

## **Issues in the Administration of Criminal Justice in Nigeria**

**CHINDA, Florence Anelechi Ph. D<sup>1\*</sup>**

<sup>1\*</sup>Lecturer, Faculty of Law, Rivers State University, Port Harcourt, Nigeria.

**\* Correspondence:** CHINDA, Florence Anelechi Ph. D

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**ABSTRACT:** In the wake of seemingly normalized criminality and its unabated wave in Nigeria and the need for concerted efforts to understand its pervasiveness, this paper examined the issues and challenges in the Nigeria Criminal Justice System (CJS). The administration of criminal justice in Nigeria has evolved significantly over time, mirroring the complexities and challenges of its diverse and dynamic society. It plays a pivotal role in maintaining law and order, protecting citizens' rights, and ensuring justice. However, it faces numerous issues and challenges that impede its effectiveness. This paper examined these challenges, focusing on systemic inefficiencies, procedural delays, corruption, lack of adequate infrastructure, and the inadequate training of law enforcement officers. One of the most significant concerns is the overwhelming backlog of cases, exacerbated by limited judicial personnel and poorly equipped courts, resulting in prolonged pretrial detention and prison congestion. Additionally, corruption within the police force and judiciary further undermines public confidence in the system, as financial and political influences often distort the course of justice. Governed primarily by the Administration of Criminal Justice Act (ACJA) 2015, along with similar state-level laws, the system is designed to promote fair and efficient justice. The ACJA introduced

reforms aimed at reducing delays in criminal proceedings, safeguarding the rights of suspects and victims, and improving the overall efficiency of the judicial process. However, despite these improvements, the Nigerian criminal justice system still grapples with significant issues such as systemic corruption, inadequate infrastructure, and resource shortages that hinder its effectiveness. This paper has made recommendations that requires an overhaul of the Nigerian criminal justice system requiring comprehensive reforms, including the modernization of legal frameworks, better training for judicial officers, investment in infrastructure, and the strengthening of anti-corruption mechanisms to restore public trust. Addressing these challenges is essential for ensuring that justice is served fairly and efficiently in Nigeria.

**Keywords:** *Crime, Criminal, System, Justice, Administration.*

## INTRODUCTION

Crime is inevitable in any human society since some violations or the other of any code of conduct prescribed for the members of a society is bound to occur. Not only is crime inevitable but, paradoxically as it may sound, some sociologists has gone to the extent of saying that crime, to some extent, helps in promoting social solidarity among people constituting the society. The inevitability and universality of the phenomenon of crime has been described in the following words:

There is no society that is not confronted with the problem of criminality. Its form changes; the acts thus characterized are not the same everywhere; but, everywhere and always, there have been men who have behaved in such a way as to draw upon themselves penal repression ... No doubt it is possible that crime itself will have abnormal forms, for example, when its rate is usually high. This excess is indeed undoubtedly morbid in nature. What is normal, simply, is the existence of criminality, provided that it attains and not exceed, for each social type a certain level... To classify crime among the phenomena of normal sociology is not to say merely that it is inevitable, although regrettable, phenomenon, due to incorrigible wickedness of men, it is to affirm that it is a factor in public health, an integral part of all healthy society.

According to Durkheim even a society composed of persons possessing angelic qualities would not be free from violations of the norms of that society with the result that faults which appear venial to the layman will create there the same scandal that the ordinary offence does in ordinary consciousness.

It is against this backdrop that society necessarily has to put machinery in place to check the excesses of persons in that society so that lives and properties will not be endangered. Criminal Justice System is an essential part of any civilized nation to ensure justice, fairness, the practice of the rule of law and the institutionalization of a democratic system. Criminal justice system is what prescribes, controls and enforces the laws for the co-existence of persons and institutions in the society. It is necessary in every democratic society to have in place a criminal justice system that is proactive otherwise the existence of a peaceful society will be threatened.

### **The Role of Criminal Justice in the Society**

The Administration of Criminal Justice comes to play where there is a reasonable suspicion that crime has been committed. In our society today, the prevalence of crime is on the increase and as such criminal justice is an integral part of maintaining order in the society, the absence of which will result in chaos making life brutish and short. It thus can be implied that crime is what has necessitated the administration of criminal justice and the need to have an organized system of combating the menace as against resort to self-help. That is not to say that the Administration of Criminal Justice eradicates crime. It is only a tool (very important) that fashions strategies and measures to deter and reduce crime in the society. Society is dynamic and thus gives room for the evolution of new crimes which makes the task of criminal justice administration one that must be conscious of the dynamics of crime in the society.

The administration of criminal justice is a crucial aspect of any nation's governance, as it is responsible for maintaining law and order, ensuring public safety, and upholding the rights of citizens. In Nigeria, the criminal justice system comprises various institutions, including the police, judiciary, and correctional services, working together to enforce laws, investigate crimes, prosecute offenders, and rehabilitate convicts. However, the Nigerian criminal justice system has faced

numerous challenges over the years that have hindered its effectiveness and efficiency.

For the system to function effectively, there has to be some persons or bodies that will be charged with the responsibility of upholding or enforcing the tenets of the criminal justice system. The machineries put in place to carry out these function of ensuring compliance is what forms the Administration of Criminal Justice.

### **Issues in the Administration of Criminal Justice in Nigeria**

Some of the pressing issues include corruption, lack of funding and resources, an inefficient court system, police brutality and abuse of power, poor prison conditions, insufficient legal representation, discrimination and bias, lack of public trust, and inadequate data collection and record-keeping. These issues not only hinder the effectiveness of the criminal justice system but also undermine the fundamental rights of Nigerian citizens.

To tackle these challenges, it is crucial to implement comprehensive reforms that target the root causes of these problems. Such reforms may include promoting transparency and accountability within the criminal justice system, improving funding and resource allocation, enhancing the efficiency of the court system, ensuring proper training and oversight for law enforcement officers, addressing prison overcrowding and inhumane conditions, and ensuring equal access to legal representation for all citizens.

By addressing these challenges, Nigeria can work towards building a more effective, efficient, and just criminal justice system that upholds the rule of law, protects citizens' rights, and fosters public trust. This, in turn, will contribute to the overall stability and development of the country, as well as promote a safer and more just society for all Nigerians

Some of the issues that have hampered the efficient administration of criminal justice in Nigeria will be considered below.

## **Control of Criminal Proceedings by the Attorney-General**

The office of the Attorney-General is created under sections 150 (1) and 195(1) of the 1999 constitution. Section 150 (1) provides that ‘there shall be an Attorney General of the Federation who shall be the Chief Law Officer of the Federation and a minister of the Government of the Federation. The said section as well as the corresponding section for the office of the State Attorney-General also made provision for the qualification to occupy the said office. By sections 174 and 211 of the 1999 Constitution, they have powers to commence and undertake, take over and continue or discontinue any criminal proceedings against or in respect of any offender in their respective jurisdictions. The powers of the Attorney General will be considered below

### **(a) Power to Institute Proceedings**

The power to institute proceedings by the Attorneys-General against any person is an absolute one. Where two or more persons commit an offence or a series of offences, the Attorney-General has the discretion as to who to prosecute in respect of what offence. This discretion is not fettered by any way. He has no obligation to give reasons for exercising his discretion in a particular way. The discretion to prosecute, who to prosecute, and where to commence criminal proceedings against any person lies in the Attorney-General. Thus in *Akpan v State*, Tobi JSC held inter alia: ‘the only jurisdiction of the court is to try persons presented before it for prosecution. The prosecution is not under any regimental duty or any duty at all to charge all possible accused persons. It has however been held in *Dariye v State* that under EFCC Act 2004, s 13(2), the Commission has powers to prosecute an offender. The power to institute criminal proceedings was held not be an exclusive prerogative of the Attorney-General since the power to prosecute can be exercised directly or indirectly through an agent. The power to institute criminal proceedings if abused by the Attorney-General can alter the cause of justice especially where a group of offenders who are alleged to have committed a crime are by the powers of the Attorney General are not all prosecuted. The selection of who to prosecute and who not to prosecute if abused has a negative effect on the criminal justice system as the society

or even the victim of the crime may feel slighted and confidence in the administration of criminal justice may be eroded.

#### **(b) Power to Take Over**

The power of the Attorney-General to takeover proceedings from any authority or person at any stage of criminal proceedings is also absolute. In *Amaefule v State*, the accused persons were charged before the Magistrates' Court in Imo State for certain indictable offences. After several adjournments in the case, the Magistrate adjourned the case sine die. While that case was still pending before the Magistrates Court, the Attorney-General filed information in the High Court against some of the accused persons in respect of the offence. The accused persons objected to the information on the ground that it was an abuse of court process and that the information should be declared null and void. The Supreme Court rejected the contention of the appellants although it acknowledged that it was desirable to withdraw the charge against the accused persons at the Magistrates Court.

One cannot but wonder what abuse of court process entails if the Supreme Court has difficulty in holding that the actions of the Attorney-General in *Amaefule's* case amounted to an abuse of court process

#### **(c) Power to Discontinue**

The constitutional principle of "Nolle prosequi" is a Latin expression meaning: 'we shall no longer prosecute.' It is not subject to judicial review. Section 174 (c) of the Constitution provides that the Attorney-General of the Federation shall have power: 'to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person'. In *State v Illori, Aniagolu JSC* held:

My brother Kayode Eso, JSC, while asserting the Attorney-General's absolute discretion in entering a nolle prosequi, has recognized the invidious position of a citizen who falls victim to an unscrupulous Attorney-General and agreed that such a victim is not without remedy although his remedy is not to question or review the exercise of the powers of the Attorney-General.

The provision of the law is unfair to our criminal Justice System, because as a human being, there is a need for limitation of power so that he would not act excessively, since power corrupts and absolute power corrupts absolutely. In this regard, there is need for review of the law to restrict these powers in certain situations and possibly by making it subject to judicial review. Alternatively, the office could be split into two, that is, the office of Attorney General made separate from the office of the Minister/Commissioner for Justice so that power of prosecution and exercise of “*nolle prosequi*” will only be vested in the Attorney General who should only be a professional not subject to executive control.

### **Exercise of Prerogative of Mercy**

The foundation of Presidential Pardon and Prerogative of Mercy may be traced to the Holy Bible from where different nations have adopted them in their Constitutions. In the Bible it is said, “I will therefore chastise him, and release him.” In the same chapter, our Lord Jesus Christ told a criminal crucified with him that he would be with him in heaven as the criminal repented. In the case of Jesus Christ, he was innocent but crucified, while the criminal was guilty and crucified.

Pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. A pardon is the use of executive power that exempts the individual to whom it was given from punishment. The prerogative of mercy is a power exercised by heads of state, typically to grant pardons or to mitigate punishment for individuals, often after consulting with an advisory body such as the Council of State. By virtue of Sections of 175 and 212 of the CFRN 1999 (as amended), pardon is provided for, which can be termed as an executive pardon. This is the pardon for a crime that has come from the governor or the president of a state. This type of pardon is exercised on prerogative of mercy and may be conditional or unconditional. Judicially, a pardon has been defined in *Olu Falae v. Obasanjo* (No. 2) as an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and the privileges forfeited on account of the offender.

The effect of a pardon is to make the offender, a new man (*novus homo*), to acquit him of all corporal penalties and forfeitures annexed to the offence pardoned.

### **Examination of Prerogative of Mercy in Nigeria:**

By the wordings of the Constitution, A Council of State is supposed to supervise the exercise of the powers conferred on the Governor for advice. It may be observed that some states in the Federation exercise their powers in line with the above provision of the constitution. However, some Governors do not have in place Council of the State for prerogative of mercy. The Council of State in place in some states, appear to be mere rubber stamp who just sign documents to fulfill all righteousness.

There is similar provision in the constitution of the United States of America. It provides thus:

The President shall be Commander in Chief of the Army and Navy of the U.S., and of the Militia of the several States, when called into the actual service of the U.S, he may require the opinion, in writing, of the principal officer in each of the executive Departments, upon any subject relating to the Duty of the respective offices, and he shall have Power to grant Reprieves and Pardon for Offences against the United States, except in cases of impeachment.

Also, the Constitution of the Republic of Uganda provided for Prerogative of Mercy. Comparatively the Constitution of Republic of Uganda is more detailed as to the procedures, steps and requirements of Prerogative of Mercy or Pardon. The Nigerian Constitution gives the Nigerian President more space to manoeuvre in his exercise of his power to grant pardon as our own Constitution is not very verbose.

Prerogative of mercy is simply a discretion had out of grace. In law it is a power exercised in different forms by the President or Governor. It could take the forms of a pardon, amnesty, respite etc. It considers a wide range of factors not comprehended in judicial proceedings and sentencing determinations.

Prerogative of mercy is the power of the President and the Governor to pardon a criminal offence absolutely (and thereby relieving the defendant of all the



consequences of conviction), to commute a sentence to a milder form, or to remit a sentence in part.

The court in *FRN v Achida* has clearly interpreted that "concerned with" as used in the subsection 1, paragraph [a] of the two sections does not refer to "person(s)", rather, "offence". Hence, it is not the person that is or to be granted a pardon that matters, but the offence on which the person is or to be granted. This, therefore, still boils down to one clear fact that the powers of prerogative of mercy given to the President and Governor, are to be exercised after the person has been convicted of the offence, and not before, as posited in *Ibiwoye Adeola v. The State*. This is because, to interpret the power of a President or Governor to pardon includes the pardon of someone whose right to a presumption of innocence is guaranteed and protected by the Constitution, and against whom there cannot be a suggestion of having done something criminal without a pronouncement of guilt by a court of law, will be to bring the provision of Section 212(1)(a) of the 1999 Constitution into direct conflict with the provision of Section 36(5) of the Constitution. To end the problems of when the power is to be exercised and on whom the person is to be exercised, the apex court in *Solola & 2 Ors v. The State*, held:

It needs to be stressed for future guidance that a person convicted for murder or sentenced to death by a High Court and whose appeal is dismissed by the Court of Appeal is deemed to have lodged a further appeal to this Court and until that appeal is finally determined the Head of State or the Governor of a State cannot under sections 175 or 212 of the 1999 Constitution as the case may be, exercise his power of prerogative of mercy in favour of that person.

Worthy of note, also, are the conditions stated in subsection 1, paragraph [a] of the sections. These conditions are not precedent on the President or Governor to the grant. That is, it is not for president to fulfill a certain condition before granting a pardon. Rather, they are ones to either place or not, the offender upon the grant. For instance, it could be said that the beneficiary (of the pardon) must never be seen around the victim, otherwise, would be returned to prison.

Only recently, the President of the Federal Republic of Nigeria, granted pardon the a murder convict, Maryam Sanda while her conviction was on appeal at the supreme court. The Supreme court did not discontinue the hearing of the matter. It proceeded to affirm the decision of the lower court on 12 Decmber, 2025. The situation has generated so much discuss as to the propriety or otherwise of the pardon and the conviction by the president and the supreme court respectively.

Stating that the President or Governor is not to fulfil any condition is not absolute. This is because the unanimous reading and understanding of the subsection 2 of the two sections (175 & 212) depicting that the President and Governor (as the case may be) does not, should not, or even, must not exercise this power singlehandedly. It must be exercised upon and with the advice of the Council of States, otherwise, may not be possible.

On the flip side, the president or governor is still at the discretion to take their advice. But one very important fact and point here is that, the pardon must have come with the advice of the Council, otherwise, the power needs be checked, hence, the pardon will be illegal and unconstitutional.

It must, first, be noted that the council of state has no executive power, however, can advise the executive on a certain matter, as in the case of prerogative of mercy.

It has been argued that the "National Council of State" is a vexatious and pointless organisation. However, the President (who serves as chairman), the Vice-President (who serves as vice-chair), the Chief Justice, the President of the Senate, the Speaker of the House of Representatives, all state governors, the former heads of state of Nigeria, and the Attorney General are listed as members of the Council of States in this constitution.

According to reports, the Council serves as the president's "advisory" body on a variety of issues, including the national population commission, the president's prerogative to show mercy, the awarding of national honours, appointments to the National Judicial Commission, the Independent Electoral Commission, and the National Population Commission. It also reportedly provides advice on maintaining law and order in Nigeria.

## **Poverty and Unemployment**

Nigeria is a state blessed with both human and natural resources, yet poverty is running virtually in the blood stream of its citizens. Many Nigerians are unemployed and are living below poverty line. Where there is poverty, survival is an instinct that will be addressed either correctly or wrongly. Poverty and unemployment alters the course of administration of criminal justice. A visit to the prisons will prove correctly the above assertion. The prison officials depend on the provision for inmates for their upkeep.

Also, the inadequate salaries paid to officers in the administration of criminal justice makes the officers not motivated to do their jobs well. Those employed are faced with two major obstacles; first, the employment and its contents are below the minimum standard expected in the international community, thus, not well enough. Secondly, the privileged employed citizens had their regular wages reduced to no meaning by inflation.

## **Children in the Administration of Criminal Justice**

The involvement of children in crime and criminality has long attracted global attention. This is not because children are by nature inclined towards criminality, but primarily because their physiological and psychological vulnerabilities make them prey to adults of dubious character. To this end, the United Nations in 1986 came up with the Convention on the Declaration of the Rights of a Child to which Nigeria is a signatory. The principal legislation that regulate the course of criminal justice system concerning children in Nigeria include the Constitution of the Federal Republic of Nigeria, the Child Rights Act and the Administration of Criminal Justice Act.

In determining whether a person shall be accorded the privileges and procedure that applies to the trial of a child, the question must first be answered, "Who is a child?". It must first be made clear that there is no universally acceptable definition of a child. For the purposes of determining who is a child, recourse is often made to age. For instance, the constitution stipulates the age of majority as 18 years. Similarly, the Child Rights Act defines a child as a person who has not attained the age of 18 years. The Immigration Act stipulates that a person below the age of 16

ears is a minor. However, the constitution made a shift from the requirement of the attainment of 18 years to the marital status of the person where it is a girl. By the provision of the constitution, “any woman who is married shall be deemed to be of full age.”

It is submitted with due respect, that marriage of a person cannot confer majority and that a woman who is married before the age of 18 years should in the same vein be accorded the rights and privileges of a child, except it is medically proven that marriage develops the mental and psychological ability of a person below 18 years.

In the case of *James v State of Lagos*, the definition of a child was given per the Child Rights Law of Lagos State 2015. the court held thus:

I will start by defining who a child is. For the purpose of this judgement, I will refer to the interpretation section of the Criminal law of Lagos state. Under section 416 of the Criminal law of Lagos state which is the interpretation section, a child “has the meaning assigned to it in the Child’s Right Law of Lagos state”. The Child’s Right Law of Lagos State. 2015 under section 262 then proceeded to define a child as ‘a person under the age of eighteen.”

Some states have been able to domesticate the Child rights Act, hence these states have their own laws but for states that have not done so, they are still relying on the Children and Young Persons Law.

The various stages in handling cases concerning child offenders will be discussed below:

**a) Investigation Process:** The constitutional provisions with regard to the right of a suspect or accused also applies where the suspect or offender is a child. By the provision of the CRA the child has the right to the presence of a parent or guardian and the right to legal representation. Upon initial contact with the child, the apprehending officer is expected to immediately notify the child’s parents or guardian. Once apprehended, the court or the police is required to consider the possibility of release of the child and the need to avoid harm to the child, including “the use of harsh language, physical violence, exposure to the environment and any

consequential physical, psychological or emotional injury or hurt.” The Act provides for the establishment of a Specialized Children’s Police Unit to deal primarily with children and the prevention of child offences. This unit is charged with the prevention and control of child offenders, apprehension of child offenders, and investigation of child offences.

The Act encourages the use of Alternative Dispute Resolution (ADR) mechanisms, for resolving cases involving child offenders and provides for police investigation and adjudication in court as a last resort. It also prescribes guidance, supervision, restitution and compensation of victims where possible, and advises reconciliation of parties. Detention of children pending investigation is frowned at by the court and is to be used only when necessary care including educational, medical, psychological and other forms of assistance and facilities. Detention should preferably be in a home, educational setting, or other convenient facilities. The adult correctional adult correctional centre is completely rules out as a detention place for children.

The ACJA provides that where a child arrested by a police cannot be brought to court immediately, the officer in charge of the station should inquire into the case and release the child on bond to his parents or guardians unless it is necessary to keep him away for his benefit, or the offence involved is a serious one.

It is interesting to note that many police stations do not have any specialized unit for child offenders as child offenders are probably taken to an exclusive office existing in course of an ordinary emergency with a view to make the child comfortable and to be seen to comply with the provision of the CRA. It has also been alleged that some police officers inflate the ages of child offenders to be absolved from following the guidelines for arresting and investigation child offenders. The resultant effect is that these children are tried in the regular courts and not family or juvenile courts.

#### **b) The Trial process**

The CRA provides for the establishment of family court. In Rivers State, the Child Rights Law provides that the family court shall comprise at the High court level of: one Judge, Two Assessors (not below the rank of Chief Child Development Officers and one of whom must have relevant training related to child psychology education).

at the Magistrate court level, it comprises of: One chief Magistrate and two assessors (not below the rank of Senior Child Development Officers and one of whom must have relevant training related to child psychology education)

The Child Justice Procedure (CJP) is the rules of procedure for family courts and it is strictly to be applied to cases involving children. Where there is an inconsistency between the provision of the CRA and any other rules of procedure, the provision of the CRA will supersede. Other salient provision of the CRA relating to the trial of child offenders include:

- i. Right to counsel
- ii. Restriction of court attendance in cases involving children
- iii. Prohibition of publication of child's name, address, school and other details
- iv. Proceedings to be in the interest of the child
- v. Child to be subject to only child justice system
- vi. Evidence to be given by a child is to be unsworn or sworn deposition on oath

There are however some cases where children are charged with adults for serious offences. This may be because the child may have played one role or the other in the commission of the offence. Such cases are often tried by the regular court. Most often, in such case, the court use their discretion in the application of the rules of court as pertains to the child offender.

### **c) Punishment for Children**

Upon conclusion of cases of child offenders and if found that a *prima facie* case has been made out against the child, the child is to be allowed to explain reasons for his conduct before the court decides on how to deal with the case. The court in recording its decision concerning the child offender is prohibited from using the terms "conviction" or "sentence" against the child.

The court is may remand or commit the child to a government-owned facility for observation or investigation. The court may also order the child or parents to a fine,

amongst other non-custodial punishments. The court is prohibited from imposing a corporal punishment (like flogging), imprisonment or death penalty. Where the offence is a very serious cases like murder, arson, manslaughter, treason, robbery, or grievous harm, the court may order detention in such a place as it chooses, for such a period as it deems fit.

### **Common Challenges in the Administration of Criminal Justice**

The challenges in the administration of criminal justice play out from the pre-trial investigation and then to trial, conviction, and sentence. These challenges, some of which are strengthened by a 'conspiracy of silence' have remained unaddressed. The challenges identified in this chapter are not exhaustive as it takes different forms depending on the particular case. The institutions involved in the administration of criminal justice basically pose the challenges experienced in the criminal justice system. An ineffective and corrupt system is what plays out on daily basis in the administration of criminal justice in Nigeria. An attempt to address these challenges often times ends in constituting more institutions which will serve as check on the existing ones but the later still fall into the same challenges that have devilled the former. The same lack of adequate facility, corruption, poor funding, in-efficiency etc., trail again the measures taken to improve on the criminal justice system.

### **Corruption**

It is not an easy task to define or attempt a precise and universally acceptable definition of corruption. Several unsuccessful attempts have been made to define corruption or its constituent's acts with the resultant divergent views. The difficulty in defining corruption according to Egwemi, is first a function of its being a secret and clandestine activity and secondly because it has many manifestations, dimensions and forms. Some have approached the issue narrowly, others broadly, and yet some have refrained from defining the concept but rather adopt a descriptive approach. According to Black's Law Dictionary, corruption is the act of doing something with intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others." In the

Corrupt Practices and Other Related Offences Act , corruption is defined to include: bribery, fraud, and related offences. Offences Punishable under the act include: wilful giving and receipt of bribes and gratification to influence a public duty, fraudulent acquisition and receipt of properties, deliberate frustration of investigation by the anti-corruption commission (ICPC), making false returns, making of false or misleading statements to the anti-corruption commission, attempts, conspiracies and abatement of offences under the Act.

In *Biobaku v Police*, Bairamian J. illustrated the use of the word ‘corruptly’ as:

...‘corruptly’ mean no more than “improperly.” It would be equally true to say of an act which is an offence that is ‘improper’ to do it-which of course is the reason why it is an offence under some section of the code; but the word ‘corruptly’ does not always occur; for example, it is absent from S. 99 which forbids an officer to take or accept any reward beyond his pay for the performance of his duty...

In section 98, 98A and 98B of the Criminal Code Act, the word ‘corruptly’ is repeatedly used without any definition. However, the acts which are described following the use of the word ‘corruptly’ will suggest the meaning of corruption. Here the word ‘corruptly’ can be interpreted to mean “with intent to corrupt”.

Corruption has also been defined as behaviour which deviate from the formal duty of a public role because of private-regarding (family or close clique), pecuniary or status gain, or violates rules against the exercise of certain types of private regarding influence. It is clear therefore that to be guilty of corruption, a wrongful desire for pecuniary gain or some other advantage(s) has to be established.

Corruption has also been classified into various distinctions. There is ‘petty corruption’ and ‘grand corruption’. While the first classification refers to minor corrupt practices such as those involving small amounts of money, dispensation of minor favours by persons seeking preferential treatment or the employment of friends or relatives to minor positions, the second category refers to a large scale corrupt practices which exist or occur at the highest levels of Government and which



erode public confidence in good government, the rule of law and negates economic progress or stability.

#### **(a) Common Manifestations of Corruption**

Bribery is perhaps the most common form of corruption. It involves the exchange of money or other benefit for a reward, favour or to influence a decision and can be defined as the corrupt payment, receipt or solicitation of a private favour for official action. Bribery can be initiated by the person who solicits for a bribe or the person who offers and then pays a bribe.

It is a common phenomenon in our criminal justice system ranging from the arrest and investigation of an alleged offender to the conviction and sentencing of an offender. The key players in the administration of criminal justice are usually caught in the web of this monster known as bribery. While some are persuasive to demand for a bribe, others are usually very firm and fix their prices. It has become an acceptable mode of operation that police bail is not free, even when there is a bold display in writing in the police stations that “bail is free”. Even lawyers negotiate for an amount to be paid to obtain the release of their clients from police custody.

In the court room the situation is no different, counsel have to “tip” Court clerks and Registrars to get processes from the court file and other assistance that will enable the counsel prepare for his case. The bailiffs of court are not left out as they get richer by the day even when their salaries do not in any way measure up to the properties they have acquired in course of their employment.

The Judges are not left out in this scandal of bribery. Perverse judgment seems to be the order of the day as justice is bought in the chambers of the judges. Legal Practitioners are guilty of making moves to reach judges just to retain their clients and portrayed in the eye of the public as “magicians”. According to Uwaize CJN:

I have heard it said that some legal practitioners act as agents for litigants in giving bribe to judicial officers. Some also extract money from their clients on the pretext that the judicial officer, before whom the clients’ case is pending,

would have to be bribed before they could get justice. Such bribe does not of course reach the judge but ends in the pockets of legal practitioners.

Bribery in the administration of criminal justice in Nigeria has made justice to be far from the common man.

Abuse of Discretion and Abuse of Office is another manifestation of corruption. Where an individual vested with powers or authority to do acts on behalf of the government decides to use those powers for personal or third party gain, abuse of discretion is complete. A consideration of our criminal justice system will reveal that there are persons that have discretion to act in certain manner. This discretion ought to be exercised properly. An example of where there can be abuse of discretion is where the powers conferred on the Attorney General of the Federation and Attorneys General of the States are used in an improper manner. In *State v Illorin, Kayode Eso*, in that case observed that:

The pre-eminent and incontestable position of the Attorney-General, under the common law, as the chief law officer of the state, ...has long been recognized by the court. In regard to these powers, and subject only to ultimate control by public opinion and that of parliament or the legislature, the Attorney-General has, at common law, been a master unto himself, law unto himself and under no control whatsoever, judicial or otherwise, vis-à-vis his powers of instituting or discontinuing criminal proceedings.

An attempt to qualify these powers has been made in section 174 (3) and 211 (3) which provide that in exercising his powers under this section, the Attorney- General of a State shall have regard to public interest, the interest of justice and the need to prevent abuse of legal process.

It is however worthy of note that the section 174(3) and section 211 (3) does not take away the wide discretionary power of the Attorneys General. In *State v Ilori & Ors*, the Supreme Court noted that the Attorney General of the State must assume “sole responsibility” for the proper and effective exercise of this power, he has full discretion in arriving at what amounts to “public interest, the interest of justice and the need to prevent abuse of the legal process”. The Court went further to state that

the words “shall have regard to” did not limit the broad discretionary powers of the prosecutor under the Common Law or under the Nigerian constitution.

Also to consider is the discretionary powers of the court. An example is where the court has to exercise its power to grant or refuse a bail application, this exercise of discretion sometimes are prone to abuse.

### **(iii) Extortion**

Indeed the police today is publicly perceived as one of the most corrupt government institutions, with its personnel constantly accused of bribery and extortion in the course of performing their functions. These accusations are rampant amongst the populace, especially that relating to the extortion from members of the public. In addition, the police have also been accused of erecting illegal road blocks in order to extort money from the citizenry. This has resulted in the loss of public confidence in the integrity of the police personnel.

Policing in Nigeria is characterized by pervasive corruption, such as diverting police resources for personal enrichment, harassing and intimidating suspects with a view to get a good financial bargain from suspects and their relatives or representation, destruction or suppression of evidence including disposal of bodies of victims of extra judicial killings, extortion of members of the public, even in front of a police station.

Extortion has been defined as the offence committed by a public official who illegally obtains property under the colour of office; especially an official's collection of an unlawful fee. In the courts today, a lot of extortion is practised by the registrars and clerks of courts. It is no secret that often times when bail is granted to an alleged offender by the court, the bail application form does not come easily unless the applicant or his representative part with something. Some times where the condition of bail states that the surety is to be verified by the prosecution, the prosecutor extorts money from the applicant or his representative before such verification is done.

During the trial, witnesses are being bought for a price. The investigating police officer in a case will not make himself available for evidence till and until the he is hired for a fee. Not to be left out is what goes on in the prisons, where relatives of prisoners are being extorted before they are allowed to visit the prisoner.

#### **(iv) Bureaucratic Corruption**

Bureaucracy has been defined as “government by officials”. This implies that bureaucracy signifies the government and its official especially those who did not go through the process of an election. They are government officials who see to the daily running of all government departments be it in the judicial, legislative or executive. It is the misuse of power by public officials for personal gain in violation of laws that govern public servants and moral principles. In its basic form, it occurs when a public servant demands and accepts bribes or kickback, in order to perform his official duty.

This type of corruption is very common in the administration of criminal justice in Nigeria. Starting from when a complaint is laid at the police station, the complainant is expected to “mobilize” the police for an arrest or investigation of the crime else, nothing will be done regarding the complaint. These and several forms of corruption takes place in the administration of criminal justice in Nigeria.

#### **Inadequate Funding of Institutions of Criminal Justice**

It is truism that the core institutions involved in the administration of criminal justice are poorly funded. This can be deduced from the dilapidated buildings housing these institutions and the functionality of the institutions. Because these institutions are non-political in nature and outlive the tenure of political office holders, the executives in whose hands lie the funds for these institutions seem not to border much about the state and functionality of these institutions.

A tour around the facilities accommodating the institutions involved in the administration of justice will reveal that they are poorly funded. The court rooms and facilities are too small to accommodate lawyers, litigants and witnesses. The sittings are old and outdated and power supply to the court room is epileptic. The atmosphere

created by the congestion of the court and dilapidated facility makes judges conduct proceedings in a hurried manner or not even sit at all. Judges have to strain their ears to hear lawyers and vice versa. In some jurisdictions, a judge is required to sit in more than one division. This makes the Judges shuttle from one division to the other hence he cannot be regular in one division from Monday to Friday. Some judges do not have befitting accommodation. Some come from very long distance to the court thereby arriving late and wasting time that would have been used in administering justice in the courts.

Most police officers readily cite their poor pay as the principal reason for extortion. Some even claim that in the absence of the basic provisions for policing, the police use proceeds from extortion to fulfil operational needs, such as stationery for recording statements from suspects, gasoline for patrol vehicles, batteries for mobile phone units, and similar day-to-day needs.

Even the prisons are underfunded. This is owing to the fact that provision is usually not made for inmates who are awaiting trial. The government assumes responsibility for only convicts and not inmates awaiting trial. The overall effect is that the inmates who are awaiting trial have to be catered for from the provision made for the convicts.

### **Delays in Justice Delivery**

The administration of criminal justice in Nigeria is characterized by delays in every stage of the justice system. Delay in most instances are either occasioned by lack of diligent prosecution of cases, antics of counsel such as of interlocutory appeals to stall and frustrate legitimate expectation of justice, or indolence on the part of some judges.

The constitution provides as follows:

In determination of his civil rights and obligations, including any question or determination by or against any government or authority; a person shall be entitled to fair hearing within a reasonable time by a court or tribunal

established by law and constituted in such a manner as to secure its independence and impartiality.

Fair hearing has been interpreted to be synonymous with fair, speedy trial without undue delay. The Nigerian judiciary from the lowest court to the apex court faces the challenges of backlog of cases pending in each of the courts. This perhaps is largely due to the facts that the courts are inundated daily with the challenges of insufficient facilities in spite of huge volumes of paper work which stem from the increasing use of modern tools in the society. The courts so far, have managed to face these challenges with old tools which are proving to be more and more inadequate. This consistently results into backlog of cases and slow pace of justice delivery leading to overworking of judges. The era of writing short hand, frequent adjournment of cases, time delay in arraignment, taking evidence (long hand), irrelevant questions in examination of witnesses, epileptic appearance of counsel and dealing with huge volumes of papers appear not only to be obsolete but require serious review to match with time. In a society which finds itself firmly in the digital age using such tools and operating such concepts as paperless system, the internet, social media and information technology, it is an understatement to say that such society is doomed if it neglects or refuses to identify with such modern tools and concepts. Some of the factors Occasioning delays in the criminal justice delivery will be considered below.

#### **(a) Delay Occasioned by the Police**

The process of investigation of a crime is very material for the administration of criminal justice in Nigeria. Sometimes investigation requires so much time to gather evidence that will incriminate the alleged offender. The department that is responsible for investigation of crimes in the Nigerian police force is then Criminal Investigation Department. As important as the role of investigation in the administration of criminal justice, it is often hampered by so many factors. The Nigerian Police Force is a federal institution. Consequently, officers are subject to transfer to any part of the federation in exercise of their duties. Officers are more concentrated in the cities and in the rural areas one find only a few officers who can barely cover the division. Frequent transfer of officers delay investigation as the case

file may be given to another officer who need time to study the file and in some cases start investigation afresh.

Where the police officer on the other hand has concluded investigation before his transfer, he may be required to come from his new place of assignment to come and give evidence in respect of the matter which he concluded investigation. Often times, the excuses of hearing notice being served on the police officer are part of the reason for the adjournment. Other times, the police officer may inform the court that he is on official assignment by his superior or that he is to give evidence in a superior court. All this problems are common to the administration of criminal justice.

#### **(b) Frivolous Applications and Adjournments by Counsel**

Counsel often times take to making frivolous applications to the court to delay trial. This goes to show on the side of the prosecution that they are not prepared for their case, and on the side of the defence, they are not sure of the outcome of the case. This kind of practice is adopted with a view to frustrate the other party so that the matter becomes complicated and burdensome so much that the opposing party gives up on the case. These applications may be that an adjournment is sought because a witness that is material to prove the party's case traveled and is out of the jurisdiction of the court, or that the witness is sick, or even that the counsel is before a superior court.

One application that is open to a defence counsel is a no case submission. Often times defence counsel makes a no case submission with a view to delay trial. A no case submission means that there is nothing in the evidence adduced by the prosecution that will persuade the court to compel the accused person to put up his defence. The AJCA provides that:

the court may, on its own motion or on application by a defendant, after hearing the evidence for the prosecution, where it considers that the evidence against the defendant or any of several defendants is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of the defendant without calling him to enter his or their defence and the defendant

shall accordingly be discharged and the court shall then call on the remaining defendant, if any, to enter his defence.

Sometimes, even when it is undoubtedly clear that the defendant has a case to answer the defence counsel first, as a matter of “try luck’ makes a no case submission for the defence. Where this is the case, it delays the trial by postponing the opening of the case for the defence to a later date because until that application is disposed of in favour of the prosecution, the court cannot call on the defence to open its case.

In *Worlu v Umelo*, the court held: ‘I think I should remind counsel that by rule 15(3) of the Rules of Professional Conduct for Legal Practitioners, it amounts to professional misconduct for a lawyer to conduct a defence merely to delay trial, and harass or maliciously injure the plaintiff thereby.’ Also in *Dariye v FRN*, the court observed that it has been the practice since the third republic commenced in 1999 for well to do individuals who face criminal cases, to ensure such trials never proceed. This is done by filling in court relevant and irrelevant applications, appeals all designed to stop the trial from proceeding to conclusion.

### **(c) Irregular Sitting of Courts**

It has been observed with disdain that most courts do not sit regularly. In Enugu State, some Judges sit in more than one division and so it becomes impracticable for courts in those divisions to function from Monday to Friday. Sometimes, judges sit from 10:00am and rise before 2:00 pm, thus leaving a good number of cases on the cause list unheard. These cases that are left unheard are re-listed on other days with the litigants frustrated, and of course, the lawyer’s appearance fee must be paid in full. Irregular sitting of court also makes access to justice expensive. Sometimes, litigants have to mobilize witnesses to come and give evidence in their favour only to be told that the court will not sit. The litigant has to mobilize again the witness who ordinarily would have been taken, had the court sat.

In some cases, the irregular sitting of court may affect the validity of a judgement and by extension, the verdict of the court. The time within which judgement shall be delivered is constitutionally provided for. Section 294 (1) of the constitution provides:



Every court established under this constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof.

In *Shehu v State*, the appellant was tried at the High Court for culpable homicide punishable with death. After all the witnesses had testified and final addresses had been delivered, the case was adjourned for judgement. The judgement was not delivered until after 5 months in which the appellant was convicted. On appeal, the conviction was quashed. This strict position of the time limit for delivery of judgement has however, been whittled down by section 294 (5) of the constitution. Thus the judgement shall be nullified only upon proof by the appellant that he has suffered a miscarriage of justice by the delay in delivering judgement within 90 days.

### **Lack of Skilled Personnel in the Administration of Criminal Justice**

The officers in the administration of criminal justice in Nigeria often display lack of skill and in some cases abuse of power. The police in the exercise of its power for the preservation of law and order sometimes delve into matters clearly outside their statutory powers under section 4 of the Police Act. In *Mclaren v Jennings*, Salami JCA (as he then was) held inter alia: 'I have scrutinized the provision of the Section and am unable to see a provision providing for or empowering police to enforce contract or to collect debts.'

In Magistrates' Court where Police officers prosecute offenders, some are not knowledgeable in the laws governing procedure. Some basic rules of evidence are neglected by the prosecutors because they lack the requisite skill to apply the rules.

Also, some of the Magistrates' and Judges that are appointed were not practicing lawyers. Some have little knowledge of the tenets of the office they occupy thus making them vulnerable to alien practices. It is no doubt that the nature of the office and functions of a judge call for very high sense of duty, probity, integrity and transparency, as such any judge appointed, without possessing the above fundamental qualities, is no doubt bound to be a clog and obstacle to justice as a

judge with little or no learning can be a most dangerous clog in the administration of justice.

### **Lack of Discipline in the Institutions**

There is so much indiscipline among the key players in the administration of criminal justice so much that the confidence of the society is eroded. People see those who are meant to protect lives as the criminals instead. It has become common knowledge and in fact a frightening dimension is now being experienced by the Nigerian citizenry at the Police penchant for shooting at innocent people with guns bought with taxpayers' money. They are meant to protect the citizens but, alas they now use them to terrorize, to maim and to wantonly kill the people they are meant to protect. According to Pats-Acholonu, JCA, the worn out phrase, 'accidental discharge' has become so common in our criminal jurisprudence that many a policeman has been acquitted and discharged on the ruse of accidental discharge.

Also by Regulation 370, offences against discipline is provided in the first schedule to the regulation makes it an offence to drink or solicit drink on duty. It is necessary to reproduce the words of the regulation for clarity:

#### **(h) Drinking or soliciting drink on duty, that is to say if he-**

- i. Without the consent of his superior officer, drinks or receives from any person, any intoxicating liquor while he is on duty or brings liquor into the barracks; or
- ii. Demands or endeavour to persuade any person to give him or to purchase or obtain for him any intoxicating liquor whilst he is on duty.

A consideration of the above provision would reveal that where the police officer has the consent of a superior officer, he will not be guilty of an offence. Nowadays, it is common to see officers solicit for drinks and other gratification on duty. Some even engage in these acts to the knowledge of their superior because they have to make returns to their superiors. Even in front of police stations, it is common to see officers extorting money from Motorists.

Also, regulation (q) makes it an offence for a police officer to exercise unlawful or unnecessary authority. This includes arresting a person without good or sufficient cause, using unnecessary violence on a prisoner being uncivil to a member of the public.

The indiscipline in the system has made the society treat with disrespect the officials of the administration of criminal justice. They do not believe that when complaints are made, it will be acted upon with some level of seriousness due to indiscipline and the lackadaisical attitude of the officials. Some times when complaints are laid at the police station, the officers do not react timeously unless the complainant is willing to 'grease their palm'. In the case of *FRN v Tafabalogun*, an Inspector General of Police who was ordinarily well paid and is entitled to several and attractive emoluments of office was discovered to have embezzled police funds was accordingly convicted and punished.

### **Congestion of Correctional Services**

Prison congestion is a serious problem in our criminal justice system. The congestion of prisons defeats classification of prisoners as prisoners are kept in cells that can further accommodate and not according to the classification under the Prison Regulation.

The resultant effect is that it defeats the reform sought to be achieved by imprisonment of an offender. When prisoners are admitted into cells irrespective of their crime history, the tendency to corrupt inmates who are first offenders and whose offence are minor is high. When these prisoners are released back into the society, often times they are taken back to crime and more serious crime than they were convicted for at the initial. With these set of persons back into the larger society, they sometimes breed other persons into criminals like they are.

### **Conclusion/Recommendations**

The issues and challenges identified will help in knowing what kind of reforms that are anticipated in the administration of criminal justice in Nigeria. These anticipated reforms are the prospects that we look forward to in the system. The enactment of the

Administration of Criminal Justice Act, 2015 is a guide in the right direction. Laudable provisions of this piece of legislation if enforced will bring about much change in the system. On the other hand, where there is a total disregard or non-implementation of the provisions of the Administration of Criminal Justice Act, and we leave the challenges identified unaddressed, then we are heading for a society where the rights of citizens will be trampled upon and the society will lose its confidence in the judiciary or the entire system.

A consideration of the laudable provisions of the Administration of Criminal Justice Act raises hope that we are in the right direction. It does not in itself create new rights or procedures but it serves as a reminder. The protection of the defendant is paramount and until he is proven guilty he remains a suspect and should be treated as such.

It is submitted that the beauty of the provisions of this Act will not make much impact unless the canker worm called corruption is dealt with. Corruption is our major problem in the administration of criminal justice in Nigeria. It is believed that if corruption is adequately tackled, other factors that inhibit the proper functioning of the administration of criminal justice in Nigeria will as a matter of fact be eliminated. The more the fight against corruption is tackled, the more effective criminal justice administration we have. This is so because

unskilled and non-diligent officers will be relieved their positions thus make way for only diligent and skilled personnel, there will be prompt sitting of courts, the money meant for the institutions involved in criminal justice administration will be disbursed decorously hence the institutions will perform better. The police will not have to complain that they have run out of stationeries nor will they require a complainant to mobilize them for an arrest.

Also worthy of mention is the prison system. We are headed for doom without a proper prison system. A situation where prisoners who have served their time in jail and are released into the larger society pose as even greater threats than they were before their incarceration is worrisome. Congestion of prisons, malnutrition, torture and inhumane treatment meted out to inmates make the end of the criminal justice administration a failure. Rehabilitation is almost impossible because the purpose of

prison is not properly driven. It serves as a place to restrict the liberty of offenders and nothing more. It is hoped that if the prison system encounters reform it will go a long way in protecting the larger society from potential harm from ex-convicts.

There should be checks on the exercise of the powers and duties of persons and institutions involved in the administration of criminal justice. In a bid to check the abuse of discretionary powers vested in the Attorney General who doubles as the Minister/Commissioner for Justice, there should be separation of the offices. The Attorney General need not be an appointee of the President or the Governor. He may well be a person serving in the Ministry of Justice who rose to that position by reason of his promotion in line with the civil service rules. This will help to reduce the influence that the chief executive officer has over the Attorney General and thus will enable him to work devoid of political affiliation since he is not appointed by the President/Governor. He should also be enabled to enjoy security of tenure.

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