



E-ISSN: 2789-9500
P-ISSN: 2789-9497
IJCCSL 2021; 1(2): 09-16
© 2021 IJCCSL
www.criminallawjournal.org
Received: 11-07-2021
Accepted: 16-08-2021

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Examining the rights of suspects under the constitution and administration of criminal justice act: The role of legal aid council

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Abstract

The Constitution of Federal Republic of Nigeria 1999 (as amended) guarantees inherent rights not because of their recognition by laws but because they are humans ^[1]. In the same vein, the Administration of Criminal Justice Act (ACJA) 2015 was enacted to foster the interest of justice in Nigeria but due to the restrictions of its applicability to the federal Capital territory and Federal Courts in Nigeria, many of the Nigerian states are yet to adopt the laws and by implication, its provisions on the rights of suspects. However, both the Constitution and ACJA 2015 have made the rights of a Defendant in a criminal proceeding pivotal and important. And in the situation that a person accused of committing a crime lacks the financial wherewithal to provide for himself adequate legal representation, the Legal Aid Act empowers the Legal Aid Council established under the Act to step up to the aid of such individuals for effective representation so as to ensure access to justice. This article therefore seeks to discuss the general rights afforded a suspect under the Constitution and the Administration of Criminal Justice Act, 2015 with a view to specifically x-ray the rights of a suspect to legal representation and the roles played by the Legal Aid Council of Nigeria. The article recommends ways to improve the enjoyment of these rights and advocates more practical ways of protection during investigation as well as court trial.

Keywords: rights, suspects under, constitution, administration, criminal justice act, legal aid council

Introduction

Criminal litigation in Nigeria provides for the procedures and modes of ensuring that perpetrations of criminal activities are tracked and punished for the effective organisation of the State. The State integrates the concept of justice and equity for the modes of punishing and enforcing the guilty of a suspect. Administration of criminal justice in Nigeria seeks to satisfy even dispensation of justice and promote not just the interest of the victim or the state but it has in contemplation the protection of the rights of the suspect. A person accused of a crime is now statutorily required to be called Defendant under the Administration of Criminal Justice Act. This aims to reduce the stigma attached to criminal proceedings ^[2]. The underlying consideration is that a person remains human being despite infractions and violation of the provisions of the Laws of the State, therefore, he should be treated like human beings and afforded every inherent right enjoyable by a human being during his trials. Thus, the Constitution proposes the protection and guarantee these inherent rights despite the violation of the laws since they are immutable to humans not because of their recognition by laws but because they are humans ^[3]. To buttress the significance of these rights, the Administration of Criminal Justice Act (ACJA) was enacted in 2015 to foster the interest of justice in Nigeria in the aspect of criminal justice though, the restrictions of its applicability is to the Federal Capital Territory and Federal Courts in Nigeria, some of the states in the federation are yet to adopt the laws while other have adapted the provisions to enact their own Administration of Criminal Justice Laws.

Notwithstanding, both the Constitution of Nigeria and ACJA 2015 have made the rights of a Defendant of a criminal proceeding pivotal and important. These Laws ensure true and full dispensation of justice. This practice of ensuring all round justice was alluded to in the case of *Godwin Josiah v the State*, ^[4] where Oputa J.S.C. (as he then was) observed rightly in a *dictum* that:

Justice is not a one-way traffic. It is not justice for the appellant only. Justice is not even, only a two-way traffic. It is justice for the defendant accused of a heinous crime of murder; it is justice for the victim, the murdered man, i.e. the deceased 'whose blood is crying to the high

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heavens for vengeance'; and finally it is justice for the society at large – the society whose social norms and values had been desecrated and broken by the criminal act complained of... that justice which seeks only to protect the appellant is not even-handed justice... but justice sacrificed at the shrine of guilt.

One major right of a suspect is the right to adequately defend himself within a reasonable time with enough facilities and resources. It sometimes happens that a person accused of commission of a crime lacks the financial wherewithal to provide for himself adequate legal representation. In response to this situation, the Legal Aid Act and the Council established under the Act have been empowered to step up to the aid for such individuals for effective representation to ensure that he has access to justice and that justice is manifestly seen to have been done. Thus, the content of the constitutional and statutory provisions that protect the rights of a suspect as well as the significant role the Legal Aid Council of Nigeria is the crux of this paper.

Meaning of a suspect

In criminal litigation, there are stages of proceedings which ultimately result in a judgement. First, upon arrest of a person and remand in the custody of the police, the person is referred to as a suspect. A suspect is therefore a person who is alleged to have committed an offence or participated in the commission of an offence but he is not yet arraigned for that offence. Therefore, during arraignment^[5], the suspect is formally accused of the commission of the crime and he takes his plea, this is the point he becomes an accused. In the legal sense, a suspect is a person having been suspected of a crime is brought before the Court after investigation to defend himself against the allegations of crime. Thus, the term accused seems offensive to many people and the current judicial thinking is that a person called upon to defend himself against allegations of crime is simply a Defendant^[6]. Thus, the words 'Defendants' and 'accused persons' are often used interchangeably. However, in respect of jurisdictional practice in Nigeria with the use of the two words; in the North, "Accused person" is preferred while in the South, Lagos and FCT, Abuja, "Defendant" is what is employed. Needing to add that once a suspect is convicted, he becomes a convict and after he is conveyed to prison, he is tagged a prisoner.

Rights of a Suspect

There are provisions made in Laws to ensure that a person accused of commission of a crime is not intimidated and he is protected effectively. Paramount among these laws are the Constitution of the Federal Republic of Nigeria and the Administration of Criminal Justice Act, 2015. The Rights accruing to a suspect are privileges, guarantees and entitlements provided to him by law to facilitate his defence^[7]. The rights of an accused are safeguards which provides shield for him as protection from harm, risk and danger coming from somebody or something^[8]. The rights are structures put in place to ensure that justice is evenly distributed. There is no doubt that the relationship existing between the state and a suspect in a criminal proceeding is like that of a giant and a dwarf at a combat arena, the giant possesses the power and the domineering authority to trample down on the dwarf. However, the law has come up with protective measures to ensure the relationship in a criminal trial must be to find out the true nature of the crime and not to intimidate the defendant. It is in a bid to achieve a stress-free

trial that the Constitution and other laws provide for the rights.

There are two categories of rights a person accused of crimes may claim. These are either statutory rights or Constitutional rights^[9]. The Constitution of the Federal Republic of Nigeria represents the fundamental provisions for the security of the rights of every individual in Nigeria whether suspected of a crime, accused or even convicted of the Criminal offence. At the centre of the objective of the Constitution is "justice". Statutory rights are those which are provided for under any laws in Nigeria other than the Constitution of the Federal Republic of Nigeria^[10]. While the Constitutional rights are those provided by the Constitution^[11]. They represent the current international trends for the protection and security of the human society. Every other right is derived from the Constitutional rights and no other law could divert from the tenor of the Constitution^[12].

The Constitution of the Federal Republic of Nigeria and the Administration of Criminal Justice Act have both provided for protective measures to ensure the smooth regulations of the criminal proceedings in order to reduce the oppression of the accused and assure that the purpose of criminal trial is not to compulsorily secure a conviction. The purpose must be to enhance dispensation of justice in a mutual way to both the prosecution and the accused.

Both the Constitution and ACJA recognize that at the base of the rights of a suspect is the right to fair hearing. The right to fair hearing is the foundational structure embracing every other right an accused may claim in a trial. Section 36(4) of the 1999 Constitution provides that whenever a person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair trial in public within a reasonable time by a court or tribunal. Commenting on the paramountcy of the right to fair hearing, the Court in *Falodun v. Ogunse*^[13] stated that:

Although customary courts are not bound by technical rules of procedure, the provisions of section 36 of the Constitution relating to fair hearing are very far-reaching provisions. The requirements of fair hearing are so ubiquitous that even proceedings in customary Courts must observe them.

The right to fair hearing is immutable to the extent of the immutability of the Constitution and it aims at ensuring that no person is punished for an offence without granting to him a fair trial in accordance with the Constitution^[14]. The Court stated the attributes of fair hearing in the case of *Ovunwo & Anor v. Woko & Ors*^[15].

The right to fair hearing is an issue of jurisdiction. The right to fair hearing is a constitutional right enshrined in Section 36 of the 1999 Constitution. This right cannot be waived or statutorily taken away. It entails that in the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The basic attributes of fair hearing include- a. That the court shall hear both sides not only in the case but also on all material issues in the case before reaching a decision which may be prejudicial to any party in the case. b. That the court or tribunal gives equal treatment, opportunity and consideration to all concerned. c. That all concerned shall be informed of and have access to such place of public hearing. d. That having regard to all the circumstances in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been done^[16].

There are two components of fair hearing based on the principles of natural justice. These are the principles of *Audi alterem partem* and *nemo iudex in causa sua*. These principles are expected to serve as guides to the courts in the administration of criminal justice for the projection of the values of the State for the promotion of social justice^[17]. The principle of *Audi alterem partem* mandates the Court to grant the right of audience on equal footings to the parties to a proceeding. In criminal proceedings, the principle obliges the court to listen to the defendant and the prosecution. No offence is to be seen as too grave as to deprive the right to initiate defence. A person accused of crime must be given opportunity to be heard. This includes the right to have access to and connect a legal practitioner in respect of his plight whether he is in custody or not. In the case of *Akabueze v FRN*^[18], the appellant was charged with 6 counts offences. During the trial the court found his counsel guilty of conduct unbecoming of a legal practitioner and unethical behaviour. He was remanded upon release; the lawyer withdrew his services to the defendant. The appellant sought an adjournment of two weeks to arrange for a new counsel, the court granted one week and remanded him. The court also gave orders restricting visitors. The defendant could not secure legal representation, the court continued the trial and sentenced the defendant upon conviction to 115 years imprisonment. Upon appeal, the Court of Appeal overturning the decision held that:

I think this is a proper case where the appellant could have been given adequate opportunity to arrange for counsel to defend him having regard to the severity of the punishment of the offences with which he was charged. This is more so when the appellant was remanded in custody and has no access to visitors in the face of the restrictive orders made by the tribunal.

This rule of *Audi alterem partem* emphasises the provision of sufficient legal allowance to the accused for the advancement of the justice in the case^[19]. *Nemo iudex in causa sua* on the other hand preaches that the hearing of the commission of a crime must be done in a forum disinterested in the outcome of the offence. The judge must not be impartial or beclouded by his own interest or sentiments. He must be neutral to properly weigh the evidence without influence of his own life revealing in the judgment. In *Garba & Ors v. University of Maiduguri*^[20], the appellants were students of the respondent University who were expelled by the university upon a recommendation of a Disciplinary Committee finding them guilty of riotous behaviours. The Committee was presided over by the Deputy Vice Chancellor of the Respondent university whose house and property were looted and destroyed. The Court overturned the finding of the Committee and held that;

It is my opinion that when the Board undertook to investigate the crimes, identify those involved and who participated and their roles and apportioned blame and recommend suitable disciplinary measures to be taken against them, they were carrying out judicial functions... Having assumed judicial functions, they were bound to pass the qualification test to assume the judicial functions and were bound to act judicially and comply with the constitutional requirements of fair hearing.

The rule of fair hearing is the benchmark for the test of justness of a criminal trial, where it is shown that a court acted unfairly in the trial leading to the conviction of a person, the trial is an affront to the Constitution and to that extent, it is

incurably bad. It is bound to be overturned on appeal^[21]. Fair hearing holds up the two pillars of justice which are indispensable to the adjudication in a political society; not only to technically offer justice but to ensure that justice is done and manifestly seen to be done^[22].

Specific Rights of an accused under ACJA and Constitution

The right to fair hearing is a combination of specific individual privileges afforded an accused to make him feel safe under the criminal procedure during the interval of eliciting the truth in respect of act constituting violation of law and it assists in serving due justice within the judicial system. The Constitution of the Federal Republic of Nigeria and the Administration of Criminal Justice Act, 2015 have provisions for safeguards in criminal proceedings for the advancement of the social distribution of justice. These rights are to serve as mandatory guides for everyone involved in criminal adjudication otherwise the contravention of the guides will only make the efforts of the court to be expended in futility. These rights are as follows:

Speedy Trial in Public

One major attribute of justice is that justice must be seen to be done. This requirement mandates the Court to hold its proceeding in public^[23], section 36(4) of the 1999 Constitution provides that whenever a person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair trial in public within a reasonable time by a court or tribunal. A criminal proceeding must be undertaken within a reasonable time in public. A speedy public trial enables the accused person and his relatives know in proper time the fate of the accused^[24]. This will reduce both emotional and financial burden attached to Criminal Litigation. Section 259 of ACJA provides in support of public trial as follows: subject to the provisions of sections 232 and 260-262 of this Act and of any other law specifically relating thereto, the room or place in which a trial is to take place under this Act shall be an open court to which the public generally may have access as far as it can conveniently contain them. In *Edibo v. State*^[25], the trial judge took the plea of the appellant in his chambers and tried him in the open court. He was convicted of culpable homicide punishable with death and sentenced to death by hanging. He appealed against the decision on the ground that whether the plea taken in the Chambers was constitutional. The Supreme Court concluded that the Chambers of a judge is not a public place and overturned the judgment^[26].

Presumption of Innocence

A person accused of commission of an offence is not a culprit. And he is assumed to know nothing about the crime. Being arraigned is asking him to come to court and hear the accusations against him to make sound defence in his favour and his failure to bring facts justifying his innocence upon proof beyond reasonable doubt by the prosecution rebuts the presumption of innocence in his favour. Therefore, a suspect is perceived not as a criminal until conviction. Everything done or said in respect of an accused is an allegation until his conviction. It is absolutely the obligation of the prosecution to rebut the presumption of innocence as the accused cannot be compelled to prove his innocence^[27]. Section 302 of ACJA in respect of no case submission provides that the court shall, on its own motion or on the application by the defendant after

hearing the evidence for the prosecution, where it considers that the evidence against the defendant is not sufficient to *justify the continuation of the trial, record a finding of not guilty in respect of the defendant without calling on him to enter his defence* and the defendant shall accordingly be discharged. To require him to enter his defence when no prima facie evidence is available is to compel him to establish his innocence. Thus, every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty ^[28].

Right to Bail

Closely connected to the presumption of innocence is the right to bail. This right is obtainable at three stages. The first is at the investigation during police interview in view of trial, then, at the court during pending the determination of trial and also bail pending appeal. Where allegations are made against a person, he is not required to be punished for the allegations. Keeping him in custody is a restraint on his right to liberty which is akin to a punishment of imprisonment. Thus, upon security for his attendance in the Court, he may be released during the course of his trial. Right to bail is both constitutional and statutory ^[29]. Section 158 of the Administration of Criminal Justice Act states that where a person who is suspected to have committed an offence or is accused of an offence is arrested or detained or appears or brought before a court, he shall, subject to the provisions of this part, be entitled to bail. Bail is an entitlement unless in a serious accusation. Despite that, a suspect is not required to be punished before his conviction being legally innocent of the offence charged ^[30].

Right to have Notice of the Offence

It is fundamental that a person accused of the commission of an offence must be given full notices and particulars of the offence he is alleged to have committed irrespective of the fact that he was caught in the act of commission ^[31]. The document containing the information is called a charge. Section 196(1) of ACJA 2015 provides that the charge shall contain such particulars as to time and place of the alleged offence and the victim, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the defendant notice of the offence with which he is charged. The simple purpose of a charge is to give the accused notice of the case against him ^[32]. Thus, a suspect has a right to be informed promptly and in the language he understands and in details of the nature of the offence ^[33].

Right to Reasonable Time and Facilities for the Conduct of his Defence

It is a Constitutional right and privilege afforded to a person accused of a crime to be given adequate time and facilities for the preparation of his defence against an allegation of offence ^[34]. This includes access to legal advisers and material time to have mutual interaction for the study of the case and other necessary facilities to help the State promote justice. In the case of *University of Ilorin & 2 Ors v. Akinrogunde* ^[35], the Court frowns at the conduct of a Disciplinary proceeding giving the appellant less 24 hours to respond to the allegations against him. This is no reasonable time and without any legal aid.

Right to Examine and Cross Examine Witness

In furtherance of fair trial, allowance and opportunity must be

given to a suspect to invite and if necessary, compel witnesses to bring evidence to aid the establishment of the inaccuracies contained in the case of the prosecution. He must be given a chance too to show through the witnesses of the prosecution the unreliable nature of their testimonies and comment. Under section 36(6)(d) of the 1999 Constitution, a suspect is entitled to call witnesses and cross examine witnesses to establish his defence. Any conduct in the court constituting a restriction to this right incurably vitiates the trial for denial of fair hearing ^[36].

In the same vein, ACJA 2015 ensures that where the suspect denies the allegation against him and states that he intends to show cause why he should not be convicted, the court shall proceed to hear the Complainant and take such evidence as may be produced in support of the prosecution ^[37]. The suspect shall be at liberty to cross-examine the witnesses for the prosecution and if he so does, the prosecutor may re-examine the witnesses where necessary ^[38]. The right to re-examine is further extended to recalling of witnesses when a charge is revised. In such a situation, where a charge is altered, amended or substituted after the commencement of the trial, the Defendant shall be allowed to recall or re-summon and examine any witness who may have been examined before and to call any further witness; provided that such examination shall be limited to the alteration, amendment or substitution made ^[39].

Right to an Interpreter

It is the entitlement of a suspect to have a grasp of the conduct of the trial. He must be carried along in the trial. Thus, where he does not understand the language of the court, he must be provided with an interpreter to competently and clearly state to him the conduct of the proceeding ^[40]. Every person who is charged with a criminal offence shall be entitled to have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence ^[41]. Similarly, ACJA 2015 provides that where a suspect does not understand or speak or write in the English language, an interpreter, shall record and read over the statement to the suspect to his understanding and the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement. The interpreter shall endorse his name, address, occupation, designation or other particulars on the statement. The suspect in this case shall also endorse the statement with his full particulars ^[42].

Right against Retrospective laws and against Punishment for acts not expressly prohibited by Written Law

These two rights are closely related as they deal with legality of a criminal trial. It is fundamental that a person cannot be retroactively punished for an act which was not an offence at the time he did or be subject to a higher punishment than that which was provided as at when he committed the offence ^[43]. Thus, no person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed ^[44]. In the same vein, section 36(12) of the Constitution provides that "subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law" ^[45]. In case of *A.G. of the Federation v. Isong*,

[46] where the Appellant was charged and convicted by a lower court under a provision of the law that was not in existence. It was held that the conviction was a violation of section 33(12) of the 1979 Constitution [47].

Right against Double Jeopardy

In criminal trial, a person shall not be damnified or prejudiced twice for the same offence. This is an affront on the constitutional right to fair hearing and trial. Section 238(1) of ACJA 2015 states that without prejudice to section 226 of this Act, a Defendant charged with an offence is not liable to be tried for that offence where it is shown that he has previously been:

- (a) convicted or acquitted of the same offence by a competent court;
- (b) convicted or acquitted by a competent court on a charge on which he might have been convicted of the offence charged; or
- (c) convicted for or acquitted of an offence by a competent court other than the offence charged, being an offence for which, apart from this section, he might be convicted by virtue of being charged with the offence charged [48].

The protection is valid to the extent that a suspect, having been convicted of an offence can no longer be apprehended for the same offence. Invariably, if he was wrongfully and innocently convicted and sentenced, he cannot be prosecuted again if he regains freedom to commit the same offence.

Right to Silence

During his trial, an accused may decide to stay quiet all through without uttering a single word. It is not an obligation on the accused to assist the prosecution to prove their allegations against him. He cannot be compelled to give evidence in the trial. It is then, the duty of the prosecution to bring facts. More importantly, the prosecution and court may comment on the silence of the accused person but the comment must not warrant an insinuation of his guilty [49].

In summary, the right to fair hearing and trial has components and elements each of which together serve the interest of justice. They are inseparably connected to the concept of constitutionalism. Despite, that in certain cases non-compliance may not vitiate the trial but in all cases, it brings about the extent of obedience and conformity to the Constitution and statutory laws. Prominently, the rights seek the advancement of the social policy in Nigeria in the prosecution of a case and adjudicatory duties of the judges.

Right to Adequate Legal Representation

It has been made severally in this work, that the right to fair hearing is so fundamental in a Society. It stands at the heart of a criminal trial, without fair hearing, the principles of natural justice are abandoned [50]. However, right to fair hearing is as dead as the letters of the law that creates it if the accused person has no adequate and quality legal representation. Legal representation should not be a technical factor used for constitutional compliance only. It must be adequate. A suspect without legal representation stands as a victim of unknown eventualities. Sometimes, the court could not fully guarantee the legal education of a suspect through lectures in respect of all rights available to him and State Counsel in charge of criminal trials are so smart looking out for ways to place their case and ensure that they secure conviction. An accused without experience and skills at the bar may be

confused and feel intimidated. Thus, in that situation, fair hearing is not justified and can only be reduced to technicality [51]. In *Kotoye v. CBN* [52], the Supreme Court stated that the right of fair hearing is not a technical doctrine. It is one of substance. So, the bloodline of fair hearing is adequate and quality legal representation.

First, the choice of legal representation is with the accused to make. *Isiaka & Ors v. Ogundimu & Ors* [53], the Supreme Court pronounced that "A litigant is free to engage counsel of his choice at any time and may equally terminate such engagement at any time [54]." Section 36(6)(c) provides that every person who is charged of a criminal offence shall be entitled to defence himself in person or through a legal practitioner of his choice. Thus, a suspect may decide to personally handle his defence. However, this decision must be appropriately probed by the Court. The decision may be influenced by numerous factors. The Court must specifically consider a decision of personal defence put before it by a poor illiterate accused person. Sometimes, the kind of decision a person makes is determined by his economic means and exposure. The Court after having made inquiry, may arrange for the defence of a suspect unless he rejects the arrangements. As a matter of reiteration, section 267(1) ACJA 2015 provides that the complainant and defendant shall be entitled to conduct their cases by a legal practitioner or in person except in a trial for a capital offence or an offence punishable with life imprisonment. Where the defendant elects to defend himself in person, the court shall inform him of his rights within the trial and the consequences of his election [55].

Second, adequate and quality legal representation is not given if the accused person is not given access to his counsel due to the order of the court or conduct of the police whilst in custody. In *Akanbueze v. State* [56], it was held that the desire of the tribunal to dispose of the case expeditiously is understandable, of course, should not be done at the expense of not giving the appellant adequate opportunity of defending himself. In that case, the court gave a restrictive order disallowing visitors and legal practitioners from visiting the appellant. The judgment was overturned for failure to comply with fair hearing. Section 267(2) of ACJA 2015 states that where the defendant is in custody or on remand, he shall be allowed access to his Legal practitioner at all reasonable times. The operating words are "at all reasonable time". These words suggest that the counsel will be permitted to visit the custody any time during the day to have mutual talk, develop strategy and prepare the accused for trial as well as assuring him that he should have confidence in the criminal justice system as it only intends to bring out justice and not mandatory conviction. So, a denial of access to counsel whilst in custody amounts to denial of fair hearing. This is because he would have been denied adequate time and facilities to defend himself.

The right to counsel is closely connected with fair hearing and opportunity must be given to an accused to employ the service of a lawyer. The legal practitioner must not be denied right of audience before the court, since denial will defeat the purpose of the right [57]. It must be noted that an accused that pleaded guilty cannot be heard to complain that he has been denied right to adequate legal representation. The right does not exist in the first place. The Supreme Court emphasized the point in *Torri v. National Park Service of Nigeria* [58], that:

"The right to defend oneself either in person or by counsel of one's choice is available only to an accused who pleads not

guilty to a charge thereby challenging the prosecution to prove its case beyond reasonable doubt. Where an accused person pleads guilty to a charge there is no right to defend, nothing to be defended at all. The charge against appellant does not carry death sentence to which the law requires that the trial Judge ought to enter a plea of not guilty even though an accused pleads guilty. In the instant case, the offences charged carry terms of imprisonment and or fine. The same thing applies to the argument that appellant ought to have been given adequate time and facility to prepare for his defence which as stated earlier, does not exist as appellant admitted the charge by pleading guilty thereto ^[59]."

Another challenge is how to deal with an illiterate poor accused person. Section 349(1) ACJA states that where a defendant charged before the court is not represented by a legal practitioner, The court shall:

- (a) Inform him of his rights to a legal practitioner of his choice; and
- (b) Enquire from him, whether he wishes to engage his own legal Practitioner, or a legal practitioner engaged for him by way of legal aid.

The court must first inform the illiterate poor accused person of his right to the choice of legal practitioner and then, recommend and inquire from him if he could secure the assistance of a legal practitioner or one should be made available through the legal aid. Thus, the choice of the modes is still with the accused person.

A suspect who rejects legal representation is another basic challenge before the court. There are many reasons for rejecting the services of a legal practitioner. Poverty is one of the reasons in this case, the court may make provisions through legal aid. An accused may thereafter, reject the provision made by a court and insist on going ahead with the trial without legal representation. The solution in this respect depends on the penalty attached to the charge against the accused person. If it is a normal charge of commission of simple offences or felonies which punishment is not death or life imprisonment, the court will inform the accused of his rights and danger attached. Section 267(1) of ACJA 2015 recognizes the right of choice of an accused but restricts in respect of charges for offences carrying capital punishment or life imprisonment. Section 349(6) of ACJA 2015 restates this condition when it stipulates that where the defendant chooses to represent himself, the court shall:

- (a) Inform him of all his rights under the Constitution of the Federal Republic of Nigeria, 1999 and under this Act; and
- (b) Indicate the fact of having so informed the defendant on the record, but a defendant charged with a capital offence or an offence punishable with life imprisonment shall not be allowed to represent and defend himself ^[60].

However, the condition is not expressly contained in the Constitution of the Federal Republic of Nigeria, but this has been the line of judicial thought for a while. In the case of *Josiah v. State* ^[61], The appellant was charged with multiple capital offences of murder and armed robbery. He was not represented by a counsel, the Supreme Court overturned the decision. Similarly, in *Okotogbo v. State* ^[62], the court held that the provisions of the section 352 CPA ^[63], is mandatory and the failure to provide an accused with a legal practitioner when he is standing trial for a capital offence will render the trial a nullity.

However, section 267(4) of the Administration of Criminal Justice Act, 2015 seems to pre-empt the practical challenge that the provisions above will pose in respect of a dangerously adamant defendant. A defendant may object to legal representation and the Court has no authority to compel him to cooperate with the legal practitioner. In this situation, there will be no opportunity to commence or continue with the trial since it will suffer overturn at the Supreme Court. But section 267(4) provides that the Court shall ensure that the defendant is represented by a counsel in capital Offences provided that a defendant who refuses to be represented by counsel shall, after being informed under section 349 (6) of this Act of the risks of defending himself in person, be deemed to have elected to defend himself in person and this shall not be a ground to void the trial. Thus, the failure of a difficult accused person who is charged of a capital offence shall not vitiate the trial and conviction provided that he is informed of his right to counsel and the risk and danger of the decision to represent himself.

Another challenge is the constant absence of the Counsel from Court. Section 349(2) of ACJA 2015 provides that where the legal practitioner who had appeared on behalf of the defendant ceases to Appear in court in two consecutive sessions of the Court, the Court shall enquire from the defendant if he wishes to engage on his own another legal practitioner or a Legal practitioner engaged for him by way of legal aid and where the defendant wishes to engage another legal practitioner of his choice, the Court shall allow him reasonable time but not exceeding 30 days to do so ^[64]. However, where the defendant fails, or is unable to secure a legal practitioner arranged by him After a reasonable time, the Court may direct that a legal practitioner arranged by way of legal aid to represent the defendant ^[65]. The Court may assign to any legal practitioner whose place of practice is within the Jurisdiction of the court, any case of a defendant who has no legal representation, and the legal practitioner shall undertake the defence of the defendant with all due diligence, in which case, the legal practitioner shall not pay any filing fee or service fee in respect of the case so assigned ^[66].

The Roles of Legal Aid Council

It is a practical knowledge that criminal litigation is the most sensitive trial in the field of law. Numerous factors affect the progression of the proceedings, and inseparably connected to the Court game, is the life or liberty of another person. A person cannot afford to rely on the expertise of an incompetent lawyer. However, securing the service of a lawyer is not cheap. Expenses are now an obstruction to getting access to justice or for the advancement of fair hearing. Fair hearing is the heart of Criminal Procedure which hinges on the bloodline of legal representation. Thus, the Legal Act, 2011 has been enacted to open more widely the admission of more persons to the Court of Justice. The importance of legal aid cannot be watered down in the administration of Criminal justice in Nigeria. The Legal Aid Act creates the Legal Aid Council as a body corporate with perpetual succession and having a common seal having the right to sue and be sued in its name ^[67]. The primary functions of the Council is in accordance with the Act, to provide legal aid, advice, access to justice in respect of persons entitled ^[68]. The Council undertakes the defence of indigent defendants and diligently put forward their case in the interest of justice. The Council is composed of the Governing Board made up of the Chairman and the members, the Director-General of the

Council; and such supporting legal and other staff engaged for the purposes of the efficient performance of the duties and obligations of the Council under or pursuant to this Act ^[69]. The Council carries out his functions to grant of legal aid, advice and access to justice in 3 broad areas, namely, Criminal Defence Service, Advice and Assistance in Civil Matters including legal representation in court and Community Legal Services subject to merits and indigence tests for the parties. The Council, shall establish, maintain and develop a service known as the Criminal Defence Service for the purpose of assisting indigent persons involved in criminal Investigation or proceedings specified in the Second Schedule to this Act, access to Such advice, assistance and representation as the interest of justice requires ^[70].

It is important to note that legal aid is offered to Nigerians seeking access to justice who has no economic means to set up his defence against an allegation of crime. The class of individuals entitled to legal aid are stated in section 10 of the Legal Aid Act, 2011 as follows:

Legal aid shall only be granted to a person whose income does not exceed the national minimum wage. Notwithstanding the provision of subsection (1), the Board may, in exceptional circumstance, grant legal aid service to a person whose earning exceeds the national minimum wage. Notwithstanding the provisions of subsection (1) of this section, the Governing Board may approve the giving of legal aid on a contributory basis to a person whose income exceeds ten times of the national minimum wage.

This Act intends to provide solution to the practical limitation arising from the restrictions to indigents. However, legal aid can be sought for many reasons. The requirement of indigence is not in tuned with the current life of the people. Similarly, a person with little means but not indigent may not take on with a trial if he considers obtaining services of a legal practitioner expensive and unnecessary spending. Situations arise where an accused is so confident that he had done nothing wrong, he may see the expenses of a criminal proceeding as a form of punishment to him and undertake to personally defend himself to his detriment despite his innocence. All these factors should be considered in setting a general limit for permitting seeking assistance through legal aid.

The Criminal Defence Service of the Legal Aid Council has played huge roles in the administration of Criminal justice in Nigeria. They have provided legal services to a number of Nigerians on serious matters to secure the rescue of many uninformed Nigerians from the shocks of Criminal trial. The Legal Aid Council offers legal advice for such individuals. They partner with court for the defence of an indigent defendant. The Court refers matters to them if the court understands that the accused is not represented. Despite being a public institution, the Council still employs the diligence of a legal practitioner to ensure the defence of the accused. One of the roles played by the Council was revealed in the case *State v. Eduek Asuquo Oruk & 1 Or* ^[71], where the accused person was charged with a three-count charge of conspiracy, Armed robbery, and Assault occasioning Harm contrary to sections 6(b) and 1(2)(a) of the Robbery and Firearms Act LFN 2004 and S. 364 of Criminal Code Law of Akwa Ibom State, 2000 Before High Court 7, Uyo, Akwa Ibom state presided over by Hon. Justice Okon Okon. After the evidence of PW1, the State withdrew the charges against the 2nd Accused person and proceeded against the 1st Accused person. The facts of the case is summarily to the effect that the accused person alongside 15 others at large were alleged

to have robbed one PC Michael Patrick John, a serving police officer, who was in the company of one Sgt. Emmanuel Akpan also a serving Army officer of his Gionee Phone, torchlight, and cash of #23,000. The accused denied the allegations both in his extrajudicial statements and oral testimony in court. Rather, the accused claimed that the officers were attacked by persons who said the officers were always coming to their community to look for women without settling the boys. S.A. Adula ^[72] was the counsel to the accused person. The accused was discharged and acquitted as a result of the spirited effort by S.A. Adula. The accused was accordingly released from correctional custody ^[73]. The accused was saved by the skills and expertise of the legal aid Council. The Council is a part and parcel of the Nigerian Criminal Litigation and are playing vital roles for the promotion of the rights of accused to fair hearing.

However, the efficiency of the Legal Aid Council is adversely affected by low funding and scanty staffing of the Council. It is a general knowledge that some of the offices of legal Aid Council are empty and, the legal practitioners in the department are negatively perceived as low ranked. The neglect of the State in relation to the Council fundamentally affect the security of the rights of an accused. Legal Aid department in Nigeria obviously requires financial aid. Finances and economic capacities apparently affect the roles played by the Council in fostering of the rights of a suspect in a criminal trial.

Conclusion

The Constitution of the Federal Republic of Nigeria is a pact of governance by which the public reneges their power and agree to act in accordance with the provisions of the state laws for the protection and advancement of their rights. Despite the agreement to reduce their liberty of actions to permit uniform governance, a number of individuals commit some infractions against the law. The violation does not deprive them automatically of the protection of the Constitution. The Administration of Criminal Justice Act, 2015 has been enacted to further the policy of the Constitution in ensuring the entrenchment of the rights of an accused. The right of an accused is immutably ground on adequate legal representation. The legal aid Council has been helpful in assuring that adequate legal representation is provided to indigent defendants. However, the following can be looked into as a development in ensuring furtherance of right of an accused:

1. The structure of the legal representation for a person who refuses service of a legal practitioner should be made more flexible by allowing a lawyer to stand in Court for him and observe compliance with the procedure adopted.
2. The Legal Aid Council should be adopted by the States and independently fund and foster the service to the public.
3. Rendering of legal assistance should be made more attractive to lawyers. Incentives and awards may be given instead of making it a condition to achieve the position of Senior Advocates of Nigeria only.
4. There must be deliberate intention to implement the positions of the law on legal representation.
5. The definition of indigents in the Legal Aid Council does not represent the reality of Nigeria. A wider meaning should be adopted.
6. More resources both human and material should be provided for the legal aid counsel for the discharge of

their responsibilities.

Finally, the idea of contribution is good, then the condition that a person must be indigent to seek legal aid is not needed. Legal aid may be needed in order to avoid material expenses on legal matters.

References

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2. Section 494 of the ACJA 2015.
3. Ransome-Kuti & Ors v. A.G. Federation & Ors [1985] LPELR-2940 (SC).
4. [1985]1 NWLR (Pt. 1) 125.
5. Arraignment is a stage in criminal procedure where a person suspected to have committed an offence is formally brought to court and his plea taken. This is the commencement of a criminal proceeding. See the cases of Ibrahim v. FRN [2016] LPELR-40059 (CA); See also section 271 of ACJA 2015.
6. Kalu v. State [1998] 13 NWLR (Pt. 583) 55; see also Timothy v. FRN [2013] 5 NWLR (Pt. 1347)213.
7. Fagbunle v. Rodrigues [2002] 7 NWLR (Pt.765) 188
Bangboye v. University of Ilorin [1999] 10 NWLR (Pt.622) 290.
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10. Akin Oluwadayisi, Practical Approach to Civil and Criminal Litigation (Bosem Publishers Akure 2013) 583.
11. Ibid.
12. Araka v. Ejeagwu [2001] 5 WRN 1 SC.
13. [2010] All FWLR (Pt. 504) 1404 at 1427; See also Azudibia v. INEC [2010] All FWLR (Pt. 505) 1684.
14. Odunlami v. Nigerian Navy [2014] All FWLR (Pt 720) 1206.
15. [2011] LPELR-2841(SC).
16. Per Olufunlola Oyelola Adekeye, JSC (Pp 33 - 34 Paras A - C); Usani v. Duke [2004] 7 NWLR (Pt.871) 116; Awoniyi v. The Registered Trustees of the Rosicrucian Order, Amorc (Nigeria) [2000] 6 SC 1 at 103; Okafor v. A-G Anambra State [1991] 3 NWLR (Pt. 200) 59.
17. Ibid.
18. [2003] FWLR (Pt. 178) 1165.
19. Ibid.
20. [1986] 1 NSCC 245.
21. Odessa v. FRN [2005] All FWLR (Pt. 282) 2010.
22. Unibiz Nig. Ltd. v. Commercial Bank Credit Lyonnais Ltd. [2003] 6 NWLR (Pt. 816) 402.
23. In Oviasu v. Oviasu [1973] 11 SC 315, the Supreme Court defines public to mean open to everyone without discrimination. Anything, gathering or audience, which is not private is public.
24. Effiom v. State [1995] 1 NWLR (Pt. 373) 507.
25. [2007] All FWLR (384) 192.
26. Note that criminal proceeding may take place in camera on the grounds of public interest, public policy, public safety and welfare of a child who has not attained maturity. See the proviso to section 36(4) of the Constitution.
27. Abdullahi v State [2005] All FWLR Pt 263 at 698.
28. Section 36(5) 1999 Constitution.
29. Onyebuchi v. FRN [2009] All FWLR (Pt 458) at 341.
30. See section 35 of the 1999 Constitution; See also the cases of Eda v. COP [1982] 3 NCLR 219.
31. Timothy v. FRN [2008] All FWLR (Pt. 402) 1136.
32. Odeh v. FRN [2008] All FWLR (Pt. 424) 1590.
33. See section 36(6)(a) of the 1999 Constitution.
34. See section 36(6)(b) of the 1999 Constitution.
35. [2006] All FWLR Pt 302 at 176.
36. Tulu v. Bauchi Native Authority [1965] NLMR 343.
37. Section 112(9) ACJA 2015.
38. Ibid.
39. Section 219 ACJA 2015.
40. See Queen v. Eguabor [1962] 1 All NLR 287; Udesen v. State [2007] All FWLR (Pt. 356) 669.
41. See section 36(6)(e) of the 1999 Constitution.
42. Section 17(5) ACJA 2015.
43. Egunjobi v. FRN [2002] FWLR (Pt. 103) 896.
44. Section 36(8) of the 1999 Constitution.
45. See the case of Aoko v. Fagbemi [1961] 1 All NLR 400.
46. [1986] 1 QLRN 75.
47. Now section 36(12) of the 1999 Constitution.
48. See Section 36(9) of the 1999 Constitution.
49. Section 36(11) of the 1999 Constitution.
50. Kotoye v. CBN [1989] 1 NWLR (Pt. 98) 419.
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58. [2011] LPELR-8142 (SC).
59. Per Walter Samuel Nkanu Onnoghen, JSC (Pp 25 – 26 Paras F – C).
60. Emphasis is mine.
61. [1985] 1 SC 406.
62. [2004] All FWLR (Pt. 222)1652.
63. A corresponding section in the Criminal Procedure Act mandating compulsory legal representation in capital offence.
64. Section 349(3) ACJA 2015.
65. Ibid, Section 349(4).
66. Section 349(5) ACJA 2015.
67. Section 1 Legal Aid Act, 2011.
68. Ibid, Section 1(3).
69. Section 1(4) Legal Aid Act 2011.
70. Ibid, Section 8.
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