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# Corruption in Administration of Criminal Justice System in Nigeria

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## ABSTRACT

Crime is inevitable in every human society, but where the rate of crime is on the high side, it becomes a threat to human existence. To put to check the rate of crimes, each nation- state has put in place a criminal justice system. The system is aimed at processing criminals from the point of arrest to sentencing and rehabilitation. It need to be stated that crime can only be managed in a society where the criminal justice system lives up to expectation. A situation where the administration of the criminal justice system is bedeviling of corruption, the rate of crime will increase astronomically. To reduce crime, however, corruption in the criminal justice system must be managed.

This paper examines the various components of the criminal justice system and points out the elements of corrupt practices which ahs undermine the purpose of the criminal justice system. The paper adopts a doctrinal approach to achieve this purpose. The primary source of information is from various statutes establishing and regulating the criminal justice system. The secondary source is derived from various articles in journal, commentaries, and internet sources.

*Kyewords:* corruption, criminal justice system, police, crime.

*Classification:* FOR Code: 940403

*Language:* English



London  
Journals Press

LJP Copyright ID: 573326  
Print ISSN: 2515-5784  
Online ISSN: 2515-5792

London Journal of Research in Humanities and Social Sciences

Volume 20 | Issue 2 | Compilation 1.0



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# Corruption in Administration of Criminal Justice System in Nigeria

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*Crime is inevitable in every human society, but where the rate of crime is on the high side, it becomes a threat to human existence. To put to check the rate of crimes, each nation- state has put in place a criminal justice system. The system is aimed at processing criminals from the point of arrest to sentencing and rehabilitation. It need to be stated that crime can only be managed in a society where the criminal justice system lives up to expectation. A situation where the administration of the criminal justice system is bedeviling of corruption, the rate of crime will increase astronomically. To reduce crime, however, corruption in the criminal justice system must be managed.*

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*The paper concludes that the reduction of crime in any society is predicated on a corruption- free criminal justice system. Attempt to reduce crime must begin with eradicating corruption in the criminal justice system.*

**Keywords:** corruption, criminal justice system, police, crime.

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## I. INTRODUCTION

In a world where economic resources are limited and human wants insatiable, it is not uncommon for human beings to compete for survival and where survival becomes highly competitive, crimes and corruption become inevitable. This is because the likelihood of some human beings to resolve to foul play for the purpose of controlling resources in order to satisfy their insatiable wants becomes necessary as every human being thinks that he desires to survive.

The above position is the key drive and foundation of the concept of corruption and crime. The criminal justice system is designed with the principal aims of processing offenders right from the point of arrest to sentencing and probably restorative justice. The criminal justice system comprises of the Police, Court, Prosecutorial Authorities (such as Ministry of Justice, EFCC, ICPC, NDELA, etc.) and Prison.

The perception of the criminal justice system in Nigeria is overwhelmingly negative. According to Amnesty International, the criminal justice system in Nigeria is a conveyor belt of injustice from the public to end.<sup>1</sup> The President of the Nigerian Bar Association thinks that the criminal justice system has failed to respond to the increasing need and demands of the Nigerian<sup>2</sup>.

<sup>1</sup> Amnesty International Nigeria: Criminal Justice System utterly Failing Nigeria People: Majority innates not convicted ofanycrime.<http://www.amnesty.org/en/press-releases/2008/02/nigeria-criminal-justice-system-utterly-failing-nigeria-people-majority/> accessed on 2<sup>nd</sup> March, 2019.

<sup>2</sup> News Agency of Nigeria, 2013

Osasuna noted this fact when he said that:

The Nigerian criminal justice system is fundamentally flawed, and the deficits manifest at every processing point on the entire criminal justice system line- from the failure of governance in institutions to design a suitable criminal justice policy that serves the current needs of the country to the inability of the legislature to appropriately transform policies into laws, from an oddly judicial system plagued by massive corruption, incompetence, and crippling bureaucratic bottlenecks to an outdated and counterproductive style of policing and a correctional services that inhumanely warehouses those considered innocent by the very law of the society that imprison them.<sup>3</sup>

In a bid to respond to these challenges, the National Assembly enacts the Administration of Criminal Justice Act 2015.<sup>4</sup> This Act aims at providing for the administration of criminal justice system that promotes efficient and effective disposition of justice void of corruption among other things. A holistic reformation of the criminal justice system will involve all the agencies saddled with one responsibility or the other in the criminal justice system. The principal- agent in Nigeria includes Police Court, Prison, Economic and Financial Crime Commission (EFCC).

## II. DEFINITION OF TERMS

### 2.1 Criminal Justice System

According to Wikipedia, The Criminal justice system is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime or sanctioning those who violate laws with criminal penalties and rehabilitation efforts.<sup>5</sup>

<sup>3</sup> Osasona, T. Time to Mend Nigeria Criminal Justice System(1). The Guardian Newspaper published on 20<sup>th</sup> May, 2015.

<sup>4</sup> ACJA 2015 is enacted to replace the Criminal Procedure Act. It is applicable to Federal Offences. However, some states has adopted the Act . such states includes Ekiti, Abia, Anambra, Delta, etc.

### 2.2 Dambazau opines that:

*The Criminal justice system can be defined either as a legal process or as an academic discipline. As a legal process, it involves the procedure of processing the person accused of committing a crime from arrest to the final disposal of the case.*<sup>6</sup>

### 2.3 According to Clare and Krammer,

*It is possible to view the criminal justice system as a sequence of decision- making stages. Through this system, offenders are either passed on to the next stage or diverted out of the system. This diversion may be due to any number of reasons, such as lack of evidence or a desire to reduce the load upon the system. Each subsequent stage of the process is dependent upon the previous stages for its elements. It is this dependence that best exemplifies the system's nature of criminal justice.*<sup>7</sup>

## CORRUPTION

According to Black's Law Dictionary- ,

it is defined as an act done with an intent to give advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully uses his status or character to procure some benefit for *himself or another person contrary to duty and the rights of others*- .<sup>8</sup>

Morris defines corruption from a political point of view as the illegitimate use of public power to benefit a private interest.<sup>9</sup> Senior avers that it is an action to secretly provide a good or service to a third party so that he or she can influence actions

<sup>5</sup>

<sup>6</sup> Dambazau, A. B. Criminology and Criminal Justice. Ibadan: Spectrum Books Limited. 2011, P.6

<sup>7</sup> Clare P.K & Krammer J.H. introduction to American Correction. Boston, MA: Holbrook Press Inc. 1197, P.

<sup>8</sup> Bryan A. Garner (2009) Black's Law Dictionary. (9<sup>th</sup> eds). USA: West Publishing Company.

<sup>9</sup> Morris, S.D. Corruption and Politics in Contemporary Mexico. Tuscaloosa: University of Alabama Press.

that benefit the corrupt, a third party, or both in which the corrupt agent has authority.<sup>10</sup>

Lagarde avers that Corruption undermined prosperity because of its micro-economic implications. Further that “there was a short supply of integrity governance, despite its high demand. Corruption undercuts countries’ efforts to deliver sustainable and inclusive growth.”<sup>11</sup> Buhari, the Nigerian President, defines it as:

The greatest form of human rights violation. According to him, the rise of public administration and the discovery of oil and natural gas are two events that seem to have led to an increase in corrupt practices in the country.<sup>12</sup>

According to the Chief Justice of Nigeria, Mahmud Mohammed,

Corruption is the catalyst that suppresses economic growth and undermines people’s collective security *while aggravating poverty. Such can only be tackled with transparent delivery of justice.*<sup>13</sup>

In the case of A.G Ondo State v A.G Federation, Uwais CJN (as he then was) succinctly posits that:

...corrupt practices and abuse of power spread across and eaten into the segment of the society. These vices are not limited only to certain sections of society. It is a lame argument to say that private individuals or persons do not corrupt a official or get them to abuse their power. It is right that everyone involved in corrupt practices

and abuse of power should be made to face the law in our effort to eradicate this cankerworm.<sup>14</sup>

Corruption can occur on a different scale. It can be petty corruption (corruption that occurs as small favor between a small number of people), grand corruption (corruption that affects the government on a large scale) ,or systemic corruption (corruption forming part of the structure of the society). Factors that encourages corruption includes conflicting incentives, discretionary powers, monopolistic powers, lack of transparency, low pay, and culture of impunity.

It is worthy of note that corruption is bound to thrive in a society where there is too much competition for human survival, but where men can easily access means of survival, it can be reduced to the barest minimum. Corruption can be found in virtually every facet of human endeavors.

## II. ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA

The administration of criminal justice in Nigeria is governed by the Administration of Criminal Justice Act, which applies to federal offenses and each state of the federation promulgated her law. It is worthy of note that these laws make provisions for procedures to be adopted in prosecuting an offender. The Constitution of the Federal Republic of Nigeria 1999 (as amended)<sup>15</sup> is another legislation governing the administration of the criminal justice system in Nigeria. It sets the basis upon which the criminal justice system is predicated.

The criminal justice system is administered by some institutions such as Police, Court, Prison, Ministry of Justice and other prosecutorial authorities such as EFCC, NDELA, ICPC etc. this paper shall examine these institutions in seriatim.

<sup>10</sup> Senior, I. Corruption: The World Big C. Institute of Economic Affairs. London.

<sup>11</sup> Lagarde, C. (2016) Corruption Undermines Nations’ Prosperity. Vanguard Newspaper. September, 2016.

<sup>12</sup> Buhari Corruption in Nigeria. <https://en.m.wikipedia.org/wiki/corruption-in-nigeria> accessed on 7th September, 2016;

<sup>13</sup> Mohammed, M. (2016) How Lawyers and Judges are Slowing Down Nigeria Anti corruption War. Premium Times, July 18.

<sup>14</sup> (2002)9 NWLR (Pt. 772) P.222.

<sup>15</sup> Cap C23, LFN 2004. Section 36 provides for the principle of hearing. It also provides that an accused person is innocent until proven otherwise.

### III. PRINCIPAL AGENCIES IN THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM

For this paper, our scope of the discussion of agencies in the criminal justice system will be limited to the principal agencies, which are Police, Court, Prison and Economic, and Financial Crime Commission (EFCC). These agencies will be discussed in seriatim.

#### 3.1 The Police

According to Dambazau, the police is:

*The biggest, most viable and important subsystem of the criminal justice system. It provides the entry point into the criminal justice system either through crime reports from the public or its own discovery. It is also the main institution that provides regular direct contact with the public, a situation that makes it unique among the other components of the criminal justice system.*<sup>16</sup>

Goldstein noted that the police as the agency of last resort becomes involved with the most aggravated behavioral problems that occur in our society. They deal with entitling matters- the coarse and the unrefined that are outside the range of situations likely to be experienced by the average citizen.<sup>17</sup>

Established by the 1999 Constitution of the Federal Republic of Nigeria<sup>18</sup>, the police is the principal law enforcement agency in Nigeria with a staff strength of about 371,800 and consisting of 36 commands grouped into twelve zones and seven administrative organs.

##### 3.1.1 Functions

The role of the police in the administration of the criminal justice system is encapsulated in section 23 of the Police Act. It includes:

1. Power to arrest an offender
2. Power to detect a crime
3. Power to prevent the commission of a crime
4. Power to detained and search suspected person
5. Power to prosecute criminal cases
6. Promoting and preserving civil order
7. Investigating crime.<sup>19</sup>

#### 3.2 The Court

The court is one of the notable components of the criminal justice system. According to Hemphil and Charles:

*The court is an agency set up by the government to define and apply the law, to order its enforcement and to settle the disputed point on which individuals or groups do not agree.*<sup>20</sup>

There are laid down procedure for commencing criminal trial.<sup>21</sup> According to the above definition, it is the duty of the court to actually pass guilt on an offender brought before her after observing the criminal procedures as stated in the law. The court is the centre of the criminal justice system in that it applies a defined crime by the law to a real life issue.

In Nigeria criminal justice system, the lowest court for commencing criminal trial is notably the Magistrate court (in the south) and Area or Sharia Court (in the North). However, some crimes (capital offences) can only be entertained in the High court. Appeals from the Magistrate court go to the High Court while appeals from the High court go to the court of appeal. The Supreme Court is the final determination of criminal cases.

<sup>19</sup> Police Act, Cap P, LFN 2004

<sup>20</sup> Hemphil, J & Charles F. (1978) Criminal Procedure: The Administration of Justice. Saint Monica, CA: Goodyear.

<sup>21</sup> Criminal trial commences from arraignment. The rules are provided in the Constitution which is the grundnorm and various states laws on Criminal Procedure e.g CPCL, ACJL etc.

<sup>16</sup> Dambazau, *op.cit*

<sup>17</sup> Goldstein, H. (1968) Policing A Free Society. Cambridge, MA: Harvard University Press

<sup>18</sup> See section 241(1)



Where a defendant is found guilty of a particular crime, the court is saddled with the responsibility of passing sentencing. These sentencing can be in form of fine, imprisonment, death, forfeiture, plea bargaining etc.

### 3.3 The Prison

Prison is one of the agencies of criminal justice system. According to Dambazau Prison is responsible for the custody of the final products in the criminal justice system. Maintaining custody involves carrying out measure to prevent escapes, such as erecting high walls or chain-link fence, placing armed guards, constant checks of cells, providing a system of passes for movement within the prison, constant surveillance, and such stringent measures which may be applied from time to time to prevent escapes, riot and so on.<sup>22</sup>

### 3.4 According to Mickunas

Prison attacks the psyche by attempts at reformation and through mental deterioration that occurs because of the negative environment of the prison. Many described prison as a psychological punishment. Prison in its most severe form attack the soul; it acts on the heart, the thought, the will and the inclination of the prisoner.<sup>23</sup>

#### 3.4.1 Functions

Prison institution in Nigeria perform the following functions among others

- a. Social isolation and confinement. For instance, to isolate an offender from society because he has proved to be a threat to its organization, stability and cohesion and to keep him out of

circulation and so securely confined that his deviation from law does not disturb the peace of mind of the man in the street.

- b. Repentance: For instance, to keep an offender in an isolated place where he could ponder over the consequences of his wrong deeds.
- c. Punishment and deterrence: For instance, to inflict some pains and suffering on an offender for violating legal norms, so that criminal should be worse off than the poorest of honest citizens...
- d. Protection:
- e. Reformation<sup>24</sup>

## V. ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC)

The Economic and Financial Crime Commission (EFCC) is a Nigerian law enforcement agency that investigates financial crime such as advance fee fraud and money laundering. Established in 2003 by Economic and Financial Crime Commission (Establishment) Act,<sup>25</sup> it is saddled with the responsibility of ridding Nigeria of economic and financial crimes and to effectively coordinate the domestic effort of the global fight against money laundering and terrorist financing.

It is worthy of note that the commission is one of the important government agency used in combating corruption (most especially embezzlement of public fund) in governance. The agency has the power to prosecute any offenders who have contravened the Act.

## VI. CORRUPTION IN CRIMINAL JUSTICE SYSTEM

It is not a misplaced of priority if corruption in the criminal justice system is examined notably from the angle of the police force as an institution. This is because the level of corruption in the Police institution leaves much to be worried. It is no doubt that the police play enormous roles in the administration of criminal justice system. They

<sup>22</sup> Dambazau. (supra)

<sup>23</sup> Mikunas, A. (1990) Philosophical Issues Related to Prison Reform. In Murphy & Dison (Eds) Are Prison Any Better? Twenty Years of Correctional Reform. Newbury Park, CA: Sage Publication.

<sup>24</sup> What are the 5 basics function of prison? Retrieved from <http://www.preservearticles.com/2012050131648/what-are-the-5-basic-functions-of-prisons.html>. accessed on 3rd March, 2019.

<sup>25</sup> EFCC Act, Cap E, LFN 2004

have the statutory power to arrest and search suspects, investigate and even prosecute suspect from the lower courts to the Supreme Court.

Indeed, Nigeria has a failing criminal justice system and the police, ministry of justice, court and prison have their various share of the blame. This paper shall discuss corruption in the criminal justice system with emphasis on the police as an institution.

### VIII. POWER OF THE POLICE TO ARREST AND INVESTIGATE

Once an offence is committed, the complainant goes to the Police station where a complaint is lodged and it is the duty of the police to investigate and arrest the suspect where necessary. The commitment to be attached to the investigation of the case depends on the willingness of the complainant to grease the palm of the police. Where the complainant is so impecunious or unwilling to part with his money, the complaint will certainly not be investigated or not properly investigated.<sup>26</sup>

Infact, where the complainant mobilizes the police to investigate the case, and the suspect offers more than what the complainant gives, the investigation will tilt towards the suspect than the complainant even where there is obvious reason that it should not be so. Justice to them has become property auction to a highest bidder.

Another worrisome aspect where corruption plays out in the police force is a situation where a complainant becomes a suspect and this occurs mostly where there is a sort of gratification from the initial suspect to the Investigating Police Officer (IPO). It need be stated that it is possible in law for the complainant to later become suspect if proper investigation carried out reveals that he (complainant) has a case to answer but most often than not, this happens where the suspect is richer or influential than the complainant.

<sup>26</sup> Mohammed Aminu, Police Corruption and Administration of Criminal Justice in Nigeria. NAUJILJ 9(1) 2018, P. 200.

Many atimes, the police engage in negotiation with the suspect and upon payment of a huge sum, lessen the offence committed by the suspect so as to get a soft landing or secure his bail at the lower court. In a bit to enrich themselves, there are times the police engage in arbitrary arrest of innocent people under the guise of “reasonable suspicion” when it is crystal clear that their suspicion is clearly unreasonable. There are situations where police officers will go outside their way to carry out arrest where the subject matter is non payment of friendly loan which is purely civil in nature. They engage in this *ultra vires* act with the utmost aim of getting their shares from the largesse.

### VIII. BAIL IN CRIMINAL JUSTICE SYSTEM

Subject to our law, the police in limited cases and the court have the power to grant bail. It is trite law that bail is a constitutional guaranteed right of an accused person and this is predicated on the fact that an accused person is innocent until contrary is proved.<sup>27</sup> While bail by law is required to free, in practice, it has become an avenue for police officer, magistrate, judges and even court officials to make money.

This is more alarming at the police station where nobody arrested by the police can be released on bail without any pecuniary benefit. Where it is obvious that a suspect has no case to answer in the course of police investigation and the Superior Officer has ordered that the suspect be released on bail, the police through the Investigating Police Officer will come to the suspect so as to negotiate his bail as if they are in the market shopping for grocery. The worst and annoying part of this is that it is a systemic practice whereby the Superior Officer will have his share of the largesse but pretend as if he does not know what is happening under his watch.

Worse still, some legal practitioners are accomplice in this menace as they encourage their client to pay such money so as to get their own share. A times, where it is obvious that a suspect

<sup>27</sup> Section 36(5) CFRN.



has committed an offence, the police will negotiate with the suspect so as to release him on bail and quash the case even if it is for them to destroy the exhibit needed to prove the case irrespective of the fact that the complainant who is the victim of the offence wish the matter to be prosecuted.

There are times the IPO will threaten the suspect to pay the money demanded for bail or he will be brought to court via form k on simple offence. The police exploit the psyche of the suspect knowing fully well that his liberty is sacrosanct to him.

### 8.1 Court and Bail

It is trite law that the court has the discretionary power to grant bail to the accused person. This discretionary power is expected to be exercised judicially and judiciously. The issue of corruption sets in where the court exercises this discretion arbitrarily. The court a times descend into the arena by granting bail to a suspect on a soft terms where money has exchanged hands. Even the court clerk implores this medium to extort the accused by demanding for money before bail could be perfected. Failure of the suspect to cooperate with the clerk in this regard can occasion delay in perfecting the bail bond which may subsequently land the suspect in remand.

The decadence in our criminal justice system cannot be attributed to the police and the judicial officers alone, some legal practitioners in fact serve as a conduit in which this ugly menace is perpetrated. They serve as the link between the judicial officer and the suspect, settle the prosecutor not to raise any objection to the bail application and rob the palm of the court clerk s as to ensure speedy movement of the files.

### 8.3 Prosecutors and Arraignment

The Attorney General of the Federation or States is saddled with the responsibility of prosecuting criminal cases.<sup>28</sup> Also, the Police<sup>29</sup> and other

Prosecutorial authorities<sup>30</sup> have the power to prosecute offenders but such power is subject to the prosecutorial power of the Attorney General.

The police prosecutor usually abuse its power by not presenting its case very well or a times fails to call its witnesses thereby giving the Defendant's Counsel the opportunity to apply that the case be struck out. This is done in connivance with the Defence Counsel who will ensure that Prosecutor is adequately compensated by the accused persons. Also, prosecutors a times will insist on transmitting the case file to the ministry of justice thereby causing unnecessary delay except the complainant pays a certain amount of money.

Worse still, the Ministry of justice where one will expect high level of decorum and decency is not spared of corrupt practices. Legal advice has become a matter of highest bidder. Where the suspect refuses to co operate, the files will be delayed unnecessary occasioning hardship on the part of the suspect.

## IX. SUGGESTIONS AND RECOMMENDATIONS

This paper makes the following recommendations:

1. The power of the police to grant bail should be revoked.
2. Appropriate punishment should be met against any police officers who detains suspect beyond the period provided in the constitution.
3. Police as an institution should be adequately funded in order to discharge their enormous duty.
4. Review of remuneration of Magistrate and Police Officers so as to discourage bribe .
5. Adequate punishment is recommended for legal practitioner who engaged in sharp practices in the area of criminal justice administration.
6. The law should stipulate a time frame within which legal advice should be released.

<sup>28</sup> Section 174 & 195 of CFRN 1999 (as amended)

<sup>29</sup> FRN v Osahon (2006) 5 NWLR (Pt 973) 361

<sup>30</sup> Such prosecutorial authority includes EFCC, ICPC, NDELA etc.

## X. CONCLUSION

Corruption is a virus affecting every facet of Nigeria socio- economic life. It has manifested itself in every sector, including the justice system, and has assumed part of our normative values. This paper examines the various institutions that are engaged in the administration o criminal justice in Nigeria. It further examines the menace in this institution and how the institution has abused their offices at the detriment of the criminal justice system. Emphasis is on the police as an institution but other institutions are not spared in this regard.