

# DEFENDING **JUSTICE**

A Practical Guide for Young Criminal Defence Lawyers



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## **About Hope Behind Bars Africa**

Hope Behind Bars Africa, a youth-led social Non-profit organisation with a mission of being the beacon of hope to the incarcerated and a voice for criminal justice reforms using service delivery, advocacy and tech. Hope Behind Bars Africa commenced operations in 2018 and was formally registered in 2019 with the mission of being a beacon of hope to the incarcerated and a voice for criminal justice reforms using service delivery, tech and education. Our Access to Justice Program is a core program area that leverages on the availability of young lawyers to make up for the gap in legal representation especially as it relates to indigent pretrial detainees. Our interventions are in 7 states in Nigeria- Edo, Niger, Nasarawa, Kano, Kaduna, Abia and Abuja.

## **Centre For Legal Support and Inmates Rehabilitation**

Centre for Legal Support and Inmates Rehabilitation is a Non-governmental Organisation committed to rendering free legal support to Justice-impacted Individuals and also rehabilitation assistance that equips the Incarcerated with life skills capable of sustaining them when reunited to the society. Since its establishment in 2020, Centre for Legal Support and Inmates Rehabilitation has played a pivotal role in enhancing the reintegration of Incarcerated individuals into society by providing education, vocational training, and guidance in essential life skills. The transformational influence of our efforts on their path to rehabilitation has been unmistakably evident.

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## ACKNOWLEDGMENT

We extend our heartfelt appreciation to all those who have contributed to the creation and success of "Defending Justice: A Practical Guide for Young Criminal Defence Lawyers." This practical guide stands as a testament to the dedication, expertise and collaborative spirit of a remarkable group of individuals and institutions.

At the forefront of this endeavour were Oluwafunke Adeoye and Joke Aladesanmi serving as the Executive Directors of Hope Behind Bars Africa and Centre for Legal Support & Inmates' Rehabilitation respectively. Their visionary initiative in conceiving and supporting this project is a beacon of hope for justice. Their commitment to equipping young legal minds with the knowledge and tools needed for effective criminal defence is an inspiration to all.

Guiding the project with meticulous care were Ilawole Funmi, Rosemary Ochiwu and Grace Okeke, serving as the dedicated Project Coordinators. Their unwavering dedication to ensuring the book's cohesiveness and practicality shines through every page, making it an indispensable resource for aspiring legal professionals.

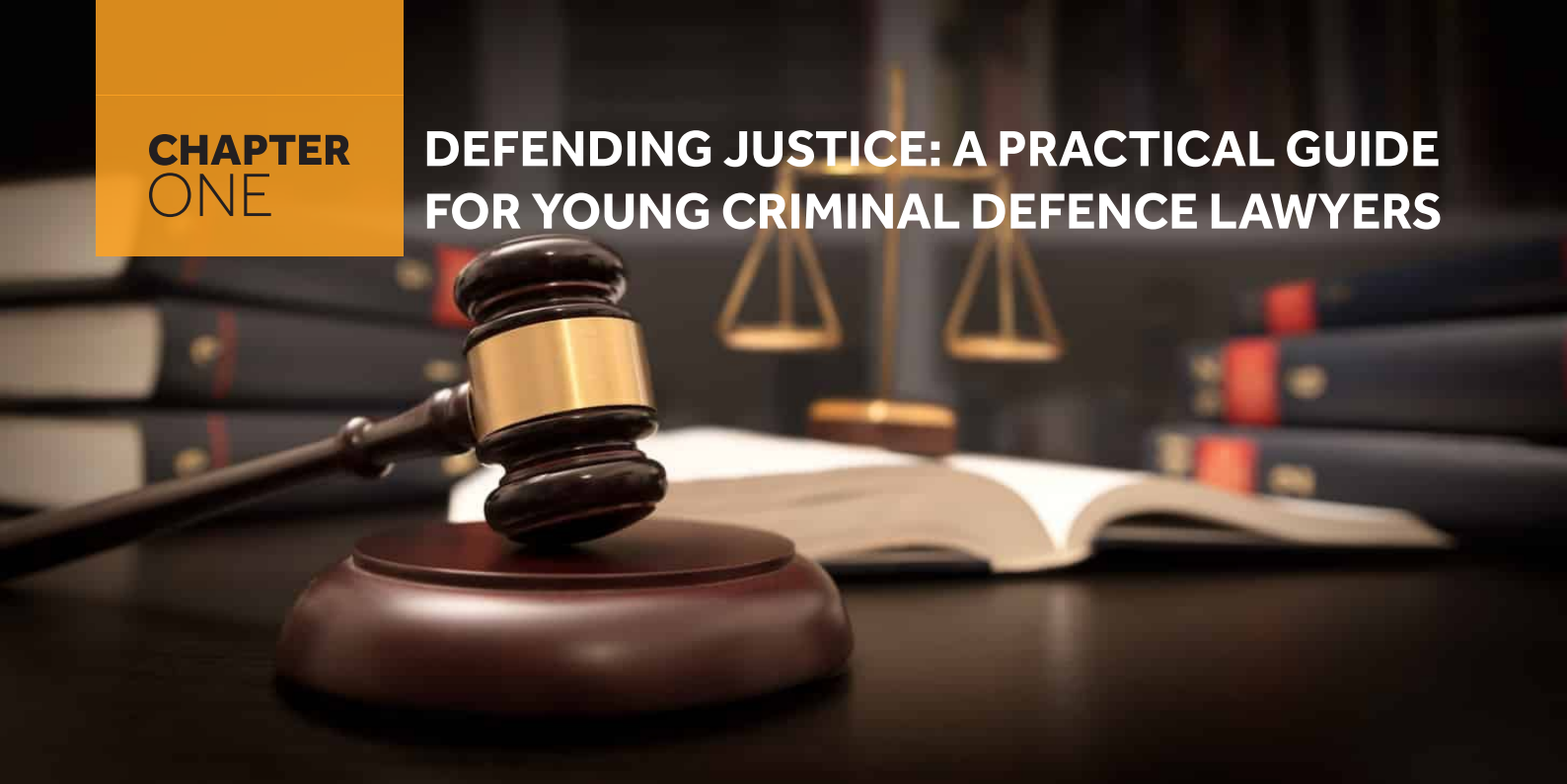
The invaluable insights and consultancy provided by Adesola Olushola and Samson Ojodomo Onuche have enriched the content of this guide, ensuring its relevance and real-world applicability. Their expertise in the field of criminal defence has left an indelible mark on the book's quality.

A special acknowledgment goes to the Innocent Chukwuma Social Impact Chair & Fellowship, whose generous sponsorship played a pivotal role in bringing this project to fruition. Their commitment to education and justice is commendable and greatly appreciated. The culmination of these efforts has resulted in a guide that not only imparts knowledge but also cultivates a sense of responsibility towards justice.



# TABLE OF CONTENTS

	PAGE
About the Organisation	02
Acknowledgement	03
<b>Chapter One:</b> Defending Justice: A Practical Guide for Young Criminal Defence Lawyers	05
<b>Chapter Two:</b> Arrest	07
<b>Chapter Three:</b> Law Enforcement Interview, Interrogation, and Investigation in Nigeria	14
<b>Chapter Four:</b> Charge and Information	20
<b>Chapter Five:</b> Arraignment and Plea Procedure	26
<b>Chapter Six:</b> Bail	32
<b>Chapter Seven:</b> Trial	37
<b>Chapter Eight:</b> Defences Available to the Defendant	49
<b>Chapter Nine:</b> Sentencing and Plea of Allocutus	64



As young lawyers, the task of defending justice and ensuring the fair treatment of every individual entangled within the Nigeria Criminal Justice system is a monumental responsibility. "Defending Justice: A Practical Guide for Young Criminal Defence Lawyers" is a comprehensive compendium crafted with the intent to arm the new generation of legal professionals with the tools, insights and practical wisdom necessary to navigate the Nigerian Criminal Justice System.

Spanning an array of pivotal topics, this guidebook delves into the key stages of criminal proceedings, from the initial encounter with law enforcement to the culmination of a trial and beyond. Each chapter intricately examines a distinct phase of the legal journey, offering a balance of foundational knowledge and practical strategies that empower young lawyers to champion their clients' rights while adhering to the highest standards of ethical conduct.

The journey commences with an exploration of "Arrest," where the delicate balance between law enforcement's authority and individual rights is unveiled. From there, we delve into the intricacies of "Law Enforcement Interview, Interrogation, and Investigation," understanding the dynamics that shape the evidence-gathering process. "Charge/Information" brings us to the pivotal moment of formal accusation, followed by a meticulous dissection of "Arraignment and Plea Procedure," revealing the complexities of the pre-trial phase.

As the legal drama intensifies, we explore the concept of "Bail," understanding its significance in balancing liberty and accountability. The trial takes centre stage in a dedicated chapter, where we unravel the art of effective advocacy and presentation of evidence. The heart of the book lies in the exploration of "Defences Available to the Defendant," where strategies to safeguard justice and truth are unveiled. Finally, we



conclude our journey by dissecting the critical juncture of "Sentencing and Plea of Allocutus," where the scales of justice weigh the consequences of actions.



## 2.0 Introduction

As a young lawyer, understanding the intricacies of the arrest process is essential in safeguarding the rights and interests of individuals within the Nigerian criminal justice system. This chapter will provide you with a practical guide on arrest procedure in Nigeria, outlining the legal framework, rights of the arrested and procedural steps to ensure a just and fair process. A suspect can be apprehended in three ways: By Summons, Arrest without Warrant and Arrest with Warrant.

## 2.1 Arrest

Arrest is a legal process where law enforcement authorities, such as police officers, take an individual into custody under specific circumstances defined by law. This typically involves the temporary deprivation of the person's freedom of movement. Arrests are made when there is reasonable suspicion or probable cause to believe that the individual has committed a crime or when a warrant has been issued by a court.

### 2.1.1 Summons

A summons is an invitation to a person, suspected to have committed a crime, to report to a Law Enforcement Agency or a Court of Law. Where a summons is disobeyed, the Court may issue a warrant for arrest and production in court. Section 114, 11, 131 Administration of Criminal Justice Act (ACJA) 2015, Section 77, 80 82, 94 Administration of Criminal Justice Law (ACJL) Lagos 2015, Section 77 Administration of Criminal Justice Act (ACJL) Kano, 2019.



## **2.1.2 Arrest with Warrant**

A warrant of arrest is a written authority from a court for a police officer or another person to apprehend a suspect. It is issued under these circumstances of Legal Specification, Severity of offence and disobedience of summons. Arrest warrant cannot be carried out during a court or legislative session, without legislative head consent, or within a foreign embassy or High Commission. It Remains valid until execution or cancellation by the issuing authority. Once executed, it becomes void and cannot be reused for another arrest. Section 139 ACJA 2015; Section 100 ACJL Lagos 2015.

## **2.1.3 Arrest without Warrant**

### **A. The Police**

The Police can arrest without a warrant for offences committed in their presence, even if the law creating the offence requires a warrant. Section 18 ACJA, Section 10 ACJL Lagos, Section 41 ACJL Kano, Section 38 Nigeria Police Act 2020.

### **B. Judicial Officers**

Judicial officers have the authority to personally arrest a suspect if an offence occurs in their presence within their assigned jurisdiction. They may grant bail or commit the person to custody. Section 24 & 25 ACJA, Section 41 Nigeria Police Act 2020, Section 45 ACJL Kano.

### **C. Private Persons**

Private individuals can make arrests if the offence happens in their presence or if there's a reasonable belief the suspect committed an arrestable offence. Owners, servants, or agents can arrest for property damage or injury. A private person may also arrest someone damaging public property. Section 20, 21, 22 ACJA, Section 12, 13 ACJL Lagos, Section 43 ACJL Kano, Section 39 Nigeria Police Act 2020.

### **D. Special Agents/Prosecutors**

Special Prosecutors, like those from the State Security Service, NDLEA, EFCC, etc., have arrest powers while performing official duties based on the legal framework establishing their roles. Section 39 Nigeria Police Act 2020.

## 2.2 Framework/Constitutional Provisions Relating To Arrest

As a young lawyer, understand that there are various constitutional protections provided by the Constitution to protect suspects. These safeguard include:



### A. Right to informed of the offence alleged

A suspect has a right to be informed of the alleged offence and the right to remain silent until consulting with a Legal Practitioner, in a language they understand. Section 6 ACJA, Section 3 ACJL Lagos, Section 29 ACJL Kano, Section 35 Nigeria Police Act 2020.



### F. Right not to be unnecessarily restrained

A suspect has the right not to be unnecessarily restrained, except when ordered by the court or for safety reasons. Section 34 Police Act 2020, Section 5 ACJA, Section 2 ACJL Lagos, Section 28 ACJL Kano.



### B. Right to Humane Treatment

The suspect must be treated with humanity, avoiding torture or degrading treatment. Section 8 ACJA, Section 37 Police Act 2020, Section 34(1) CFRN 1999.



### G. Right to decent search

If a search is necessary, it must be respectful and by a same-sex person unless impractical. Section 9(3) ACJA, Section 5(2) ACJL Lagos, Section 32(3) ACJL Kano, Section 53(6) Police Act 2020.



### C. Right not to be arrested in place of another

No one should be arrested in lieu of another; such an arrest is illegal, and the wrongfully arrested person has the right to seek redress. Section 36 Police Act 2020, Section 7 ACJA, Section 4 ACJL Lagos, Section 30 ACJL Kano, Section 35(6) CFRN 1999.



### H. Right to be Presumed Innocent

A suspect is presumed innocent until proven guilty and the burden of proof lies with the prosecution Section 36(5) CFRN 1999, Section 141 Evidence Act 2011.



### D. Right not to be Arrested for a Civil Wrong

Arrest for a civil wrong or breach of contract is prohibited. Section 32(2) Police Act 2020, Section 8(2) ACJA.



### I. Right to Personal Liberty

Suspects has a fundamental right to personal liberty during interrogation, ensuring protection from unlawful detention or abuse. Section 35(1) CFRN 1999.



### E. Right to Life while in Custody

Entitled to the right to life, ensuring well-being and safety during custody. Section 33 CFRN 1999.



### J. Right to Bail

When a person is arrested or detained, they have the right to be brought before a court within a reasonable time. "Reasonable time" typically means one day if there is a nearby court or two days if there is not or such day is a weekend or public holiday. See Section 35(1)©, (4)(5) CFRN 1999.



For Non-Capital Offences, a person is arrested without a warrant for a non-capital offence, and it's not possible to bring them to court within 24 hours or conclude the inquiry immediately, the police must release the person on bail. See Section 62(1)(2) & 63(1) Police Act 2020, Section 30(1)(2) & 31 (1) ACJA 2015, Section 17(1)(2) ACJL Lagos 2015, Section 49(1)(2) & 50(1) ACJL Kano 2019.

For Capital Offence, the person arrested will not be released on bail. - The police may seek legal advice from the Attorney-General and must bring the suspect to court within a reasonable time. See Section 62 (3) Police Act 2020, Section 30(3) ACJA 2015, Section 17(3) ACJL Lagos 2015, Section 49(1)(2) ACJL Kano 2019.

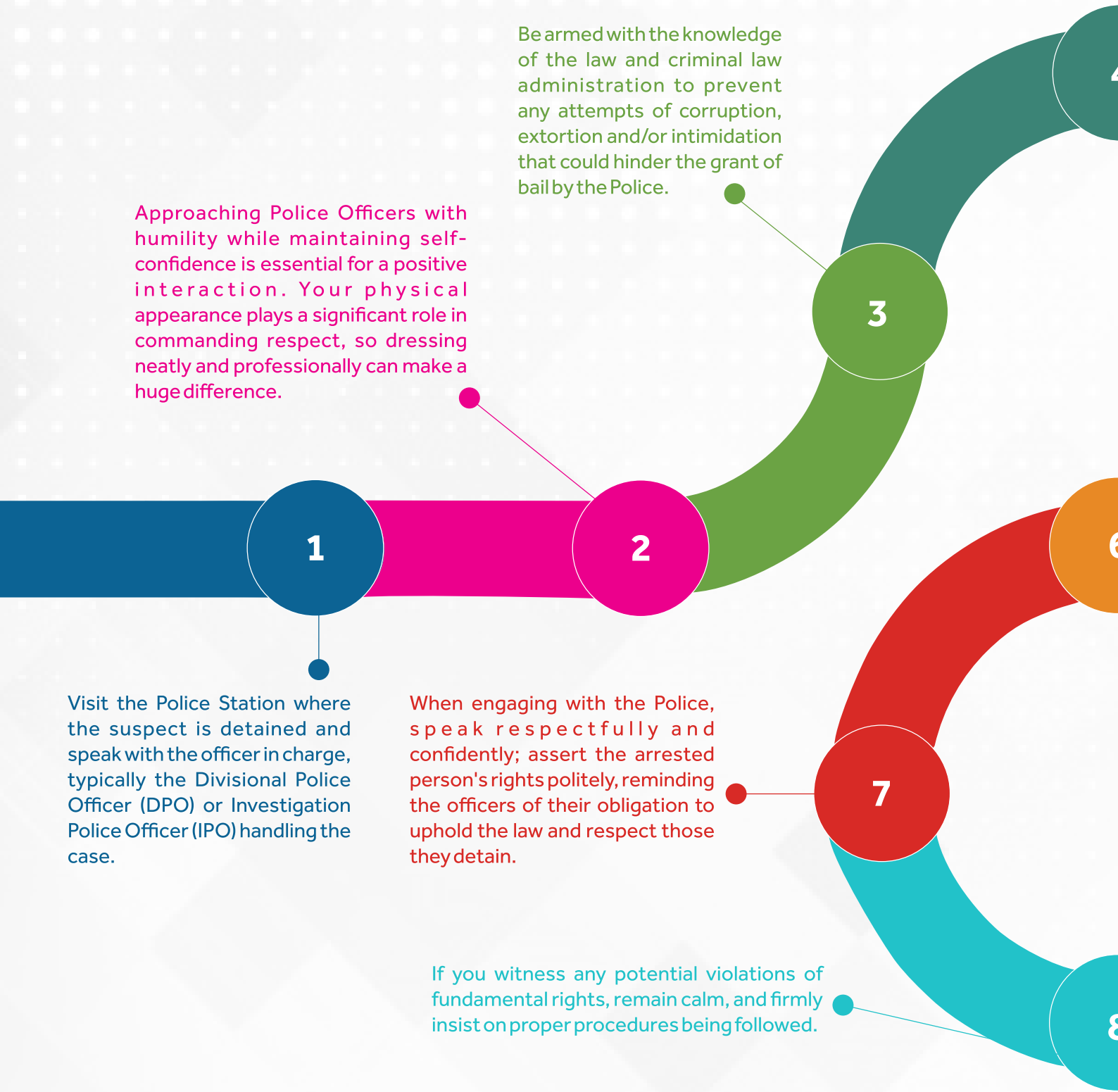


## 2.3 Prohibition of Media Parade of Suspects

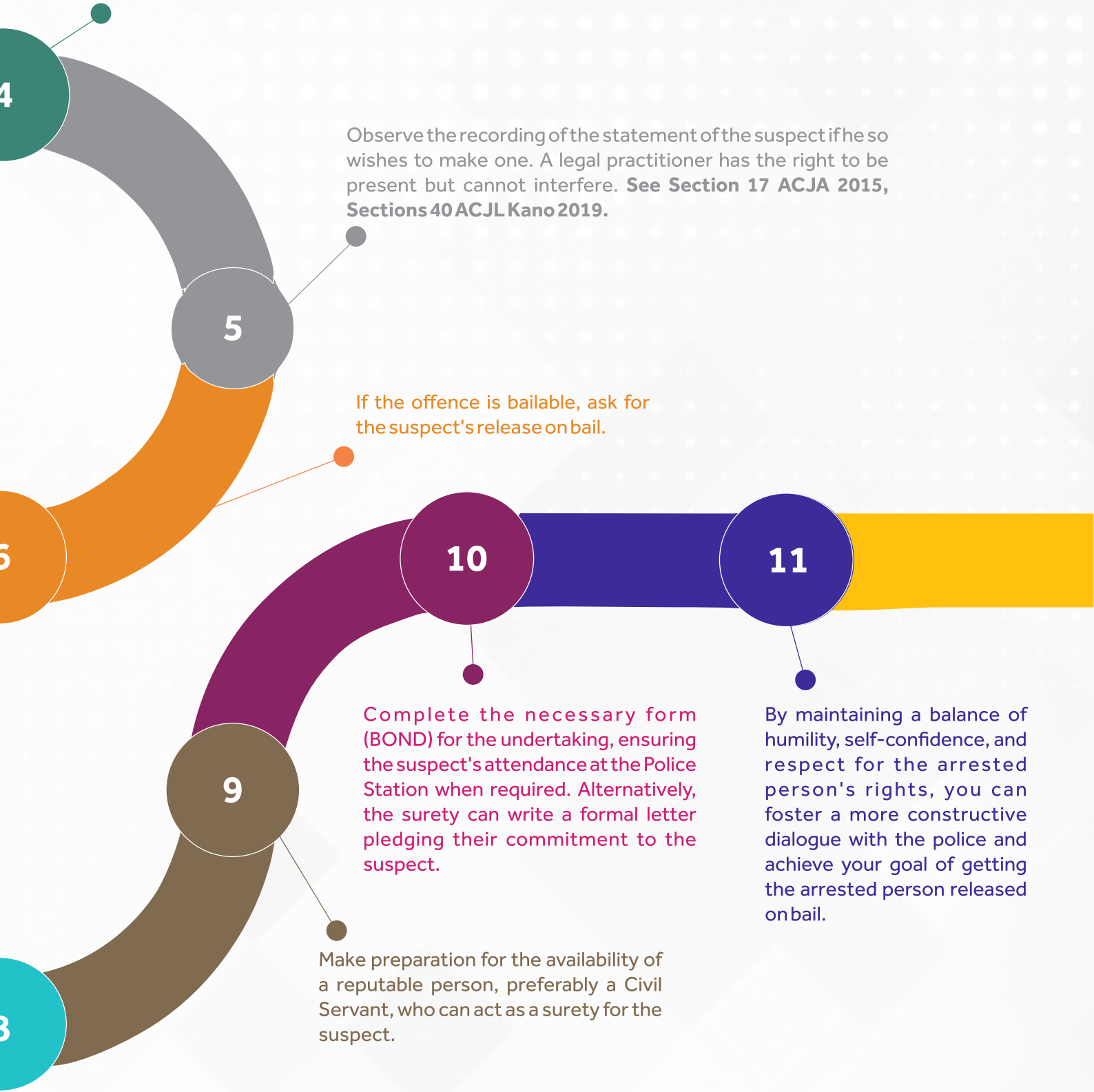
Being the practice of law enforcement agencies over the years to parade suspects before the media as it undermines justice and constitutes a gross violation of the fundamental rights of the criminal suspects to presumption of innocence guaranteed by Section 36 of the Constitution and Article 7 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap A9, Laws of the Federation of Nigeria, 2004). The Administration of Criminal Justice {Amendment} Law, 2021 prohibits the parading any suspect before the media.

## 2.4 Steps to take at the Police Station/Law Enforcement Agency

As a Legal Practitioner:



Request to be informed about the specific offence the suspect is accused of and the time of the arrest.



Observe the recording of the statement of the suspect if he so wishes to make one. A legal practitioner has the right to be present but cannot interfere. **See Section 17 ACJA 2015, Sections 40 ACJL Kano 2019.**

If the offence is bailable, ask for the suspect's release on bail.

Complete the necessary form (BOND) for the undertaking, ensuring the suspect's attendance at the Police Station when required. Alternatively, the surety can write a formal letter pledging their commitment to the suspect.

Make preparation for the availability of a reputable person, preferably a Civil Servant, who can act as a surety for the suspect.

By maintaining a balance of humility, self-confidence, and respect for the arrested person's rights, you can foster a more constructive dialogue with the police and achieve your goal of getting the arrested person released on bail.



According to the Rules of Professional Conduct for Legal Practitioners, where a Legal Practitioner undertakes the defence of a person accused of a crime, he shall not stand bail or offer to stand bail for the person for whom himself or his firm is appearing. Standing as surety may negatively impact the image of the legal profession. **See Rule 37(1)(b) Rules of Professional Conduct for Legal Practitioners 2023.**

## 2.5 Alternative course of action where bail is refused at the Police Station

If bail is denied at the Police Station, one can seek release by applying to a magistrate. This application, not necessarily in writing, involves the court examining the reasons for detention and may grant bail if appropriate. Methods for enforcing bail rights include:

**A. Fundamental Rights Enforcement:** Filed in the High Court, it includes an application, affidavit, statement of facts, and written address. Prayers may seek declaration, mandamus, injunction, release, certiorari, prohibition, damages, or public apology.

**B. Habeas Corpus;** a writ directed to a person detaining another, commanding him to produce the person detained. It is often used to test the legality of detention or imprisonment, not the guilt or innocence of the person detained. *A.G. Federation v. Usman Abubakar & Ors.* (2008) 16 NWLR (Pt. 1112) 135

## 2.6. Conclusion

Arrests play a pivotal role in the criminal justice system. Mastering the nuances of this process is crucial for young lawyers to provide effective legal representation. As you conclude this chapter, remember that a strong foundation in arrest procedures will empower you to safeguard the rights of the accused, there ensure that you advocate for due process.



### 3.0 Introduction

Law enforcement interviews, interrogation and investigation are processes that allow the investigating agencies to establish strong evidence against a suspect. Understanding the legal framework and ethical principles surrounding the process is crucial for young lawyers. This section provides essential knowledge on practical steps when dealing with issues on law enforcement interviews, interrogations, and investigations.

### 3.1 Guidelines and Legal Concerns During Law Enforcement Interviews and Interrogations

Several legal concerns can arise during law enforcement interviews and interrogations: Young lawyers should be prepared to address various legal concerns that might arise during law enforcement interviews and interrogations. Some of these legal concerns and guidelines includes:



#### **Miranda Rights Violations:**

Informing the suspect of their rights (Miranda rights) before questioning, including the right to remain silent and the right to a lawyer. Although not explicitly called "Miranda Rights," Nigerian law requires that suspects be informed of their right to remain silent and their right to a legal representative.



02

**Voluntariness:**

Ensuring that any statements made by the suspect are voluntary and not obtained through coercion, intimidation, or deception. If your client alleges any form of abuse, document it and pursue appropriate legal remedies.



03

**No Physical or Psychological Abuse:**

Understand that the use of physical force, torture, threats, or psychological manipulation to extract information or confessions is prohibited.



04

**Recording and Documentation:**

Ensure that interrogations are recorded, this is to create a clear record of the process and to prevent disputes about what was said. Advise your clients to request that the interrogation be recorded, as this can serve as evidence of any potential violations or mistreatment.



05

**Length and Breaks:**

Ensure that your client is not subjected to excessively long interrogations and is provided with appropriate breaks to prevent exhaustion or duress.



06

**Right to Counsel:**

Denying the right to an attorney or conducting interrogations after the suspect has invoked their right to remain silent can violate their legal rights.



07

**Confession Reliability:**

False confessions can occur due to psychological factors, coercion, or other reasons. Courts assess the reliability of confessions before considering them as evidence.

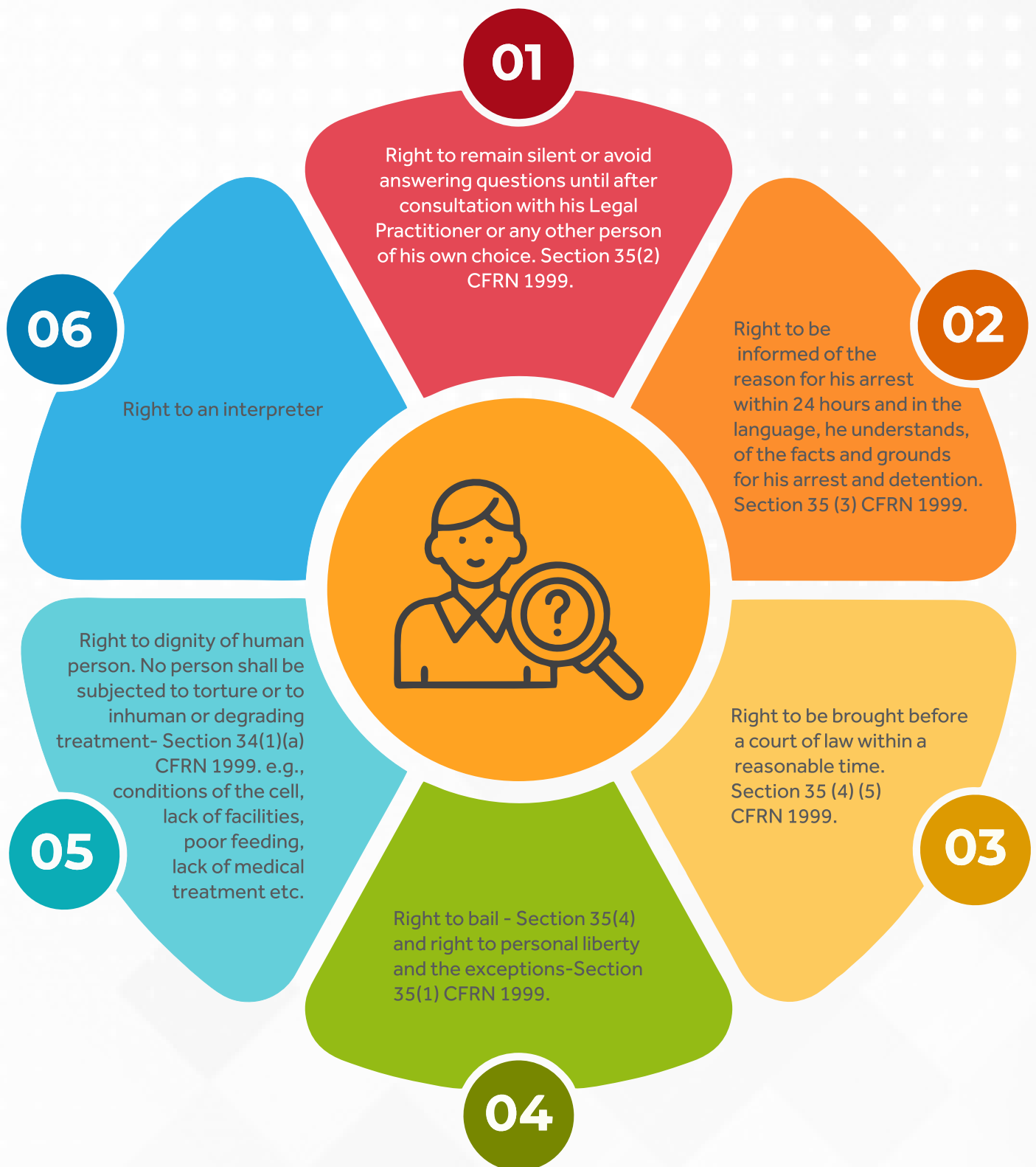


08

**Improper Questioning Techniques:**

Using deceptive practices, leading questions, or manipulating evidence can raise concerns about the validity of statements obtained.

## 3.2 Understanding the Constitutional rights of a suspect at the Police station?





## 3.3 Procedure for Making and Taking Confessional Statements

### Administration of Words of Caution and Explanation of Rights 1

Before asking questions, the investigating officer must administer words of caution to the defendant. The investigating officer should inform the suspect of their rights, including the right to remain silent, the right to lawyer, and the right to have the statement recorded in writing or electronically.



### Choice of Legal Representation 2

If the suspect chooses to have legal representation, the officer should allow the suspect to select a Legal Practitioner of their choice. If not, other options for representation should be presented.



### Selection of Witnesses or Presence of Legal Practitioner 3

If the suspect does not have legal representation, they can choose to have the statement taken in the presence of an officer of the Legal Aid Council of Nigeria, a representative from a Civil Society Organization, a Justice of the Peace, or another person of their choice. Section 17 (2) ACJA, Section 40 (2) ACJL (Kano),



### Recording of the Confessional Statement 4

The confessional statement shall be taken in writing or may be recorded electronically using retrievable Video Compact Disc or other audiovisual means. In the absence of video recording facilities, ensure that a Legal Practitioner of the suspect's choice is present during the statement-taking process. Section 15 (4) ACJA, Section 38 (4) ACJL (Kano), Section 9 (3) ACJL (Lagos).

**NOTE:** This section is a bit controversial, but legal authorities clarify that it has both mandatory and optional elements. If someone willingly gives a confessional statement, it must be recorded on video, but if there's no video available, the statement should be made in the presence of a chosen legal practitioner. The optional part is that the video recording may be presented during the trial. *Kadiri v. State* (2019) LPELR-47714 (CA). See also *Zhiya v. People of Lagos* (2016) LPELR (40562), *Awelle v. People of Lagos State* (2016) LPELR (41395).



### Interpreter for Non-English-Speaking Suspects 5

If the suspect does not understand or speak English, an interpreter should be provided to assist in the statement-taking process.



## 6 Statement Endorsement



The suspect should endorse the statement with their full particulars (Name, Address, Age, Religion), stating the duration of the taking of the statement.

## 7 Interpreter's Particulars Endorsement



If an interpreter is used, their particulars (Name, Signature, Date, Language) should be endorsed on the statement.

## 8 Review and Confirmation



After the statement is recorded, it should be read back to the suspect in a language they understand. The suspect should confirm its accuracy and, if satisfied, sign or endorse the statement.

## 9 Preservation of Statement



Ensure that the recorded or written statement is properly preserved and stored as evidence in the case.

## 10 Admissibility Considerations



Legal practitioners should carefully review the statement to ensure it was taken in compliance with the ACJA provisions or relevant laws. If there are any concerns about coercion, duress, or violation of rights, appropriate legal action can be taken to address these issues.

## 3.5 Conclusion

Navigating law enforcement interviews, interrogations, and investigations requires a solid understanding of Nigerian criminal justice laws, constitutional rights, and ethical considerations. By following these guidelines outlined in this practical guide, young lawyers can effectively protect the rights of defendants and contribute to a just legal process. Always strive to uphold the principles of justice, fairness, and professionalism in your practice.



## **4.0 Introduction**

At the conclusion of investigation and preparing the suspect for arraignment in court, a charge or information is usually prepared, outlining the details of the offence. This chapter will delve into an exposition on charges and information, the procedural intricacies and highlight the role of young lawyers in upholding the principles of justice. It provides practical knowledge on how to identify a defective charge or information.

## **4.1 Charge/information**

A charge means the statement of offence or statement of offences with which an accused is charged in a summary trial before a court. Criminal Proceedings commences when an accused is arraigned on a charge or information. **See Fawehinmi V I.G.P. (2002) 7 NWLR (Pt. 767) 606**

### **4.1.1 Form of a Charge**

#### **A. Magistrate Court/Area Courts/ Customary Courts**

There are three methods of commencing criminal proceedings and they are as follows;  
1. By bringing the person arrested without a warrant before a Magistrate or the customary Court Judge upon a charge duly signed by a Police Officer who must be a



Legal Practitioner. Section 110(1)(a) ACJA 2015, Section 78(1) ACJL Lagos 2015, Section 127(1)(a) ACJL kano, 2019.

2. By laying a complaint before a magistrate whether or not on oath upon receiving a First Information Report. **Section 109 (a) & 110 (1) (c) ACJA 2015, Section (126) (a) ACJL Kano 2019.**

3. By laying First Information Report before a Magistrate. This method is common in the North and the F.C.T, not used in any part of the South. **Section 110 (1) (b) ACJA 2015.**

## **B. Federal High Court**

Criminal trials are of a summary nature, and they commence by filing a charge against the accused, which must be duly signed by a law officer or a Police Officer, who may also be a Legal Practitioner, depending on the situation. Summary trial is a form of trial by a Magistrate or by a High Court commenced without filling Information. Section 33(2) & Section 56(1) Federal High Court Act 2009, Section 66 Police Act 2020, Section 494 ACJA 2015.

## **C. State High Court**

Under the ACJA 2015, the Attorney General of the Federation or a designated legal practitioner can initiate criminal proceedings in any court for offenses created by the National Assembly. This is done by preferring information. In the North, criminal actions start with obtaining the High Court's leave or laying a complaint before the Judge, supported by a written application, the proposed charge, and proof of evidence.

The Attorney General of the Federation or the Director of Public Prosecution can provide legal advice or directives to the Police or law enforcement for offences under National Assembly Acts. A copy of such advice or directive is submitted to the court handling the case. Section 104 & 106 ACJA 2015, Section 69 ACJL Lagos 2015, Section 121 ACJL Kano 2019, Section 211 (1)(2) CFRN 1999, Section 105 ACJA 2015, Section 74 ACJL Lagos 2015, Section 122 ACJL Kano 2019.

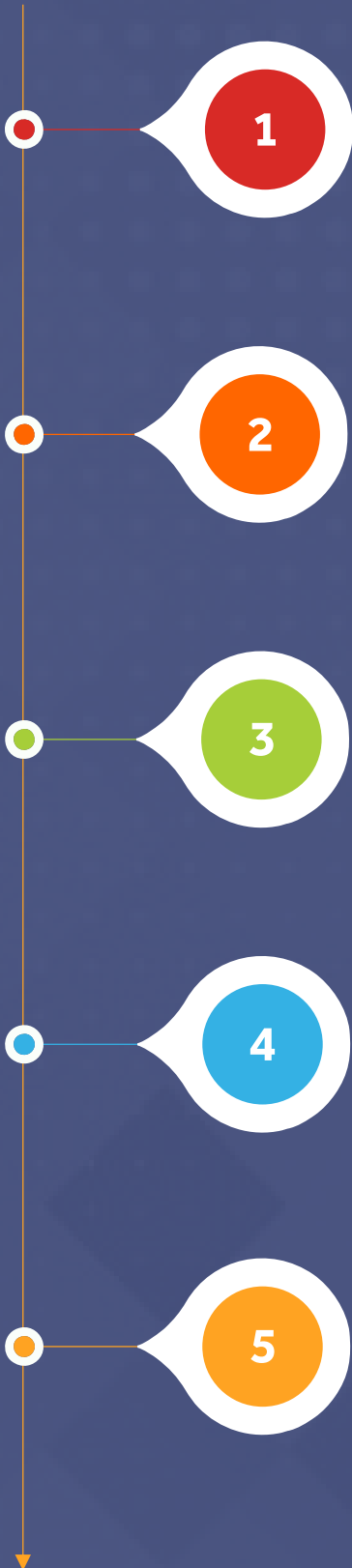
### **4.1.2 Content of a Charge/Information**

Information is not a charge. The filing of an information is a proceeding preliminary to trial. Unlike in a charge, the accused is not directly indicted in an information. Rather, the court is informed by the Attorney-General, who is responsible for the prosecution, that the accused committed the offence or offences. In other words, information is a mode of instituting criminal proceedings. **Fawehinmi v. A.G., Lagos State (No.1) (1989) 3 NWLR (Pt. 112)707**

In the Magistrate Courts in the South and the High Courts of the Northern States, it is referred to as a "charge", while in the High Courts in the South, and Adamawa and Taraba States in the North; it is known as "information".

### 4.1.3 Content of a Charge

The contents of a charge are set out to be used and adapted but could be modified as necessary in the circumstances of each case. **Section 193 ACJA 2015, Section 146 ACJL Lagos 2015, Section 200 ACJL Kano 2019.**



#### The Heading:

The Court where the case is instituted. In order to determine the court where the matter is to be tried, the jurisdiction in which the offence is alleged to have been committed must be ascertained.

#### The Reference Number:

This is not a requirement of the law. It is for administrative purposes, used to trace out a file. In the North, it is referred to as "Case No." while in the South it is referred to as "Charge No."

#### Parties:

The prosecuting party {the State} and the defendant{s}. The name of the nominal complainant does not appear as a party on the charge. The name of the nominal complainant does not appear as a party on the charge.

#### Preambles:

The charge at the Magistrate Court in the South and the Federal High Court do not commence with preambles but the State High Courts in the South and Magistrate courts in the North commence with a Preamble.

#### Count:

The count is the particulars of the alleged offence or offences with which the Defendant is charged. Each count must contain the following:

1. The Name of the Defendant
2. The date of commission of the Offence
3. The place the offence was committed
4. The offence which the Defendant is charged
5. Name of the person and/or thing in relation to whom or in respect of which the offence was committed
6. Date and Signature of the Drafting Authority

## 4.2 Rules of Drafting Charges

### 4.2.1 The rule against Ambiguity

This rule stipulates that a charge must be sufficiently clear to provide the Defendant with proper notice of the offence they are being charged with. This is a fundamental rule in the sense that an ambiguous charge could mislead the accused person and wrongly affect the preparation for his defence.

### 4.2.2 The Rule against duplicity

This rule pertains to the count in a charge, particularly in situations involving ambiguity. It prohibits including multiple offences in a single count, unless such combination is allowed by a statute.

### 4.2.3 The Rule against Misjoinder of Offenders

This rule prohibits consolidating offenders in a single court case, meaning only one defendant should be charged per charge sheet. However, defendants may be jointly charged if accused of:

- The same offence committed in the course of the same transaction.
- An offence and another related to abetting, being an accessory to, or attempting to commit the same offence.
- More than one offence of the same or similar character, committed jointly.
- Different offences committed during the same transaction.
- Offences like theft, extortion, or criminal misappropriation, and another accused of receiving, retaining, or assisting in the disposal or concealment of the related property.
- Dishonestly receiving stolen property or assisting in its concealment Section 208, 209, 210-215 ACJA 2015, Section 151, 153 ACJL Lagos 2015, Section 215, 216, 217-222 ACJL Kano 2019.

### 4.3.1 Effect of a Defective Charge

Once a charge discloses an offence recognized by law, any defect in the charge shall not render it legally invalid unless the defendant was misled by the defect and it affected the conduct of their defence. Section 216, 220, 222 ACJA 2015, Section 154, 158 ACJL Lagos 2015, Section 223, 227, 229 ACJL Kano 2019; Mohammed V. State (2023) 3 NWLR (Pt. 1870) 157.

### 4.3.2 Alteration or Amendment of Charge

If a new charge is added or an existing one is changed, the court will ask the defendant to plead and confirm trial readiness. If the defendant is not ready, reasons will be considered. The court may proceed immediately if it will not harm the case of the defence or prosecution. If harm is likely, the court may order a new trial or postpone.

For charge amendments, the court may endorse the order and treats it as originally filed. Amendments may require recalling witnesses for examination or cross-examination. Section 156 ACJL Lagos 2015, Section 217 & 218 ACJA 2015, Section 224 & 225 ACJL Kano 2019, Section 219 ACJA 2015, Section 157 ACJL Lagos 2015, Section 227 ACJL Kano 2019.

#### **4.3.3 Information**

The ACJA states that the rules regarding charges also extend to the counts mentioned in an information. Similar to a charge, the contents of an information are provided as a framework but can be adjusted as needed based on the specifics of each case. Section 380, 377 ACJA 2015, Section 250 ACJL Lagos 2015.

#### **4.3.4 Contents of Information**

1. A description of each charged offence in separate paragraphs.
2. Each paragraph (count) starts with the offence statement and is numbered if there are multiple charges.
3. The offence statement briefly describes the charge, including essential elements and references to the specific law if applicable.
4. The offence particulars are stated in simple language.
5. Specify the law and section under which the offence is alleged.
6. If the offence lacks a specific name, include a definition for clarity.
7. Include Proof of Evidence, List of Witnesses, and List of Exhibits.
8. Additional requirements under the ACJA for the Proof of Evidence include exhibits, witness lists, extra-judicial statements, relevant documents, and details about the defendant's bail, custody, plea bargains, and prior proceedings. See: Section 378 ACJA 2015, Section 251 ACJL Lagos 2015, Nyame V. FRN (2021) 6 NWLR (Pt. 1772) 289, and Section 379(1) ACJA 2015.

#### **4.3.5 Objections challenging the validity of a Charge or Information**

Objections to the validity of a charge will be considered only if the defect misled the defendant and affected their defence. Such objections can lead to void proceedings. Section 220 ACJA 2015, Section 158 ACJL Lagos 2015, Section 227 ACJL Kano 2019. Specifically, ACJL Lagos provides that objections cannot delay judgments if they could have been fixed during the trial. These objections include discrepancies in time, location or form of the charge and evidence. To prevent trial delays, Section 396(2) of ACJA allows objections after the plea but combines them with substantive issues, ruling on both during judgment. Nyame V. FRN (2021) 6 NWLR (Pt. 1772) 289.



## 4.4 Conclusion

As you conclude this chapter, remember that your understanding of charge and information procedures will enable you to advocate for accurate, fair legal processes and maintain the integrity of the criminal justice system. During arraignment be observant and make sure the charge is not defective. Where the charge or information falls short of the requirements stipulated in the various laws, appropriate objections must be raised and determined before arraignment.



## 5.0 Introduction

Arraignment and plea procedure stands as a pivotal moment, a defining juncture where the wheels of justice are set into motion. Arraignment is the act of formally presenting the charges to the defendant, and soliciting their plea. It is not merely a procedural formality. It represents the bedrock of a valid trial process. In this chapter, we will embark on practical procedures on arraignment and plea of a defendant.

## 5.1 Requirement of a Valid Arraignment

- The accused person must be brought to court unrestrained, unless directed otherwise.
- The Registrar calls the accused person by name and has them stand in the dock.
- The Charge or Information is read and explained in a language the accused understands, to the satisfaction of the court, possibly in the presence of a legal representative.
- The defendant is called to plead immediately, unless they object due to non-service of the charge, and the court verifies non-service. Section 211 ACJL Lagos, Section 271(2) ACJA, Section 273(2) ACJL Kano.
- Instead of the common "guilty or not guilty," the court official should ask, "How do you plead?"
- The court records that it is satisfied the defendant understands the charge and notes the plea in the defendant's words. Section 271(3) ACJA, Section 273(3) ACJL Kano; See Sampson Jacob Akpan v. State (2020) 6 NWLR (Pt. 1720) 297.

The requirements must co-exist and failure to comply with any of them renders the whole trial a nullity, as arraignment is fundamental in criminal proceedings. Even the judgement delivered in a criminal trial cannot be sustained when the arraignment is not valid. **F.R.N. v. Abubakar (2019) 7 NWLR (Pt. 1670) 113** **Lufadeju v. Johnson (2007) 8 NWLR (Pt. 1037) 53**; **Olanrewaju v. State (2020) 11 NWLR (Pt. 1734) 1**.

## 5.2 Possible Objections that could be raised by the Defendant upon a charge being read

**01**

An objection based on the Court's lack of jurisdiction to adjudicate on the matter.

**02**

An objection regarding a defect on the face of the charge. **Obakpolor v. State (1991) 1 NWLR (Pt. 165) 113**.

**03**

An objection based on double jeopardy i.e. he has been either convicted or acquitted of the same offence. **Section 36 (9) CFRN, Section 277 ACJA, Section 279 ACJL Kano, Section 216 ACJL Lagos.**

**04**

An objection on the grounds that he has been pardoned. **Section 36 (10) CFRN (as amended), Section 277 ACJA, Section 279 ACJL Kano, Section 216 ACJL Lagos.**

**05**

An objection based on the ground that the offence is not recognized by law. **Section 36 (12) CFRN (as amended).**

**06**

An objection based on the ground that the crime is statute barred, such as sedition, treason, and treasonable felony.

**07**

An objection concerning non-service, wherein the Court finds that the Defendant has not been duly served. **Section 211 ACJL Lagos, Section 271 (2) ACJA, Section 273 (2) ACJL Kano.**

## 5.3 Plea of Guilty

When a defendant pleads guilty, the court will record the plea in the defendant's own words. The prosecution then presents details and the court will check if the plea aligns with the presented facts. If convinced, the court can convict and sentence, unless there are substantial reasons not to. No burden is on the prosecution to prove guilt. **Section 274 ACJA, Section 213 ACJL Lagos, Section 276 ACJL Kano; Okunola Taiwo v. F.R.N. (2022) 13 NWLR (Pt. 1846) 61.**

For capital offences, a guilty plea is not accepted. Instead, a plea of not guilty is recorded and the prosecution must prove the alleged offence. *F.R.N. v. Ya'u Mohammed* (2014) 10 NWLR (Pt. 1413) 551; *Taye Samuel v. State* (2021) 2 NWLR (Pt. 1761) 451.

## 5.4. Plea of Not Guilty

By pleading not guilty, the defendant will be considered as having opted for a trial. The defendant puts on the prosecution the burden that he committed the alleged offence. **Section 273 ACJA, Section 275 ACJL Kano, Section 212 ACJL Lagos.**

## 5.5 Plea of Guilty by Reason of Insanity

Where an accused person pleads not guilty due to insanity, the court must conduct a trial to determine both the commission of the offence and the defendant's mental state at that time. If the court finds the defendant committed the offence but was mentally impaired, they are declared not guilty by reason of insanity. **Section 278 ACJA, Section 280 ACJL Kano, Section 217 ACJL Lagos.**

However, being found not guilty by reason of insanity does not lead to immediate release. Instead, the person is held in custody, and the case goes to the Governor for a decision. The Governor may order confinement in a mental health facility, prison, or another suitable place for an indeterminate period *Umar Mustapha Usman v. State* (2018) 15 NWLR (Pt. 1642) 320.

## 5.6 Failure to Plead (Standing Mute)

Where the defendant remains silent when asked to plead, it becomes the court's duty to investigate the reasons behind their silence. This inquiry may even involve a medical examination to assist the court in making an informed decision. If, upon investigation, the court determines that the defendant's silence is intentional and malicious, the court will proceed to enter a plea of not guilty on the defendant's behalf. This entered plea will have the same legal effect as if the defendant had actually pleaded not guilty. **Section 276 ACJA, Section 215 ACJL Lagos, Section 278 ACJL Kano.**

The Court may further inquire if the accused person is of sound mind or not. Where the accused person is found to be of sound mind, the Court shall proceed with trial. But where he is found to be of unsound mind, the provisions of the law relating to accused persons of unsound mind shall apply.



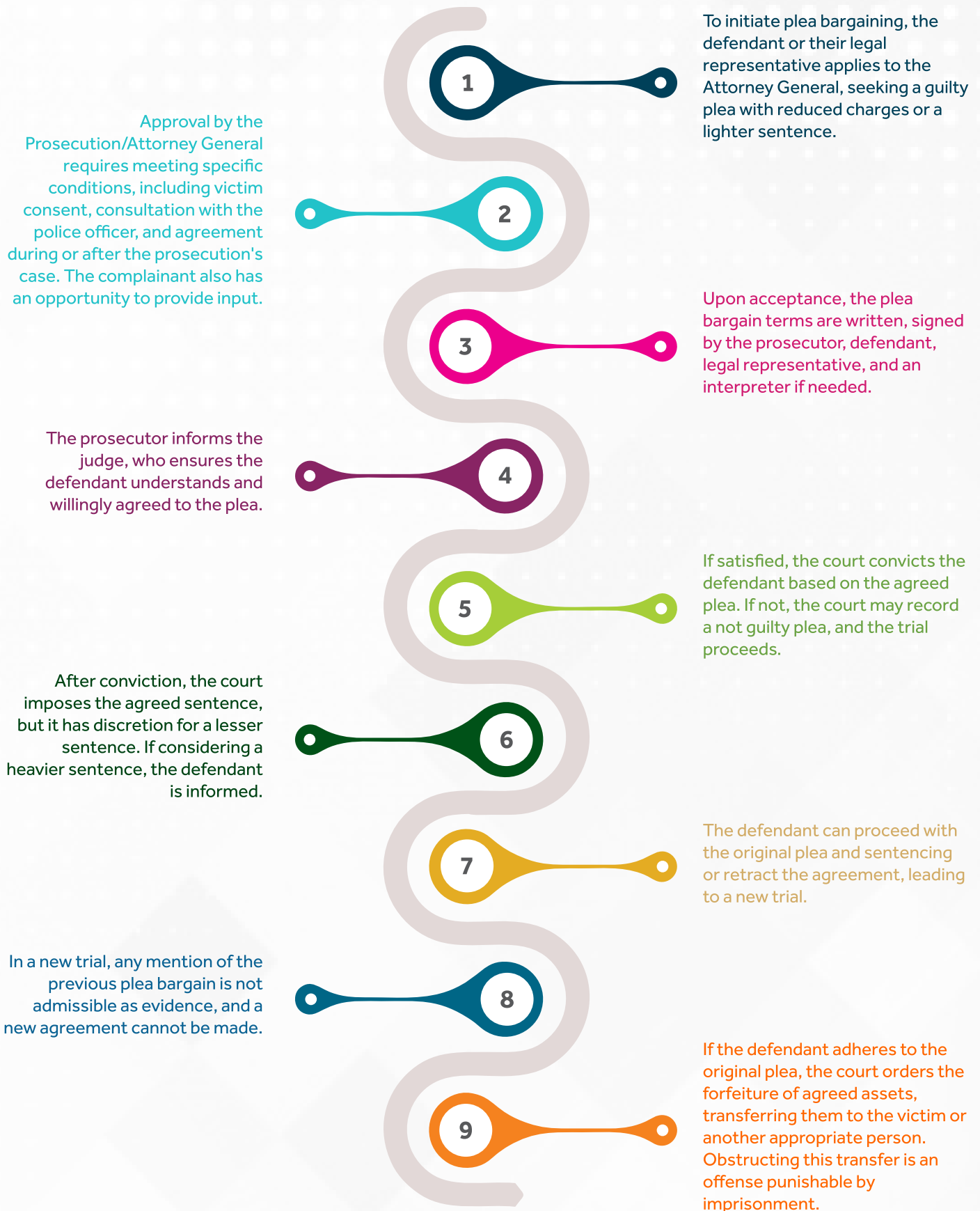


## 5.7 Plea Bargain

A plea bargain, also known as a plea agreement, is a legal arrangement between a defendant and a prosecutor in a criminal case, whereby the defendant agrees to plead guilty to certain charges or lesser offences in exchange for concessions from the prosecution. These concessions may include reduced charges (charge bargain), a lighter sentence (sentence bargain), or the dismissal of some charges. *John Yusuf Yakubu v. F.R.N.* (2023) 1 NWLR (Pt. 1864) 97.

The Attorney General of a State or Prosecution as stated under the ACJA is clothed with the power to receive and consider a plea bargain presented by a defendant charged with an offence, either directly from the defendant or on his behalf; or propose a plea bargain to a defendant charged with an offence where the attorney general is of the view that it will be in public interest, the interest of justice and the need to prevent abuse of legal process. Section 270 (1) ACJA, Section 76 (1) ACJL Lagos and Administration of Criminal Justice (Amendment) Law (ACJL) of Lagos State 2021, Section 272 (1) ACJL Kano, Section 75 ACJL Lagos, Section 270 (3) ACJA, Section 272 (3) ACJL Kano.

## 5.7.1 Procedure for Plea Bargaining



See Section 270 ACJA, Section 76 ACJL Lagos, Section 272 ACJL Kano, Section 272(10)(11)(12) ACJL Kano, Administration of Criminal Justice (Amendment) Law (ACJL) of Lagos State 2021. *Olumide Agbi v. F.R.N.* (2020) 15 NWLR (Pt. 1748) 416. *Iboyi Kelly v. F.R.N.* (2020) 14 NWLR (Pt. 1745) 479

## **5.8 Exempted offences**

Notwithstanding the aforementioned provisions on plea bargain under the ACJL Kano, the content of provision shall not be applicable to offences concerning culpable homicide punishable by death, rape and other sexual offenses, terrorism, unnatural offences, acts of gross indecency, thuggery, qazf {false accusation of adultery}, robbery, theft, drinking alcohol, and related offences. Section 272(15) ACJL Kano

## 6.0 Introduction

Bail refers to the temporary release of a defendant who is accused of a crime, pending trial or court appearance with conditions to ensure appearance for future proceedings. The right to bail reflects constitutional principles like personal liberty and fair trial. It's a contractual release, not immediate freedom, with the expectation that the accused will attend their trial as scheduled.

## 6.1 Legal framework for bail

The Constitution of Nigeria, especially Section 35(4) and Section 36(5), provides the legal foundation for bail. It ensures that anyone arrested is brought to court promptly. If not tried within a set period, the person must be released unconditionally or with reasonable conditions for future trial. Section 158 ACJA, Section 168 ACJL Kano, and Section 115 ACJL Lagos complement these constitutional provisions.

The Procedure Law details the processes for granting bail, specifying criteria, distinguishing bailable and non-bailable offences, and outlining conditions for the accused person when granted bail.

## 6.2 Bailable or non-bailable Offences

Offences in legal systems are often categorised as either "bailable" or "non-bailable" based on whether the accused person can be granted bail while awaiting trial.



## 6.2.1 Bailable Offences

Where the offence charged with is a felony other than a felony that carries the death penalty, the Court has the discretion to grant bail if it deems appropriate but where the offence is a simple offence {offences punishable with a term of years not exceeding three years}, it is mandatory for the Court to admit the accused to bail. Section 162, 163 ACJA, Section 115(2), 115(3) ACJL Lagos, Section 172, 173 ACJL Kano.

## 6.2.2 Non- Bailable Offences

A Magistrate lacks the authority to approve bail for capital offences, which are crimes carrying the penalty of death. Only a High Court judge holds the jurisdiction to grant bail for capital offences; however, such approval must be in exceptional circumstances such as ill health, delay in investigation, arraignment and prosecution for a period exceeding one year and any other circumstances that a judge may consider exceptional. Section 161(1) ACJA, Section 115(1) ACJL Lagos, Section 171{1} ACJL Kano.

## 6.3 Types of Bail at the Court

There are two forms of bail that the court can grant a defendant. These forms of bail are:

### 6.3.1 Bail Pending Trial

Bail pending trial refers to a legal arrangement in which a defendant who is facing criminal charges is released from custody pending trial or final determination of guilt or otherwise, under certain conditions to be imposed by the Court. This allows the defendant to remain free while awaiting trial.

#### 6.3.1.1 Principles guiding grant or refusal of bail pending trial

Granting bail is not an absolute right. Courts decide based on specific circumstances, considering factors like the charge's nature, evidence, punishment severity, criminal record, likelihood of repeat offences, probability of guilt, potential witness interference, accused person's protection, medical needs, and the likelihood of attending court. These factors must co-exist for the court to grant or refuse bail. See: *Uwgu v. State* (2020) 15 NWLR (Pt. 1746) 1, *Abacha v. State* (2002) 5 NWLR (Pt. 761) 638; *Bamaiyi v. State* (2001) 2 NWLR (Pt. 698) 435; *Ani v. State* (2001) 17 NWLR 742

#### 6.3.1.2 Procedure for Bail

The statute does not contain a particular stipulation regarding the process to be followed for submitting a bail application. When seeking bail, the legal representative of the defendant has the option to present a bail application either verbally or in writing upon arraignment.

### **6.3.1.3 Application for Bail in Magistrate Courts**

At the Magistrate Court, the application could be done orally, after arraignment and the plea of the Defendant has been taken. If the defendant enters a "guilty" plea, the matter of bail becomes irrelevant. However, if the defendant pleads "not guilty," their legal representative can orally request bail on behalf of the defendant. Should the Magistrate deny the bail request, the application can be made to the High Court. Section 168(b) ACJA, Section 119 ACJL Lagos, Section 178(b) ACJL Kano.

### **6.3.1.4 Application for Bail in High Court; Chief Moshood Kashimawo Abiola v. Federal Republic of Nigeria (1995) NWLR PT.370**

In the High Court, bail applications are typically made in written form. However, in the case of Chief Moshood Kashimawo Abiola v. Federal Republic of Nigeria, the defence counsel made an oral bail application after the appellant was arraigned. The trial Judge refused bail, stating it should be in writing with supporting affidavit evidence. The appellant appealed, arguing that bail applications do not need to be in writing.

The Court of Appeal, considering relevant legal provisions, unanimously allowed the appeal. It held that there's no specific procedure for bail application, and it's usually made orally from the bar, with the court determining it based on informed statements, not on oath. The court clarified that the trial Judge was wrong to insist on a written application. The Court also explained the difference between sections 118 and 123 of the Criminal Procedure Act, (Now Section 161(1), 162 & 163, 168 (b) ACJA, Section 115, 119 ACJL Lagos and Section 171, 172, 173, 178(b) ACJL Kano respectively), emphasizing that an oral application is generally accepted in the High Court, regardless of the gravity of the offense. The Judge can grant bail based on available material and exercise discretion.

The summary of the position on procedure in Chief Moshood Kashimawo Abiola v. Federal Republic of Nigeria is as follows:

1. For bail applications made during arraignment, whether the offense is capital or not, oral applications are accepted from the defense counsel or the accused. The prosecution can oppose orally, even in a Court of record.
2. If bail is denied by a Magistrate, a High Court Judge may grant bail. In this case, the bail application must be in writing, made by summons supported by an affidavit, as there is no charge pending before the Judge. The applicant must exhibit relevant documents to show the denial of bail by the lower court.

### **6.3.1.5 Conditions for bail**

The court has the authority to set bail conditions, considering the circumstances of the case and these conditions must be reasonable. This may include a specified amount of money or alternative collateral. After the trial or upon a surety's request, the provided money or security is returned. When granting bail, the court may require a surety or sureties, assessed by the court, to ensure the defendant's presence. Anyone, regardless of gender, can act as a surety; it's unlawful to reject someone based on

gender.

See Section 165, 167 ACJA, Section 116, 118 ACJL Lagos, Section 175, 177 ACJL Kano. Nwafor v. EFCC (2021) 13 NWLR (Pt. 1794) 548. Ibori v. FRN (2009) 3 NWLR (Pt. 1127) 94.

### **6.3.2 Bail Pending Appeal**

A defendant who has been convicted of an offence and is in the process of appealing against the conviction can apply for bail and be granted release from custody while the appeal is pending. Although similar to the regular bail, the defendant is no longer presumed innocent, therefore must show special and/or exceptional circumstances for the bail pending appeal to be considered and granted. The grant of bail pending an appeal is not made as a matter of course but at the discretion of the court depending on the special facts, circumstances and severity of the offence. Ani v. State (2004) 7 NWLR (Pt. 872) 249; Jammal v. State (1996) 9 NWLR (Pt. 472) 352.

#### **6.3.2.1 Conditions Precedent to an Application for Bail Pending Appeal**

Prior to contemplating the admission of a convict to bail pending appeal, it is imperative to ensure that the following preliminary conditions met:

1. The Applicant must have indeed lodged an appeal, and the said appeal is in fact pending;
2. The Applicant has adhered to the appeal conditions stipulated, which will indicate the level of earnestness in going through with the appeal; and
3. If the petitioner was previously granted bail during the trial proceedings, there is no record of them endeavouring or attempting to jump bail.

#### **6.3.2.2 What constitutes special circumstances?**

Bail applications pending appeal are determined based on unique circumstances, such as the appeal's legal significance, the likelihood of serving a substantial part of the sentence before the appeal, the prospects of success, potential undue delays in the appeal process, serious health risks to the appellant, and a demonstration of good behavior and law-abiding conduct. See: Obi v. State (1992) 8 NWLR (Pt. 257) 76, Meregini v. F.R.N. (2018) 12 NWLR (Pt. 1633) 33, George v. F.R.N. (2010) 5 NWLR (Pt. 1187) 254, Nwaoboshi v. F.R.N. (2023) 10 NWLR (Pt. 1893) 565.

## **6.4 Revocation of Bail**

The Court can cancel granted bail if the defendant evades or does not attend trial. In such cases, the Court may issue a bench warrant for arrest or order bail bond forfeiture. The surety has a chance to explain why forfeiture should not happen. Recognizance can also be forfeited with satisfactory proof.

If a Magistrate grants bail for a non-bailable offence and the defendant is indicted, the Magistrate issues an arrest warrant and commits the defendant to prison once informed. Indictment occurs when the information is filed at the High Court. Section 179, 184 ACJA, Section 132 ACJL Lagos, Section 189 ACJL Kano, F.R.N. v. Maishanu (2019) 7 NWLR (Pt. 1671) 203.

## 6.5 Variation of bail conditions

A High Court Judge may order a review of bail conditions set by the Magistrate Court or a police officer. Additionally, the Judge can grant bail to a defendant who is in custody within a State or in the Federal Capital Territory, Abuja. Section 168 ACJA, Section 120 ACJL Lagos, Section 178 ACJL Kano.

## 6.7 Conclusion

Bail is a crucial part of the justice system, maintaining a delicate balance between protecting the rights of the accused and ensuring a smooth legal process. Rooted in constitutional principles like personal liberty and the right to a fair trial, bail is vital for upholding the "innocent until proven guilty" principle. It prevents unnecessary detention before a court appearance. Striking a balance is key, considering public safety and judicial integrity, making sure bail conditions are fair and just for each case's unique circumstances.

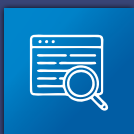


## 7.0 Introduction

A trial is a legal process where a court examines the evidence and arguments presented by both the prosecution (the side accusing someone of a crime) and the defence (the side defending the accused). The goal is to determine whether the accused person is guilty or not guilty of the crime they are charged with. As a young criminal defence lawyer, always go through your checklist and have a guide base on the nature of the matter.

### 7.1 Trial Preparation Checklist for Young Lawyers

Before commencement of trial, lawyers should ensure that they have thoroughly prepared for the case to provide the best possible representation for their client. Here's a checklist of things a lawyer should consider:



#### A. Legal Research and Case Analysis:

- Review relevant laws, statutes, regulations, and case precedents related to the charges against the suspect.
- Analyse the strengths and weaknesses of the case to develop a legal strategy to adopt during trial.
- Adopt a case strategy or case theory that is simple, persuasive, logical, and comprehensive.
- Consider the credibility or its believability or where it is disputable, let it align with common sense and the evidence.



#### B. Client Consultation:

- Have thorough discussions with the client to understand their version of the story and discuss any potential defences.
- Explain the legal process, potential outcomes, and the defendants' rights



### **C. Gathering Evidence:**

- Collect and review all evidence relevant to the case, including witness statements, documents, photos, videos, and physical evidence.
- Identify any evidence that could support the defence or challenge the prosecution's case.



### **D. Witnesses:**

- Identify potential witnesses who can testify on behalf of the defendant and secure their availability for trial.
- Prepare witnesses for their testimony and anticipate potential cross-examination questions.



### **E. Pretrial Motions and Applications:**

- File or make necessary pretrial motions or application, such as motions for bail, Application for facilities etc.
- Respond to any pretrial motions or counter motions filed by the prosecution.



### **F. Discovery:**

- Ensure that all relevant evidence has been disclosed and documentary evidence to be used by the prosecution during trial has been obtained.



### **G. Trial Preparation:**

- Prepare a trial outline or strategy that includes questions for examination of witnesses and cross-examination, noting points for your final address.
- Prepare exhibits, visual aids, and any demonstrative evidence.



### **H. Negotiations:**

- Engage in plea negotiations with the prosecution if the client wishes to explore the possibility of a plea bargain. This must be done before the commencement of trial.



### **I. Courtroom Logistics:**

- Ensure that all necessary documents are organised and ready for presentation during the trial.
- Confirm the trial date, time, and courtroom location.



### **J. Courtroom Etiquette and Behavior:**

- Advise the client on proper courtroom behaviour and appearance.
- Prepare the client for potential questioning by the prosecution and cross-examination.

Remember that each case is unique, and the specific tasks and considerations may vary depending on the circumstances and nature of the charges. It's crucial for a lawyer to provide diligent and competent representation while upholding ethical standards throughout the trial process.

## 7.2 Presence of The Defendant and Complainant During Trial

The defendant must be physically present in court throughout the entire trial process. There is no trial in absentia (when the defendant is not present). **Section 208 ACJL (Lagos) and Section 266 ACJA.**

### Exceptions to Defendant's Presence

1. The defendant's presence may be waived if they behave badly, disrupting the proceedings or making them impractical to continue.
2. When the offence carries a small penalty (not exceeding N 100,000 or imprisonment not exceeding 6 months, or both), the defendant does not have to be physically present. Instead, the defendant can plead guilty in writing or have a legal practitioner appear on their behalf and plead guilty. **Section 135 ACJA.**

### What if the Complainant fails to come to court?

If the complainant is aware of the scheduled hearing time and location but fails to appear in court, the court will dismiss the complaint unless a valid reason for the absence is provided. In such cases, the court has the option to adjourn the proceedings. **Section 351 ACJA and Section 232 ACJL (Lagos).**

## 7.3 Commencement of the Trial

The defendant must be present in court or brought before the court, and the charges will be read and clarified to their satisfaction by the registrar. Subsequently, they will be requested to enter their plea in response to the charges. **Section 211 ACJL (Lagos) and Section 271 ACJA.** Where the defendant pleads not guilty, the prosecution has the duty to prove the guilt of the defendant.

### 7.3.1 Understanding the difference between "Burden of Proof" and the "Standard of Proof" in criminal cases.

These concepts define the responsibilities of the parties involved in a criminal trial in terms of providing evidence and convincing the court of their claims.

## A. Burden of Proof

The burden of proof refers to the legal obligation placed on a specific party (usually the prosecution) to prove the elements of the case. In a criminal trial, the burden of proof rests on the prosecution. This means that it is the responsibility of the prosecution to present evidence and demonstrate, beyond a reasonable doubt, that the defendant is guilty of the charges brought against them. The prosecution must establish all the essential elements of the crime, and if they fail to do so, the defendant should be acquitted. **Section 132, 135 (2) Evidence Act 2011.**

## B. Standard of Proof

The standard of proof refers to the level or degree of certainty that the party with the burden of proof must reach to convince the court. In criminal cases, the standard of proof is generally "beyond a reasonable doubt." This means that the prosecution must present evidence that is so strong and convincing that there is no reasonable doubt in the minds of the judge that the accused committed the crime. The standard of proof is intentionally set high in criminal cases to protect the rights of the accused and prevent wrongful convictions. **Section 135 (1) Evidence Act 2011.**

### Instances where burden of proof would shift to the defendant

- Plea of intoxication and insanity.
- Special plea of autre fois acquit or autre fois convict.
- Facts specially within the knowledge of the defendant. **S. 140 E.A.**
- Exemptions, exceptions, or qualifications contained in statutes. **S. 141 E.A**
- Burden imposed by statute.

## 7.4 The case of the Prosecution

The prosecution's case refers to the evidence, witnesses, and arguments that the prosecuting side will present in court to prove the guilt of the defendant.

### 7.4.1 Types of Prosecution's Witnesses

Be careful to take note of the type of witness this will enable you to cross examine the witness effectively.



#### A. The Complainant, Eye Witnesses, or Relatives

These witnesses are people who directly saw or experienced the crime or have relevant information about it. They can provide firsthand accounts of what happened.





### **B. The Investigating Police Officer (IPO)**

Usually, the IPO who handled the investigation may be called as a witness to present evidence related to the investigation. However, there are exceptions where their presence can be skipped under certain conditions according to Section 49 and 50 of the Evidence Act, 2011. For example, if the IPO's testimony is not essential or if they are unable to attend court.



### **C. Expert Witnesses**

Experts in a specific field (like forensic science, medicine, etc.) can be called to explain complex matters to the court. Their testimony helps the judge to understand technical details that are crucial to the case.



### **D. Child/Minor Witnesses**

Children who are witnesses in a case need special consideration due to their vulnerability. The court takes steps to ensure their comfort and safety during testimony. Their evidence is given in a sensitive manner to minimise any distress.



### **E. Subpoenaed Witnesses**

A subpoena is a legal order to appear in court as a witness. Subpoenaed witnesses are individuals who are required by law to testify or bring evidence before the court. The evidence of this type of witness is usually important to the case.

## **7.4.2 Understanding the Provisions of Section 201 to 204 of the Evidence Act (Corroboration/Number of Witnesses to Prove Certain Offences)**

These sections of the Evidence Act deal with the requirement for multiple witnesses or corroboration to prove certain offences. In some cases, the law mandates that there be more than one witness or additional evidence to support the accusation and ensure a stronger case.

## **7.5 Likely Objections During Criminal Trials**

In presenting the case through the testimonies of these witnesses, there are likely objections that may come up during trial. These objections include:

### **7.5.1 Objection to Admissibility of Extra-Judicial Statements of the Defendants**

When evidence is presented in court, including statements made by the defendant outside of the courtroom (extra-judicial statements), there can be objections to their admissibility. This means that the other party (usually the Defence) might argue that these statements should not be considered as evidence in the trial. These objections may be on the following grounds.

### **Ground 1 - Voluntariness**

This objection revolves around the idea that statements made by a defendant were not given voluntarily. Sections 28 and 29 of the Evidence Act emphasise that a confession or statement must be given freely and without any form of coercion, inducement, or threat. If a statement is obtained under duress, it might be deemed inadmissible as evidence. Sections 28 and 29 of the Evidence Act.

### **Ground 2 - The Rule in *Ifaramoye v. State* (2013) LPELR-20533 (CA)**

The "rule" in *Ifaramoye v. State* provides that improperly obtained evidence shall be admissible pursuant to Section 14 of the Evidence Act, 2011 "unless the Court is of the opinion that the desirability of admitting the evidence is out-weighted by the undesirability of admitting evidence that has been obtained in that manner. In this regard and as spelt out in Section 15 of the Evidence Act, the Court shall take into account: (a) The probative value of the evidence; (b) The importance of the evidence in the proceeding; (c) The nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceeding..." Therefore, objections can be raised based on the consideration or circumstances in which such document may not be admissible.

### **Ground 3 - The Option of Retraction: The Rule in *Kushimo v. State***

The concept of retraction comes into play when a defendant claims that they made a statement under pressure or mistakenly, and they later want to take it back. The rule in *Kushimo v. State* provides that "the doctrine is well settled, to the unmistakable effect, that a retraction of a confessional statement does not necessarily render such a statement void. That's to say, a confessional statement does not become inadmissible merely because it is subsequently retracted by the maker thereof in the course of trial'. The law allows the defendant to retract their statement if they can prove that it was made falsely, involuntarily, or under improper influence.

## **Likely Objections to Documentary Evidence in a Criminal Trial**

### **Ground 1 - The Rule Against the Maker**

This objection arises when the document's author or maker is also the person trying to introduce the document as evidence. The rule against self-serving statements aims to prevent individuals from presenting their own biased or untrustworthy statements as evidence in their favour.

### **Ground 2 - The Rule of Certification (Public Documents)**

Certain documents, known as public documents, need to be certified to be admissible in court. The objection could be raised if a public document, like a government record, is not properly certified according to legal requirements. **Section 102 and 104 Evidence Act 2011.**

### **Ground 3 - The Rule as to Form (Photocopy) Section 89 Evidence Act:**

Section 89 of the Evidence Act specifies that copies of documents are admissible as

evidence if they are made in the regular course of business. However, objections can arise if the form of the document, such as a photocopy, is not in line with what's considered usual or proper and foundation is not laid as to the whereabouts of the original document.

#### **Ground 4 - The Rule of Compliance with Section 84, Evidence Act**

Section 84 of the Evidence Act pertains to the admissibility of electronically generated evidence. If the requirements of Section 84 are not met, it is a ground for objection to the admissibility of the document generated by means of an electronic process.

#### **Ground 5 - The Failure to Lay Proper Foundation**

For a document to be admissible, the party introducing it must establish its relevance and authenticity. If the foundation for admitting the document is not properly laid, an objection can be raised. This means that the document's connection to the case, its source, and how it was obtained must be explained adequately.

#### **Ground 6 - The Rule of Fair Hearing and Non-Service of Documents Sought to be Tendered under Section 36(4) CFRN 1999.**

Section 36(4) of the 1999 Constitution of Nigeria guarantees the right to a fair hearing. If the prosecution fails to provide the defence with a copy of the document they intend to use as evidence, this could violate the principle of fair hearing. An objection can be raised based on the non-service of documents to ensure both sides have equal access to evidence.

In summary, when documentary evidence is presented in a criminal trial in Nigeria, there are various grounds on which objections can be raised. These objections relate to the credibility, form, authenticity, compliance with legal requirements, and fair hearing principles. Objections ensure that only relevant, authentic, and fairly obtained evidence is considered in the trial, preserving the integrity of the legal process.

## **7.6 Cross-Examination of Prosecution Witnesses**

Cross-examination is a crucial phase of a trial where the defence has the opportunity to question the prosecution's witnesses to test the credibility of their testimony, expose inconsistencies, and reveal the full context of the case. When cross-examining the complainant, eyewitnesses, or relatives, several techniques can be employed:

### **7.6.1 Facts from the Evidence in Chief**

During the direct examination (evidence in chief) of the prosecution witnesses, they present their version of events. Cross-examiners begin by asking questions that confirm and clarify the points made during the evidence in chief. This helps establish a foundation for further questions.

### **7.6.2 Facts from Previous Statement**

As a cross-examiner, refer to any previous statements the eye witness or relatives made related to the case, such as police statements. If the witness's current testimony contradicts their previous statements, highlight these inconsistencies to challenge the witness's credibility.

### **7.6.3 Facts Obtained from the Defendant's (The Defendant's Story)**

The cross-examiner may bring up facts or details from the defendant's side of the story that contrasts with the prosecution witness's testimony. This approach aims to challenge the witness's perspective and reveal any bias or inaccuracies.

### **7.6.4 The Use of Extra-Judicial Statement in Compliance with Section 232 of the Evidence Act, 2011**

Section 232 of the Evidence Act allows a previous statement made by a witness (complainant or defendant) to be used for impeachment if they deny making that statement during cross-examination. The cross-examiner can present the extra-judicial statement to confront the witness with their own earlier words.

## **7.7 Techniques to Cross Examine an Investigating Officer**

Cross-examining an Investigating officer (IO) is a critical aspect of a criminal trial, as their testimony often shapes the prosecution's case. Here are techniques you can use to effectively cross-examine an investigating officer:

### **A. The Roles Played and Activities Undertaken**

Begin by establishing the investigating officer's role and activities in the case. Ask questions to clarify their involvement, such as whether they interviewed witnesses, collected evidence, secured the crime scene, or arrested the defendant. Understanding their actions will help you identify potential flaws in the investigation or gather information to challenge their conclusions.

### **B. The Hearsay Approaches**

Hearsay is an out-of-court statement offered for the truth of the matter asserted. Cross-examine the IPO about the sources of their information. If they relied heavily on hearsay, challenge the reliability of the information they gathered. Point out that relying on statements made by others who are not present in court might not provide an accurate picture of the events.

### **C. Questions on Investigation Activities**

Delve into the specifics of the investigation. Ask about the methods they used, the evidence they collected, and the procedures they followed. This can help you expose any shortcomings, inconsistencies, or procedural errors that might have compromised the investigation's integrity.



### **D. Facts Obtained from the Defendant's (The Defendant's Story)**

Contrast the IPO's account with the defendant's side of the story. If the defendant's version of events contradicts the IPO's testimony, it could raise doubts about the accuracy of the investigation. This technique aims to highlight discrepancies and bias that might exist in the investigation process.

## **7.8 Techniques to Cross Examine Expert Witness(es)**

Cross-examining expert witnesses is a complex task that requires careful planning and effective techniques. These techniques aim to challenge the credibility, relevance, and methodology of the expert's testimony. Here's how you can approach cross-examining expert witnesses:

### **A. The Length of Experience/Years of Service:**

When cross-examining an expert witness, inquire about their years of experience and background in the relevant field. While experience can lend credibility, it's important to establish whether their expertise aligns closely with the specifics of the case. If the expert's experience is primarily in a different area, you can question their ability to provide accurate insights into the case.

### **B. Relevance of Expertise to the Facts of the Case**

Probe the expert about the connection between their expertise and the specific facts of the case. If their specialised knowledge does not directly apply to the case at hand, you can question the relevance of their testimony. This technique aims to show that their opinions may not be well-founded in the context of the case.

### **C. Procedure Undertaken/The Standard Procedural Rules:**

Question the expert about the methods and procedures they followed in arriving at their conclusions. This is an opportunity to expose any deviations from standard practices or procedural rules in their field. If the expert deviated from accepted norms, it could raise doubts about the reliability of their analysis.

### **D. Analysis**

Probe into the expert's analysis and conclusions. Ask detailed questions about how they arrived at their opinions, what factors they considered, and whether they explored alternative explanations. If their analysis appears to be based on incomplete or biased information, you can challenge the validity of their conclusions.



## 7.9 What are the Common Pitfalls Lawyers Must Avoid?

Lawyers must be cautious to avoid certain pitfalls during examination-in-chief, cross-examination, and re-examination in a criminal case to maintain the integrity of the trial and ensure a fair process. Here are some pitfalls to avoid:

### Examination-in-Chief

#### 1. Leading Questions:

While leading questions can be used to elicit specific information, excessive use can undermine the credibility of the witness and appear manipulative.

#### 2. Narrative Witness:

Allowing the witness to give lengthy, uncontrolled narratives can result in irrelevant information being introduced and losing control of the witness's testimony.

#### 3. Inadequate Preparation:

Failing to thoroughly prepare witnesses can lead to inconsistencies, confusion, or the omission of crucial information.

**4. Speculation:** Asking witnesses to guess or speculate about details can weaken their credibility and introduce unreliable information.

**5. Hearsay:** Presenting information from witnesses who were not present during the incident can be considered hearsay and might be inadmissible.

### Cross-Examination

#### Cross-Examination:

##### 1. Badgering Witnesses:

Being overly aggressive or confrontational with witnesses can alienate the judge and weaken the lawyer's own case.

##### 2. Asking Multiple

**Questions:** Asking multiple questions in one go can confuse witnesses and allow them to pick and choose what to answer.

##### 3. Mischaracterization:

Misstating or misrepresenting evidence or witness statements can damage the lawyer's credibility and harm their case.

**4. Hostile Witnesses:** Failing to manage hostile witnesses can result in uncontrollable arguments or irrelevant testimony.

**5. Leading Questions in Cross-Examination:** While leading questions are usually used in cross-examination, they should be used carefully to avoid unintended admissions.

### Re-Examination

#### 1. New Questions:

Introducing new topics or questions that were not raised during cross-examination can open the door for the opposing side to ask further cross-examination questions.

#### 2. Repetitive Questions:

Repetitive questioning during re-examination can be seen as an attempt to bolster the witness's testimony and may not be well-received.

#### 3. Arguing with the Witness:

Re-examination is not the time to argue with the witness or challenge their credibility.

**4. Leading Questions:** While leading questions can be used to clarify points, they should not be used to create new testimony or introduce new facts.

**5. Losing Control:** Losing control of the witness during re-examination can lead to irrelevant information being presented.

Overall, lawyers should always maintain professionalism, respect witnesses, adhere to courtroom decorum, and be well-prepared. The key is to conduct examinations in a way that presents the case persuasively and effectively, while upholding the standards of fairness.

## 7.10 Options Available to the Defendant at the Close of Prosecution's Case

When the prosecution finishes presenting its evidence, the defendant has several options to consider in the proceeding of a criminal trial in Nigeria:

### 7.10.1 No Case Submission

A "no-case submission" is a formal request made by the defence to the court to dismiss the case due to insufficient evidence. This option asserts that the prosecution has failed to present enough evidence to prove the defendant's guilt. It's based on the belief that even if all the prosecution's evidence is accepted as true, it still falls short of establishing the defendant's guilt beyond a reasonable doubt. There are factors that a lawyer must consider before considering a no-case submission. **Section 303 ACJA**

#### **A. Failure of the Prosecution to Prove the Ingredients of the Offence**

One factor to consider when making a no-case submission is whether the prosecution has successfully proven each element of the offence. If they have not established all the essential elements, it could be a strong basis for a no-case submission.

#### **B. Failure of the Witnesses to Link the Defendant to the Offence**

If the prosecution's witnesses have not provided sufficient evidence connecting the defendant to the alleged crime, this could be grounds for a no-case submission.

#### **C. The Weakness of the Case of the Prosecution**

If the prosecution's evidence is weak, inconsistent, or relies heavily on hearsay, this could be used to argue that there is no case to answer.

### 7.10.2 Resting the Case on the Case of the Prosecution:

Instead of presenting a defence, the defendant's counsel can choose to "rest the case on the case of the prosecution." This means that the defence does not present any evidence or witnesses, but rather relies on the prosecution's evidence being insufficient to prove the defendant's guilt. This is however risky where there is evidence before the court. See the case of *Adamu v. State* (2014) LPELR 22696-(SC), *Magaji v. Nigerian Army* (2008) 1814 (SC).

### 7.10.3 The Defendant Presents His Own Defence

If the defendant and their counsel believe there is a chance to counter the prosecution's case, they can choose to present their own defence. This can involve calling witnesses, presenting evidence, and cross-examining prosecution witnesses to challenge their credibility.

In summary, the defendant in a criminal trial in Nigeria has several options after the prosecution's case is presented. These include making a no-case submission, considering factors like the prosecution's failure to prove elements or weak evidence,

resting the case on the prosecution's evidence, or proceeding to present the defendant's own defence. Each option should be carefully evaluated based on the strength of the prosecution's case and the defence's strategy.

## **7.11 Conclusion**

A trial is a pivotal legal process that serves as the crucible for justice, where the prosecution and defence engage in a rigorous examination of evidence and arguments. Its ultimate purpose is to render a verdict, determining the guilt or innocence of the defendant. For young criminal defence lawyers, adhering to a well-structured checklist and tailoring strategies based on the unique nature of each case is essential in ensuring a fair and effective defence of your client.



## 8.0 Introduction

There are a number of defences that are available to the defendant in criminal cases. Understanding the array of defences available to a defendant is crucial for any young lawyer. This practical guidebook delves into the multifaceted world of defences, equipping young lawyers with insights, tools and approaches to navigate the intricate labyrinth of litigation. These defences includes:

### 8.1.1 Defence of Alibi

An alibi is a defence strategy in which the defendant claims that they were not present at the scene of the alleged crime when it occurred. The term "alibi" is derived from the Latin phrase "alibi," which means "elsewhere." **Ukpa v. State (2012) LPELR-15429(CA)**

In the Nigerian legal system, the principle of alibi is based on the idea that if the defendant can prove that they were in a different location at the time the crime was committed, they could not have possibly been the perpetrator.

#### A. When to Raise Alibi

The alibi defence is typically raised by the defendant. It is a settled law that for the defence of alibi to be properly raised it must be raised at the earliest opportunity when the accused person is confronted by the Police with the commission of an offence so that the police will be in a position to investigate the alibi. **Ebenchi v. The State (2009) 179 LRCN 91.**

During the trial, the defence must present specific evidence that challenges the prosecution's assertion that the defendant was present at the scene of the crime. The



defendant and their legal counsel should decide whether to raise the alibi defence based on the available evidence and the circumstances of the case.

## **B. How to Establish Alibi**

To establish an alibi defence, the defendant must provide evidence that proves their absence from the crime scene at the time the offence occurred. This evidence may include:

- 1. Witness Testimonies:** The defendant can present witnesses who were with them at the time of the alleged crime and can vouch for their presence elsewhere.
- 2. Surveillance Footage:** If there is any surveillance footage from a location where the defendant claims to have been, it can serve as concrete evidence of their whereabouts.
- 3. Documentation:** Receipts, tickets, or any other documents that establish the defendant's presence at a different location can be used to support the alibi defence.
- 4. Cell Phone Records:** Phone records showing the defendant's location based on cell tower data at the time of the crime can be used as evidence.
- 5. Expert Testimony:** Experts in relevant fields, such as forensic experts or technology experts, can testify about the defendant's location and the reliability of the evidence presented.

The credibility of both the defendant and the witnesses they present will be assessed by the court. Inconsistencies or contradictions in their statements can weaken the alibi defence.



### **8.1.2 Defence of Insanity**

The insanity defence is a legal concept that asserts that a defendant should not be held criminally responsible for their actions if they were mentally incapable of understanding the nature and consequences of their actions at the time the crime was committed. In the Nigerian criminal justice system, the principles of insanity recognize that individuals who lack the mental capacity to distinguish right from wrong should not be held fully accountable for their actions. Mohammed v. State (1997) 9 NWLR (pt.520) p.169; Madjemu v. State (2001) 9 NWLR (pt.718) p.349.



## A. When to Raise Insanity

The insanity defence is typically raised by the defendant during the trial, after the prosecution has presented their evidence. It is a defence that focuses on the mental state of the defendant at the time the alleged crime occurred. The decision to raise the insanity defence is typically made by the defendant's legal counsel based on the available evidence and the defendant's mental health history.

## B. How to Establish Insanity

To establish the insanity defence, the defendant must provide evidence that demonstrates their mental incapacity at the time of the crime. Establishing insanity as a defence is a complex process and may involve the following elements:

1. **Medical Evaluation:** The defendant may need to undergo a psychiatric evaluation conducted by qualified mental health professionals. The evaluation aims to determine the defendant's mental state at the time of the offence.
2. **Expert Testimony:** Psychiatric experts can testify about the defendant's mental condition, including any relevant mental disorders or conditions that might have affected their ability to understand the nature and consequences of their actions.
3. **Medical Records:** Existing medical records and history, including any past diagnoses or treatments for mental health issues, can be presented as evidence to support the insanity defence.
4. **Witness Testimonies:** Witnesses who knew the defendant well and can attest to their mental state around the time of the alleged crime can provide important evidence.
5. **Circumstantial Evidence:** If there is circumstantial evidence suggesting the defendant's inability to comprehend the consequences of their actions, it can be presented to support the insanity defence.
6. **Legal Criteria:** The defence must demonstrate that the defendant met the legal criteria for insanity, which may vary depending on the jurisdiction. This often involves proving that the defendant did not understand the wrongful nature of their actions or that they were unable to control their behaviour due to a severe mental disorder.

It's essential to note that while the prosecution has the burden to prove beyond reasonable doubt, this burden will shift to the defence where a defence of insanity is raised by the defence.



### 8.1.3 Defence of Provocation

The provocation defence, also known as the defence of "diminished responsibility," is a legal concept that acknowledges that a defendant's actions might have been influenced by intense emotions such as anger, fear, or passion. The defence argues that these emotional states can temporarily impair a person's self-control and judgement, potentially reducing the severity of the offence. **Sections 283 and 318 Criminal Code and Bassey v. State (2013) LPELR-2069 (CA).**

#### A. When to Raise Provocation

The provocation defence is typically raised by the defendant during the trial, after the prosecution has presented their evidence. It is a defence that focuses on the defendant's emotional state and how it may have affected their actions. The decision to raise the provocation defence is often based on the available evidence and the circumstances of the case, particularly when there is evidence of strong emotional triggers.

#### B. How to Establish Provocation

To establish the provocation defence in Nigeria, the defendant must provide evidence that supports the claim that their actions were a direct result of being provoked and experiencing intense emotions. Establishing provocation as a defence may involve the following steps:

- 1. Evidence of Provocation:** The defendant must provide evidence that shows they were indeed provoked by the victim or another party. This provocation must have been sufficient to arouse intense emotions that led to the defendant's loss of self-control.
- 2. Circumstances and Timing:** The provocation must have occurred right before the defendant's actions. The court will assess whether the time between the provocation and the offence was short enough to establish a causal link between the two.
- 3. Reasonable Person Standard:** The court may apply the "reasonable person" standard to determine if a hypothetical reasonable person would have reacted similarly to the provocation. If the reaction was considered reasonable given the circumstances, it could strengthen the provocation defence.

**4. Expert Testimony:** Experts, such as psychologists or psychiatrists, might testify about the defendant's emotional state and how it could have affected their ability to exercise self-control.

**5. Witness Testimonies:** Witnesses who observed the defendant's emotional state before and during the offence can provide valuable evidence to support the provocation defence.

**6. Mental State Evidence:** If there is evidence to suggest that the defendant's emotional state impacted their ability to form the necessary intent for a specific crime, it can be presented as part of the defence.

It's important to note that the provocation defence does not necessarily absolve the defendant of guilt. Instead, it might lead to a reduction in the charges or the severity of the sentence if the court determines that the defendant's actions were a result of temporary emotional turmoil.



#### **8.1.4 Self Defence**

The principle of self-defence in the legal context of Nigeria is based on the idea that individuals have the right to protect themselves from imminent harm or danger. It allows a person to use reasonable force, even lethal force in some cases, to defend themselves or others when faced with a genuine threat. Section 60 of the Penal Code Law, *Sampson Nkemji Uwaekweghinye v. State* (2005) 9 NWLR (pt. 930) 227 @ p.250.

##### **A. When to Raise Self Defence**

Self-defence is raised by a defendant when they believe their actions were necessary to protect themselves or others from harm. This defence is usually invoked when the defendant admits to the actions but claims they were justified due to the need for self-preservation.

## **B. How to Establish Self Defence**

To establish the self-defence, the defendant must provide evidence that their actions were taken in response to an actual and immediate threat and that the force used was proportionate to the threat. The process of establishing self-defence may include the following elements:

**1. Imminent Threat:** The defendant must show that they genuinely believed they were facing an imminent threat of bodily harm or death. This threat must be real and immediate, rather than hypothetical or speculative.

**2. Proportionality:** The force used in self-defence must be proportionate to the threat. The defendant cannot use excessive force that goes beyond what is necessary to neutralise the threat. If lethal force is used, it must be justified by the severity of the threat.

**3. Reasonable Belief:** The defendant's belief in the necessity of self-defence must be objectively reasonable. The court will assess whether a reasonable person in the defendant's situation would have perceived the threat similarly.

**4. No Reasonable Retreat:** The defendant must show that they had no reasonable opportunity to escape or avoid the threat before resorting to self-defence. In some cases, retreat might not be necessary if the threat is too immediate.

**5. Immediacy:** The defendant's response should be immediate and in direct response to the threat. Delayed actions might weaken the self-defence claim.

**6. Witness Testimonies:** Witnesses who were present during the incident can provide accounts of the events leading up to the use of force and the perceived threat.

**7. Expert Testimony:** Experts in relevant fields, such as self-defence training or law enforcement, might provide testimony about the reasonableness of the defendant's actions given the circumstances.

In conclusion, the defence of self-defence in the Nigerian Criminal Justice system allows individuals to protect themselves or others from imminent harm. To establish this defence, the defendant must provide evidence that their actions were a reasonable response to a real and immediate threat and the force used was proportionate to the danger.





### 8.1.5 Defence of Intoxication

The principle of intoxication defence in the legal context of Nigeria deals with situations where a defendant claims that their actions were influenced by involuntary intoxication (such as being drugged without their knowledge) or voluntary intoxication (consumption of drugs or alcohol). The defence argues that due to their impaired mental state, they were unable to form the necessary intent to commit the alleged crime.

#### A. When to Raise Intoxication

The intoxication defence can be raised by the defendant during the trial if they believe that their actions were influenced by their intoxicated state. This defence is often used when the defendant wishes to demonstrate that they lacked the required mental capacity to commit the crime due to their altered state of mind caused by drugs or alcohol.

#### B. How to Establish Intoxication

To establish the intoxication defence in Nigeria, the defendant must provide evidence that their level of intoxication was such that they were unable to form the requisite intent for the crime they are charged with. The process of establishing intoxication as a defence may include the following steps:

- 1. Type of Intoxication:** The defence must clarify whether the intoxication was involuntary (resulting from being drugged without consent) or voluntary (resulting from the defendant's own actions such as alcohol or drug consumption).
- 2. Mental State:** The defendant must demonstrate that their level of intoxication was significant enough to affect their ability to understand the nature and consequences of their actions or to form the specific intent required for the alleged crime.
- 3. Expert Testimony:** Medical or toxicology experts might testify about the effects of the substance consumed and how it could impair cognitive and decision-making functions.



**4. Witness Testimonies:** Witnesses who interacted with the defendant while they were intoxicated can provide accounts of their behaviour and mental state.

**5. Motive and Intent:** The defence must show that the defendant's actions were not premeditated and that they were driven by their intoxicated state rather than a deliberate intention to commit the crime.

**6. Causation:** The defence must establish a direct link between the level of intoxication and the inability to form the necessary intent.

It's important to note that the success of the intoxication defence might depend on whether the crime in question requires a specific mental state (such as intent, knowledge, or recklessness). In some cases, if the crime is one of strict liability (where intent is not a factor), the intoxication defence might not apply.

Furthermore, while voluntary intoxication might lead to reduced charges or sentencing, it might not absolve the defendant of all legal consequences. Involuntary intoxication, on the other hand, could lead to a complete defence if it can be proven that the defendant had no control over their state of intoxication.



#### **8.1.6 Defence of Automatism**

Automatism is a defence in the legal context that asserts that the defendant's actions were involuntary and committed without conscious control or intent. It's based on the premise that a person cannot be held criminally responsible for actions they performed unconsciously, without being aware of their actions.

##### **A. When to Raise Automatism**

The automatism defence can be raised by the defendant during the trial if they believe that their actions were the result of involuntary behaviour due to a state of automatism. This defence is typically used when the defendant claims that they had no control over their actions at the time of the alleged offence.

## **B. How to Establish Automatism**

To establish the automatism defence, the defendant must provide evidence that their actions were truly involuntary and beyond their control. Establishing automatism as a defence may involve the following steps:

**1. Medical Evidence:** The defendant might need to provide medical or expert testimony to demonstrate that they were in a state of automatism at the time of the alleged offence. This could involve conditions such as sleepwalking, seizures, or other medical issues that cause unconscious behaviour.

**2. Lack of Conscious Control:** The defence must show that the defendant's actions were beyond their conscious control and that they were not aware of their actions at the time they were committed.

**3. Witness Testimonies:** Witnesses who observed the defendant's behaviour at the time of the incident might provide testimony that supports the claim of automatism.

**4. Mental State Examination:** A mental health evaluation might be conducted to assess the defendant's mental state at the time of the alleged offence and determine if automatism is a valid defence.

**5. Comparison to Voluntary Acts:** The defence must demonstrate that the behaviour exhibited during the alleged offence was different from the defendant's normal behaviour and actions that are under their control.

**6. Trigger Factors:** If there were any external factors or circumstances that triggered the defendant's state of automatism, those factors might be relevant to establish the defence.

It's important to note that the burden of proving automatism often rests on the defendant. However, once the defendant presents credible evidence of automatism, the burden might shift to the prosecution to disprove the automatism claim.

Furthermore, the success of the automatism defence may depend on whether the court accepts the evidence provided by the defendant and whether the court believes that the actions were truly involuntary and beyond the defendant's control.



### 8.1.7 The Defence of Necessity

The necessity defence is a legal concept that allows a defendant to justify their actions as necessary to prevent a greater harm or danger. It is based on the principle that in certain situations, breaking the law might be justified if it prevents a more serious harm from occurring.

#### A. When to Raise Necessity

The necessity defence is raised by a defendant when they believe that their actions, which would normally be considered illegal, were necessary to avoid a greater harm or danger. This defence is often invoked when the defendant can demonstrate that they faced an imminent threat or emergency situation.

#### B. How to Establish Necessity

To establish the necessity defence, the defendant must provide evidence that their actions were indeed necessary to prevent a greater harm.

Establishing necessity as a defence may involve the following steps:

- **Imminent Danger:** The defendant must demonstrate that they were facing an imminent danger or emergency situation that required immediate action.
- **Proportionality:** The defence must show that the harm they were trying to prevent was greater than the harm caused by their actions. The principle of proportionality requires that the potential harm avoided is significantly more severe than the harm caused.
- **No Reasonable Alternative:** The defendant must prove that there were no reasonable alternatives available to prevent the harm without breaking the law.
- **Objective Standard:** The court will apply an objective standard to determine if a reasonable person in the defendant's situation would have acted similarly to prevent the harm.
- **Expert Testimony:** Depending on the situation, expert witnesses might provide testimony to support the claim that the defendant's actions were necessary to prevent greater harm.



- **Causation:** The defendant must establish a direct link between their actions and the prevention of the greater harm.
- **Immediacy:** The defence must demonstrate that there was no time to seek legal authorities' assistance or wait for other solutions to the problem.

It's important to note that the necessity defence is not available for all types of crimes. Generally, it is more likely to be accepted for minor offences or property crimes than for serious violent crimes.



### 8.1.8 The Defence of Mistake

The principle of mistake as a legal defence asserts that a defendant made an honest and reasonable mistake about a material fact that, had they known the truth, would have affected their intent to commit the alleged crime. Mistake defences are based on the notion that individuals should not be held criminally liable for actions committed under a genuine misunderstanding of the situation.

#### A. When to Raise Mistake

The mistake defence can be raised by the defendant during the trial if they believe that their actions were influenced by an honest mistake regarding a key fact. This defence is often used when the defendant's intent is central to the elements of the alleged offence.

#### B. How to Establish Mistake

To establish the mistake defence the defendant must provide evidence that supports their claim of an honest and reasonable mistake. Establishing the mistake defence may involve the following steps:

**Honest and Reasonable Mistake:** The defendant must demonstrate that their belief about a certain fact was honest and that it was reasonable given the circumstances.

- **Material Fact:** The mistake must concern a material fact that, if known correctly, would have affected the defendant's intent or actions related to the alleged crime.
- **Evidence of Belief:** The defendant needs to present evidence that shows they genuinely believed in the mistaken fact and that their actions were influenced by that belief.
- **Consistency:** The defendant's claim of mistake should be consistent with their overall behaviour and actions before and after the incident.
- **Expert Testimony:** In some cases, expert testimony might be used to demonstrate that the defendant's mistaken belief was reasonable given their background or the available information.
- **Causation:** The defendant must show a direct link between their mistaken belief and their actions. The mistake must have significantly influenced their decision to commit the crime.

It's important to note that the mistake defence generally applies to situations where the crime requires a specific mental state, such as intent or knowledge. If the crime is one of strict liability, where intent is not a factor, the mistake defence might not be applicable.



### 8.1.9 The Defence of Coercion

The principle of coercion as a legal defence asserts that a defendant was forced or threatened to commit a crime against their will due to circumstances beyond their control. The coercion defence argues that the defendant should not be held fully responsible for their actions if they were compelled to act under duress.

#### A. When to Raise Coercion

The coercion defence can be raised by the defendant during the trial if they believe that their actions were influenced by external pressures or threats that left them with no reasonable choice but to commit the crime. This defence is often invoked when the defendant can demonstrate that they faced imminent danger or a situation in which they had no other option.



## **B. How to Establish Coercion**

To establish the coercion defence, the defendant must provide evidence that supports their claim of being forced or threatened. Establishing the coercion defence may involve the following steps:

**1. Threat or Force:** The defendant must demonstrate that they were subject to threats, force, or intimidation that left them with no reasonable choice but to commit the crime.

**2. Immediacy and Directness:** The coercion must have been immediate and directly linked to the commission of the crime. It must have left the defendant with no viable alternative.

**3. Evidence of Coercion:** The defendant might need to provide evidence that supports their claim of being coerced. This could include witness testimonies, physical evidence, or communication records.

**4. Lack of Free Will:** The defendant must establish that their actions were not of their own free will and were a result of external pressures beyond their control.

**5. Reasonable Belief:** The defendant's belief that they were under coercion must be reasonable given the circumstances. If a reasonable person in their situation would have believed they had no choice but to commit the crime, the defence may be more likely to succeed.

**6. Causation:** The defendant must show a direct link between the threat or force they experienced and their decision to commit the crime.

**7. No Reasonable Alternative:** The defendant must prove that there were no reasonable alternatives available to them that would have allowed them to avoid committing the crime.

It's important to note that the burden of proving the coercion defence often rests on the defendant. The evidence they present must convincingly show that their actions were not voluntary and that they were acting under extreme duress.



### 8.1.10 The Defence of Impossibility

The principle of impossibility is a legal defence that asserts that a defendant should not be held criminally liable for an attempt to commit a crime if it was impossible for them to complete the crime due to certain circumstances. Impossibility defences can be categorised as either factual impossibility or legal impossibility.

- **Factual Impossibility:** This occurs when a defendant's intended actions were not feasible or possible due to the surrounding circumstances, even though they believed they were committing a crime.
- **Legal Impossibility:** This occurs when a defendant's actions were not criminal in nature, even though they believed they were committing a crime. The actions themselves do not constitute a crime under the law.

#### A. When to Raise Impossibility

The impossibility defence can be raised by the defendant during the trial when they believe that their actions, even though intended to be criminal, were not feasible or were not actually criminal under the law.

#### B. How to Establish Impossibility

To establish the impossibility defence, the defendant must provide evidence that

supports their claim of factual or legal impossibility. Establishing the impossibility defence may involve the following steps:

### **Factual Impossibility**

**1. Evidence of Impossibility:** The defendant must demonstrate that, due to circumstances beyond their control, the intended crime could not have been completed even if they had carried out their actions as planned.

**2. Intent:** The defendant's actions must indicate a genuine intent to commit the crime, but the circumstances rendered completion impossible.

**3. No Legal Harm:** The actions the defendant attempted, even if completed, would not have caused harm or damage that is considered criminal under the law.

### **Legal Impossibility**

**1. Evidence of Legal Impossibility:** The defendant must show that the actions they believed to be criminal were not actually prohibited by the law.

**2. Misinterpretation of Law:** The defendant's belief that they were committing a crime must be based on a reasonable misunderstanding of the law.

**3. No Criminal Act:** The defendant's actions, even if carried out as planned, would not have constituted a crime under the legal definition.

The burden of proving the impossibility defence often rests on the defendant. The evidence they present must be persuasive enough to convince the court that their actions were indeed impossible to complete or that their actions were not criminal in nature.

## **8.2 Conclusion**

During the case of the defendant, the Nigeria Criminal Justice System, provides for various defences to a criminal charge. As a young criminal defence lawyer, ensure that you properly consider these defences based on the circumstances of the case. Every defence must be aimed at disproving the element of the offence, that evidence has already been adduced by the prosecution.

## **9.0 Introduction**

As a young lawyer, embarking on a journey through the intricate landscape of the legal profession, you are poised to play a pivotal role in upholding justice and safeguarding the rights of individuals going through the criminal justice system. Central to this mission is your grasp of the processes surrounding judgement, plea for leniency and sentencing. An understanding of these will equip you to advocate on behalf of your clients effectively.

## **9.1 Judgement Outcomes**

At the conclusion of trial, the court must deliver its judgement. This could either lead to the discharge or conviction of the defendant. Note that:

- Every Judgement must contain the point or points for determination, the decision of the court and the reasons for the decision. Section 294 CFRN, Section 275 ACJL (Lagos), Section 309 ACJL (kano).
- The judgement shall be dated and signed or sealed by the court at the time of pronouncing it. Sections 294 CFRN, Section 245; 308(1) ACJA; Section 275 ACJL Lagos and Section 309 ACJL Kano.

Where the defendant is convicted, the court will call on the convict or defence counsel to put before the court a mitigating factor, that will justify reasons why the court will not impose a maximum sentence on the convict.

## **9.2 Allocutus**

After conviction but before sentences, the convict shall be asked by the Registrar whether he has anything to say why sentence should not be



passed on him according to law. Note that, omission to comply with this requirement does not affect the validity of the proceedings. The purpose of Allocutus is to mitigate the punishment, not a defence. In the North, the defendant may at this stage call a witness as to his character if he has not previously done so and the prosecution may thereafter produce evidence of any previous conviction of the defendant. **Section 310 ACJA and section 311 ACJL Kano.**

## 9.3 Practical Step-by-Step Guide for Pleading an Allocutus for a Convicted Defendant

Pleading an allocutus is a crucial opportunity for a convicted defendant to address the court before sentencing. Where the defence counsel intends to plea on the behalf of the convict, inform the court that you have the consent of the defendant to plea on his behalf. Here's a practical step-by-step guide to help you effectively present an allocutus on behalf of a convicted defendant:

01

### Understand the Case and Conviction

Before preparing the allocutus, make sure you have a clear understanding of the case, the charges, the evidence presented, and the circumstances surrounding the conviction. This understanding will help you tailor the allocutus to the specifics of the case.

02

### Gather Relevant Information

Collect all relevant information about the defendant that could potentially influence the court's sentencing decision. This includes personal background, family situation, employment history, community involvement, and any mitigating factors that might warrant leniency.

03

### Consult with the Defendant

Meet with the convicted defendant to discuss the allocutus. Understand their feelings, regrets, and any input they may want to include in their plea for leniency. This will help you present an allocutus that accurately reflects their perspective.





04

#### **Organise Your Thoughts**

Outline the key points you want to address in the allocutus. This should include the defendant's remorse, the impact of the conviction on their life and the lives of their loved ones, and any steps they have taken towards rehabilitation or restitution.



05

#### **Address the Court**

During the sentencing hearing, when given the opportunity to present the allocutus, address the court respectfully. Begin by acknowledging the conviction and expressing the defendant's understanding of the seriousness of the offence.



06

#### **Express Remorse**

Articulate the defendant's genuine remorse for their actions. Emphasise that they understand the harm caused and regret their choices. This is a critical aspect of the allocutus that can demonstrate a sincere desire for personal growth and change.



07

#### **Discuss Personal Circumstances**

Share information about the defendant's personal background, family, and life circumstances. Highlight any factors that may have contributed to their actions, such as difficult life experiences, mental health issues, or external pressures.



08

#### **Highlight Positive Attributes**

Detail the defendant's positive qualities and contributions to society. Mention any past community service, charitable work, or positive achievements that demonstrate their potential for rehabilitation.

09

### Proposed Steps Towards Rehabilitation

Outline specific steps the defendant intends to take to reform themselves and reintegrate into society. This could include seeking counselling, attending rehabilitation programs, or pursuing educational opportunities while incarcerated.

10

### Request Leniency

Conclude the allocutus by respectfully requesting the court's leniency in sentencing. Appeal to the court's sense of justice and compassion, emphasizing that the defendant is committed to making amends and becoming a productive member of society.

11

### Thank the Court

Express gratitude to the court for allowing the defendant to address the court through the allocutus. This shows respect for the legal process and the court's role in making just decisions.

Remember, an effective allocutus is a sincere and heartfelt plea that presents the defendant as a complex individual deserving of consideration beyond their actions. By following these steps, you can help the defendant present a compelling allocutus that may influence the court's sentencing decision.

## 9.4 Punishment

There are various forms of punishment that can be imposed in criminal cases in Nigeria. This punishment depends on the nature of the offence. Here are some of the common forms of punishment used in criminal cases in Nigeria:



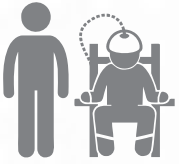
### 1. Imprisonment:

Offenders serve a specified time in correctional centres, with or without hard labour, based on the offence's severity.



### 2. Fines:

Offenders pay a specified amount as a penalty, the sum determined by the nature of the offence. Non-payment may lead to imprisonment.



### 3. Death Penalty:

Reserved for serious crimes like murder or treason, involving the execution of the offender.



### 4. Caning (Haddi Lashing):

Administered in certain regions, particularly under Islamic law, for offences like adultery or alcohol consumption. See sections 387, 388, 393 of the Penal Code; Section 430 ACLJ Kano.



### 5. Deportation:

Removal of an offender from the country, often for foreign nationals convicted of specific crimes. See Section 41 CFRN 1999, Section 440 ACJA.



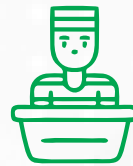
### 6. Probation Order:

Conditional release into the community under probation officers' supervision, with failure to comply leading to more severe penalties. Section 453-459 ACJA.



### 7. Conditional Discharge:

Release with specific conditions, such as good conduct, for a specified period. Section 375 ACJA.



### 8. Parole:

Inmate's release before sentence completion, contingent on good behaviour and subject to conditions. Section 468 section 468 ACJA; Section 450 ACJL Kano.



### 9. Binding Over:

Offender enters a bond for good behaviour, facing penalties if they fail to comply. Section 369 ACJA, *Atte v. Commissioner of Police* (1974) LPELR-600 (SC).



### 10. Compensation or Restitution:

Offenders may be required to compensate victims for losses or damages resulting from the offence.

## 9.5 Conclusion

The availability and application of these forms of punishment can vary based on the jurisdiction within Nigeria and the specific laws in place. Additionally, legal reforms and changes in societal attitudes can influence the types of punishments that are deemed appropriate for certain offences over time. As a young criminal defence lawyer always advocates for non-custodial sentences. This will aid the efforts at decongestions of correctional facilities.

