

# THE WHITE COLLAR

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## The Silent Revolution: the Administration of Criminal Justice Act 2015

May 15 seemed an innocuous day as any other in May. While all eyes were trained on May 29, the new administration, and new political players emerging, the most significant upturn of

Nigerian rights in nearly two decades actually took place exactly 2 weeks before, on May 15. It is hard to imagine that one presidential election, 29 gubernatorial elections, hundreds of elections to the Senate and House of Reps after, and the greatest changes in Nigerian civil liberties since perhaps the 1999 Constitution passed with the silent stroke of a pen - the Administration of Criminal Justice Act 2015, signed into law as one of former President Jonathan's final official acts.

This one law has the power to affect Nigerians in their day-to-day lives perhaps more than any other piece of legislation since the beginning of the Fourth Nigerian Republic on May 29 1999. Yes, I dare say it is that significant.

### Police Powers-Big Changes

A young man walking out of a Cyber Café is stopped randomly by a Police Officer rounding off students, and asked this question- "What is your name?" A simple enough question, but anyone who has been in this situation before will know that the wrong answer may be the difference between a few minutes of conversation and a night wearing trousers inside out and unwanted intimacy with mosquitoes in a Police cell.

**Section 19(1) and (3) of the Administration of Criminal Justice (ACJ) Act 2015** have the effect of making the refusal of an individual to give their name or to give a name which the Police Officer 'believes' to be false on the request of the Officer an offence for which that person can be arrested and be held for up to 24 hours. Of course the immediate question is "Why wouldn't a person give their name if asked by a Police Officer?" but the truth is there are as many legitimate reasons and circumstances to withhold personal information as there are obligations to give it upon demand.

The correct question is not whether the power to request the information and remand consequently should exist nor is it even whether a person should have the equally essential right to decline answering, but rather whether these powers and rights are exercised within a framework that is open to the transparent and accountable measure of their use and execution in accordance with the spirit of the purposes for which they exist.

What the ACJ Act attempts to do is set out plainly the powers and obligations for the establishment and maintenance of a system of successfully administering public law and order. It also attempts, by some discernible means, to balance these powers against the equally important need to protect the Nigerian's right to liberty. For most intents and purposes it is a leap in the right direction, considering that the laws it replaced, **the Criminal Procedure Code (CPC) 1963 and the Criminal Code Act (CPA) 1945** are laws from a different period of Nigerian society and the fact that it consolidates the two former regions of Northern and Southern Nigeria governed by the **CPC** and **CPA** respectively into one.

The valiant attempt to represent rights as essential entitlements of Nigerians must be acknowledged, and yet the contradiction of this effort is evident because the "proof of the pudding" is in relying on such rights- and it appears that in the ACJ Act while public powers are real and enforceable, rights and liberties are simply a representation of "goodwill" rather than concrete enforceable entitlements.

### Leaps and Bounds for Criminal Justice



The ACJ Act by itself introduces some innovative and forward-looking provisions while maintaining many of the more progressive provisions of the old laws. For instance **section 6(1)** requires that:

*"except when the suspect is in the actual course of the commission of an offence or is pursued immediately after the commission of an offence or has escaped from lawful custody, the police officer or other persons making the arrest shall inform the suspect immediately of the reason for the arrest."*

**Section 7** ensures that the unfortunate practice where a person unrelated to a crime is arrested in lieu of another is prohibited, and **Section 8(2)** prevents the Police from being used as debt collectors to arrest parties in commercial disputes when it states:

*"A Suspect shall not be arrested merely on a civil wrong or breach of contract."*

**Section 9(1)(a)** also maintains that the search of a suspect will only be carried out with the use of "Reasonable Force" necessary for the purpose.

What these provisions demonstrate is the recognition of the need for a measured and standardised use of these powers that is transparent and removed from arbitrary abuse. However the real issue to be examined is not just the mere representation of the protections but the real safeguards to maintaining and enforcing them. For instance the term "reasonable grounds to believe" required in section 9(2) preventing the arbitrary search of a Suspect, becomes a necessity for the exercise of the power to search a Suspect, but how is it proved by an officer? Does he merely state he has "reasonable grounds to believe" or should there be a procedure supporting the requirement? Or is the requirement for such belief simply spurious in the provision and not intended to be evaluated?

Another instance where it becomes important to evaluate acceptable standards of practice and the use of these powers is during the actual conduct of a search. **Section 9(3)** requires that it be carried out "decently" so the pertinent questions to follow will be "What does it mean to carry out a search decently?" and "What is the consequence of not doing so if the intent is to protect the Suspect from abuse?" Where these questions are not answered sufficiently by the law it simply gives room to be overlooked or worse- be designated as irrelevant and so never hope to actually protect those it was meant to.

### Efficiencies and Oversight

It is widely reported that 70% of inmates

on remand in Prisons or in Police custody are awaiting trial. This is one of the greatest indictments on our criminal justice system and a travesty of law. It is a breach of Fundamental Human Rights, which we have unfortunately become too familiar and comfortable with and now accept as necessary. This explains why the ACJ Act attempts to remedy the situation with a number of new oversight provisions.

**Section 29(1)** requires that "the Inspector-General of Police and the head of every agency authorised by law to make arrests shall remit quarterly to the Attorney-General of the Federation a record of all arrests made with or without warrant in relation to federal offences within Nigeria."

**Section 33(1)** in the same vein stipulates "An officer in charge of a police station or an official in charge of an agency authorised 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 stations or agency whether the suspects have been admitted to bail or not."

**Section 34** similarly requires a Magistrate's Court Judge designated for the purpose to visit Prisons or remand centres within his territorial jurisdiction.

### A Central Criminal Registry

In modern day Nigeria a person may commit a crime in Kaduna escape from the state and simply relocate to, say, Lagos and live without fear of being apprehended because the law simply "forgets" in the absence of a codified, recorded and centrally transmitted Police registry. It is an incredible fact of this modern day Nigeria, but it is one that the ACJ Act, dispenses with in another small step in the right direction, with the establishment of a Central Criminal Registry.

### An Unfortunate Step Back for Civil Rights and Liberties

The ACJ Act makes the effort to introduce these innovations and they are commendable indeed. However if all these were perfect examples of enabling provisions aiding the administration of criminal justice in Nigeria then perhaps equally as harmful to the rights and civil liberties of Nigerians is **section 296** which states:

*"(1) Where an order of remand of the suspect is made pursuant to section 293 [arrest for offences which the Magistrate's Court has no jurisdiction] of this Act, the order shall be for a period not exceeding 14 days in the first instance, and the case shall be returnable within the same period."*

**Section 293(2) and (5)** allow for a further

extension of the period of remand without charge of 28 days. Meaning a Nigerian citizen can be legitimately arrested and held for **42 days** on ordinary suspicions. This one inclusion is reminiscent of provisions in countries without a democratic system of government. It is a big step back in the fight for the protection of rights and a truly worrying inclusion. The arguments supporting such an inclusion will be that there are a number of safeguards against the misuse of this power and while that may be true to an extent, the mere fact that this power is available as the **general rule** not a very limited **exception** is indicative of the true nature of things in our country- that rights and liberties are dispensable, easily and quickly sacrificed against the wanton execution of arbitrary power.

### Why Bother?

Some may object or wonder why it is important to make positive efforts to contend the arbitrary use of such powers or improve the conditions and safeguard for these 'amorphous' rights and liberties, but the truth is there is something about the reflection of a society in the way it treats the vulnerable, weak and those who are not part of the system. A large percentage of the Nigerian populace are helpless against such powers and so those that can do something about the checks and balances of such powers must.

A society is not just and fair because of the way it treats its law-abiding citizens or the way it rewards those who promote peace, accord or those who are involved in preserving its ideals. Rather the true nature of a society is evident in how it treats those who are weak, vulnerable, disadvantaged or those who are simply contrary to it, those who are subversive to its cultures, and those who are "outside the system" and do not meet up to the ordinary standards of acceptable behaviour. It is the way we as individuals and as a society treat this group that shows our justness and our humanity. It is precisely because there is no benefit in treating them fairly or making adequate provisions for them that it is what we ought to do. Affording everyday people the seemingly small and trivial courtesies not to be mistreated, cheated or unfairly deprived of their humanity and citizenship proves and preserves the ideals, which we claim as the best of us. It is about time elected leaders started standing up for these simple ideals before all we see when we look in the mirror is a nation preoccupied with securing every advantage from the most arbitrary of powers.