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AN EXAMINATION OF SOME ASPECTS OF THE CRIMINAL JUSTICE SYSTEM IN NIGERIA

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ABSTRACT

The Nigerian criminal justice system is bedeviled and fraught with a plethora of anomalies and institutional/bureaucratic bottlenecks. This stems from the over classification and proliferation of institutions and agencies leading to functional overlap and unnecessary rigidity and delay in the dispensation of justice. The nature of Nigerian criminal justice system calls for a reformative approach to create a balance and strengthen the existing institutions in line with recent practices in other jurisdictions of the world. Nigeria must therefore benefit from and be able to draw a useful lesson from the dynamics that the vagaries of globalization provide in the nature of criminal justice system as practiced in Britain. There are many prosecuting agencies in Nigeria- the Economic and Financial Crimes Commission, Immigration Service, Nigeria Police, the National Drug Law Enforcement Agency, the Code of Conduct Bureau, National Agency for Food and Drug Administration and Control, the Department of State Security (SSS), Custom Service and the Independent Corrupt Practices Commission, with the Nigerian Prison Services playing as host. The procedures adopted by them, though provided in their enabling instruments, have not been consistently followed, leaving room for defence lawyers to diminish the application or enforcement of the substantive matters. This also gives the judges room to venture into the journey of discretionary law making. The judicial system has also been altered with advancement in the area of admissibility of electronically generated evidence by the amendment of the Evidence Act, enactment of Anti Terrorism Act and Cyber Prohibition Act

Keywords: Terrorism, Cyber Security, Law Enforcement, Justice Dispensation.

1. INTRODUCTION

This article seeks to analyze the nature of Nigerian criminal justice system in the light of the existing criminal justice institutions and agencies. A comparative approach shall be adopted with the practice of these criminal justice agencies in the United Kingdom. The primary focus of this paper therefore, is to examine the nature of Nigeria criminal justice system vis-à-vis contemporary trends in some of the criminal justice agencies and institutions in Nigeria. A preliminary mention of some of these contemporary trends is pertinent to the subject matter under discussion. These contemporary trends include: Electronic evidence under the Evidence

Act¹ and The Administration of Criminal Justice Act, which provides for only legal practitioners called to the Nigerian Bar Association whether in government ministries, police departments etc to have the sole responsibility to prosecute criminal cases in all the courts in Nigeria² subject to the overriding powers of the Attorney General such as the enforcement of: The Anti-Terrorism Act³ and Cybercrime (Prohibition and Prevention) Act, 2015 which empowers law enforcement agencies such as the Economic and Financial Crimes Commission, ICPC, SSS, and the police to play prominent roles in the fight against cybercrime.

2. THE CRIMINAL JUSTICE INSTITUTIONS AND AGENCIES IN NIGERIA

A brief mention of these criminal justice agencies in Nigeria is pertinent if one is going to appreciate their nature, role, and challenges in the prosecution of crimes and the overall advancement of the course of the administration of justice in Nigeria. These criminal justice agencies in Nigeria include:

- The police
- EFCC
- The Nigerian Prison Service
- Customs
- Independent Corrupt Practices Commission
- The Nigeria Drug Law Enforcement Agency and the Code of Conduct Bureau, just to mention a few.
- The Courts

A brief explanation of the role of the above agencies and some comparison with the United Kingdom where necessary shall greater understanding as follows:

2.1 The Nigeria Police Force (NPF)

The Nigeria Police Force (hereinafter referred to as the NPF) is organized and administered under the Police Act⁴. Sections 217-220 of the 1999 Constitution⁵ provide for the establishment of the NPF and no other police force can be created anywhere in the federation⁶. The structure and organization of the NPF is based on the fact that Nigeria is practicing a federal system of government.⁷ The NPF is the principal law enforcement agency in Nigeria⁸ but the institution is marred by indiscipline, gross misconduct,⁹ incompetence and corruption¹⁰.

The NPF has seven (7) departments:

- Department of Finance and Administration;
- Department of Operations;
- Department of Logistics and Supply;
- Department of Criminal Investigation;
- Department of Training and Development;
- Department of Research and Planning and
- Department of Information Technology.

¹ Evidence Act, 2011 (As Amended) s. 84

² Administration of the Criminal Justice Act, 2015, S. 106

³ Anti-Terrorism (Amendment) Act, 2012

⁴ Cap P19 Laws of the Federation of Nigeria (LFN) 2004

⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) (hereinafter CFRN 1999)

⁶ CC Wigwe, 'Nigeria's Federalism: The State of the Union' (2012) JJCI 7 1 30-41

⁷ CFRN 1999- sections 2 (1), 3 (1) and 214

⁸ Interpol <<http://www.interpol.int/membercountries/Africa/Nigeria>> accessed 24 September, 2015

⁹ Ibid

¹⁰ Federal Republic of Nigeria v. TafaBalogun FHC/ABJ/CR14/2005

Each of these departments has units for instance; the Department of Criminal Investigation which prosecutes serious and complex criminal cases in and outside the country has about sixteen sections or units¹¹. The units are:

- Administration
- Anti-Fraud Section
- Special Anti-Robbery Squad
- Special Fraud Unit
- Force Intelligence Bureau (FIB)
- Counter-Terrorism Unit
- Interpol Liaison
- Legal Section
- Anti-Cultism Unit etc.

Each of these units has assigned responsibilities in the criminal justice system of Nigeria. One wonders why we still have agencies and institutions such as the Economic and Financial crimes commission¹² and the Independent Corrupt-Practices Commissions¹³. When one considers that the present police structure in Nigeria has departments and units with assigned responsibilities to prosecute offences amongst other things, it clearly amounts to duplication of functions to still retain those other institutions. In the United Kingdom, the British Police, also called, the Metropolitan Police Service and City of London Police¹⁴ is the first and foremost law enforcement agency in the United Kingdom with wide agencies such as the National Crime Agency complementing Police specialist Operations, Directorate of the Metropolitan Police also assist the police in their overall primary duty to protect lives and property and prevent crime.¹⁵

There is a popular phrase “policing by consent” in the U.K which denotes the legitimacy of policing in the perspective of the public by general consensus of support from transparency about their power and accountability¹⁶

The situation in Nigeria where the duties and functions of the Police are performed by agencies like -the Federal Road Safety Commission, Economic and Financial Crimes Commission, the Independent Corrupt Practices Commission and the Nigeria Security and Civil Defense Corps are created is grotesque. This is a complete duplication of duties and functions¹⁷ and the adventure in the public sector at a great cost to government.¹⁸ It may however be argued that the creation of those agencies have helped to curb the unemployment situation in the country and not necessarily the efficiency of the institution as anticipated.

¹¹CC Wigwe, ‘Causation in Unlawful Homicide: A Functional Appraisal’ (2009) JJCI 5 1 49-60

¹² Created by the Economic and Financial Crimes Commissions (Establishment) Act, 2004

¹³ Created by the Independent Corrupt Practices and other Related Offences Commission Act 2000

¹⁴‘Badges of Rank’. Metropolitan Police Service; Thames Valley Police: Uniformed Police Ranks.

¹⁵ ‘Code of Conduct for Police Officers’ North Yorkshire Police Federation, 28thDecember, 2014.

¹⁶ ‘Policing by Consent and ‘Surveillance Camera Code of Practice” U.K Government Home Office, June, 2013.

¹⁷ Report of the Presidential Committee on the Rationalization and Restructuring of Federal Government Parastatals, Commissions and Agencies <<http://www.punchng.com/news/fg-may-scrapefcc-icpc-frsc-others>> accessed 24 September 2015

¹⁸ Ibid

2.2 The Economic and Financial Crimes Commission and the Independent Corrupt Practices Commission

The EFCC is created by the EFCC Act¹⁹ while the ICPC is created by the ICPC Act²⁰. The ICPC was established in 2000 with jurisdiction to prosecute corruption cases²¹ while the EFCC was established in 2003 with a similar jurisdiction to investigate and prosecute corruption cases limited to financial crimes, money laundering and advanced fee fraud.²² The EFCC is equally composed of serving or retired members of any government security or law enforcement agency, chairman of the National Drug Law Enforcement Agency, Comptroller General of Customs.²³ Under Section 11²⁴, EFCC has the following units:

- General and Assets Investigation Unit;
- Legal and Prosecution Unit;
- The Research Unit;
- The Administrative Unit and
- The Training Unit²⁵.

Similarly, the ICPC has amongst its functions, the duty and power to investigate and prosecute cases of corruption, bribery and fraud.²⁶ Just like we noted earlier, the police has a department of Criminal Investigation Department with specialized units such as the Special Fraud Units, Anti-Fraud Units, Legal Section et cetera. The consequence of these too many weak institutions and poor service delivery on the criminal justice system in Nigeria appear to suggest that the main aim is to create employment rather than enhance efficient delivery of services. It does appear that creation of these Agencies may even lead to scramble of functions and fight for superiority amongst the existing institutions. The case of *FRN v. Daniel Abuh*²⁷ lends credence to the above assertion. Here the Court of Appeal, Abuja Division overruled an earlier decision of the Federal High Court and held, inter alia, that the police can prosecute all offences in any court in Nigeria including those under Civil Defense Corps Act, 2007 relating to pipeline vandalism. Meanwhile the Nigerian Civil Defence was created to amongst other things protect Oil pipelines guide against its vanderlization.

This decision of the Court of Appeal though commendable, is not novel in Nigeria. Earlier decisions²⁸ had established the prosecutorial powers of the police in any court in Nigeria in line with the general prosecutorial powers of the police in the Police Act²⁹ and the Constitution of Nigeria.³⁰ The Attorneys General of the Federation and the States equally have overriding prosecutorial powers as provided by the constitution with respect to federal and state offences respectively.³¹

The question that comes to mind when one looks at the agencies and institutions is why creating too many institutions that are being underfunded. It is therefore, recommended that the departments of the police should be strengthened with the necessary man-power and resources in order to function effectively. Duplication of institutions and functions may not be ideal. It

¹⁹ Supra

²⁰ Supra

²¹ The Powers/Functions of the ICPC are as contained in the ICPC, Act, sections 27, 28 & 29 and 61-64

²² EFCC Act, Sections 5 & 6

²³ EFCC Act, s. 2

²⁴ EFCC Act

²⁵ EFCC ACT, Sections 11 (1) and 13 (1) & (2)

²⁶ CC Wigwe, 'The Law and Morality of Plea Bargaining' (2013) Port Harcourt Law Journal 5 1 34

²⁷ (Unreported) CA/A/508C/2013; Judgment delivered on Tuesday, the 9th day of June, 2015

<<http://lawpavilionplus.com>> accessed on 24 September, 2015

²⁸ *FRN v. Osahon* (2006) 5 NWLR (pt. 973) 361

²⁹ The Police Act, Cap. P19 LFN, 2004, S. 23

³⁰ CFRN 1999, section 214

³¹ CFRN 1999 sections 174 and 211

can be argued that the duplication has the tendency to weaken the existing institutions. The enactment of the Administration of Criminal Justice Act³² by the 7th senate is novel. The ACJA is intended to whittle down the prosecutorial powers of the police in any court in Nigeria as was established in *FRN v. Osahon*³³. Section 106 of the ACJA³⁴ provides inter alia that the prosecution of all offences in any court shall be undertaken by:

- The Attorney General of the Federation or a Law Officer in his Ministry;
- Legal Practitioner Authorized by the AGF and
- Legal Practitioner Authorized to Prosecute by Law.

This provision has laid to rest the inherent lacuna that characterized Nigeria's criminal justice system through the use of non-lawyer police officers to prosecute criminal cases. The general purpose of the ACJA is stated under section 1(1) of the Act³⁵ which amongst other things includes the speedy trial and quick dispensation of criminal cases. Flowing from the above and considering what happens in other civilized countries, it can be said that a police officer can prosecute in all courts in Nigeria but such an officer must be called to the Nigerian Bar as a legal practitioner.

2.3 National Drug Law Enforcement Agency; the Nigeria Custom and Nigeria Immigration Service

The National Drug Law Enforcement Agency was established by the National Drug Law Enforcement Agency Act³⁶ with the sole purpose of eradicating illicit drug trafficking and consumption in Nigeria. The NDLEA has powers to investigate and prosecute offences under the NDLEA Act which are drug related offences. This power to prosecute drug related offences bestowed on the NDLEA is conflicting with the powers of the police to prosecute offences in any court in Nigeria³⁷ especially when one looks at the earlier decision of the Federal High Court (Sokoto Division) in *Chukwuma Ugwanyi v. FRN*³⁸ to the effect that the police cannot prosecute drug related offences. This no longer represents the law on this point³⁹ based on the doctrine of judicial precedent.⁴⁰

With respect to the Nigeria Custom Service (NCS) and the Nigeria Immigration Service (NIS) these two agencies are under two different departments⁴¹. This is unlike the position in Britain where custom and immigration are fused. In 1978, the three units of Nigeria Custom, Immigration and Prisons were merged into one department.⁴² However, the current trend in Nigeria is that these two institutions are separated. In the United Kingdom, the U.K Borders Agency and Immigration Police Officers have powers to tackle persons illegally working in that country and automatically deport some foreign nationals imprisoned for specific offences.⁴³ The creation of these institutions has resulted in crowding the Nigeria exist points or borders with so many agencies to the extent that in most times the personnel of these agencies out-numbers the travellers.

³² Administration of Criminal Justice Act 2015

³³ (supra)

³⁴ (supra)

³⁵ (supra)

³⁶ National Drug Law Enforcement Agency Act, 2008.

³⁷ *FRN v. Osahon* (supra)

³⁸ (Unreported)

³⁹ See *FRN v. Daniel Abuh* (supra)

⁴⁰ C.C. Wigwe, "Jurisprudence and Legal Theory (Read wide publisher, 2011) p. 159

⁴¹ Immigration Department and the Custom Department

⁴² Department of Custom and Excise which later changed Customs, Immigration and Prison Services Board in 1985. Its name changed again to the Nigeria Customs Service in 1992

⁴³ U.K Borders Act, 2007.

A similar practice used to exist in the United States of America as in the United Kingdom. There is the Immigration and Customs Department of the U.S and the Customs and Border Protection Authority.⁴⁴ Civilized nations such as the U.S. and U.K have realized that over departmentalization and proliferation of agencies in the criminal justice system would be a clog in the will of justice. In UK Immigration and Customs are merged together and they are called Border Force. The personnel are well paid and better focused for efficiency.

3. LEGAL ISSUES SURROUNDING THE ONGOING TRIAL OF NIGERIA'S SENATE PRESIDENT AT THE CODE OF CONDUCT TRIBUNAL⁴⁵

Currently, the legal issues for determination by the Code Of Conduct Tribunal in a case concerning an official of the Nigeria's federal legislative organ are:

- Whether or not the tribunal is a court of law to try criminal cases as the Senate President was charged to court on 13 count charge bothering on corruption and false declaration of assets. This, the tribunal ruled, it had jurisdiction to try the accused in accordance with section 2, Administration of Criminal Justice Act.⁴⁶
- Whether or not the Code of Conduct Tribunal was right in issuing a bench warrant contrary to a Federal High Court order that the case against the Senate President be halted.
- The third and final issue is whether or not there are genuine grounds to sustain the charges or whether the trial is just for political reasons.
- The ruling of the Federal High Court Abuja that the chairman of Code of Conduct should appear before the court can be said to amount to judicial rascality as the Tribunal has the same co-ordinate jurisdiction.

Though it would appear that on all three or more issues raised above, much as there are feelers and grounds to believe that the tribunal and trial are politicized, it is still too early to plunge into conclusion as the accused just took his plea less than a forth night ago. Above all, the matter is sub judice.

4. CONCLUSION

Having x-rayed the nature of Nigeria's criminal justice in the light of functional overlap that exists amongst the criminal justice agencies, occasioned by the proliferation of agencies and institutions, it is advised that Nigeria must struggle to catch up with the rest of the world by curing the spate at which these institutions are created. A suggested model would be to strengthen the relevant police departments and a few other technical agencies with resources and man-power in order for them to be able to discharge their functions effectively with minimum friction. Political interference in the criminal justice system must give way for the rule of law if we must live up to our ideals as a liberal democratic state. The creation of these institutions with overlapping functions encourages too many discretionary powers of the courts of first instance that may lead to abuse of judicial powers as can be witnessed in the trial of the Senate President of 8th Upper Legislative Assembly where the judge of the Federal High Court can be said to have displayed the highest judicial rascality when he ruled the chairman of the

⁴⁴ Customs and Border Protection Authority Act, 15 January, 2014.

⁴⁵ (supra)

⁴⁶ Charge Number ABT (01/15 dated 11 and filed before the Code of conduct tribunal)

Code of Conduct Tribunal should appear before the High Court when in facts the two courts have similar co-ordinate jurisdiction.

The existing Departments in the Nigerian Police Force should be strengthened and reorganized to reduce too many overlapping functions of these institutions and this to my may reduce the unhealthy competitions of these Agencies and perhaps will lead to more efficient prosecution and administration of criminal justice system in Nigeria similar to that of United Kingdom.

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