besides these provisions on compensation for victims of crime, the \textit{Criminal Justice Victim’s Remedies (CJVR) Bill, 2006}\textsuperscript{92} is fully devoted to addressing the problems of crime victims.

\textbf{Conclusion}

This article has endeavored to analyze some of the notable novel provisions in the \textit{Administration of Criminal Justice Law of Lagos State 2007(ACJL)}, and the provisions of the \textit{Administration of Criminal Justice Bill, 2005}. One of the major improvements brought about generally by the reforms is that conscious effort was made to fortify the rights of the defendant and reduce delays in the criminal process. Though most of these rights had existed hitherto, the new Law and Bill have added emphasis to them and have also ironed out a lot or grey areas that had been long overdue for change.

Lagos State has blazed the trail in passing into law the \textit{Administration of Criminal Justice Law 2007}. The Nation’s legislature is called upon to speed up legislative processes and pass the \textit{Administration of Criminal Justice Bill (ACJ Bill 2005)} pending before them for over five years.

In the meantime, it behoves the police, other law enforcement officials, prosecutors, defence lawyers judicial officers and the public to get conversant with the provisions of the laws, especially in Lagos State, and other developments within the system, so as to comply with the requirements engendered by the laudable reforms.

\textsuperscript{91} Section 292 (d), \textit{ibid.}

\textsuperscript{92} This Bill is also pending at the National Assembly.