

KNOW YOUR RIGHTS

AGAINST THE

P O L I C E

AND IN COURT

IN

CRIMINAL MATTERS

Barrister Manuel Akinshola

**The Complete “Know Your Rights” Titles Under Our
PUBLIC ENLIGHTENMENT CAMPAIGN SERIES (PECS):**

1. Know Your Rights As A Tenant *(2016 Edition)*
2. Know Your Rights As A Landlord *(2016 Edition)*
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Preface

The first edition of this book was published in 2007. In that edition, I made an undertaking that I would regularly update this book whenever there is any new law or regulation that affects criminal law practice and procedure in Nigeria. Thus, since about ten years ago, this book has been updated and revised twice – 2009 and 2013. This 2016 edition makes the third.

The 2016 Revised Edition is important in order to bring the reader up to date about new developments in our criminal jurisprudence. This, principally, is as a result of the promulgation of the Administration of Criminal Justice Act, 2015, (“The ACJA 2015”). This is a federal law that specifies the practice and procedure as far as criminal matters are concerned. The law applies to offences created by the National Assembly (i.e., federal offences) as well as the practice and procedures in Federal High Courts and the high courts of the Federal Capital Territory (F.C.T). The ACJA 2015 repealed the Criminal Procedure Act (CPA) which regulated criminal practice and procedure in the southern part of Nigeria, and the Criminal Procedure Code (CPC) which applied mainly in the northern States.

In light of the above, the law outlined the practice and procedure in criminal matters, right from searches, arrest, detention, to prosecution, judgment, etc. I have provided an outline of some of the innovations in this law in a new Chapter 1(b), to acquaint you with its provisions. But always have it at the back of your mind that the ACJA 2015 applies to offences created by the National Assembly, not State Houses of Assembly. However, the law will apply in States that have domesticated and adopted the law into their own laws, so that it will be applied even if the offence involved was created by that State House of Assembly. We hope that all States in Nigeria will adopt this law soonest, so we can have a uniform criminal procedure law.

For those who read the 2009 edition of this book, the new law should come as a surprise – surprise that the Federal Government is promulgating this law about eight years after Lagos State had done same with the promulgation of the Administration of Criminal Justice Law 2007 (amended in 2011). This is because the contents of ACJA 2015 are similar in many respects to the Lagos State law. One would have expected that the Federal Parliament would have been more expedient in repealing the CPA and CPC (both laws bequeathed by the colonial administration), and come up

with the new law earlier than now, in line with international best practices. After all, a precedent is already there to draw from in the operation of the law in Lagos State. Well, it is better late than never. In order to bring my readers up-to-date, therefore, and in contrast to the previous editions which adopted the Administration of Criminal Justice Law of Lagos State, this revised edition shall substantially adopt the ACJA 2015 as our reference point, because it has a national application.

There is a second reason why this book had to be revised, viz: the current happenings in our political life as a nation. Since the inception of the administration of President Muhammadu Buhari, the government has embarked upon a massive clampdown on corrupt officials, politicians, civil servants, serving and former public or military officials and even judges. This is in fulfillment of the campaign promises of tackling corruption. However, the fight against corruption has led to confusion in the country with many commentaries for and against the government actions. Many suspects are either being detained, released, prosecuted or on bail. To many people, the government's action is primarily targeted at silencing the opposition, because according to them, only leading opposition figures are being arrested/investigated/prosecuted. To others, the fight against corruption is apolitical, and is merely a manifestation of President Buhari's determination to cleanse the polity.

I listen to daily commentaries by the average citizen. The mass media – online and traditional – have been agog with many arguments for and against. The government organs in charge of this fight, the ICPC, EFCC and SSS have come under severe knocks and kudos, criticisms and commendations, depending on the view of the particular commentator. But one thing that strikes me is that many people comment out of ignorance of the practice and principles in criminal matters. This, therefore, informed the reason why I decided to include Chapter 14 on the anti-corruption war, in a bid to educate the citizens. The Chapter seeks to review the activities of anti-corruption agencies vis-à-vis the enabling laws. It also seeks to consider the criminal procedure as it relates to corruption and embezzlement of public funds, right from arrest, investigation, trial, pre- and post-judgment, in order to educate the reader and assist him/her in making informed decisions and run commentaries that align with the law.

It is my hope that the revisions and additions in this 2016 Edition of the book will generally be of tremendous benefits to my numerous readers who daily seek to know their rights.

Introduction

Crimes and offences are part of human existence. They are bound to happen.

Some people commit crime out of ignorance, some out of mistake while some are forced by circumstances. Whichever instance one finds himself, the proper thing to do is to know what your rights are, even as an offender.

The Nigerian Constitution presumes every person accused of committing an offence to be innocent until proven guilty. Therefore, an offender is to be treated as a suspect by the Police. For, even as an offender, there are constitutionally stipulated procedures on ways that offender is to be treated.

In this book, we seek to enlighten the general populace on their basic rights when involved in a criminal case. One could be the accused person or the complainant. The case may involve a friend, associate, relation, or family member. Even when the person directly involved is ignorant about his rights, you who have read this book would be able to enlighten him and direct him on the proper steps to take in enforcing his rights.

By writing this book, I have only tried to lay the foundation for the knowledge of your right, to enable you know what to do in the first instance. And this knowledge is very important whether the offence is a minor or serious one. But I have always advised the citizens not to hesitate to engage a lawyer once they have a criminal matter, especially if it is a serious offence. Some people make the mistake of believing that criminal offences are something they can deal with themselves and see no need to engage a lawyer. Some prefer to bribe the police with thousands of Naira rather than engage a lawyer. In the long run, most of the cases end in the court where they are eventually compelled to engage a lawyer, in which case the money they had given to the police turns out to be a waste.

Let me, however, warn you beforehand that you must be steadfast if you need to enforce your rights against the Police. This is because the Police do not want you to know your rights let alone enforce them. And they would do anything and everything to prevent you from enforcing those rights, including intimidation, harassment and even detention. But make up your mind not to be intimidated, especially if you are sure of your stand; after all, cells were constructed for human

beings. And the mere fact that you were detained by the Police does not make you a convict. You remain a suspect under the law.

Let me inform you too that the police would eventually mellow down once they realize that you know what you are talking about, especially when you restate what is in this book. They then adopt another tactics: they change from intimidation to cajoling, all in the bid to extort money from you. Do not be moved! Let me repeat that the Police too are under the law, and are very vulnerable by virtue of their position. No policeman wants to lose his job, and none wants you to write a petition against him or report him to his superiors. So, once they know that you are enlightened about your rights, they want to deal very carefully with you. In most cases, they want to push the case to court so they can wash their hands off it.

But some citizens fret and worry unnecessarily when they learn that they are being charged to court. If you are innocent of the crime alleged or you are sure of your defense, then you have nothing to worry about. Even where you are guilty of the offence, going to court may afford you the opportunity to negotiate and settle with the complainant before judgment. But one thing you can be sure of is that the 1999 Constitution has laid-down procedures to guarantee your rights to fair hearing in the courts.

Let me add this point here. Please do not be misled by the title of the book to believe that it only relates to the police. No. All the principles enumerated here apply in equal measure to all other security agencies, whether SSS (or DSS), EFCC, ICPC, NDLEA, the armed forces or even to outfits like customs and immigrations. We have only focused more on police because this is the force that is closer to the people, and with which a citizen is more likely to relate in his day-to-day activities. But whatever is written here applies to all security agencies, as far as your constitutional rights are concerned. And they also apply to procedure in any court in Nigeria, except, of course, a court martial or Sharia Court.

In the final analysis, this book will serve as a guide to you on what to do whenever you come across any criminal matter. I assure you that reading this book will free you from the shackles of ignorance.

I welcome you to the world of knowledge!