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UNIFICATION & REFORM OF CRIMINAL & PROCEDURE CODES

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Unification and Reform of the Criminal Laws and Procedure Codes of Nigeria

14

Unification and Reform of Trial Procedures Under Nigerian Law

*O.A. Onadeko**

Introduction

In 1945, the Criminal Procedure Ordinance was enacted as a statute containing the law of criminal procedure in the Magistrate's Courts as well as the Supreme Courts (now the High Courts) in Nigeria. In 1960, the Criminal Procedure Code (CPC) was enacted as the law of criminal procedure in the then northern region of Nigeria. Since then, the Criminal Procedure Act (CPA) as the Ordinance later became known , became applicable only in the southern part of the country, while the CPC was applicable in the northern part of the country. The CPC is also applicable in the Federal Capital Territory of Abuja by virtue of Decree No. 12 of 1984.

Although the CPA is not applicable in the northern states, some of its provisions were saved and made applicable to the northern states under the criminal procedure code (Northern Region) Law of 1960. These are the Federal Provisions contained in the parts 45 and 52 of the CPA. Part 45 deals with deportation and part 52 deals with the service of process throughout the Federation. In effect the CPA is not exclusive to the southern states and the CPC is not the only criminal procedural law applicable in the northern states.

States in the north and in the south adopted (with modifications) the CPC and the CPA as state laws. The effect of this is that there are state variations even within the CPC/CPA dichotomy.

There are also the various procedural provisions contained in some of the Decrees setting up Tribunals. Since these provisions have nation wide application, there will be no need to consider them here.

Courts of Criminal Jurisdiction

The courts of criminal jurisdiction in the South to which the CPA applies are the magistrate courts of the various grades and the High Courts. In the North,

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the courts to which the CPC applies are the Area Magistrates and the High Courts. As regards the Area Courts, they are only expected to be guided by the provisions of the CPC apart from those which relate only to any court other than an Area Court.[1] But the provisions of chapter xxxiii of the CPC are applicable exclusively to trials in the Area Courts.

The Present Trial Procedures in the North and the Southern States

The trial of any criminal offence is deemed to start from the moment of arraingment of an accused person before a court of criminal jurisdiction.[2] There are a lot of similarities in the trial procedures adopted throughout the country. This is further enhanced by the fact that the Evidence Act which came into operation in 1945 applies throughout the Federation with minor variations as well as the omission of some Federal provision by the States Evidence Laws. Areas where the procedures in both the north and south are identical will not be discussed except areas of parities.

Institution of Criminal Proceedings in Magistrates and Area Courts

Under section 77(a) of the CPA, criminal proceedings may be instituted in the Magistrates Court on a complaint whether or not on oath. Section 78 specifies the particulars of instituting criminal proceedings in Magistrates' Courts and apart from mentioning a complaint in paragraph (a), it mentions the usually adopted method in starting a criminal case procedure in paragraph (b) which is by bringing a person arrested with or without a warrant before the court upon a charge contained in a sheet specifying the name and occupation of the person charged, the charge against him and the time and place where the offence is alleged to have been committed. The charge sheet shall be signed by the police officer in charge of the case.[3]

This procedure places an important responsibility on the police, of determinating a proper case to take before a Magistrate. It is, for example, for the police to determine the merit or a report of crime by an aggrieved person and act accordingly, making arrests (where necessary) investigating the case, gathering witnesses and exhibits before drafting the relevant charge to be taken before a Magistrate for trial.

Chapter xii of the CPC deals with "information to the police and their powers to investigate". When information is given to the officer in charge of a police station, concerning the commission of an offence for which the police are authorized to arrest without a warrant and which may, be tried by a court, within the local limits of whose jurisdiction the police station is situated, he shall if it is given orally, reduce the information to writing in the prescribed form called the First Information Report (FIR) and shall read it or cause it to

1. S. 381(1) CPC.
2. See *Kajubo* v *The State*, (1988) 3, *SCNJ* 79.
3. See S. 78(b) CPA. See also *Okotie* v *Police* (1959) 4 *FSC* 129; *Ehiguage* v *Police* (1957) 4 *WRNCR* 129

be read over to the informant. Every such information whether given in writing or reduced to writing shall be signed or sealed by the person giving it if he is able to do so and such officer shall enter or cause to be entered the information in a book to be kept in the form prescribed by the Commissioner of Police.[4] The officer receiving the information may however, if satisfied that no public interest will be served by a prosecution, refuse to accept the information and notify in writing the informant of his right to complain to a court.

The above procedure in a nut-shell is the beginning of a criminal case in a Magistrate or Area Court under the CPC. The aforesaid police officer in charge of a station will thereafter, send the FIR to the appropriate court, which could be either an Area Court or a Magistrate Court.[5] He will then proceed to investigate the case. The court on it's part after having received the FIR may either direct the police to proceed with the investigation or if he thinks it fit proceed to hold an inquiry or to otherwise deal with the case as provided in chapter fifteen of the CPC which deals with initiation of judicial proceedings before a court.[6]

Under Section 143 of the CPC a court may take cognizance of an offence:

a) when an arrested person is brought before it under section 40 or 41;
b) upon receiving a First Information Report under section 118 or from any other court;
c) upon receiving a complaint in writing from the Attorney-General;
d) upon receiving a complaint of facts which constitute the offence; and
e) if from information received from any person other than a police officer it has reason to believe or suspect that an offence has been committed.

When the accused appears or is brought before the court, the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted.[7] If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him and if he shows no sufficient cause why he should not be convicted the court may convict him accordingly. In that case, it shall not be necessary to frame a formal charge.[8] This is the short summary trial procedure and the military governor of a state may by order specify the maximum sentence of imprisonment or the maximum fine which any grade or class of courts may impose on conviction under this procedure.[9]

When the court decides not to convict the accused under section 157 or when an accused person states that, he intends to show cause why he should not be convicted, the court shall proceed to hear the complaint, if any, and take all

4. See S. 117(1) *CPC*
5. See S. 118(1) (b) *CPC*
6. See S. 120(1) *CPC*
7. See S. 156 *CPC*
8. See S. 157 *CPC*
9. See S. 157 (2) *CPC*

such evidence as may be produced in support of the prosecution. The court shall ascertain from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and shall summon to give evidence before the court such of them as the court thinks necessary. The accused shall be at liberty to cross-examine the witnesses for the prosecution and, if he does so, the prosecutor may re-examine them.[10] If upon taking all the evidence referred to in section 158 and making such examination, if any, of the accused as may be made in accordance with section 235, the court finds that no case against the accused has been made, out which if not rebutted would warrant his conviction, the court shall discharge him.[11] If when the evidence referred to in section 158 and the examination referred to in section 159 have been taken and made or at any previous stage of the case the court is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such court is competent to try and which in the opinion of the court could be adequately punished thereby. The court shall frame a charge declaring with what offence the accused is charged and shall then proceed.[12]

As can be clearly seen, there is an apparent difference in the manner by which the trial of an accused commences before a Magistrate in the south and before either a Magistrate or an Area Court Judge in the north. While the CPA procedure entrusts the police (who invariably prosecute most cases) with the discretion as to the decision to investigate, prosecute and determine the offence to charge the accused with, the CPC procedure allows the police discretion to determine whether or not, in the opinion of the police officer in charge of the station where the information is given, public interest will be served by a prosecution. This discretion is of course without prejudice to the right of the informant to complain to a court under section 143 of the CPC. To put it more aptly, it can be said that the overall discretion given to the police under the CPA is in fact in the hands of Magistrates and Area Court Judges under the CPC.

It is a well known fact that, *in spite of several years of police involvement in deciding who goes for trial and the offence to charge in the south, they are yet to master the art of drafting of charges. Indeed a number of good cases have been lost on this score.* Furthermore, several cases which ought not to be taken to court for prosecution have often gone for trial only to be lost and a simple submission of no case to answer by the defence counsel. This discretion given to the police has often been seen to be abused by some officers who use their near absolute discretion, get person arrained for alleged offences, only for such to be discovered in court as unfounded. *Even a discharge will not fully compensate the supposed accused for all the trauma he had undergone prior to his release.*

10. See S. 158 *CPC*
11. See S. 159 (1) *CPC*
12. See S. 160 (1) *CPC*

The position in the north has the main disadvantage of putting the accused right in the hands of the trial judge. A situation whereby an accused can be convicted on his admission based on the particulars of the offence contained in First Information Report being read to him without a formal charge, has its apparent dangers in that since the punishment prescribed when adopting the short summary trial is minimal, such an accused may make an admission of convenience even where he did not commit the crime. Also, an accused who is unable to brief a lawyer for his defence may prefer not to bother doing it himself when faced with the reality that an admission at that stage will earn little punishment.

Although, the constitutionality of the pre-trial hearing prior to the drafting of a charge has been upheld by the Supreme Court,[13] the issue of the impartiality of a Judge who having convinced himself about the existence of a *prima facie* case and proceeds to try an accused deserves some scrutiny. I am not mindful of any longitudinal empirical study of this issue to determine the frequency of acquittals and convictions. Fears will be allayed if a study is carried out, showing that there is indeed no strong correlation between the decision of a Magistrate in the north to draft a charge and the ultimate fate of the accused.

Proposal

It is proposed that a uniform procedure be adopted throughout the country for initiating trials in the courts of summary jurisdiction. Because of the nature of cases that go before these courts, It is suggested that initiation and prosecution of cases be left in the hands of the police, who on their part should create legal departments in all states, where legal practitioners either as civilian employees or as members of the Force should be given a free hand to advice on cases and assist with both the drafting of charges and prosecution. The suggested legal advice should in fact be summary in nature to ensure that a lot of cases are dealt with in a little time. Happily, the number of serving police officers studying law is on the increase, it is hoped that these officers will be deployed to the suggested legal duties.

Institution of Criminal Proceedings in the High Court

Under the CPA, an information charging any person with an indictable offence shall be preferred either:

a) by the person charged having been committed for trial; or
b) by the information being preferred by the discretion or with the consent of a Judge or pursuant to an order made under Part 31 to prosecute the person charged for perjury.[14]

Since committal proceedings have either been abolished as in Lagos State[15] or gone into disuse as has happened in some other southern states, there is no

13. *Uzodima* v *Police.*
14. See S. 340 (2)(a) and (b) *CPA*
15. See The Criminal Procedure Law (Amendment) Law 1979.

need to further consider it here. On the information preferred by the discretion or consent of a judge of the High Court, the applicable rules are the Indictment (Procedure) Rules 1971 (of England), which have been made applicable by virtue of section 363 of the CPA. Some of the relevant rules are:

(6) An application for consent to the preferment of a bill of indictment may be made to a Judge of the High Court.
(7) Every such application:

(a) shall be accompanied by a bill of indictment which it is proposed to prefer and, unless the application is made by or on behalf of the DPP shall also be accompanied by an affidavit by the applicant, or if the applicant is a corporation, by an affidavit by some director or officer of the corporation, that the statement contained in the application are, to the best of the deponent's knowledge, information and belief, true; and
(b) shall state whether or not any application has previously been made under these Rules and the result of any such application or proceedings.

8)(i) Where there have been committal proceedings, the application shall state the reason why it is desired to prefer a bill without such proceedings and:

a) there shall accompany the application proofs of the evidence of the witnesses when it is proposed to call in support of the charge; and
b) the application shall embody a statement that the evidence shown by the proofs will be available at the trial and that the case disclosed by the proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

10) Unless the judge otherwise directs in any particular case, his decision on the application shall be signified in writing on the application without requiring the attendance before him of the applicant or of any of the witnesses, and if the Judge thinks fit to require the attendance of the applicant or of any of the witnesses, their attendance shall not be in open court.

Unless the CPC — no person shall be tried in the High Court unless:

a) he has been committed for trial to the High Court in accordance with the provisions of Chapter XVIII; or
b) a charge is preferred against him without the holding of a preliminary inquiry by leave of a judge of the High Court; or
c) a charge of contempt is preferred against him in accordance with the provisions of section 314 or section 315.[16]

The applicable rules for prefering a charge without the holding of P.I, are

16. See S. 185 *CPC.*

contained in the Criminal Procedure (Application for leave to prefer a charge in the High Court) Rules 1970. These rules are similar to the aforementioned indictment (procedure) Rules 1971 (of England) except that they contain in rule, 2, a provision that an application may be made orally:

a) when the High Court sitting in its appellate jurisdiction has allowed an appeal in a criminal matter and has ordered a retrial of the person in the High Court; or
b) when a Magistrate purports to commit a person for trial in the High Court after taking a preliminary inquiry is declared by the H igh Court to be a nullity. The effect of rule two is that rather than allowing delay that will occur if the prosecutor has to undergo the formality of a written application, the High Court may allow an oral application since it is already conversant with the facts of the case.

Proposal

The provision for oral application is a commendable one which would enhance the quick dispensation of justice if adopted nationwide.

Sub-section (1) of section 340 of the CPA requires that there shall be at least one count charging an indictable offence in every information in respect of which consent is sought.[17]

However, under the CPC,[18] there is no such provision and a charge sought to be preferred need not be one triable exclusively by the High Court. The provision of the CPA[19] appears more practicable especially when it is realized that the High Court is not a court of summary trial and every effect should be made to discourage cases that can be better handled by the lower courts from going there for trial.

Furthermore, the provision under both rules for a High court to hear the applicant before deciding whether or not to grant consent is a commendable one. Unfortunately, this provision is hardly ever used in the south.

However, it is a well established practice in the north that, the Law Officer making the application shall appear at an *ex-parte* hearing of his application, to put forward his application for consideration before the court.

It is suggested that this procedure be adopted throughout the country for uniformity. It also, has the advantage of allowing the judge to clarify issues which may affect his ruling and which are unreferred to in the written application.

Submission of No-Case to Answer

Section 286 of the CPA states that, if at the close of the evidence in support of the charge it appears to the court that a case is not made out against the defendant sufficiently to require him to make a defence the court shall, as to that particular charge, discharge him. In practice, it is the accused or his counsel that makes a submission of no-case to answer both in a summary trial and in a trial on information. As to what will found the submission, the position adopted by our courts is similar to what is contained in the *Practice Direction* issued the Queens Bench Division of the High Court of Justice in England, dated 9 February, 1962. It was stated therein that:

> A submission that there is no case to answer may properly be made and upheld:
> a) when there has been no evidence to prove an essential element in the alleged offence;
> b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonably tribunal could safely convict upon it.

Where the submission is upheld, the accused person is normally acquitted.[20] Under the CPC, there is no specific provision for an accused or his counsel to make a submission of no case to answer. However, there are some provisions in various parts of the code in Chapters xvi, xvii and xviii which may be so construed. Section 159 which is under chapter xvi, dealing with summary trials, in subsection (1) states that if upon taking all the evidence referred to in section 158 and making such examination, if any, of the accused as may be made in accordance with section 235, the court finds that no case against the accused has been made out which if not rebutted would warrant his conviction the court shall discharge him. Subsection (3) however, states that a discharge under this section shall not be a bar to further proceedings against the accused in respect of the same matter. Likewise, section 169, which is in chapter xvii, dealing with preliminary inquiry and commitment for trial to the High Court, contains similar provisions in its subsections (1) and (3). Section 191 (5) which is contained in Chapter xviii dealing with trials in the High Court states that notwithstanding the provisions of subsection (4), the court may, before calling upon the accused to enter upon the defence, call upon the prosecutor to sum up his case against any one or more of the accused against whom it considers that the evidence is not sufficient to justify the continuation of the trial and, after hearing the summing up, may in its discretion record a finding of not guilty in respect of any such accused or call upon any of them to enter upon his or their defence.

A submission of no case to answer is usually made under sections 159(1), 169(1) and 191(5) depending on the type of proceedings. Another interesting provision under the CPC is section 235 which empowers the trial court to examine the accused person if he agrees, after evidence has been heard and take his answers or silence into consideration in reaching a decision. There is no equivalent of this provision under the CPA.

The consequences of a discharge in sub-sections 159(1) and 169(1) is that such discharge shall not be a bar to further proceeding against the accused in respect of the same matter. Thus unlike the consequence of a discharge based

17. See *R* v *Wazisi*, 1958, *NRNLR* 91; *R* v *Onubaka*, (1959) 4 *FSC* 267.
18. See Section 12(1) *CPC*
19. See S. 340(1) *CPA*
20. See *Police* v *Marke*, (1957) 2 *FSC* 5

on a no case submission under the CPA an accused in the north may be prosecuted for the same offence later. The accused in the north cannot be absolutely free unless his trial is in the High Court where there is no equivalent provision,[21] saying that his discharge is no bar to further proceedings in respect of the same matter.

Proposal

There is need to harmonize the law as it relates to the submission of no case to answer under both the CPA and the CPC. The explicit provision for the submission under the CPA is very apt as it leaves no ambiguity as to the existence of the submission, since what should constitute the submission of no case to answer is the same all over the country.[22]

There is also the need to harmonize the consequence of a successful submission of no case to answer. Since the CPA views the discharge as one on the merits thus leading to an acquittal,[23] it is suggested that the same outcome should be applicable under the CPC, since prosecution evidence would have been taken in each case.

On the provision of section 235 of the CPC, which empowers the court to examine the accused, it is submitted that since the sole purpose of such examination shall be to discover the line of defence, and to make clear to the accused the particular points in the case for the prosecution which he has to meet in his defence and there shall be nothing in the nature of a general cross-examination for the purpose of establishing the guilt of the accused,[24] it is a commendable provision that deserves adoption throughout the federation. Infact, the provision can make the proceedings clearer to an accused person and actually assist him with his defence.

Witness refusing to be sworn

Under the CPA[25] when a witness in a case refuses to be sworn as a witness, without offering any sufficient excuse for such refusal, the court may adjourn the hearing of the case for any period not exceeding eight days where practicable and may in the meantime, by warrant commit such a person to prison or other place of safe custody, unless he sooner consents to do what is so required of him. Under the CPC,[26] no witness, if he refused to take an oath or make a solemn affirmation, shall be compelled to do so or asked his reason for so refusing but the court shall record in such a case the nature of the oath or affirmation proposed and the fact of the refusal of the witness together with any reason which the witness may voluntarily give for his refusal.

21. See S. 191 *CPC*.
22. See *C.O.P.* v *Iweanya*, (1966) *NNLR* 7.
23. *Police* v *Marke*, (1959) 2 *FSC* 5
24. See S. 235 (4) *CPC*.
25. See S. 194(1) (a) *CPA*
26. S. 230 *CPC*.

In effect, whereas the refusal of a witness to testify in the north will attract no sanction, or even comment from the Judge, his counterpart in the south will get into trouble with the law for his refusal if he cannot offer sufficient excuse. It is doubtful if he can have any other reason but affirmation, since the Oaths Act of 1963,[27] has already prescribed the right to affirm instead of taking an oath.

There is therefore, the need to harmonize the law in relation to oath taking and making of affirmation. I believe that whatever precedes the testimony of a witness can hardly be responsible for the truthfulness or otherwise of his account, as a liar will lie no matter what he does before testifying.

Proposal

It is proposed that no witness should be bound to take an oath or make an affirmation. Whilst it may be worthwhile to retain the provision for the benefit of those who appreciate it, it should be extended to accommodate a witness who wishes to testify without either the oath or affirmation and the trial judge will of course still have overall responsibility of assessing the probative value of every account.

Procedure when a Court of Summary Jurisdiction Cannot Pass Sentence Sufficiently Severe

Section 257(1) of the CPC provides that whenever a court having jurisdiction:

a) finds a person guilty after hearing the evidence for the prosecution and defence; or
b) accepts a plea of guilty from a person, and after conviction such person is of the opinion that he ought to receive a punishment different in kind from or more severe than that which such court is empowered to inflict, it may record such opinion and submit the proceeding and send the accused to a court having the necessary powers of punishment or to the High Court. This provision no doubt relates to trial courts inferior to the High Court.

There is no equivalent provision under the CPA and in order to avoid a situation whereby the court to which an accused is taken will necessarily determine the limit of his sentence, no matter the prescribed maximum, it is suggested that the provision be adopted throughout the Federation.

Proposal

Section 257 of the CPA is recommended for adoption nation wide.

Application for bail during trial

Under the CPA[28] a judge of the High Court may, if he thinks fit admit any per-

27. See S. 8, Oaths Act 1963.
28. See S. 123 *CPA*.

son charged before a court in the state subject to the jurisdiction of the High Court to bail although the court before whom the charge is made has not thought it fit to do so. An application under this provision is always by summons although the CPA does not make any provision for the mode to adopt when applying for bail during trial and since by section 35 of the High Court Law of Northern Region of Nigeria, the practice and procedure in the High Court of England shall not apply in criminal proceedings where the CPC has not made a specific provisions, in effect the mode adopted under the CPA will not be relevant in the North.

The effect is that High Courts in the north have never really had a procedure for how an application for bail is made. However it appears that some courts have adopted the reasons for applying for bail during trial by way of summons as being applicable even under the CPC[29]

There is the need to harmonize the procedure to adopt throughout the country when applying for bail before conviction moreso, when the grounds for granting bail are identical under both laws.[30]

Proposals

The mode of application by way of summons under the CPA is specific and the rationale for summons is sound.[31] It is suggested that for uniformity and to have a definite way for bringing such applications, the mode adopted under the CPA should be codified for application nationwide.[32]

Use of Interpreters at trials

Under the CPC, when the services of an interpreter are required by any court or justice of the peace, for interpretation of any evidence, statement or other proceedings, he shall be bound by oath or solemn affirmation to state the true interpretation of the evidence, statement or other proceedings.[33] Compliance with this provision is very strict[36] and the trial court must record the details of compliance. There is no equivalent provision under the CPA requiring an interpreter to be sworn. As stated earlier when considering the implication of a witness' refusal to be sworn or made a solemn affirmation, oath taking is a mere formality the true effect of which cannot be duly assessed.

Proposal

It is proposed that an Interpreter should be free to choose whether or not he

29. See S. 463 *CPA*; See also *Simidele* v *Police* (1966) *NNCR*. 116
30. See Ss. 341 and 342(1) *CPC*
31. *Paul Tanks and Anos* v *COP* (1986) 1 *QLRN* 58
32. See S. 341(2) *CPC*; *R* v *Police* (1958) *NNLR* 3 and *Dogo* v *COP* (1980% 1 *NCR* 14.
33. See again *Paul Tanks & Anor* v *COP*, (1986) 1 *QLRN* 58 and *Simidele* v *Police*, (1966) *NMLR* 116.
34. Same should apply to the mode of bringing applications for bail after conviction, but pending trial which should be by motion.

wishes to take an oath, make a solemn affirmation or do nothing at all before proceeding to render his service.

Judgement of the trial court

Under the CPA,[35] the Judge or Magistrate shall record his judgment in writing and every such judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision shall be dated and signed by the Judge or Magistrate at the time of pronouncing it: Provided that in the case of a Magistrate in lieu of writing such judgment it shall be sufficient compliance under this section if the Magistrate:

a)record briefly in the book his decision thereon and where necessary his reasons for such decision and delivers an oral judgment, or

b)records such information in a prescribed form.[36]

Under the CPC,[37] the judgment of courts of criminal trial must be in writing and under no circumstance may a Magistrate deliver an oral judgment.

Granted that a Magistrate's court is a court of summary jurisdiction, it is submitted that since this court is expected to take pains to record the proceedings in a case, delivering a full judgment in writing should not be too cumbersome for such a Magistrate. Indeed the ends of justice will be better met if the Magistrate delivers a full judgment in writing.

Proposal

Every trial judge in a criminal case should be made to deliver a full, written judgment at the conclusion of trial. The ends of justice especially from the perspective of the accused will be better met, if a written judgment with all the relevant issues considered is given.

Previous Acquittal on conviction

It is the right of every accused charged with an offence to raise the bar plea of *autrefois acquit* or *autrefois convict* at his trial. Under the CPC,[38] a previous acquittal or conviction may be pleaded or proved at any stage of an inquiry into or trial for the same offence or any other offence to a charge of which it is a bar; upon its being proved, the accused shall be discharged. This provision makes it possible for an accused to raise his plea in bar at any stage of proceedings except when the court has adjourned to consider its decision.[39] A similar provision allowing for a plea in bar is contained in section 221 of the CPA. However, decisions based on its wording have said that the plea must be

35. See S. 242(1) *CPC*.
36. See *Sinifida* v *COP* (1975) *NNLR* 113
37. See S. 245 *CPA*
38. See *Okorowa* v *The State* (1975) 5 SC. 23; and *Osayande* v *The State* (1987)
39. See S. 224 *CPC*.

made before the accused makes a general plea of not guilty and not after the plea.[40]

A bar plea, which should entitle an accused to be discharged must be capable of being made even on the day of judgment. To deprive an accused of this right simply because he has waited too long to make it is an undue strictness which should be avoided.

Proposal

It is suggested that a provision similar to that contained in the CPC, but with clear emphasis on the right of the accused to make his plea in bar at any stage of trial, even on the day of judgment should be adopted for application throughout the Federation.

Conclusion and Suggested Reforms

This chapter has attempted to highlight areas of differences in both the CPA and the CPC, as they relate to procedure during trial in Nigeria. It must of course be said that there are many areas of similarities and these have been deliberately omitted. Undoubtedly, the areas highlighted are by no means exhaustive of the difference, but they include those considered important for discussion.

The Area Court system in the North deserves special mention because of the reforms being carried out in the various states in terms of jurisdiction, and personnel. It is worthy of note that there is a well established in service training system for the Judges and other staff, as a result of which quite a number of Area Courts are now manned by duly qualified Legal Practitioners and even where they are not so qualified, they would have obtained at least a Diploma in Law. Given this situation, there may be no need to make special provisions for trials in Area Courts as is contained in chapter xxxiii of the CPC or to provide that Area Courts are not to be bound by some provisions of the CPC but only guided by such.

The use of interpreters in our criminal justice system is commendable. However it is submitted that it is now time for a change of the practice, whereby the judge, the counsel, the accused, the witnesses and the court officials all speak and understand the same language, but yet an interpreter will be brought to court to interpret proceedings, simply because the accused does not speak English which is the language of the court. The situation becomes more intriguing, when it is realized that the trial judge at times corrects a wrongful interpretation to English by the interpreter. Happily the Area Courts do conduct their proceedings in Hausa where all those involved speak and understand the language. It is suggestd that a provision for nation wide application, allowing the use of the local language in the location of courts where all those involved in the case speak that language should be adopted. That may even enhance the understanding of proceedings by all the parties involved.

40. See *The State* v *Dushi* (1968) *SCOPE* 76.

Our accusatorial criminal justice system, considering the peculiar nature of our society, needs to be reconsidered. It is definitely not in the interest of justice to always insist on the prosecution proving a case beyond reasonable doubt with no interference whatsoever from the judge. For our purpose.[41] Certain classes of offences should be tried using the inquisitorial system. A situation whereby a known criminal cannot be brought to justice is condemnable and there is still no evidence that there is more injustice in those jurisdictions where the inquisitorial systems operates.

Our sentencing practice, which is absolutely dependent on the judge's feelings within the provision of the law prescribing the sentence deserves a re-examination. There is no doubt that there is no consistency among Judges in the way they sentence for similar offences committed in like circumstances. Guidelines on sentencing for Judges should be considered for their assistance. The idea of sentencing panels should also be considered in order to achieve a stable pattern of sentencing.

The current practice, whereby Judges write down the proceedings in cases in long hand should be reviewed. This procedure not only puts an unnecessary strain on the Judges, but is also very slow. Happily, the proposed move by the Federal Government to introduce electronic recording gadgets to relieve Judges of the cumbersome duty of writing is commendable. It is hoped that it will be implemented as soon as possible.

Witness allowances which used to be paid to witnesses, but which has been suspended in many states should be restored. It is suggested that a provision specifying realistic sums in consonance with current prices should be adopted. This should vary from place to place and depending on the cost of living and transportation.

Finally, the police should be encouraged to minimize the transfer of their officers concerned with criminal trials. This will no doubt enhance speedy and uninterrupted criminal trials.

41. See *Edu* v *Police* (1952) 14 *WACA* 163; See also *Pategi* v *R* (957) *NRNLR* 47.
42. Offences like fraud or embezzlement.