

My Lords, Worshipful Magistrates, Your Honours, Area Customary Court Presidents, Chairman and Executive Members of the Nigeria Bar Association, Ekpoma Branch, Learned Gentlemen of the Bar and distinguished Guest.

I am very delighted to be in your midst this morning as special guest of honour at the ceremony marking the annual law week of the Nigeria Bar Association, Ekpoma Branch. This occasion gives credence to the fact that your Association has come to stay as it is viable and effective. I note that the motto of this association is "Promoting the Rule of Law" and hence I am not surprised that in the realization and furtherance of this, the Chairman and his executive have chosen as theme for the Law Week "Modern Administration of Criminal Justice in Nigeria". This theme is most relevant at this time when the Governor of Edo State, Mr. Godwin Nogheghase Obaseki has only recently signed into law on the 20th March, 2018 the Criminal Justice Administration Law.

In exposition of the theme of this law week, I would like to commend the previous administration in Nigeria for passing into law the Administration of Criminal Justice Act in 2015. The states were soon to

catch up with the Act and Edo State after a lot of clamoring came on stream. Only last month, I issued directives for the implementation. There are set objectives for the application of this law which the officials and institutions engaged in justice delivery ought to bear in mind, first and foremost in my respectful view is the shift from the underlying philosophy of criminal justice administration from punishment of offenders to restorative justice and the protection of the larger society i.e. the rights and interest of the victims of crimes, and the defendants. It is to be noted that the new law refers to the offenders now as defendant not accused person. Thus the principles of Restorative Justice would have to be applied by Judges and other law enforcers. This seeks to respond to criminal behavior by balancing the needs of the community, the victims of crime and the offenders.

The above calls to memory the words of our revered JSC, Hon. Justice C. Oputa of blessed memory in the case of *Josiah V. State* (1985) NWLR (pt. 125) at 141 vis:

Justice is not a one-way traffic. It is not justice for the appellant only. Justice is not even a two way traffic. It is really three-way traffic, justice for the appellant accused of a heinous crime of murder. Justice for

the victim, the murdered man, the deceased whose blood is crying to heaven for vengeance and finally, justice for the society at large ó the society whose social norms and values had been desecrated and broken by the criminal act complained of.ö

I believe that the major objective in applying these principles and new law is to speed up the dispensation of justice. It is a notorious fact that the administration of justice is bedeviled by delays. One wonders why delay in trial of criminal cases has become endemic when Section 36(4) of the 1999 Constitution of the Federal Republic of Nigeria provides inter alia thus:

“ whenever a person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a **reasonable time** by a court or tribunal.ö

In my humble view, any case therefore that lingers for more than one year is gradually creeping into the unreasonable time period. It is not uncommon to find on the average criminal cases lasting for 5 years to 10 years with Lawyers watching on. With the coming into effect of the ACJL there is no room for “awaiting trial syndrome” in criminal justice

anymore in my honourable view. The cases that are brought before the Magistrates are only those over which they have jurisdiction. A cursory look at Part 12 i.e. Section 109-111 of the ACJL shows how a criminal case is instituted in both the Magistrates and High Court. In the Magistrate Court the charge filed by the prosecution shall be served on the defendant within 7 days or such time as the court may allow, the trial shall commence not later than 30 days from the date of filing and the trial completed within a reasonable time. If the trial is not commenced within 30 days or trial commenced but not completed after 180 days of arraignment on that charge, the court shall forward to the Chief Judge the particulars of the charge and reasons for failure to commence the trial or to complete the trial. A court seised with criminal proceedings shall make quarterly returns of the particulars of all cases, including charges, remand and other proceedings commenced and dealt with in his court within the quarter to the Chief Judge. Section 110(6) mandate the Chief Judge in reviewing the returns submitted to ensure that criminal matters are speedily dealt with no congestion of cases and decongestion of prisons.

The Administration of Criminal Justice Monitoring Committee is empowered to consider all returns made to the Chief Judge to ensure the expeditions disposal of case. It is noteworthy that the law also provides for the National Human Rights Commission to have access to the returns. The Comptroller General of Prisons is also expected under Section 111 of the law to make returns every 90 days to the Chief Judge of all those awaiting trial who is expected to take steps in addressing the issues raised in the returns in furtherance of the objective of the law. All other cases go directly to the High Court and there are time limit guiding that court for the hearing of cases.

On the question of arrests, it is true trite that the power to arrest any person can only be exercised in respect of offences established by a law of Edo State House of Assembly. The Police or person making the arrest shall actually touch or confine the body of the suspect unless there is a submission to custody by word or action. The person making arrest is bound to immediately inform the suspect the reason for the arrest. It is noted that the wording of Section 3 of the ACJL allows an arrest before investigation whereas the Constitution of Nigeria by Section 35 provides for the arrest of a suspect upon a reasonable suspicion. I agree with Prof.

Yemi Akinseye-George (SAN) in his explanation notes on the ACJA that the better approach consistent with good practice (I would say with developed nations) is to conduct some investigation into an alleged offence before arresting the suspect.

In making an arrest, the suspect shall be informed of his right to remain silent until after consultation with his legal practitioner or any other person of his choice. He has right to consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest and a right to free legal representation by the Legal Aid Council of Nigeria or other similar institutions. The authority having custody of the suspect shall have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect except where he refuses to disclose any address.

Justice Law ACJL before the National Assembly passed the Administration of Criminal Justice Act (ACJA) for the entire country.

Under the Administration of Criminal Justice Law (ACJL) some of the rights of suspect which will eventually lead to decongestion of our prisons are as follows:

Section 7 of ACJL prohibits the arrest in lieu. This innovation is a welcome development in that previously, parents brothers or other relations of suspects were arrested indiscriminately and charged to court for offences they knew nothing about in lieu of their relation.

Order 2 Rule 5 of the Practice Direction also provides that henceforth:

“In all courts except directed otherwise a charge sheet together with copies of proof of evidence, statement of evidence, list of witnesses and copies and list of exhibits/documents to be relied on t the trial shall be served on the defendant within 14 days of filing.”

This directive will no doubt end the delay hitherto experienced when the Police and the office of the DPP would not act timeously. With this time limit, the trial period is surely to be reduced.

Section 8 of ACJL also introduced a novelty to our laws i.e. humane treatment of suspect and defendants which before now, was visibly absent in our laws. This section as a matter of fact is a breakaway from the treatment of suspects to the inhuman treatment hitherto received from our law enforcement officers.

Section 8 ó A suspect shall:

- (a) Be accorded humane treatment, having regard to the right to the dignity of his person; and
- (b) Not to be subjected to any form of torture, crude inhuman or degrading treatment.

Added to this, is Section 8(2):

“A suspect shall not be arrested merely for a civil wrong or breach of contract”

The above provision of the law although it has been in our criminal law jurisprudence, couple with the fact that various jurists even at the apex court, have pronounced severally that civil wrong no matter the colouration will never, metamorphose to criminal wrong, but our daily experience show that the Police indulges in this practice. It is hoped that the law enforcement officers will adhere to this provision of the law to reduce prison congestion.

Section 29 of the law is also worthy of note:

29(1)õThe Commissioner of Police in Edo State and head of every agency authorized by law to make arrest within the State, shall remit quarterly to the Attorney-General of the

state a record of all arrest made with or without warrant in relation to state offences or arrest within the state.

29(2) The report shall contain the full particulars of arrested suspect as prescribed by Section 15 of this law. Relating to this section on measures put in place to ensure that the power hitherto exercised by the Police or those agencies in charge of arrest are controlled is Section 33 of the law.

“An Officer in charge of Police Station or an official in charge of an agency authorized to make arrest shall on the last working day of every month report to the nearest Magistrate the cases, of all suspects arrested without warrant within the limits of their respective station or agency whether the suspects have been admitted to bail or not.”

This section of the law is a complete departure from the previous practice where Police or other agencies in charge of arrest are the alter-ego in their respective domain. I am sure this will put them on their toes, that release or freedom of such suspects in their detention will not be to the whims and caprices of such officer. Section 34(1) of the law is a

measure put in place to discourage Police overcrowding Police cells under the guise of lack of transport, detaining suspects more than necessary for non availability of logistics.

30(1) The Chief Magistrate, or where there is no Chief

Magistrate within the Police division any Magistrate designated by the Chief Judge for that purpose, shall at least once every month, conduct an inspection of Police Stations or other places of detention within his territorial jurisdiction other than the prison.

(2) During a visit the Magistrate shall:

- (a) call for and inspect the record of arrest;
- (b) direct the arraignment of a suspect if any;
- (c) where bail has been refused, grant bail to any suspect where appropriate if the offence for which the suspect is held within the jurisdiction of the Magistrate.

Section 167(3) is another portion of the law that need to be discussed, that is allowing women to stand surety for suspect/defendant. There has been a convention within the law enforcement agent that denied women from standing as sureties. Before now there was no existing law that

forbids women from standing surety. But Police as part of their overbearing and uncontrolled influence on suspects has adopted this practice for so long. We are happy that the ACJL has pronounced copiously on this.

Section 167(3);

“A person shall not be denied, prevented or restricted from entering into a recognizance or standing as surety for any defendant on the ground that the person is a woman.”

There is no doubt that this section of the law will ensure women exercise their fundamental human right to the fullest in line with the practice in other climes. Also it will ensure that suspect/defendant are not unduly kept in detention, this will in the long run reduce congestion in our various prisons.

Section 469 of law is worth noting as means to ensure that justice system is adequately monitored i.e. establishment of the administration of criminal justice monitoring committee.

469(2) The Committee shall consist of:

- (a) The Chief Judge of the State who shall be the Chairman.

- (b) The Attorney-General of the State or is representative who shall not below the rank of a Director in the Ministry of Justice.
- (c) A Judge of the State High Court.
- (d) Commissioner of Police of the State or his representative who shall not be below the rank of a Superintendent of Police.
- (e) The Comptroller-General of the Nigeria Prisons Service or his representative who shall not be below the rank of Comptroller of Prisons.
- (f) A representative of the Executive Secretary of the National Human rights Commission not below the rank of Director.
- (g) The Chairman of any of the local branches of the Nigerian Bar Association in Edo State to serve for two years only.
- (h) The Director-General of the Legal Aid Council of Nigeria or representative not below the rank of Director.

- (i) The Executive Director of the office of the Public Defender in Edo State or his representative not below the rank of Director.
- (j) A representative of the Civil Society to be appointed by the Committee to serve for a period of two years only.

The functions of this Committee shall be as spelt out in Section 470 of the law.

470(1) The Committee shall be charged with the responsibility of ensuring effective and efficient application of the Act by relevant agencies.

(2) Without prejudice to the generality of subsection (1) of this section, the Committee shall ensure that:

- (a) Criminal matters are speedily dealt with.
- (b) Congestion of criminal cases in courts is drastically reduced.
- (c) Congestion in Prisons is reduced to the barest minimum.

- (d) Persons awaiting trial are, as far as possible, not detained in prison custody.
- (e) The relationship between the organs charged with the responsibility for all aspects of the administration of justice is cordial and there exists maximum cooperation amongst the organs in the administration of justice in Nigeria.
- (f) Collate, analyze and publish information in relation to the administration of Criminal Justice Sector in Nigeria and
- (g) Submit report quarterly to the Chief Judge of Edo State to keep him abreast of development towards improved criminal justice delivery and for necessary section.
- (h) Carry out such other activities as are necessary for the effective and efficient administration of criminal justice. Considering the above functions as it affect the administration criminal justice, there is no doubt this will reduce the delay in trial syndrome a drastic reduction in prison congestion.

For the purpose of this presentation, Section 396(7) of the law is very apt.

396(7) Notwithstanding the provision of any other law to the contrary, a Judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit as a High Court Judge only for the purpose of concluding any part-heard criminal matter pending before him at the time of the elevation and shall conclude the same within reasonable time.

Provided that this subsection shall not prevent him from assuming duty as a Justice of the Court of Appeal.

Finally, I will like to commend the initiative and ingenuity of the organizing committee of Law Week/Dinner of the Nigerian Bar Association, Ekpoma Branch, and I wish you all a fruitful law week celebration.

Thank you and God bless.

Hon. Justice Esohe Frances Ikponmwen, FCJJI
Chief Judge
Edo State