



## PROFESSIONAL ARTICLE

# Utilising Technology in Making the Nigerian Administration of Criminal Justice Act Effective for Criminal Trials

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The 2015 Administration of Criminal Justice Act (ACJA) has set Nigeria on the path of adopting a more technology-driven criminal justice administration. Prior to its enactment after several years of consideration, there had been only episodic use of Information and Communication Technology (ICT) facilities in criminal proceedings. This paper examines Nigeria's Criminal Justice Administration (CJA) in light of the ACJA's innovative provisions with a view to furthering the application of ICT facilities. It is hoped that ICT might be integrated throughout the CJA as it currently operates in Nigeria so as to promote the effective and efficient automated administration of criminal justice. In the new era of social distancing given the COVID-19 pandemic, such reform is submitted to be imperative.

**Keywords:** Criminal justice; administration; criminal trial; prosecution; defence; technology

### 1. Introduction of ICT Platforms in Criminal Justice Administration

The integration of ICT into global legal systems dates back to the period immediately following World War II,<sup>1</sup> and has its genesis in the criminal justice system. In contrast with civil jurisdictions in which cost-saving was a key concern, technological tools were adopted for use in criminal trials principally for purposes of speed and transparency, with cost being a secondary focal point. In 2012, the former British Prime Minister, Tony Blair, observed:

The English legal system had been an influential model for criminal justice worldwide. It had powerful strengths, and we have already achieved a lot in making it work better – for example by reducing delays. But now the time has come to drag it out from the 19th century into the 21st.<sup>2</sup>

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<sup>1</sup> A.D. Reiling, however, traced the first drive towards desire for ICT application to CJA to 1864 in Massachusetts when the first sets of data were compiled on crime. A.D. Reiling, *Technology for Justice: How Information Technology Can Support Judicial Reform*, Leiden University Press, 2009, p. 47. T. Dunworth, "Information Technology and the Criminal Justice System: An Historical Overview", in: A. Pattavina (ed.) *Information Technology and the Criminal Justice System*, Sage, London 2005, pp. 2–29, <http://dx.doi.org/10.4135/9781452225708.n1>.

<sup>2</sup> Blair to reform CJS <<http://www.telegraph.co.uk/news/1397621/Blair-to-reform-criminal-justice-system.html>> [accessed 21 March, 2020].

Little wonder the UK Justice Ministry in that same year authored a White Paper noting, in relevant part:

Too often the public view the criminal justice system as complex and remote, with processes that seem obscure. Target chasing has replaced professional discretion and diverted practitioners' focus from delivering the best outcomes using their skill and experience. The system is in need of modernisation, with old fashioned and outdated infrastructures and ways of working that suit the system rather than the public it serves. The wheels of justice grind too slowly. Too often the system tolerates unnecessary work and hearings which do not go ahead on time. This comes at a great cost to the taxpayer: over £20 billion each year. A large proportion of this is spent processing offenders, rather than on early, targeted interventions which help to prevent problems escalating. Many of those working in or around the criminal justice system will recognise these problems and there is a real appetite for improvement. The response to last year's disturbances showed what was possible: a quick and flexible response, dispensing justice in some cases in a matter of hours and days, rather than weeks and months.<sup>3</sup>

The United States of America has also significantly developed its use of courtroom technology, moving from punch card automation systems in the 1970's to the contemporary implementation of e-filing systems, video displays, exhibit annotation monitors, witness monitors, evidence cameras, wireless installation, remote witness testimony and video conferences.<sup>4</sup> Other jurisdictions including Brazil<sup>5</sup> and Malaysia<sup>6</sup> have developed e-court criminal justice systems that incorporate video conferencing, case management, community and advocate portals, and court recording and transcription. Beyond tracing the genesis and advantages of adoption of technology in the courtroom, Reiling's work has analysed corruption in the justice systems of various jurisdictions—including that of Nigeria—further highlighting the need for ICT in the justice sector.<sup>7</sup>

## 2. Court Procedure in Nigerian Criminal Trials

The criminal court process in Nigeria is modelled on English common law practice.<sup>8</sup> Until May 2015, the procedures adopted in the country adhered to two main statutes, the Criminal Procedure Code (CPC) Act—which applied in the northern part of the country—and the Criminal Procedure Act (CPA)—which applied in the southern part. States in the northern

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<sup>3</sup> See Executive Summary of Ministry of Justice White Paper entitled 'Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System' Presented to Parliament by the Secretary of State for Justice by Command of Her Majesty, July 2012 available at [www.official-documents.gov.uk](http://www.official-documents.gov.uk) p.5 [accessed on 21 March 2020].

<sup>4</sup> *American Bar Association Journal*. Jun 81, Vol. 67 Issue 6, p700. 2/3p. Available at <http://web.a.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=0705bc44-01c4-4e8a-9200-ee3ee130ec7b%40sessionmgr4003&vid=0&hid=4109> [accessed on 1 December, 2014]; see also H. B., Jr. Dixon, *The Evolution of a High-Technology Courtroom*, *Future Trends in State Courts* 2011, pp. 28–32.

<sup>5</sup> T. C. D. Bueno, *et al*, *E-Courts in Brazil Conceptual model for entirely electronic court process*, 18th BILETA Conference: Controlling Information in the Online Environment April, 2003 QMW, London. See also T. C. D Bueno *et al*. *Modeling an intelligence System for the Evolution of Justice Using the Web*. Submitted to Ninth International Conference on Artificial Intelligence and Law – ICAIL 2003.

<sup>6</sup> K. Hassan and M. F. Mokhtar, *The E-Court System in Malaysia*, a paper presented 2011 2nd International Conference on Education and Management Technology, IPEDR vol.13 (2011) IACSIT Press, Singapore.

<sup>7</sup> See Reiling *supra* note 1, pp. 209 and 230.

<sup>8</sup> *Gbadamosi v. State* (1992) LPELR-1313(SC); *Musa v. State* 3-7-2009 (2009) 15 NWLR (Pt. 1165) 467 S.C.

and southern regions have enacted their respective Criminal Procedure Laws (CPL) by the adoption of the applicable Act. In 2015, the 7<sup>th</sup> Senate of the National Assembly enacted the ACJA, to which the President promptly assented. The effect of the ACJA was to repeal both the CPA and the CPC. A challenge arose, however, by virtue of the fact that although ACJA repealed the CPC and the CPA, it did not and could not repeal the state CPLs derived from the repealed laws as the 1999 Constitution of the Federal Republic of Nigeria permits concurrent jurisdiction for legislative powers on criminal law and procedure.<sup>9</sup> The hope therefore is that the ACJA will eventually be adopted by the 36 states of the federation.<sup>10</sup>

Research has revealed that the time to disposition (trial court through appeal) for criminal prosecutions in Nigeria averages between 5 and 6 years. Of course, there are outliers such as *State vs. Al Mustapha* which lasted for 13 years.<sup>11</sup> Moreover, ongoing economic challenges coupled with reductions in funding are exacerbating delays.<sup>12</sup> **Table 1** provides an analysis of the mean number of years for criminal actions to reach trial:

The findings demonstrate that delays in case management leave the federation vulnerable to both social and economic risks. From the perspectives of crime control and prevention, this paper explores and appraises ICT tools that can assist the court system in Nigeria to reduce delays and promote greater transparency.

Prior to the advent of the ACJA, when the police arrested a suspect they would conduct a preliminary investigation to determine jurisdiction, among other things. Where the offence was within police jurisdiction to prosecute, the suspect would be charged to the Magistrate Court.<sup>13</sup> Where police lacked jurisdiction, the matter would be transferred to the Attorney-General's (AG) office. The Director of Public Prosecutions (DPP) in the AG office was responsible for considering matters and providing counsel as to whether a charge should be filed against the suspect based on several factors:

1. Whether the facts of the case satisfy the criteria required by *prima facie* standards;
2. Whether there is a specific statutory law prohibiting the offence;
3. The discretion of the AG pursuant to sections 174 (for AG Federation) and 211 (for AG State)<sup>14</sup>; and
4. In exceptional cases, an economic consideration where the cost of prosecution was disproportionate to the public harm.

<sup>9</sup> Constitution of the Federal Republic of Nigeria 1999 Cap C4 Laws of the Federation (LFN) 2004 (hereinafter referred to as 1999 Constitution, S. 4(5).

<sup>10</sup> A few have.

<sup>11</sup> Olubukola Olugasa, *Application of Information and Communication Technology for Efficient and Effective Criminal Justice System in Nigeria*, 2016, PhD Thesis submitted to Babcock University, Appendix 1, p. 222. The statistics is in contrast from what obtains in Canada with similar CJA where, depending on the province it takes about 228 to 145 days to try a criminal case at the trial court. The appeal time is not included however. See <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/dec01.html> [accessed on 14 April, 2020].

<sup>12</sup> See <https://www.thisdaylive.com/index.php/2018/12/16/a-case-for-better-funding-for-the-judiciary/> [accessed on 31 March, 2020] <https://www.dailytrust.com.ng/poor-funding-of-the-judiciary.html> [accessed on 31 March, 2020]

<sup>13</sup> In Nigeria's CJA, there are two major possible prosecutors, the state and the police (where the police include other similar but specialized agencies including the DSS, the EFCC, the NDLEA, the Immigrations, the Customs, the ICPC, etc.). The 1999 Constitution by section 174 empowers the AG federation and state the power to institute a criminal action but not the monopoly of institution of a criminal action. However, the AG has the exclusive power to maintain or discontinue a criminal action in the law courts in Nigeria instituted by any of the law enforcement agencies. per Pats-Acholonu in *FRN v. Osahon* (2006) 5 NWLR PT. 973 361 at page 417.

<sup>14</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended), Cap 23 Laws of Federation of Nigeria (LFN) 2004 ["1999 Constitution"].

**Table 1:** Olubukola Olugasa, Application of Information and Communication Technology for Efficient and Effective Criminal Justice System in Nigeria, 2016, PhD Thesis submitted to Babcock University, Appendix 1, p. 222.

	<b>0–3 YEARS</b>	<b>4–6 YEARS</b>	<b>7–9 YEARS</b>	<b>10–12 YEARS</b>	<b>13 YEARS ABOVE</b>
1985	6	4	0	0	0
1986	8	2	0	0	0
1987	6	3	1	0	0
1988	5	3	2	0	0
1989	5	4	0	1	0
1990	2	2	4	1	0
1991	3	2	3	2	0
1992	2	4	4	0	0
1993	1	4	1	3	1
1994	2	5	1	2	0
1995	3	1	4	1	1
1996	4	2	3	1	0
1997	2	2	4	0	2
1998	3	3	3	1	0
1999	0	5	5	0	0
2000	1	5	0	3	1
2001	3	4	1	1	1
2002	5	2	0	2	1
2003	3	3	1	2	1
2004	3	1	3	1	2
2005	1	3	3	0	3
2006	2	2	2	1	3
<b>TOTAL</b>	<b>70</b>	<b>66</b>	<b>45</b>	<b>22</b>	<b>16</b>

During police investigations, the suspect will be detained in most instances to preclude them from potentially compromising the investigation, although pursuant to the Constitution this detention ought not to exceed 48 hours. The Police, however, have devised a procedure called “remand proceedings” whereby they utilize a remand procedure if more time is needed to conclude investigations.<sup>15</sup> The procedure allows the police to bring the suspect before a Magistrate, not for arraignment,<sup>16</sup> but to request that the suspect be kept in detention pending investigation. By allowing the police to continue their investigation and the prosecution

<sup>15</sup> The rationale being, according to the Supreme Court in *Lufadeju v. Johnson* (2007) 8 NWLR (Pt.1037) 535 or (2007) LPELR-1795(SC), “what section 236(3) of the C.P.L. does is to maintain a balance between the two by doing away with the tendency of arbitrary and near indefinite police detention of suspects without order of court.” Per Onnoghen, J.S.C. (Pp. 44–45, paras. G-A).

<sup>16</sup> *Uwaje Nnabuike & Anr. V. Ca. Maidoi-I, Esq. & Anor. supra.*

to maintain an on-going consideration of the matter, this procedure creates significant delay in the CJA. Despite being considered unlawful by some and having generated serious litigation, the court has ruled that the procedure strikes an expedient balance between the interests of police investigation and the constitutional prohibition of indefinite detention.<sup>17</sup> The ACJA and the Administration of Criminal Justice Law (ACJL) of Lagos State have legitimised the procedure through statutory modifications, naming the practice “remand procedure.”<sup>18</sup> The defendant sometimes uses the opportunity to argue for bail before the Magistrate, and may otherwise proceed to the High Court through his legal representative to apply for bail and put the Police and DPP on notice. The implication that arises where bail is granted is that the DPP will have to look for the suspect again if and when it decides to prosecute.

If the AG decides to prosecute a suspect based on the available information, those charges must be filed in the appropriate High Court. Presently, that filing must be done manually.<sup>19</sup> Once the suspect is charged the prosecution serves them the proof of evidence containing the charge, statement of witnesses, statement of defendant and list of evidence to be used in the trial, so as to enable them to prepare adequately for their defence and representation. The defendant is subsequently arraigned and a plea is taken. If the suspect is not on bail and remains in police custody, then defence counsel may also use this opportunity to apply for bail at the discretion of the court and in accordance to the offence charged. The court then proceeds to calendar the case for a hearing. In practice, it is at the point of bail application or trial scheduling that the defence requests the discovery against the defendant known as “proof of evidence.”

When the trial commences, the prosecution opens its case by calling its witnesses for examination-in-chief.<sup>20</sup> The defence will subsequently cross-examine the witnesses. In some instances, the prosecution may redirect the witnesses. The evidentiary requirement of the prosecution is to prove its case against the defendant beyond a reasonable doubt. The prosecution thereafter closes its case and the defence commences its response.<sup>21</sup> The defence may call witnesses in its own examination-in-chief, who will in turn be subject to cross-examination by the prosecution. The defence will subsequently close its case. Where the defence believes the prosecution has not proven its case beyond a reasonable doubt, they may choose to rest their case on that contention without submitting evidence. The court will adjourn for the prosecution’s address and subsequently provide a judgment on the matter. If the court finds merit in the defence’s having rested,<sup>22</sup> the case is dismissed. Otherwise, the resting of the case is dismissed and the defence is directed to submit evidence. Alternatively, the defence may decline to call witnesses and make a no-case submission.<sup>23</sup> If the court upholds the no-case submission this becomes the judgment of the court and the defendant is discharged.<sup>24</sup> Section 302 of the ACJA provides that the court may now raise the no-case submission *suo motu*:

The court may, on its own motion or on application by the defendant, after hearing the evidence for the prosecution, where it considers that the evidence against the defend-

<sup>17</sup> *Lufadeju v. Johnson supra*.

<sup>18</sup> See sections 293 and 100 of the ACJA 2015 and section 264(1) of the ACJL 2011.

<sup>19</sup> Lagos State, Plateau State, Rivers State and the Federal Capital Territory are beginning to toy with electronic filing (e-filing) but for civil matters only.

<sup>20</sup> By section 300(1) of the ACJA 2015 the procedure of the prosecution opening case is retained.

<sup>21</sup> See section 300(2) ACJA 2015.

<sup>22</sup> *Segun Ajibade v. The State* (2012) LPELR-15531(SC).

<sup>23</sup> *Imhandra v. Nigerian Army* (2007) 14 NWLR (Pt. 1053) 76 at (CA).

<sup>24</sup> A discharge suggests the case has not been proved by the evidence proffered beyond reasonable doubt. There is controversy as to whether a discharge entitles the defence to a subsequent defence of double jeopardy.

ant or any of several defendants 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 or them to enter his or their defence and the defendant shall accordingly be discharged and the court shall then call on the remaining defendant, if any, to enter his defence.

The defence makes a no-case submission by presenting its argument in court, to which the prosecution is entitled to respond on any relevant point of law.<sup>25</sup> When the prosecution and defence call witnesses, the court will first hear the argument of the defence followed by that of the prosecution. The defence may thereafter conclude the argument stage by responding to the prosecution submissions.<sup>26</sup> The court will then consider the totality of the case together with respective arguments and deliver a judgement of conviction, acquittal or discharge.

The current practice includes a manual record of the arraignment, bail application, party testimony and examination, attorney arguments and final judgment. As is the case in other jurisdictions, proceedings do not necessarily progress uninhibited through the case flow process. Adjournments are given for a variety of reasons. This paper contends that the delays caused by such applications can be addressed through appropriate ICT modalities and innovations.

### 3. ICT for Court Procedure in Criminal Trial

#### 3.1. ICT for Pre-Trial Detention and Remand Procedure

The 2015 ACJA section 15 provides for an interface between law enforcement and the court. The section makes it mandatory for the police upon arrest of a suspect to obtain the suspect's record and promptly inform the appropriate Chief Magistrate or the Chief Judge. The provision ensures that pre-trial detainees are not incarcerated for the duration of the police investigation. ICT could make this interface more functional, efficient, and effective. Although the legislation requires a paper record, it does not preclude it from being translated into an electronic format.

#### a) **Database Accessible to the AG (prosecution), Magistrate/Judge, Prison and Police:**

The ACJA requires every police station to keep a record of all suspects, collate the record from time-to-time, and forward to the AG, the Chief Magistrate (of each magistracy) and Chief Judge (of the state) the purview of its jurisdictional operations. The purpose of the record is to afford the Court oversight by allowing them to monitor the pre-trial detention population while concurrently enforcing compliance with the 48-hour arraignment requirement. The database could be developed so that it provides court officers real-time data with which they might schedule online and in-person visits of prison or police institutions.

#### b) **Video-conferencing or audio-conferencing for hearing and granting bail pending conclusion of investigation:**

The capacity of the Magistrate or Judge to visit police and prison detention facilities enables court officials to verify compliance with the 48-hour constitutional provision. It would be considerably cheaper and more efficient to conduct the oversight function through video-conferencing. Along a similar vein, bail matters could also be heard by way of a video platform. Video and audio conferencing facilities are easily accessible and relatively inexpensive once the technological infrastructure is in place.<sup>27</sup> A variety of carriers such as Skype, Facetime, Zoom, and Whatsapp are but a few of the conferencing options that can be explored. Stakeholders should be equipped with the appropriate facilities in order to streamline these processes. To ensure effective management

<sup>25</sup> See section 303 ACJA 2015.

<sup>26</sup> See section 304 ACJA 2015.

<sup>27</sup> J. Bailey and J. Burkell, "Implementing Technology in the Justice Sector: A Canadian Perspective", *Canadian Journal of Law and Technology*, 2013, pp. 253–281.

and avoid potential misuse of the technology, there should be a dedicated room in the detention facility reserved for the suspect to meet with his counsel and Investigating Police Officer. In addition, image recognition biometric technologies currently in development could also have useful application.<sup>28</sup> With the assistance of counsel, the suspect would present their application to the Magistrate or Judge. In those instances where the offence is not bailable charge, the court can remand the suspect. Law enforcement would also have the opportunity to respond and offer the court an update on the investigation.

- c) **Video recording of proceedings:** Whenever video-conferencing is applied, it is integral that the proceedings are recorded.<sup>29</sup> Questions raised in the instant case if and when the matter is appealed will require a review of the grounds for which decisions were based, which can only be accurately assessed if the record is provided. Having said that, the proceedings should be recorded in any case as a matter of best practice. The facilities in which the exchanges occur should be equipped with CCTV. This process could also allow the record to be reconciled to authenticate bail proceedings and guard against security breaches such as hacking or voice overlays.

### 3.2. ICT for Trial Proceedings

Trial proceedings commence with the arraignment and taking of a plea by the suspect. Each stage of the criminal proceeding represents an important element of the entire process, and errors at any stage can be consequential to the outcome of the case. Thus, criminal proceedings require a thorough account of all that transpired during each stage in order that the overall integrity of proceedings is preserved and justice delivered. The proceedings should be recorded using high definition audio-visual cameras that span the entire courtroom. With the aid of Judicial Assistants, the record of the proceedings should be transcribed and reviewed for accuracy at the end of each day and signed by the Magistrate or Judge. The relevant elements of proceedings which would require capture include the following:

- a) **E-filing of the Charge/Information in Court:** A criminal action commences with its filing in the appropriate court jurisdiction, which includes the charge/information sheet and proof of evidence. The information sheet contains the relevant offences alleged to have been committed by the suspect. Current practice is to file the paper copy of these documents in court, but it is recommended in light of the availability of applicable technologies that the CJA would fare better by adopting an electronic format (e-filing).<sup>30</sup> In order to effect this, the court would require a dedicated and functional website from which various stakeholders including the prosecution, judge or magistrate, defence counsel, members of the public, and the media could gain access to the extent permitted by law. Once the charge/information has been filed, the prosecution would be responsible for carrying out the case assignment, as well as the subsequent requisite processes on the dedicated site.
- b) **E-service on defendant processing:** Pursuant to section 15 of the ACJA, the police record should include the suspect's e-mail, phone number, and mailing address.<sup>31</sup> The information should be verified by police and included in the case file submitted to the DPP. Once a case is assigned to a judge or magistrate, the court should serve the defendant through

<sup>28</sup> J. D. Walker, "Image Recognition Biometric Technologies Make Strides", *Future trends in State Courts 2006*, pp. 50–52.

<sup>29</sup> Australia has been using video conferencing in criminal proceedings for about two decades. See [https://www.supremecourt.wa.gov.au/V/video\\_and\\_telephone\\_conferencing.aspx](https://www.supremecourt.wa.gov.au/V/video_and_telephone_conferencing.aspx) [accessed 14 April 2020]. The US has developed such proceedings and using them well. See A. Poulin, "Criminal Justice and Videoconferencing Technology: The Remote Defendant", *Tulane law review* 78 (villanovawps-1015) January 2004 with 341.

<sup>30</sup> The process has commenced with the adoption of Legal Mail by the Nigeria Bar Association. See <https://nigerianbar.org.ng/legal-mail> [accessed on 14 April 2020].

<sup>31</sup> This could be done via legal mail. See <https://nigerianbar.org.ng/legal-mail> [accessed on 14 April 2020].



each of the contacts. E-services can prevent delay—be it purposeful or inadvertent—and enables the court to confirm receipt, an integral aspect of the exercise of its jurisdiction.<sup>32</sup>

- c) Audio-visual Recording of Arraignment and Plea Taking:** Recording the arraignment of the defendant is pivotal in a criminal prosecution in Nigeria, not unlike in other common law jurisdictions. During the proceeding, the defendant is advised of the charge counts enumerated in the charge/information sheet. The court registrar will subsequently ask the defendant how they plead to the stated charges.<sup>33</sup> In order for the arraignment to be valid, the defendant must be advised of these charges in a language they understand. As such, the court must provide an interpreter if needed.<sup>34</sup> Where the defendant does not understand the language of the court—usually English—a competent interpreter must be engaged by the court to translate<sup>35</sup> each of the count charges and take the defendant's plea for each of the count charges separately.<sup>36</sup> Handwritten recording of these proceedings is cumbersome and sometimes replete with fundamental omissions.
- d) Hearing Bail Application via Video-conferencing/audio-conferencing:** Bail applications are usually heard in open court. In some instances bail will be granted as a result of its not being opposed by the prosecution. In others where the application is contentious, the matter is not heard in open court so as to allow the attorneys to prepare for a future date. In such circumstances, the application could be filed and served electronically. This would allow the court to consider the positions of the parties and rule accordingly.<sup>37</sup>
- e) Opening and closing of prosecution's case<sup>38</sup> and defendant's case<sup>39</sup> to be recorded via audio-visual device and video-conferencing:** As noted earlier, the prosecution has the burden in proving its case beyond a reasonable doubt.<sup>40</sup> The defence, on the other hand, that needs only to meet the preponderance of evidence standard.<sup>41</sup> Unfortunately, there is no witness protection law in Nigeria, although a bill to that end was laid before the assembly some years ago.<sup>42</sup> Securing witnesses to attend court is a perpetual challenge. ICT measures can assist in that video-conferencing may be used to secure witness testimony from remote locations. This would require assessment and implementation of hardware capable of allowing the witness to testify from the location of their choice. Matters being transferred from other jurisdictions could also benefit from such measures. This would mitigate the number of adjournments resulting from witness scheduling, which are limited to five by section 396 of the ACJA.<sup>43</sup>

Finally, the ICT modalities are a basic instructive tool that can be relatively easy to incorporate into each party's case during presentation.<sup>44</sup>

<sup>32</sup> *Idemudia v. State* (1999) 7 NWLR (Pt.610)202 or (1999) LPELR-1418 (SC).

<sup>33</sup> See section 271 ACJA 2015; *Ewe v. State* (1992) LPELR-1179(SC) Per Tobi, JSC. (P. 28, paras. D-F).

<sup>34</sup> *Idemudia v. State supra* Per Katsina- Alu, JSC. (Pp. 31–32, paras. D-B).

<sup>35</sup> The language interpreting can be done by video as well. See: <https://www.ninthcircuit.org/about/programs/virtual-remote-interpreting> [accessed on 14 April 2020].

<sup>36</sup> In *State v. Olabode* (2009) LPELR-2542(SC).

<sup>37</sup> See Bailey and Burkell *supra*, note 27.

<sup>38</sup> See section 300 of the ACJA 2015.

<sup>39</sup> See section 301 of the ACJA 2015.

<sup>40</sup> Evidence Act 2011, section 135.

<sup>41</sup> Evidence Act 2011, section 137.

<sup>42</sup> The bill was passed in the 8th Senate on 8th June 2017 and sent to the House of Representatives where it failed at the committee stage. It was reintroduced at the Senate and has passed the first reading stage.

<sup>43</sup> By virtue of section 353 of the ACJ Act where an adjournment is owing to non-appearance of defendant the Court in deserving cases would strike out the suit without prejudice in addition to the provisions of section 352.

<sup>44</sup> ..., "Access to Justice: A Contest between Legal Skill and Technology?" (2014) Paper presented at the Access to Justice Conference 2014 held at the Faculty of Laws, University College of London on June 19–21 2014, p. 3.



- f) Presentation of final addresses via electronic means:** Addresses of the respective parties are crucial to the court's final determination. Each party's address is delivered at the conclusion of presenting their evidence, and serves to fortify their arguments by highlighting relevant legal principles, precedent, statutes, and authority opinion. Online/electronic access to these resources will provide for their faster and easier retrieval. Judges would likewise have the same access to the information for their own review. Presentations can be provided on PowerPoint slides, shared with the court beforehand and highlighting the main points of the party's case.
- g) Reading of Court Judgment and simultaneously uploading the judgment online:** After a careful consideration of the arguments of the parties, the court decides based on the presented evidence. The judgment is recorded electronically and uploaded onto the court site. This procedure began in Australia<sup>45</sup> and the United States of America<sup>46</sup> and has been adopted through much of the world including Europe,<sup>47</sup> Asia, and Canada.<sup>48</sup> In Africa, only South Africa<sup>49</sup> has thus far adopted a legal information site. Judgments are published so that the public including law entities and scholars can readily access the rulings.<sup>50</sup>
- h) Compilation and transmission of records of appeal by electronic means:** Defendants and prosecutors who disagree with the court's ruling may exercise their right to appeal the decision. To file an appeal, a notice of Appeal stating the grounds for the appeal is submitted. An application is subsequently made to the Registrar of the Court of trial to compile the records of the case into a volume at a fee and to transmit the record compiled to the appellate court.<sup>51</sup> The compilation and subsequent transmission of the record is a torpid process, which hampers the matter from being heard in a reasonable timeframe. Furthermore, hard copy records are not always accurate and their prevalence generates reams of paper that clutter the already limited space in the courts. Recorded proceedings could be easily consolidated into a compact disc for transmission to the appellate court's registry site, as well as made accessible to the justices and for the bailiff or sheriff to electronically serve to parties. A hard copy record, if needed, could always be printed by the court. There is presently no rule accommodating the use of ICT tools for compilation of record of proceedings for appeal.<sup>52</sup>

The audio-visual recording of court proceedings and the electronic compiling of that record will help ensure accuracy and transparency, both of which qualities are desperately needed in Nigeria's criminal justice system. These innovations will further the perception that justice not only is done but also is seen to have been done. The appellate court has no jurisdiction to hear an appeal where the record of appeal is incomplete, the rationale being that the appellate court rehears a matter as is and considers it as a secondary review.<sup>53</sup> As such, an inaccurate record undermines the court's capacity to rehear the matter. The record should provide the

<sup>45</sup> AustLII.

<sup>46</sup> ConLII.

<sup>47</sup> Britain and Ireland have BAILII.

<sup>48</sup> CanLII.

<sup>49</sup> SafLII.

<sup>50</sup> www.lawpavilion.com and some others do this in Nigeria. Speech-to-text technology would be of help in this context. See <https://www.computerworld.com/article/3412349/best-speech-to-text-software.html> [accessed on 16 April 2020].

<sup>51</sup> *Owoade v. FRN* (2012) LPELR-9280(CA) Per OGUNWUMIJU, J.C.A. (Pp. 36–42, paras. A-D).

<sup>52</sup> P. O. Idornigie, "Towards Addressing Infrastructural Challenges in the Nigerian Judiciary", Nigerian Institute of Advanced Legal Studies, 2012 pp. 10–11.

<sup>53</sup> *Mutual Life & General Insurance v. Itheme* (2010) LPELR-4568(CA); *Nwana v. FCDA* (2007) 11 NWLR (pt. 1044) 59 at 84 paras D – F; *Panalpina World Transport v. Whriboko* (1975) 2 SC 29; *Oparaji v. Ohana* (1999) 9 NWLR (pt. 618) 290; and *Udeze v. Chidebe* (1990) 1 NWLR (pt. 125) 141.

appellate court with the opportunity of reviewing what actually transpired at the lower court more objectively, which among other considerations includes:<sup>54</sup> the processes filed; proceedings; countenance and nuances of the stakeholders including the judge, the legal representatives, the parties and witnesses; trial procedures; and evidence tendered, admitted or rejected.

**i) Hearing of appeal by audio-visual recording and delivery of judgment online:<sup>55</sup>**

Ordinarily, an appeal is commenced with the filing of a Notice of Appeal followed by Appellant's Brief and Respondent's Brief. The briefs are then reviewed by the appellate court. The parties present their argument on the basis of which they disagree with the lower court's ruling while providing an alternative view on how the court should have ruled. These proceedings are presently recorded by the court in long hand. The use of an audio-visual recording device would provide a more efficient record of the proceedings for the review of appellate justices. Recordings would also serve as record of decorum among stakeholders. As with lower court rulings, appeal judgements could be published online immediately.

**3.3. ICT for Record of Ex-convicts and Crime Prevention and Control**

Before the court sentences the defendant, the defendant may make a plea of *allocutus*. This type of plea allows the defendant to appeal to the court for a mitigation of sentence. For instance, the court may mitigate the sentence of a defendant who is a first-time offender. An *allocutus* plea is less likely to succeed if the defendant is a habitual offender or has been previously implicated in the criminal justice system. In such an instance, the court is more likely to sentence the defendant to a full term and place him under watch.

A major challenge in the CJA in Nigeria is lack of credible and accurate record of offenders. Audio-visual recordings of court proceedings could resolve this key defect of the system. The image and voice of the convict is captured by the device and upon conviction is fed into the police/prosecution record management system for integration.<sup>56</sup> This would allow the prosecution to provide the defendant's criminal case history to the court during a plea of *allocutus*.

**4. Conclusion**

The ACJA has provided for the adoption of ICT modalities in Nigerian criminal court proceedings, the courts' uptake of which would assist in both the control and prevention of criminal activity. Through this dual-prong objective, it would provide the means of avoiding fundamental lapses in the criminal trial case flow. Furthermore, it would promote a more effective administration of justice by providing timely and transparent outcomes, consistent with the object of the ACJA. ICT tools are capable of providing short and long-term solutions to the challenges that continue to plague the Nigerian criminal justice system. It is instructive that some jurisdictions that had hitherto relied heavily on physical administration of criminal justice are being compelled by the Covid-19 pandemic to fully adopt ICT for justice administration.<sup>57</sup> Nigeria cannot afford to operate its criminal justice system manually in such circumstances either. In an era of innovative modalities, it has become more expensive to hold to traditional practices than it is to embrace new ones.

<sup>54</sup> *Orok v. Orok* (2013) LPELR-20377 (CA).

<sup>55</sup> <https://www.law360.com/articles/1256347/top-uk-court-hears-cases-via-video-as-country-locked-down> [accessed on 14 April 2020].

<sup>56</sup> The biometric of the convict should be taken upon his transfer from detention cell to prison cell.

<sup>57</sup> See <https://theicountryjustice.wordpress.com/2020/04/06/justice-in-the-rear-view-mirror/> [accessed on 14 April 2020].

### **Competing Interests**

The author has no competing interests to declare.

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