

Administration of Criminal Justice Act of Nigeria 2015: A Critique of Selected Legislative Expressions

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The important idea in legislative drafting is to say what you mean accurately, cohesively, clearly, and economically. ...ambiguity and confused expression tend to defeat the purpose of ... legislation... Clarity and simplicity ... begin with straightforward thinking and end with straightforward expression.¹

Introduction

The Administration of Criminal Justice Act (ACJA) 2015 is a significantly improved version of a merger of the Criminal Procedure Act (CPA)² enacted in 1945 and Criminal Procedure Code (CPC)³ enacted in 1960. These were the two principal statutes governing the administration of criminal justice in Nigeria prior to 2015. Though the CPA and CPC applied respectively in the Southern and Northern parts of the Country at the Federal and State levels and in all courts, they both applied in the Federal Capital Territory, Abuja. It was challenging having two different criminal laws for the North and the South of the Country. Besides, some of the provisions were obsolete and needed amendment to mirror the intention of the Constitution and societal changes. There was also evidence of outright abuse of the provisions of the laws by the police, prosecutors and lawyers.⁴

The ACJA, described as probably the most potent instrument of criminal justice administration for initiating change and restoring sanity to a degenerate society,⁵ was one of the Acts enacted in the dying days of the 7th National Assembly. It was enacted because the criminal justice system of the Country had lost its capacity to quickly respond to the needs of the society such as checking the rising rate of crime, speedily holding criminals accountable and protecting the victims of crime. It considerably preserves the existing criminal procedure system whilst introducing elaborate, innovative and revolutionary provisions. These provisions aim at promoting fairness, transparency, accountability and integrity of Nigeria's criminal justice processes and enhancing the efficiency and credibility of the criminal justice administration system in the Country.⁶ The Act is uniformly applicable in all federal courts across Nigeria.⁷

Going by how long its twin predecessors, the CPA and the CPC had endured and the perennial problem of delay in criminal justice administration accompanying their implementation, the ACJA is indeed an Act that was long overdue. Its enactment has heralded a sigh of relief by stakeholders, particularly the countless victims of criminal justice delay and denial. As good and as welcome as the Act is, however, it is evident that it is fraught with a significant measure of substantive and legislative expression gaps, which diminish its quality and affect its implementation. If these are not timely addressed, they may lead to further unintended outcomes.

This article is majorly concerned with the legislative expression gaps. Being a very long Act - 495 sections - many of which have several subsections and paragraphs, the paper cannot address all the gaps in this respect. It only randomly highlights and discusses a selection of them and provides relevant redrafts and suggestions. Following this introduction, the article clarifies concept in the next segment,

¹William P Statsky, *Legislative Analysis and Drafting* (2nd edn, West Publishing 1984) 162.

²Cap C41 Laws of the Federation of Nigeria 2010

³Cap C39 Laws of the Federation of Nigeria 2010.

⁴Adedeji Adekunle, 'An Overview of the Administration of Criminal Justice Act 2014'

<http://nji.gov.ng/images/Workshop_Papers/2016/Induction_Course/s11.pdf> accessed 23 March 2020.

⁵Yemi Akinseye George, 'The Administration of Criminal Justice Act 2015: An Overview in relation to criminal cases adjudication in the Federal High Court' <<http://www.censolegs.org/publications/4.pdf>> accessed 23 March 2020.

⁶Adeniyi Familoni, 'Understanding the New Administration of Criminal Justice Act 2015' (Nigeria Bar Association National Conference, Abuja, August 2015) 1.

⁷Yemi Akinseye George, 'Innovative Provisions of the Administration of Criminal Justice Act 2015' *The Nation Newspaper* (Lagos, 2 June 2015) 40.

after which it gives an overview of the ACJA. It then analyses relevant gaps in legislative expression to which it proffers solutions before concluding the article.

Clarification of Concept

Legislation plays an unrivalled role in the existence and sustenance of the society. It is the translation of the rules of human and governmental interactions into legal documents that command obedience. The process of drafting legislation is usually tedious; it involves concerted painstaking efforts in planning and execution. Language is a major tool in legislative expression; it comprises both written and unwritten expressions. Words, diagrams and symbols are key components of written expression. Modern legislative expression consists generally of words. This is accomplished through the appropriate employment of syntax, which is the arrangement of words and phrases to create well-formed sentences in a language.⁸

Syntax basically has to do with sentence structure, or word choice and order. The structure of a sentence or the choice and order of presentation of words determine the meaning that can be ascribed to any writing or speech. Improper sentence structure can result in unintended purposes, such as the failure of the audience to understand what is being communicated, or ambiguity i.e. uncertain or inexact meaning.⁹ Ambiguity can be semantic or syntactic.

Semantic ambiguity occurs when a word has more than one meaning e.g., 'a light truck'; does a 'light truck' mean light in weight or light in colour?¹⁰ What about a little bit more complex one like a 'light feather' considering the fact that a feather can either be light in colour and in weight; or any other colour, yet light in weight. So, does 'light' here mean light in weight or light in colour or both? Again, consider 'I give all my containers to Edidiong'; do containers here mean cargo container, a file format or a person that holds people in a reasonably calm state? Such ambiguity can be corrected by defining any term that might be subject to more than one interpretation.

Syntactic ambiguity is the result of unclear sentence structure or poor placement of words, phrases or clauses.¹¹ Consider this notice on a private property: 'Please do not ask permission to hunt'¹² Does this mean that anyone is free to hunt without asking for permission to do so or that hunting is strictly prohibited and so no one should bother asking for permission to do so? Consider this also: 'Because he was enraged, Mr. Angana ordered the teacher to discipline the student.' Who was enraged, Mr. Angana, the teacher or the student? Syntactic ambiguity can generally be resolved through a process of disambiguation¹³ - the removal of ambiguity by making something clear - by reordering the words, phrases or clauses in question.

⁸Oxford Dictionaries Online (Oxford University Press 2014). Syntax originated in the 16 Century from the French word *syntaxe* or Greek word *suntaxis*, which means arrange together <<https://en.oxforddictionaries.com/>> accessed 11 June 2020.

⁹Compact Oxford Dictionary of Current English (Oxford University Press 2005). Essentially, ambiguity exists when words can be interpreted in more than one way.

¹⁰H Xanthaki, 'On Transferability of Legislative Solutions: the Functionality Text' <www.researchgate.net/publication/265042905_on_Transferability_of_Legislative_Solutions_The_Functionality_Test> accessed 23 March 2020.

¹¹R Dickerson, *The Fundamentals of Legal Drafting* (Little-Brown 1986) 101 and 104 for the distinction between semantic and syntactic ambiguity.

¹²George C. Christie, 'Vagueness and Legal Language' 48 *Minnesota Law Review*, 885.

¹³M C MacDonald, N J Pearlmutter, and M S Seidenberg, 'The lexical nature of syntactic ambiguity resolution' (1994) 101(4) *Psychological Review* 676.

The problem of ambiguity accentuates the need for clarity in drafting, especially legislative drafting. Clarity is the state or quality of being clear and easily perceived or understood.¹⁴ It depends on the proper selection of words, on their arrangement and on the construction of sentences.¹⁵ Clarity is achieved through the use of plain English, which is distinguishable from legalese by its economy of words, lack of archaic or lawyerly phrases, relatively short sentences, use of active voice and action verbs, avoidance of nominalisation, drafting in the singular tense, use of present tense, use of simple words, avoidance of superfluous words, and use of gender neutral language, among others.¹⁶ Appropriate use of punctuation and paragraphing are also relevant to achieving clarity in all forms of writing. Achieving clarity should be the chief aim of every drafter.

The importance of appropriate use of language in legislative drafts cannot be overemphasised because there is a limit to which even the courts can go to decipher the true intent of a legislature in its attempt to ensure justice. This is evident in the court's declaration in *Barclays Bank of Nigeria Ltd v CBN*¹⁷ that

*In considering whether or not a Court has jurisdiction to entertain any claim, it is our view that while a person's right of access to the Courts may be taken away or restricted by statute, the language of any such statute will be watched by the Courts and will not be extended beyond its onerous meaning unless clear words are used to justify such extension.*¹⁸

Legislative expression in this article, therefore, has to do with sentence structure as it relates to choice or order of words as well as the relevant devices for achieving clarity in drafting.

Brief Overview of the ACJA 2015

The essence of the ACJA, as captured in the purpose clause in Part 1, is to provide for the administration of criminal justice system in Nigeria, which promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crimes and protection of the rights and interest of the suspect, the defendant and victims.¹⁹ This, as Akinseye-George observes, indicates 'a deliberate shift from punishment as the main goal of the criminal justice to restorative justice which pays attention to the needs of the society, the victims, vulnerable persons and human dignity.'²⁰

The Act is divided into 49 parts with 495 sections dealing with a variety of subjects that had previously bedevilled the criminal justice system and slowed down the wheels of justice. Among others, Part 2 addresses the critical issues of arrest, bail and preventive justice; Part 3 provides for the general authority to issue warrants and allied issues while Part 4 provides for prevention of offences and security for good behaviour. Part 5 is on proceedings in subsequent cases, subject to order to furnish security and Part 6 focuses on public nuisance. Part 7 deals with attachment of property where there is disobedience to summons or warrant while Parts 8 and 9 provide, generally, for criminal trial and inquiries. Parts 10 and 11 relate to the powers of the Attorney-General and his or her control of criminal proceedings while Parts 12-18 cater for institution of proceedings, appearance, service, validity of process, search warrants and related matters. Part 19 is on bail and recognizance while Part 20 covers ownership of property, including a wife's remedy against her husband as it relates to her person or

¹⁴Compact Oxford Dictionary (n 9).

¹⁵H Thring, Practical Legislation: The Composition of Language of Acts of Parliament and Business Documents (John Murray 1902) 61.

¹⁶Parliamentary Counsel Office, Chapter Three: 'Principles of Clear Drafting' <www.pco.govt.nz/cleardrafting> accessed 28 June 2020.

¹⁷[197] LPELR-751 (SC).

¹⁸ *ibid* [14, paras D-E] (Justice Williams, citing Halsbury's Laws of England, 4th Edn, Vol 10, para 720).

¹⁹S 1(1).

²⁰Yemi Akinseye-George 'An Overview of the Changes and Application of the Administration of Criminal Justice Act 2015' in Adedeji Adekunle, Suzzie Oyakhire and Chukwuemeka C Nwabuzor (eds), *Issues in Criminal Justice Administration in Nigeria* (NIALS 2016) 1-2.

property and their competence as witnesses. Parts 21-23 address the various ramifications of charges for offences, and Parts 24-27 deal with previous acquittals or conviction, attendance and examination of witnesses as well as their expenses.

Part 28 covers the controversial issue of plea bargaining and pleas, generally; Part 29 provides for the procedure to be adopted where a defendant or suspect is of unsound mind; and Part 30 takes care of the thorny issue of detention time limits. Part 31 is on presentation of case and conclusion of trial. Part 32 provides for costs, compensation, damages and restitution while Part 33 provides for custody, disposal, and restoration of property. Part 34 provides for seizure, forfeiture, confiscation and destruction of the instrumentality of crime while Parts 35-37 address the procedure in perjury, summary trials and trials by way of information. Part 38 relates to provisions on death sentence, Part 39 provides for pregnant woman convicted of capital offence while Part 40 deals with sentencing other than capital sentence. Parts 41-46 provide for detention in a safe custody other than prison or mental health asylum; deportation; child offenders, with specific focus on the procedure for trying child offenders; probation and the long canvassed for non-custodial alternatives, parole and the Administration of Criminal Justice Monitoring Committee.

The Act introduces innovative provisions that, if strictly applied, will enhance the efficiency of the criminal justice system. It builds on the existing framework of criminal justice administration in the Country while filling the gaps observed in this framework over the course of several decades. One of such innovative provisions is the abolition of the arrest of family and friends in lieu of the suspect as a means of compelling the suspect to submit to arrest, even when such family and friends are not connected with the alleged offence.²¹ If this provision is properly implemented, it has the potential to reduce prison and police cell congestion.

Another innovation is the requirement of electronic recording of confessional statements.²² This is a vital provision that is aimed at proving the voluntariness of a confessional statement and preventing its retraction by an accused person claiming it was obtained under duress. Such denial usually requires a trial within trial to resolve; a necessity that had compounded the problem of delay in criminal trials. The Act has been rightly criticised, though, for making the requirement of electronic recording of confessional statement discretionary by using 'may' instead of 'shall', which is mandatory. This creates a loophole which is susceptible to exploitation by not only the police, but other government departments involved in recording statement of suspects.²³

Thankfully, in *Nnaji for v FRN*,²⁴ though the Court acknowledged that the ordinary interpretation of 'may' is permissive, as established in a long line of cases,²⁵ it, nevertheless, held that the word 'may' in section 15(4) read along with section 17(1) and (2) is mandatory and not permissive. This position of the Court is in line with a long line of other cases that have held the word 'may' to be mandatory and not permissive.²⁶

This decision was based on the application of the mischief rule of interpretation in the light of the mischief which the ACJA set out to cure. Part of this mischief is the protection of the right of an accused, who, under the Constitution, is presumed innocent until proven guilty.²⁷

²¹S 7.

²²S 15(4).

²³Estine Okolo, 'Issues in the Administration of Criminal Justice Act 2015 – Opinion' <<http://investadvocate.com.ng/2016/10/21/issues-administration-criminal-justice-act-2015-opinion/>> accessed 23 March 2020. Section 494(1) of ACJA 2015 defines a police officer to include 'any member of the Nigeria Police Force established by the Police Act or where the context so admits, shall include any officer of any law enforcement agency established by an Act of the National Assembly.'

²⁴ [2018] LPELR-43925 (CA). See also *Charles v FRN* [2018] LPELR- 43922 (CA).

²⁵Such as *Messy v Council of the Municipality of Yass* [1922] 222 SRNSW 494 and *Michel v Baker* [1800] 44 Ch D 282.

²⁶Such as *R v Barrow* [1693] Carth. 293 cited in *R v Bishop of Oxford* [1879] 4 QBD 245, 258, *Edewor v Uwegba* [1987] 1 NWLR (Pt 50) 313, 339, *John v Igbo-Etiti LGA* [2013] 7 NWLR (Pt 1362) 1, 16 and *Coca-Cola (Nig) Ltd v Akisanya* [2017] 17 NWLR (Pt 1593) 74, 123.

²⁷Constitution of the Federal Republic of Nigeria 1999, Cap C23 Laws of the Federation of Nigeria (LFN) 2010, as amended, s36(5).

Note, however, that the general position of the courts is to interpret the words of any statute in its ordinary and literal meaning once they are clear and unambiguous. The only exception to this is where it will result in absurdity to do so as the Court of Appeal indicated in *Julius Berger (Nig.) Plc v Anizzeal Eng. Project Ltd.*²⁸ quoting with approval the Supreme Court's decision in *Araka v Egbue*²⁹ that –

The duty of the Court is to interpret the words contained in the statute and not to go outside the words in search of an interpretation which is convenient to the Court or to the parties or one of the parties. Even where the provisions of a statute are hard in the sense that they will do some inconvenience to the parties, the Court is bound to interpret the provisions once they are clear and unambiguous. It is not the duty of the Court to remove the chaff from the grain in the process of interpretation of the statute to arrive at favourable terms for the parties outside the contemplation of the lawmaker. This will be tantamount to travelling outside the statute in a voyage of discovery. This Court cannot embark upon such a journey.

This view reinforces the fact that the purpose of law is better served by using precise language. The intention of the lawmaker should be made as clear as possible. This is to avoid going through the rigors of the court process to determine the intention of the law over an issue that could easily have been resolved by the use of 'shall' as was done in other parts of the same section. This is more so since it is not every accused whose voluntary confessional statement is not electronically recorded that will have the opportunity of having such discretionary exercise of power by a police officer tested through the court process. Many such suspects would have ended up, and many more will still end up, not having the benefit of their rights protected in this regard. Clearly, the provision of section 9(3) of the Administration of Criminal Justice Law of Lagos State (ACJL), 2007, mandating the Police to ensure that confessional statements are recorded on video, and the said recording and copies filed and produced at the trial, is better.

Attendant to the challenge of electronic recording of suspects' confessional statement is the question as to whether the equipment required for recording the statement will be readily available and functional as and when needed. Incidentally, ACJA 2015 has no answer for this eventuality, except to provide that notwithstanding the provision of section 15(4), 'an oral confession of an arrested person shall be admissible in evidence'.³⁰ This provision significantly undermines the mischief sought to be addressed by section 15(4). Again, section 9(3) of the ACJL of Lagos State preventively addresses such situation where a video facility may not be available. The section mandates that the statement should be made in writing in the presence of a legal practitioner of the suspect's choice.

The ACJA deliberately mainstreams human rights and protection of vulnerable persons by elaborately providing for the need to treat arrested persons humanely.³¹ It equally outlaws malicious instigation of the arrest, detention and prosecution of another because of civil wrong or contract.³² This is a very welcome development as it had become rampant in Nigeria for the police and other law enforcement and security agencies to be used to settle such matters, which were clearly outside their call of duty.

Also noteworthy is section 396(3)-(5) requiring a day-to-day trial from arraignment till the conclusion of trial, reducing total adjournments throughout the trial to not more than five for each party, with interval between adjournments not exceeding 14 working days. Where it is impracticable to conclude the trial within the given number of adjournments and interval, additional adjournments may be granted at intervals not exceeding seven days, including weekends. Incessant, and often avoidable, adjournments have been the bane of timely criminal justice delivery in Nigeria. A strict adherence to the provisions of

²⁸ [2013] LPELR-20694 (CA).

²⁹ [2003] MJSC 17.

³⁰ S 15(5)

³¹ S 8. This accords with the provisions of the 1999 Constitution, as amended s 34; Principle 1, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UNGA Resolution 43/173 of December 1988; Article 5 Universal Declaration Human Rights, 1948; Article 7 International Covenant on Civil and Political Rights, 1966; and Article 5 African Charter on Human and Peoples' Rights, 1981.

³² S 8(2).

this section will remarkably speed up criminal justice administration. The flip side of this provision, however, is that it could result in the maintenance of the status quo, especially with a judge that is not disciplined enough to take proper control of proceedings in his or her court. This is because the provision on additional adjournments does not peg the number of such adjournments.

Again, it could result in criminal matters being struck out for want of diligent prosecution because of the frequently shoddy way prosecution is conducted by some prosecutors who rush to court without proper investigation and preparation. This often leads to unjustified requests for further adjournments as evident in Ubani's lamentation on the effect of incessant adjournments of cases on criminal trials –

The worst scenario is now at the various High Courts and Federal High Courts across the federation. To be sincere I am handling some of these cases in the High Court, Lagos State presently in which I think if the prosecution should come up with diligent handling, the defendants should smell the rod in Correctional Centres.³³

Yet another novel provision of the Act is section 396(7). The provision allows a Judge of the High Court, who has been elevated to the Court of Appeal, to continue to sit as a High Court Judge in order to conclude any part-heard criminal matter pending before him or her at the time of the elevation. Such a judge must conclude the matter within a reasonable time, provided this does not prevent him or her from taking up the new post. This offers a great relief to parties to such cases as it mitigates the waste of efforts, time and resources suffered when such elevation occurred in the past and the case had to start afresh before another judge. The practice of having such cases start afresh before a new judge contributed to the prolonged duration of many criminal cases in the courts.³⁴

Incidentally, Section 396(7) ACJA has recently been held by the Apex Court, the Supreme Court of Nigeria, to contradict and challenge the letters, substance and spirit of section 290(1) of the 1999 Constitution. Therefore, it is to the extent of such inconsistency void by virtue of section 1(3) of the Constitution.³⁵ According to the Court, the effect of section 290(1) of the 1999 Constitution, as amended, is that a Judge elevated to a higher Court has ceased to be a Judge of the Court from which he or she was elevated. Such a judge has, by that appointment, been deprived of the jurisdiction to conclude the hearing of the case before him or her at the Court from where he or she was elevated. The Supreme Court, in arriving at this decision, followed its earlier decision in *Ogbunyinya & Ors v Okudo & Ors*³⁶ and affirmed in *Our Line Ltd v S.C.C Nigeria Ltd & Ors*.³⁷ This is a serious drawback on the relevance of this provision and the grounds so far gained through its application. It also reveals the significant gap of failure to take adequate cognisance of constitutional provisions in the enactment of the law. Resolving this problem may require the National Assembly amending the relevant sections of the Constitution to accommodate this novel provision of the Act. This is not an easy task going by the stringent requirement for constitutional amendment in Nigeria.³⁸

The responsibility for ensuring compliance with the provisions of the Act for the realisation of its goal rests with the courts, law enforcement agencies and other authorities or persons involved in criminal justice administration.³⁹ The responsibility for making arrangements and rules to enhance the proper application of the Act rests on the shoulders of heads of Federal courts, including the Chief Judge of the Federal High Court.⁴⁰

³³Monday O Ubani, 'We need to save Nigeria from the criminal justice sector', Opinion, Gavel International <<https://thegavel.com.ng/2020/02/26/8300/>> accessed 23 March 2020.

³⁴See Fatima Waziri-Azi, 'Compliance to the Administration of Criminal Justice Act, 2015 in Prosecution of High Profile Corruption Cases in Nigeria (2015-2017)' (2017) 5(2) Journal of Law and Criminal Justice 113 (noting that 'Nigeria has a history of slow dispensation of justice; trials could remain in court for as long as ten years without making any progress with all sides exploiting the loopholes in the laws').

³⁵Ude Jones Udeogu v Federal Republic of Nigeria & 2 Ors Suit No. SC. 622c/2019.

³⁶[1979] NSCC 77.

³⁷[2009] 17 NWLR (Pt. 1170) 383.

³⁸1999 Constitution (n 27) s 9.

³⁹S 1(2).

⁴⁰S 490.

A Critique of Selected Legislative Expressions

This critique is done under specified relevant heads that fall within the scope of the discourse as clarified under conceptual clarification.

The Use of Inappropriate Words

Section 3 on 'Arrest generally' provides –

*'A suspect or defendant alleged or charged with committing an offence established by an Act of the National Assembly shall be arrested, investigated, **inquired into**, tried or dealt with according to the provisions of this Act, except otherwise provided under this Act.'*

The highlighted phrase 'inquired into' is inappropriately used as a person cannot be inquired into. A person's action or a state of affairs may be inquired into following stipulated procedure. The use of 'investigated' in the provision is appropriate and enough, as to investigate also means to inquire. The use of both words in this instance, therefore, also amounts to tautology.

Section 4 on 'Mode of arrest' provides –

'In making an arrest, the police officer or other persons making the arrest shall actually touch or confine the body of the suspect, unless there is a submission to the custody by word or action.'

The word 'actually' is not a language of law. By this provision, in arresting an offender, whether during the commission of an offence or on suspicion of committing an offence, a touch is required unless there is a voluntary submission to arrest. A touch is a touch, even though the means of doing so may differ, but this provision is not about the means of touching. So, the person being arrested is either touched or not touched. The use of 'actually', in addition to not being a legislative language, adds nothing to the provision and, so, is unnecessary.

Section 96 on 'Offence commenced and completed in different states'

Where an offence:

- (a) is commenced in a State and completed in another State, or
- (b) is completed in the Federal Capital Territory, Abuja after being commenced in another State,

'the suspect may be dealt with, tried and punished as if the offence had been actually or wholly committed in any of the States, or Federal Capital Territory, Abuja.'

Again, the use of 'actually' is irrelevant and inappropriate. The use of "wholly committed" fully represents the intention of the provision. There is neither a parallel between the words 'actually' and 'wholly' nor are they alternatives to each other. 'Actually' relates to reality, truth or fact, while 'wholly' relates to completely, totally or entirely. Also, there should have been a comma after 'Abuja' in subsection (b).

Section 457 (1) on 'Duties of a probation officer'

A probation officer shall, subject to the directions of the court:

where the person on probation is not actually with the probation officer, visit or receive reports on the person under supervision at such reasonable intervals as may be specified in the probation order or subject as the probation officer may think fit;

Again, the use of "actually" here is inappropriate and unnecessary. If the person on probation is not with the probation officer, then he or she is not with the officer. There is no other way of being with him or

her – whether in spirit or by implication, hence, the requirement for a visit or receipt of report regarding him or her.⁴¹

Ambiguity

Section 6 on Notification of cause of arrest and rights of suspect

6(2) The police officer **or** the person making the arrest **or** the police officer in charge of a police station shall inform the suspect of his rights to:

(a) remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of **his** own choice;

A suspect's right to silence is guaranteed in section 35(2) of the Constitution.⁴² The pronoun 'his' in subsection (2)(a) is ambiguous as it is not certain whether it refers to the police officer, the person making the arrest, the police officer in charge of the police station or the suspect. Even though, by implication, it makes more sense to infer that it applies to the suspect, the couching of the subsection can ordinarily be subject to more than one interpretation. Such loop hole should not be allowed in legislation. Compare this provision with that of section 35(2) of the Constitution which has the same intent, but clearly couched in a way that raises no ambiguity. Section 35(2) '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.'

The ambiguity in section 6(2)(a) could easily have been cured by replacing 'his' with 'the suspect'. Also, the 'or' between 'officer' and 'the' in line one of 6(2) is repetitive, a comma would have been more appropriate there.

Section 11 on 'Examination of arrested suspect'

11 Where a suspect is in lawful custody on a charge of committing an offence of such a nature and alleged to have been committed in such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence, a qualified medical practitioner or any certified professional with relevant skills, acting at the request of a police officer, may make such an examination of the suspect in custody as is reasonably necessary in order to ascertain the facts which may afford the evidence, and to use such force as is reasonably necessary for that purpose.

This provision does not follow the modern standard for the construction of legislative sentence, which requires that a sentence starts with the legal subject: the police officer. The language is legalese, verbose and, to an extent, ambiguous. The sentence is long and windy (106 words). It can be made more concise by removing unnecessary words.

The ambiguity in the sentence is evident in the following portions –

'... that there are reasonable grounds for believing that an examination of his person...' To whom is this belief ascribed: the police officer, the victim(s), or witnesses of the alleged offence? Such passive voice provision that fails to specify the person to whom the belief is ascribed creates implementation problem. The provision needs to clearly specify the person to whom the belief is ascribed.

'...and to use such force as is reasonably necessary for that purpose.' Who is to use such force: the police officer, the medical practitioner or certified professional, or both?

⁴¹See Ss 6(1), 276(2) and 436(h) of the Act on more inappropriate use of 'actually'.

⁴² 1999 Constitution (n 27).

Suggested redraft

11(1) A police officer, who reasonably believes that an examination of the person of a suspect in lawful custody will produce evidence as to the commission of the offence by the suspect, may request a qualified medical practitioner or a certified professional with relevant skills, to examine the suspect for the purpose of getting such evidence.

(2) Necessary force may be used for the examination.

Section 11(2) as presented above remains passive, not having named the person who is to use the force. This is because one still cannot tell from the original provision whether it is the police officer, or the medical practitioner or certified professional, or both. Assuming the police officer is the intention of the law, a more appropriate provision would be –

(2) The police officer may use necessary force for the examination.

If the medical practitioner or certified professional is the intention of the law, it would be –

(2) The medical practitioner or certified professional may use necessary force for the examination.’

In reality, the medical practitioner or certified professional is the person conducting the examination. One would ordinarily ascribe the use of force to him or her, but it is unusual to envision a medical practitioner or professional applying force to an examinee (except in psychiatric cases, which this is not). It is more appropriate to associate the police with the use of force than a medical practitioner or professional. Consequently, one may take it that the intention of the law is that while the police applies the force, if necessary, the medical personnel conducts the examination.

Whichever way, the law will need to be amended to specifically clarify this ambiguity.

Long Sentences

Long sentences are often a function of one or a combination of the following: cramming of more than one idea in a sentence, the use of unnecessary words, the use of a chain of words for a general word and repetition of words for emphasis. Long sentences tax readers and either keep them in suspense or make them lose interest in what is being said. The modern trend in legislative drafting, and indeed legal drafting, generally, is to make sentences as concise as possible. The ways to achieve this include avoiding unnecessary words and phrases, using a general term for a chain of words that convey the same meaning or substituting a single defined expression for a string of words. Cross referencing could also be employed, where appropriate.

The utility of short sentences as opposed to long ones is evident in Crabbe’s observation that ‘[t]he ability to write short simple sentences devoid of ambiguity and distracting surplusage is a pre-requisite as well as a style that is both concise and simple leaving a minimum of opportunity for individual difference of opinion.’⁴³ In effect, the shorter a sentence is, the lesser the likelihood of ambiguity and unnecessary words.

One example of provisions in this category include:

Section 12 on ‘Search of place entered by suspect sought to be arrested’

12(1) Where a person or police officer acting under a warrant of arrest or otherwise having authority to arrest, *has reason to believe* that the suspect to be arrested has *entered into or is within* any house or place, the person residing in or being in charge of the *house or place* shall, on demand by the police officer or *person acting for the police officer*, allow *him* free access to the *house or place* and afford all reasonable facilities to search the *house or place* for the suspect *sought to be arrested*. (92 words).

⁴³ VCRAC Crabbe, ‘The Role of Parliamentary Counsel in Legislative Drafting’ Document No 11 (UNITAR Sub-Regional Workshop on Legislative Drafting for African Lawyers, Kampala, March 2000) 8.

This provision is unnecessarily wordy. All the italicised words indicate the presence of nominalisation, the use of a chain of words for a single word, unnecessary duplication of words and superfluous words. It also fails the test of a standard sentence structuring.

A more concise and properly structured redraft could be –

12(1) A police officer or person having a warrant of arrest or otherwise authorised to arrest, who *believes* that the suspect is within *any premises*, may demand entry into the premises and the person residing in or in charge of the premises, shall allow *the officer or the officer's representative* free access to the premises and *provide assistance* to search the premises for the suspect. (64 words).

Also,

12(2) Where access to a house or place cannot be obtained *under subsection (1) of this section*, the person or police officer may enter the *house or place* and search it for the suspect *to be arrested*, and in order to effect an entrance into the *house or place*, may break open **any outer or inner door** or window of any *house or place*, whether that of the suspect *to be arrested*, or of any other person or otherwise effect entry into such *house or place*, if after notification of his authority and purpose, and demand of admittance duly made, he cannot obtain admittance.' (103 words).

All the italicised phrases are superfluous and can be jettisoned without affecting the intent of the provision. The repeated phrase 'house or place' can be replaced with the word 'premises'. The phrase in bold can simply be replaced with 'any door' as it makes no difference whether it is an outer or inner door that is broken.

A redraft

12(2) A police officer or person who, after due notification of his authority and purpose, and demand for entrance into any premises in order to arrest a suspect, fails to obtain admittance into the premises, may break open any door or window of the premises or otherwise effect entry into such premises in order to search *the premises* for the suspect. (60 words).

Indeed, the italicised 'the premises' in this last line can still be removed without affecting the meaning of the provision.

Marginal Notes

Marginal notes, also known as side notes, shoulder notes or section headings⁴⁴ are brief descriptions of the content of sections of an Act. They give a user a quick view and understanding of the content and scope of the Act. They also help users to quickly direct their attention to relevant provisions of the Act.⁴⁵ They, thus, help in fulfilling the principle that law should be accessible and comprehensible to all.⁴⁶

The rules of their application include: they are assigned only to sections and not subsections, paragraphs and subparagraphs; they must be concise - generally a maximum of six to eight words - and accurate; the language must be consistent with those of the sections to which they refer; and must be couched in lower case, except for the first word, which is in initial capital.

Many of the marginal notes in the ACJA do not meet the test of conciseness as evidenced in the following selected sections for which suggested redrafts have been offered.

Section 14 'Arrested suspect to be taken immediately to police station'

Suggested redraft: 'Arrested suspect to be taken to police station'

⁴⁴Ian McLeod, Principles of Legislative and Regulatory Drafting (Hart Publishing 2009) 24

⁴⁵Gordon Stewart, 'Legislative Drafting and the Marginal Notes' (1995)16(1) Statute Law Review 21.

⁴⁶ibid

Section 26 'Arrest for offence committed in presence of Judge, Magistrate or Justice of the Peace'

Suggested redraft: 'Arrest for offence committed before judicial officer'

Section 267 'Conduct of cases by legal practitioner for complainant or for defendant'

Suggested redraft: 'Complainant or defendant's right to legal representation'

Section 288 'Procedure when defendant of unsound mind is reported to be able to make his defence'

Suggested redraft: 'Procedure for defence by defendant of unsound mind'

Section 298 'Court may bring up person remanded or make any order during remand'

Suggested redraft: 'court order during remand'⁴⁷

Section 101: The marginal note reads 'Transfer of case where cause of complaint has arisen out of jurisdiction of court'

Apart from the fact that this marginal note is too long (14 words), it does not accurately capture the essence of the section with regards to the issue of custody as seen in the provision reproduced below-

'Where a suspect is:

- in custody and the court directing a transfer thinks it expedient that the custody should be continued, or
- not in custody, that he should be placed in custody,

the court shall, by its warrant, commit the suspect to prison, subject to such security as it may deem appropriate in the circumstances, until he can be taken before a court wherein the cause of complaint arose.'

Suggested redraft: 'Custody pending transfer of case outside jurisdiction'

Paragraphing

Paragraphing is a drafting device that aids clarity. It makes for an orderly presentation of statutes that assists readers to understand the structure and content of the statutes. Section 101 has been deliberately placed last in the immediately preceding segment because of further observation on paragraphing which is discussed in this segment. One of the rules of paragraphing is that the provisions in the paragraph must be consistent with the introductory or umbrella words down to the conclusion. The flow of the introductory words through each of the provisions in the paragraph to the conclusion must be grammatically correct and coherent.⁴⁸ This is not the case with paragraph (b) of section 101. A combination of the introductory word through paragraph (b) to the conclusion reads –

'Where the suspect is:

(b) not in custody, that he should be placed in custody,

the court shall, by its warrant, commit the suspect to prison, subject to such security as it may deem appropriate in the circumstances, until he can be taken before a court wherein the cause of complaint arose.'

This error can be cured by adding 'and the court thinks it expedient' after 'not in custody' so that the section then reads –

⁴⁷See also, ss 324, 328, 407, 415, 424, 425, 433, 440, 454 etc for more examples.

⁴⁸For more on paragraphing, including the guidelines for its application, see G C Thornton, *Legislative Drafting* (4th edn, Tottel Publishing 1996) 61-65.

'Where a suspect is-

- in custody and the court directing a transfer thinks it expedient that the custody should be continued, or
- not in custody, *and the court thinks it expedient* that he should be placed in custody,

the court shall, by its warrant, commit the suspect to prison, subject to such security as it may deem appropriate in the circumstances, until he can be taken before a court wherein the cause of complaint arose.'

Better still, the section could be redrafted as follows –

'Where the court directing a transfer thinks it expedient that a suspect who is-

in custody should remain in custody; or

not in custody should be placed in custody,

the court shall, by its warrant, commit the suspect to prison, subject to such security as it may deem appropriate in the circumstances, until he can be taken before a court *in the jurisdiction* where the cause of complaint arose.'

Note the addition of the phrase in italics, which has been added in this redraft to more clearly reflect the intention of the drafter as the original provision '...until he can be taken before a court wherein the cause of complaint arose' implies that the cause of complaint (more appropriately 'cause of action') arose in the court itself as against a location within the jurisdiction of the court.

Consider also section 107(3) which provides –

(3) Where the suspect is not:

(a) before the court when the discontinuance is entered, the registrar or other proper officer of the court shall immediately cause notice in writing of the entry of the discontinuance to be given to the officer in charge of the prison or other place in which the suspect may be detained and the notice shall be sufficient authority to discharge the suspect; or

(b) in custody, the court shall immediately cause notice in writing to be given to the suspect and his sureties *and shall in either case cause a similar notice in writing to be given to any witness bound over to prosecute.*

This paragraph is also erroneously drafted. The italicised portion is applicable to both paragraphs (a) and (b) and should not have been made part of paragraph (b) only. It should have been set out separately in a way that shows that it applies to both paragraphs.

A suggested redraft-

(3) (a) Where the suspect is not-

(i) before the court when the discontinuance is entered, the registrar or other proper officer of the court shall immediately cause [a] notice in writing of the entry of the discontinuance to be given to the officer in charge of the prison or other place in which the suspect may be detained and the notice shall be sufficient authority to discharge the suspect, or

(ii) in custody, the court shall immediately cause [a] notice in writing to be given to the suspect and his sureties;

(b) The court shall, in either of the cases in (3)(a) cause a notice in writing of the entry of the discontinuance to be given to any witness bound over to prosecute.

Wrong Grammar, Incomplete Sentence and Solid Block Provision

Section 17 on 'Recording of statement of suspect'

(1) Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.

The highlighted word, 'so', is superfluous.

(2) Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice. *Provided that the [l]legal [p]ractitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.*

The full stop preceding the italicised portion of this subsection starting with 'Provided' makes the highlighted portion an incomplete sentence. The appropriate punctuation mark should have been a comma instead of a full stop. A wrong application of punctuation marks distorts legal drafts. Punctuation should, as such, not be used arbitrarily but purposefully, especially as it forms part of an enactment and is taken into consideration in the interpretation of an enactment.⁴⁹

Also, the solid block subsection would be clearer and better understood if presented in a numbered paragraph as follows –

- (2) (a) Such statement may be taken in the presence of a legal practitioner of his choice; or
- (b) Where he has no legal practitioner of his choice, in the presence of-
- (i) an officer of the Legal Aid Council of Nigeria,
 - (ii) an official of a Civil Society Organization,
 - (iii) a Justice of the Peace, or
 - (iv) any other person of his choice,

provided that the legal practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.

It could also be alternatively presented as follows –

- (2) (a) Such statement may be taken in the presence of a legal practitioner of his choice; or
- (b) Where he has no legal practitioner of his choice, in the presence of-
- (i) an officer of the Legal Aid Council of Nigeria,
 - (ii) an official of a Civil Society Organization,
 - (iii) a Justice of the Peace, or
 - (iv) any other person of his choice.

The legal practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.

Additionally, there is a problem with the content of this proviso segment of this provision presented in this suggested alternative draft as subsection (c). The implication of the concluding clause 'except for the purpose of discharging his role as a legal practitioner' is that every person mentioned in the provision – officer of the Legal Aid Council, official of a Civil Society Organization, a Justice of the Peace or any

⁴⁹ Interpretation Act Cap I23 Laws of the Federation of Nigeria (LFN) 2010, s 3(1).

other person of his choice is a legal practitioner. In reality this is not likely to be the case. Apart from an officer of the Legal Aid Council, all the other categories of persons mentioned may not be lawyers; yet only a lawyer can, under any circumstances, discharge his role as a legal practitioner. Clearly, this subsection needs to be amended to correct this error.

Clarity and Inconsistency

Section 18 on 'Arrest by police officer without warrant'

(1) A police officer may, without an order of a court and without a warrant, arrest a suspect:

(g) having in his possession without lawful excuse, the burden of proving which excuse lies on such person, any implement of housebreaking, car theft, firearm or any offensive or dangerous weapon;

This draft is awkward. It is structurally defective in that it unduly separates the verb (nominalised here as 'having in his possession') and its object ('any implement of housebreaking, car theft, firearm or any offensive or dangerous weapon') with modifiers ('without lawful excuse, the burden of proving which excuse lies on such person').

A better draft would be –

18(1) A police officer may, without an order of a court and without a warrant, arrest a person suspected of-

(g) possessing any implement of housebreaking, car theft, firearm or any offensive or dangerous weapon without lawful excuse; the burden of proving lawful excuse lies on such person;

This is clearly a reverse onus provision, which requires a person in possession of something to prove lawful possession. It is an exception to the general rule that he who alleges is the one to prove.⁵⁰

Section 82 on 'Restoration of attached property'

(1) Where within one year from the date of the attachment, a suspect, whose property is or has been at the disposal of the Court under section 80 of this Act, appears voluntarily or being arrested is brought before the Court and proves to its satisfaction that he:

(a) did not abscond or conceal himself for the purpose of avoiding execution of the warrant; and

(b) had no notice of the public summons or warrant as to enable him to attend within the time specified therein, *that property, so far as it has not been sold, and the net proceeds of any part of it which has been sold* shall, after satisfying from the proceeds all costs incurred in consequence of the attachment, be delivered to him.

There is inconsistency in the italicised portion of this provision. If, in one breath, the property has not been sold, how can it, in another breath, refer to any part of it which has been sold? The provision needs to be clarified.

Though language is the tool of communication, to the drafter's chagrin, the use of language is not, and cannot be, an exact science. As Thornton observes '[d]espite the riches of the immense vocabulary of the English language, it has tremendous potential for vagueness, ambiguity, nonsense, imprecision, inaccuracy and indeed all the other horrors recognised by the legislative drafter.'⁵¹ As has been illustrated in this segment, this drafter's pain is clearly evident in some sections of the ACJA 2015. This impacts negatively on the quality of the Act, making the need for necessary amendment evident. The testing of more of these provisions in court, as the need arises, will show how far this goes in practice.

⁵⁰*Basaki v State* [2011] LPELR-4859 (CA), *Joseph v State* [2017] LPELR-43614(CA), *Auta v The State* [2018] LPELR-44490(CA).

⁵¹Thornton (n 48) 2.

CONCLUSION

The ability of any legislation to achieve the goal of government to effectively govern in the modern democracy depends largely on the quality of the legislation, and its capacity to meet the society's expectations and needs at every point in time. Language is the tool of communication. Legislative competence requires a good mastery of the use of written language, the proper application of which impacts the quality of law. The legislative drafter must, as such, strive to be a craftsman in the use of language.

This article has given an overview of the ACJA 2015. It acknowledges the Act as a most welcome enactment that has made several innovative provisions aimed at addressing the many gaps in the CPA and CPC which had long plagued Nigeria's administration of criminal justice system. More significantly, the article examines certain legislative expressions in the Act. It indicates the gaps in these legislative expressions, provides relevant analyses and proffers alternative redrafts and suggestions.

The article notes that as good and welcome as the ACJA is, it is evident that it is fraught with a significant measure of substantive and legislative expression gaps. One significant gap in the Act is its failure to have sufficiently taken cognisance of critical constitutional provisions. This is seen in the recent decision of the Supreme Court in *Ude Jones Udeogu v Federal Republic of Nigeria & 2 Ors*,⁵² which nullified the provisions of section 396(7) of the Act as inconsistent with section 290(1) of the Constitution.⁵³

The identified gaps diminish the quality of the Act. A timely amendment is needed to address the shortcomings highlighted here and many others which could not be dealt with in this article. If these gaps are not timely addressed, they may lead to more unfavourable and unintended outcomes, which will impact negatively on the overall implementation of the Act.

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⁵² Suit No. SC. 622^c/2019 (n 35).

⁵³ 1999, as amended.