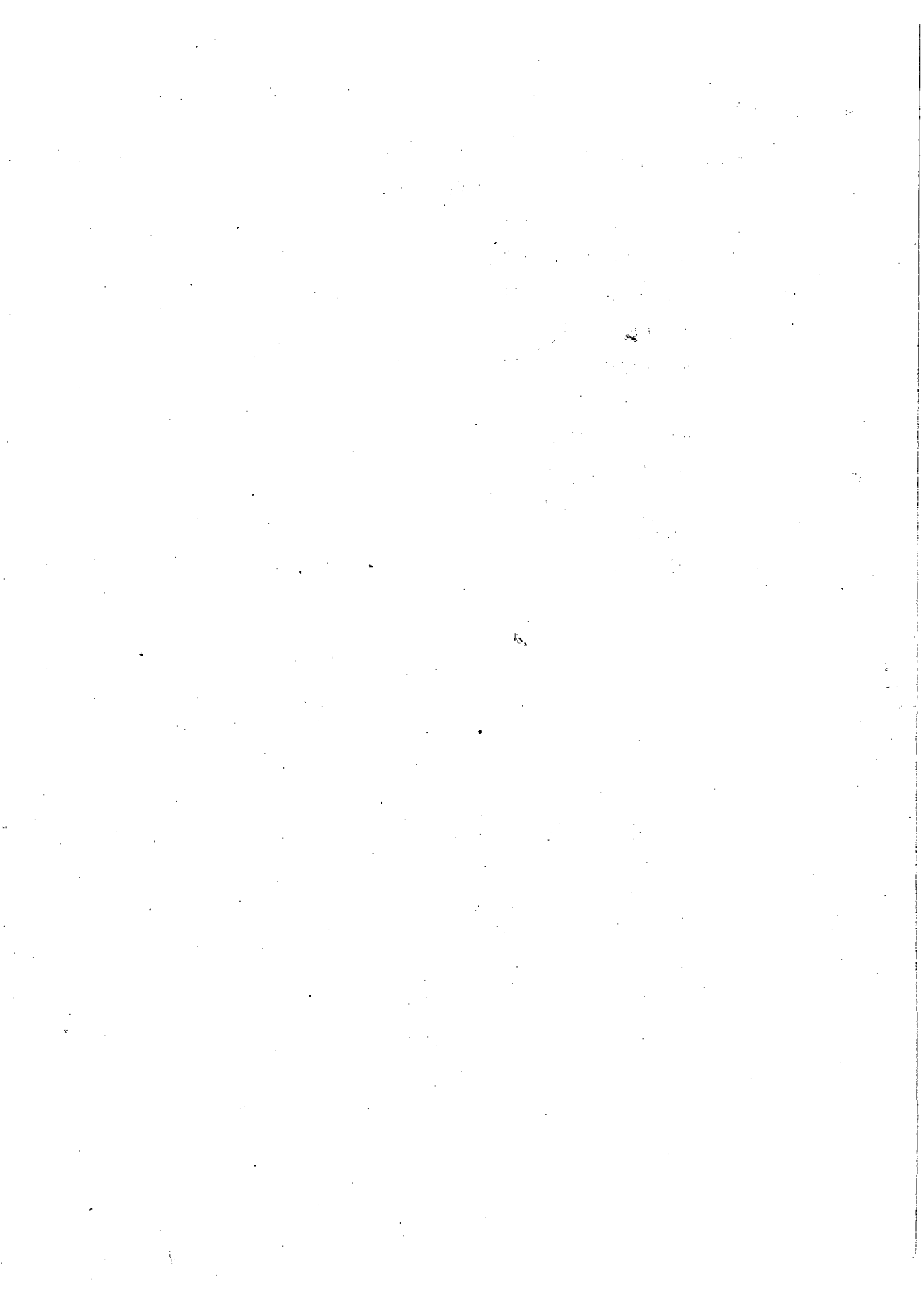


ADMINISTRATION OF CRIMINAL JUSTICE (AMENDMENT) BILL, 2017

ARRANGEMENT OF CLAUSES

Clause:

1. Amendment of Act No. 13, 2015
2. Amendment of section 15 (4)
3. Amendment of section 17 (2)
4. Amendment of section 21
5. Amendment of section 22
6. Insertion of section "271A"
7. Deletion of section 293 - 296
8. Amendment of section 296 (2)
9. Amendment of section 404
10. Citation



A BILL

FOR

AN ACT TO AMEND THE ADMINISTRATION OF CRIMINAL JUSTICE ACT No.13, 2015, TO FURTHER ENHANCE THE DISPENSATION OF JUSTICE IN CRIMINAL PROCEEDINGS IN NIGERIA, AND FOR RELATED MATTERS

Sponsored by Hon. Lynda Chuba Ikpeazu

[] Commencement

ENACTED by the National Assembly of the Federal Republic of

Nigeria-

- | | | |
|----|--|-------------------------------|
| 1 | 1. The Administration of Criminal Justice Act No. 13, 2015 (in the | Amendment of Act No. 13, 2015 |
| 2 | Bill referred to as "the Principal Act") is amended as set out in this Bill. | |
| 3 | 2. Section 15 (4) of the Principal Act is amended by- | Amendment of Section 15 (4) |
| 4 | (a) deleting the word, "may", in line 3; and | |
| 5 | (b) inserting, after the word, "means", in line 5, a new "proviso"- | |
| 6 | "Provided that where a suspect so requires, his counsel shall be present". | |
| 7 | 3. Section 17 (2) of the Principal Act is amended by substituting | Amendment of Section 17 (2) |
| 8 | for the word, "may", in line 1, the word, "shall". | |
| 9 | 4. Section 21 of the Principal Act is amended by substituting for | Amendment of Section 21 |
| 10 | the word, "suspect", in line 1, the word, "person". | |
| 11 | 5. Section 22 of the Principal Act is amended by substituting for | Amendment of Section 22 |
| 12 | the word, "suspect" in line 1, the word, "person". | |
| 13 | 6. Insert, after section 270 of the Principal Act, a new section | Insertion of section "271" |
| 14 | "271A"- | |
| 15 | 271 (1) A prosecutor authorized in writing by the Director of Public | Plea and sentence agreements |
| 16 | Prosecutions and a defendant who is legally represented may, before the | |
| 17 | defendant pleads to the charge brought against him, negotiate and enter into | |
| 18 | an agreement in respect of- | |
| 19 | (a) a plea of guilty by the defendant to the offence charged or to an | |
| 20 | offence of which he may be convicted on the charge; and | |

1 (b) if the defendant is convicted of the offence to which he has agreed
2 to plead guilty-

3 (i) a just sentence to be imposed by the court, or

4 (ii) the postponement of the passing of sentence for a period not
5 exceeding 5 years, or

6 (iii) a just sentence to be imposed by the court, of which the operation
7 of the whole or any part thereof is to be suspended on any condition which the
8 court may specify in the order, and

9 (iv) if applicable, an award for compensation by the court where an
10 offence causes damage to or loss of property.

11 (2) The prosecutor may enter into an agreement contemplated in
12 subsection (1) of this section-

13 (a) after consultation with the person charged with the investigation
14 of the case;

15 (b) with due regard to, at least, the-

16 (i) nature of and circumstances relating to the offence,

17 (ii) personal circumstances of the defendant,

18 (iii) previous convictions of the defendant, if any, and

19 (iv) interests of the community; and

20 (c) after affording the complainant or his representative, where it is
21 reasonable to do so and taking into account the nature of and circumstances
22 relating to the offence and the interests of the complainant, the opportunity to
23 make representations to the prosecutor regarding-

24 (i) the contents of the agreement, and

25 (ii) the inclusion in the agreement of a condition relating to
26 compensation or the rendering to the complainant of some specific benefit or
27 service in lieu of compensation for damage or pecuniary loss.

28 (3) The requirements of subsection (2) (b) (i) of this section may be
29 dispensed with if the prosecutor is satisfied that consultation with the person
30 charged with the investigation of the case will delay the proceedings to such an

1 extent that it could-

2 (a) cause substantial prejudice to the prosecution, the defendant,
3 the complainant or his representative; and

4 (b) affect the administration of justice adversely.

5 (4) An agreement contemplated in subsection (1) shall be in
6 writing and shall, at least-

7 (a) state that the defendant, before entering into the agreement, has
8 been informed that he has the right-

9 (i) to be presumed innocent until proved guilty beyond reasonable
10 doubt,

11 (ii) to remain silent and not to testify during the proceedings, and

12 (iii) not to be compelled to give self-incriminating evidence;

13 (b) state fully the terms of the agreement, the substantial facts of the
14 matter, all other facts relevant to the sentence agreement and any admission
15 made by the defendant;

16 (c) be signed by the prosecutor, the defendant and his legal
17 representative; and

18 (d) if the defendant has negotiated with the prosecutor through an
19 interpreter, contain a certificate by the interpreter to the effect that he
20 interpreted accurately during the negotiations and in respect of the contents
21 of the agreement.

22 (5) The court shall not participate in the negotiations contemplated
23 in subsection (1) of this section:

24 (6) The prosecutor shall, before the defendant is required to plead,
25 inform the court that an agreement contemplated in subsection (1) has been
26 entered into and the court shall then-

27 (a) require the defendant to confirm that such an agreement has
28 been entered into; and

29 (b) satisfy itself that the requirements of subsection (1) (b) (i) and
30 (iii) have been complied with.

1 (7) If the court is not satisfied that the agreement complies with the
2 requirements of subsection (1) (b) (i) and (iii), the court shall-

3 (a) inform the prosecutor and the defendant of the reasons for non-
4 compliance;

5 (b) afford the prosecutor and the defendant the opportunity to comply
6 with the requirements concerned; and

7 (c) require the defendant to plead to the charge and order that the
8 contents of the agreement be disclosed in court.

9 (8) After the contents of the agreement have been disclosed, the court
10 shall question the defendant to ascertain whether-

11 (a) he confirms the terms of the agreement and the admissions made
12 by him in the agreement;

13 (b) with reference to the alleged facts of the case, he admits the
14 allegations in the charge to which he has agreed to plead guilty; and

15 (c) the agreement was entered into freely and voluntarily in his sound
16 and sober senses and without having been unduly influenced.

17 (9) After an inquiry has been conducted under subsection (6) of this
18 section, the court shall, if-

19 (a) it is not satisfied that the defendant is guilty of the offence in
20 respect of which the agreement was entered into;

21 (b) it appears to the court that the defendant does not admit an
22 allegation in the charge or that the defendant has incorrectly admitted any such
23 allegation or that the defendant has a valid defense to the charge; or

24 (c) for any other reason, it is of the opinion that the plea of guilty by
25 the defendant should not stand, record a plea of not guilty and inform the
26 prosecutor and the defendant of the reasons therefor.

27 (10) If the court has recorded a plea of not guilty, the trial shall start de
28 novo before another presiding officer:

29 Provided that the defendant may waive his right to be tried before
30 another presiding officer:

1 (11) If the court is satisfied that the defendant admits the
2 allegations in the charge and that he is guilty of the offence in respect of
3 which the agreement was entered into, the court shall proceed to consider
4 the sentence agreement.

5 (12) For purposes of subsection (9) of this section, the court may-

6 (a) direct relevant questions, including questions about the
7 previous convictions of the defendant, to the prosecutor and the defendant;
8 and

9 (b) hear evidence, including evidence or a statement by or on
10 behalf of the defendant or the complainant.

11 (13) If the court is satisfied that the sentence agreement is just, the
12 court shall inform the prosecutor and the defendant that it is so satisfied,
13 whereupon the court shall convict the defendant of the offence charged and
14 sentence the defendant in accordance with the sentence agreement.

15 (14) If the court is of the opinion that the sentence agreement is
16 unjust, the court shall inform the prosecutor and the defendant of the
17 sentence which it considers just.

18 (15) Upon being informed of the sentence which the court
19 considers just, the prosecutor and the defendant may-

20 (a) abide by the agreement with reference to the charge and inform
21 the court that, subject to the right to lead evidence and to present argument
22 relevant to sentencing, the court may proceed with the imposition of
23 sentence; or

24 (b) withdraw from the agreement.

25 (16) If the prosecutor and the defendant abide by the agreement as
26 contemplated in subsection (15)(a), the court shall convict the defendant of
27 the offence charged and impose the sentence which it considers just.

28 (17) If the prosecutor or the defendant withdraws from the
29 agreement as contemplated in subsection (13) (b), the trial shall *start de*
30 *novo* before another presiding officer.

1 Provided that the defendant may waive his right to be tried before another
2 presiding officer.

3 (18) Where a trial starts de novo -

4 (a) the agreement shall be null and void and no regard shall be had or
5 reference made to-

6 (i) any negotiation which preceded the entering into the agreement,

7 (ii) the agreement, or

8 (iii) any record of the agreement in any proceeding relating thereto,

9 unless the defendant consents to the recording of all or certain admissions

10 made by him in the agreement or during any proceeding relating thereto and

11 any admission so recorded shall stand as proof of such admission;

12 (b) the prosecutor and the defendant may not enter into a plea and
13 sentence agreement in respect of a charge arising out of the same facts; and

14 (c) the prosecutor may proceed on any charge.

15 (19) The Attorney-General of the Federation shall issue directives
16 regarding all matters which are reasonably necessary or expedient to be
17 prescribed in order to achieve the objects of this section and any directive so
18 issued shall be observed in the application of this section.

19 (20) The directives contemplated in subsection (19) of this section-

20 (a) shall prescribe the procedures to be followed in the application of
21 this section relating to any offence-

22 (i) for which a minimum penalty is prescribed in the law creating the
23 offence,

24 (ii) in respect of which a court has the power or is required to conduct
25 a specific enquiry, whether before or after convicting or sentencing the
26 defendant, and

27 (iii) in respect of which a court has the power or is required to make a
28 specific order upon conviction of the defendant,

29 (b) may prescribe the procedures to be followed in the application of
30 this section relating to any other offence in respect of which the Attorney-

1 General of the Federation deems it necessary or expedient to prescribe
2 specific procedures;

3 (c) shall ensure that adequate disciplinary steps shall be taken
4 against a prosecutor who fails to comply with any directive; and

5 (d) shall ensure that comprehensive records and statistics relating
6 to the implementation and application of this section are kept by the
7 prosecuting authority.

8 (21) The Attorney-General of the Federation shall submit
9 directives issued under subsection (19) of this section to the National
10 Assembly before those directives take effect, and the first directives so
11 issued, shall be submitted to the National Assembly within four months of
12 the commencement of this Bill.

13 (22) Any directive issued under this section may be amended or
14 withdrawn in like manner.

15 (23) The Attorney-General of the Federation shall, at least once
16 every year, submit the records and statistics referred to in section (20) (d) of
17 this section to the National Assembly."

18 (24) In this section, "sentence agreement" means an agreement
19 contemplated in subsection (1) (b) of this section.

20 7. Sections 293 - 296 of the Principal Act are deleted.

Deletion of
sections 293-296

21 8. Section 296 (2) of the Principal Act is amended by inserting,
22 after the word, "period" in line 4, a new "proviso"-

Amendment of
sections 296 (2)

23 "Provided that where the objection relates to jurisdiction, the Court
24 shall determine it and any appeal arising from that shall not operate as a stay
25 of proceeding".

26 9. Section 404 of the Principal Act is amended by inserting, after
27 the word, "weaned", in line 3, the words, "and the court shall have regard to
28 the provision of section of the Constitution relating to the prerogative of
29 mercy".

Amendment of
Section 404

Citation

1 10. This Bill may be cited as the Administration of Criminal Justice
2 (Amendment) Bill, 2017.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Administration of Criminal Justice Act No.13, 2015, to further enhance the dispensation of justice in criminal proceedings in Nigeria.