

## Critical issues in the administration of criminal justice in Nigeria

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### Abstract

The justice sector in Nigeria continues to be an inalienable part of one of the arms of Government in Nigeria. Just like every other sector in Nigeria, the justice sector is not without its challenges. The judiciary and the police which are the main arms of Government that administer this sector grapple with a myriad of challenges on a regular basis. This article considers some of the critical issues which include but are not limited to the Role of the police in criminal justice, Endemic corruption, Remand Proceedings, Delay in the Investigation and Detection of Crime, Insecurity and the Administration of Justice, sentencing, among others. This paper also makes recommendations that can help address these issues which in recent times have continued to be a clog in the wheel of progress of the administration of justice in Nigeria.

**Keywords:** Critical issues, administration, justice, Nigeria

### Introduction

The term criminal justice refers to the system of laws, law enforcement agencies, judiciary and correctional facilities that work together to maintain order in society by identifying persons whose actions run contrary to the law, bringing them before the courts to be tried in accordance with law and meting out punishment to such persons as prescribed by the law <sup>[1]</sup>. Each component of the criminal justice system must necessarily contribute its quota and plays its role efficiently and effectively to achieve the aims and objectives of the criminal justice system <sup>[2]</sup>. Justice is the fair treatment of people; the quality of being fair or reasonable; the legal system by which people and their causes are judged; the fair and proper administration of laws.

Some of the challenges of the criminal justice system in Nigeria include persistently high levels of crime and violence, the need to respond to new forms of criminality as well as enhancing responses to criminal behaviour that have long pervaded societies including corruption and violence against women and children.

The Nigerian criminal justice system is overburdened with heavy caseloads and suffers from insufficient financial and human resources. This leads to various malfunctions of the justice system, including high levels of impunity, delays in the administration of justice, overuse of pretrial detention often for lengthy periods, insufficient use of alternative sentencing options, overcrowded prisons that cannot fulfill their rehabilitative function and high rates of reoffending.

The criminal justice system in Nigeria also suffers from compartmentalization and lack of integration of the different components of the criminal justice chain, as well as a lack of coordination and collaboration with other sectors essential to ensuring integration responses to crime and violence such as the health, education and social welfare sectors.

In Nigeria the need to overhaul the criminal justice system led to the enactment of the Administration of Criminal Justice Act in 2015 (ACJA, 2015); an enactment which was

long overdue. Section 1(1) of the ACJA, 2015 <sup>[4]</sup>, states that the purpose of the Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the Suspect, the Defendant, and the Victim.

For a proper administration of the criminal justice in Nigeria the detection and investigation of crime, prosecution of offenders, punishment of offenders, and the rehabilitation of the offender and the victim must be approached holistically.

The enactment of the ACJA, 2015 brought with it many changes that have the capacity to impact an improvement in the administration of criminal justice in Nigeria. However, there are still critical issues that call for reforms in administration of criminal justice in Nigeria so that the criminal justice system can conform to international best practices. Some of such issues revolve around compliance with the stipulated mode of taking confessional statements, the practicability of day to day trial to enhance speedy dispensation of justice, the excessive number of days allowed for remand proceedings, the need to apply restorative justice to our criminal justice system such that the interests of the victim, the offender and the society at large is properly catered for, inadequate sentencing guidelines, the requirement for the deposit of huge sums for bail, etc.

### A. Critical issues in the administration of criminal justice In Nigeria

#### 1. The role of the police in the criminal justice system

The first contact with the criminal justice system is usually the law enforcement agencies, especially the police. The police Act 2020 place the duty of detecting crimes, preventing crimes and investigating crimes on the police <sup>[5]</sup>. The police therefore are a major stake holder in the administration of justice in Nigeria. A major concern and draw-back for criminal justice in Nigeria is the quality of Investigations done by the police. That is why the police by

all means want to extract a confessional statement from a suspect. Quite a number of issues contribute to poor investigation. One of them is lack of training and lack of infrastructure. For the police to be able to carry out effective and efficient investigation, financial resources must be made available to officers and relevant equipment/gadgets for 21<sup>st</sup> century policing. The welfare and motivation of officers must be a priority if there is a true intention to ensure speedy completion of investigations. Corruption in the police needs to be addressed urgently. We have a poor work culture. A person employed to do job wants to be tipped before he or she does the job he has been paid to do.

## 2. Endemic corruption

Corruption, which has become endemic in Nigeria, is one of the many challenges to the administration of Justice in Nigeria. Generally speaking, it is believed that one who lives in Nigeria has a propensity towards becoming corrupt because corruption is almost unavoidable. The unavoidability of corruption is based largely on the fact that morality is relaxed in the Nigerian society and many people struggle for survival without assistance from the Government <sup>[6]</sup>. Sad to say that this same Government is supposed to be responsible for providing the foundation for survival for its populace <sup>[7]</sup>.

Looking at the Judiciary in microcosm, judicial officers are not immune to this perverse corruption. This type of corruption found in the judiciary and which acts as a Challenge to the due administration of Justice can be categorised into two. The first include administrative corruption which arises when court administrative employees violate formal administrative procedures for their private benefit <sup>[8]</sup>. This kind of corruption displays itself when, for example, an administrative staff of the judiciary takes bribe to steal or remove a document from the file which document is extremely essential to the success of a party's case or takes a bribe to steal or destroy the file of a particular case. Stories of files suddenly missing in Courts are not new to Practitioners.

The second aspect is operational corruption which takes place in grand corruption schemes where political and considerable economic interests are at stake <sup>[9]</sup>. When that becomes the case, cherished legal norms are swept under the carpet just for economic gains. This type of corruption cripples the administration of justice, leading to unnecessary delays and adjournment; it also has far-reaching effects on the larger society. In this wise, the words of Uwais CJN are apt when he stated thus:

A corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street. The latter can be restrained physically, but a corrupt judge deliberately destroys the moral foundation of society and causes incalculable distress to individuals through abusing his office while still being referred to as honourable.

Allegations of corruption and abuse of office by judicial officers are on the increase and the Chief Justice of Nigeria has recently threatened to drag some of them before the Independent Corrupt Practices Commission ICPC and the Economic and Financial Crime Commission (EFCC). A Most worrisome aspect is the fact that clients are ready to pay for the services of their counsel and magistrates/ Judges/ Presidents handling their matters. Actual legal practice unfolds the complicity of the Police and the Judiciary in inhibiting the efficacy of criminal justice administration in Nigeria <sup>[10]</sup>.

## 3. Remand proceedings

The ACJA, 2015 and the ACJL of the various states provide for remand proceedings. Remand proceedings have been defined by the Supreme Court in the case of *Lufadeju v Johnson* <sup>[11]</sup> as

“Remand means to send to prison or send back to prison from a court of law to be tried later after further inquiries have been made; often in the phrase ‘remand in custody’. It means to recommit on trial accused to custody after a preliminary examination.”

In the said case of *Lufadeju v Johnson* <sup>[12]</sup> the Supreme Court held that the remand proceedings is different from holding charge and that the remand proceedings is in keeping with the constitution because it is for the purpose of bringing the suspect before a court of competent jurisdiction, thus the remand proceedings is not unconstitutional <sup>[13]</sup>. The remand proceedings, according to the Supreme Court, give effect to the provisions of the constitution. It is difficult to agree with the position of the Supreme Court given the facts of the case and the clear provision of the Constitution is S. 35(4) and (5). In the case of *Lufadeju v Johnson* the Supreme Court made light of the fact that a suspect was remanded for more than 3months without a charge.

Section 35(4) of the 1999 constitution provides as follows:

“(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of –

- a. two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
- b. three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.”

To defeat any doubt on the meaning of reasonable time, subsection 5 states as follows:

“(5) In subsection (4) of this section, the expression “a reasonable time” means –

- a. In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and
- b. In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.”

This implies that the detention of arrested suspects for more than 48 hours without being charged to court is against the provisions of the constitution.

In keeping with the above constitutional provision, section 61 (1) of the Nigeria Police Act 2020 provides that a suspect arrested without a court warrant, other than a capital offence, should be granted bail, where it is impracticable to charge the suspect to court within 24 hours.

The intention of the drafters of the Constitution and the Police Act is against the background that except a person is arrested in the course of the commission of an offence, a person should be arrested only upon reasonable suspicion of having committed offence <sup>[14]</sup>.

What then makes a suspicion reasonable? In the case of *Director, S.S.S v Ibrahim* <sup>[15]</sup> the Court of Appeal adopted the definition of reasonable suspicion in the Black's Law Dictionary, 8<sup>th</sup> Edition, page 1487 to mean 'a particularised and objective basis, supported by specific and articulate facts, for suspecting a person of criminal activity'. 'Specific and articulate facts' presupposes that there has been some investigation that has brought up facts which irresistibly show that an offence has been committed by the person being arrested.

We are of the view that the remand proceedings as contained in the ACJA and ACJL of the various states is akin the procedure of 'holding charge'. The end result of holding charge which the courts have consistently held is unconstitutional as it finds no place in our laws <sup>[16]</sup>, and the remand proceeding is that contrary to the S.35 (4) (5) of the constitution a person suspected to have committed a crime is detained for a period which the constitution considers unreasonable. The difference is that the ACJA places a limit while the procedure of holding charge has no limit. Both procedures are intended to circumvent the clear and unambiguous provisions of S.35 of the constitution <sup>[17]</sup>. But we must say that the limit placed by the ACJA is not good enough.

Under the ACJA, 2015, the cumulative period for remand provided for under S296(1)(2)(4) and (5) is 56days.

It is worthy of note that by S. 293 (1) the application for remand can be made *ex parte* without any need to put the person against whom the application is brought on notice but that the court then has an obligation by S. 296 (4) to put the relevant authorities on notice when to show cause why the remand order should not be discharged after the expiration of 28days.

The issues thrown up by the remand proceedings as provided for in the ACJA <sup>[18]</sup> throws up some critical questions.

Why arrest a person and be in need of a cumulative period of about 56 days to bring him before a court of competent jurisdiction?

Secondly, why take a suspect to a court that lacks the jurisdiction to try the alleged offence in the first place.

#### 4. Delay in the investigation and detection of crime

Substantial delays occur at the stage of investigation of crimes. A section of the police known as the Criminal Investigation Department (C.I.D) is usually in charge of investigation and detection of all crimes in Nigeria. Where investigation has been properly conducted, it contributes in no small measure to effective administration of criminal justice <sup>[19]</sup>. The judiciary, one of the organs in criminal justice administration, can hardly function without the co-operation of efficient police officers. But often times, proper investigation of cases is hampered by a number of factors like:

1. Paucity and Frequent Transfer of Officers. The Nigerian Police is a federal set up. This invariably means that all officers in the force are subject to transfer to any part of the federation at any time <sup>[20]</sup>. Most times, especially in rural and semi urban areas, police officers serving in police stations or divisions are very few, and are transferred without any regard to the assignments which they have at hand. Invariably, they might be at different stages of investigations. If they had gone far with investigations the cases might be

handed over to another officer, but if the investigations are already completed, this would mean that the officer would have to return to the particular court at his former serving post to which the case was charged for trial, to testify whenever he was required to do so. However, most of the time, it turns out that the prosecuting police officer would inform the court that he had sent Hearing Notice to the Investigation Police Officer (I.P.O) but was yet to get any reply, while at some other time, the IPO himself might send a reply to such hearing notice to the effect either that he was already billed to appear before another court of co-ordinate or higher jurisdiction or that he would not be available to give evidence because of other urgent matters assigned to him in his new station. These excuses whether genuine or not have always caused delay in the trial.

2. Sponsorship of Investigations Police officers have always complained that expenses incurred during investigations such as traveling and night allowances are not refunded to them. Consequently, police officers invariably fall back on informants to sponsor the conduct of investigations and assembling of witnesses for the hearing of criminal cases. Thus, where informants are not able to meet their demands, police officers are not always keen on traveling far out of their stations to investigate any new facts or to cross check the old ones or to remind witnesses to appear in court on the day of hearing. The result is that many cases get adjourned from time to time to enable the police carry out further investigations or to assemble witnesses resulting in undue delay.

#### 5. Insecurity and administration of justice

Insecurity is also one of the challenges facing the administration of Justice in Nigeria. In some parts of the Country Nigeria, it is becoming increasingly difficult to carry out the daily activities that characterize our lives without being in fear of the activities of criminal gangs and bandits. These activities continue to cripple the due administration of justice in those areas. And recently insecurity in Nigeria has assumed an alarming rate, affecting every facet of a Nigerian's life with no end in sight <sup>[21]</sup>.

Judges have also, on occasion, been victims of this crimes in some of these insecurity-laden area. For instance, a Sharia Court Judge, Alhaji Hussaini Samaila, was reported to have been kidnapped, in the premises of the Court, in Safani Local Government Area of Kastina State <sup>[22]</sup>. This type of action instil fear in the judicial officers who man courts in those areas. It is sad to also state that the provision of security personnel for these judges does not completely help matters in a way that is expected.

#### 6. Sentencing

One of the ways of protecting the society from crime, protecting the rights and interest of the defendant and victim is the objective and fair sentencing of offenders. This is imperative as the aims of all criminal justice systems include deterrence and retribution.

Upon conviction, sentencing becomes imperative. A situation where persons who commit same crimes are given varied degrees of punishment is undesirable. Arbitrariness and uncertainty in sentencing need to be minimised to the barest minimum. Hence, there is the need to provide a form

of guide for judicial officers in the exercise of their discretion in sentencing persons who have been found guilty. Sentencing guidelines are a set of guidelines which aid judicial officers to arrive at a just, certain and objective sentences or punishments to be imposed persons who have been convicted after a criminal trial, this more so in situations that call for the exercise of discretion by the judicial officer. Sentencing guidelines do not admit of wide and unguided exercise of discretionary powers in sentencing. They streamline the discretions and spell out in details the punishments available and how to apply them in the given cases to ensure some form of uniformity. In essence, sentencing guidelines guide judicial officers in choosing from a range of criminal sanctions, which sanctions are also the creations of substantive penal laws and the sentencing guidelines laws.

Oftentimes judges give different sentences to the offenders even on similar offences with similar facts. Recognising the need to correct the disparity in sentencing some states in Nigeria including the Federal Capital Territory have enacted sentencing guidelines to guide judicial officers and magistrates in the exercise of their discretion as it regards sentencing of persons who have been found guilty.

### Conclusion and Recommendations

To tackle the challenge of corruption in the administration of justice, corruption must first be tackled effectively in the society at large. Any effort to eradicate corruption in the administration justice without first rooting it out of the Society at large will always end in futility. This is because those who make up or will continue to make up the justice sector system will always be a product of the larger society.

Much of the efforts in tackling judicial suppression and intimidation lie mostly with the Judiciary. When Judges take hold of opportunities available to them to frown at executive intimidation and suppression, they will drive home the point that the independence of Judiciary is sacrosanct<sup>[23]</sup>. The Nigerian Bar Association is not, however, left out. The efforts made so far by the Nigerian Bar Association in standing with Judiciary is commendable.

Laws must advance with the movement of the society to reflect current trends. Gigantic momentous changes are taking place around the globe; Nigeria must not be an exception. The Nigeria Government should realize the need of strengthening the criminal justice sector to meet the challenges of the 21st century. Laws at its substantive and procedural level, depends on its efficiency and effectiveness on the mandate of the lawmakers and the procedure of the law making and its relevance and acceptability of the people.

Good coordination between agencies is critical to effective and sustained implementation of ACJL provisions

Victims of crime are often the most left behind in criminal justice systems. Increasing victim support and protection is vital to preventing secondary victimization and re-victimization and to increasing the reporting of incidents.

Access to legal aid is another measure that can increase support and protection for victims of crime. It is particularly important for women offenders who typically come from disadvantage and marginalized backgrounds.

Restorative justice gives those affected by crime a voice and an opportunity to participate in the resolution of a crime in a way that conventional criminal justice processes do not. It

can be a useful mechanism for providing additional support to victims.

Criminal justice systems have to carefully balance the needs of communities and societies for protection and safety, the needs of victims for justice and reparation and the need to hold offenders accountable, while ensuring their rehabilitation and social reintegration and reducing reoffending.

Providing access to justice for all and ensuring effective, accountable and inclusive criminal justice systems is essential to sustainable development and covered under the United Nations Sustainable Development Goal 16.

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