

# Criminal Justice System: The Nigeria Scenario

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**Abstract:** From the sociological point of view, we can categorize offences as: victimless crime, those who are victims are themselves perpetrators of the crime; violent and non-violent crime; crime against person and; privileged and non-privileged crime.

It is pertinent to note that, an offender is not only the person who has acted wrongly but also the person who has failed to act. And an attempt to commit an offence is itself an offence under the criminal code. The criminal code says: "When a person begins to commit an offence, begins to put intention to adaptation to its fulfillment and manifest intension by some overt act, such a person is liable as an offender". This paper therefore, evaluates the three tiers of criminal Justice systems in Nigeria with a view to proffer possible panacea to strengthen the system.

**Keywords:** Justice System, Crime.

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## 1. INTRODUCTION

In both the criminal and the penal code, use is made of the word 'offence' rather than of the word 'crime', but since the adjective 'criminal' is also used in both codes and in the constitution, the words 'crime' and 'offence' would appear to be interchangeable. The courts use both terms indiscriminately.

The legal definition of an offence is essentially a definition in terms of procedure. As far as the courts are concerned, it is criminal procedure which marks off a crime from a civil wrong. The course of a criminal trial, at least in common law systems, is accusatorial in nature and results in a finding of guilt or innocence. Most important of all a finding of guilt leads to a passing of sentence by the court and may lead to punishment. The possibility of punishment is not the only distinguishing mark of a criminal trial, but it is probably the most important one. Thus the criminal code singles it out when, in section 2, it defines offences as:

"Acts or omissions which render the person doing the act or making the omission liable to punishment under this code." The main object of a civil case, on the other hand, is merely to compensate the plaintiff as far as possible for the wrong done to him. It is true that a criminal court has a power, albeit very limited, to provide for restitution or compensation in criminal proceedings; bOnversely it is true that very occasionally exempl'ry damage may be awarded in a civil action, and these are penal in nature.

There are several acts or omission which we put up that makes us liable. Offences can be categorized based on punishment or nature of offences. (Okonkwo, 2003).

Offences can be classified in a number of ways. Some classifications may be made merely for the sake of convenience and may have no legal significance. For instance, the division of offences into those against the person, those against property, and those against the state, is merely a rough division for academic purposes. In English Law, there is also classification into common law and statutory offences. But in Nigeria, all crimes are now statutory, and to divide crimes into those deriving from the code and those deriving from other legislation would have no value. Other classifications are

significant in that different legal consequences can attend different types of offence. Thus the procedure of trial can differ, according to whether an offence is triable summary or on information. (Nuabueze, 1998).

But from the point of view of substantive law, the only classification of importance is curtailed in Section 3 of the criminal code. Offences are there divided three-fold into felonies, misdemeanors, and simple offences. The word 'offence' applies to any act or omission rendered liable to punishments under legislative enactment, therefore this classification extends to all offences in southern Nigeria, whether contained in the code or not. The division very roughly corresponds to the gravity of the offence, because apart from the legislative provisions where an offence is expressly declared to be of a particular type, felonies are those offences which are punishable with three years imprisonment or more, misdemeanours, those with six month's imprisonment up to three years; and simple offences, those punishment for any period less than six months. The roughness of this classification should be kept in mind, for at times a misdemeanour, for instance a seditious pamphlet advocating the over-throw of the Government may be far more serious in its affects than a felony like stealing of five naira. The fact that court may feel that a felony merits little or no punishment does not alter the fact that it is a felony; and the consequences which attend on a felony, but not on a misdemeanour or a simple offence, must apply.

From the sociological point of view, we can categorize offences as: victimless crime, those who are victims are themselves perpetrators of the crime; violent and non-violent crime; crime against person and; privileged and non-privileged crime.

It is pertinent to note that, an offender is not only the person who has done something but also the person who has failed to act. And an attempt to commit an offence is itself an offence under the criminal code. The criminal code says:

"When a person begins to commit an offence, begins to put intention to adaptation to its fulfillment and manifest intension by some overt act, such a person is liable as an offender".

The criminal code further states that:

"Even though that overt act does not fulfill its intension"

Moreover, other person(s) that can be taken along with the offender, otherwise referred to as parties to offences includes:

- Principal offenders: Everybody who actually does the act or make the omission that constitute to the offence
- Every person who aids another person to commit an offences.
- Any person who counsels or procedures any other person to commit an offence.

In law, when we say that somebody is criminally responsible, that means that the person is liable for punishment if found guilty. A child from age zero (0) to seven (7) years is not criminally responsible. A child between seven and twelve years is not criminally responsible unless you can prove that the child knows what he or she is doing. A child between twelve and eighteen years is criminally responsible.

At this juncture, it is important to submit that punishment is the central point when talking about offences. Punishment is a painful measure, which an individual undergoes. The concept of punishment has two crucial elements, 'desert' and displeasure' (Emeka E.N. Obioha, 2002). Peter identifies seven characteristics of punishment as follows:

- Punishment is a deprivation that is, it negates ones privacy
- It is done in the name of the public
- The concept of punishment also presupposes that the wrong has been done.
- It also presupposes that all due process of trial has been done.
- Punishment is assumed to be evil, that is, it is painful to the person that is done to
- It is assumed that the punishment is commensurate to the offence committed.
- Punishment is executed by an authorized person.

Punishment is needed to make social life possible and to placate the victims. But the existentialists like kant have a contrary opinion, they posit that punishment is not necessary arguing that since man is free, a man will always adjust himself if he commit a crime.

The Nigerian Criminal Justice System is generally interpreted as being frustrating; it is describe as full of despair.

Criminal Justice System though defer and vary from one country to another however face common problems, a punishment philosophy, definitions of the elements of crimes, of act to be included in the criminal law; and crime data collection. This is the behaviour that should be covered by criminal punishments, who should be sanctioned and which sanctions should be applied. The rold of decision is therefore crucial to criminal justice sustains although the degree to which it is permitted varies.

In Nigeria, criminal justice systems are a process as well as – set of stages and many factors may affect how suspect experiences the stages. Not all arrested suspects proceed to the end of the Criminal Justice System. Infact, most cases do not go that far for a number of reasons.

Suspects who proceed to trial may not be convicted. They may be convicted but placed on probation, fined or sentenced to work in the community in place of being sent to prison. Those sent to prison may not serve their full terms.

Crucial to all criminal justice system is the basis for those systems, criminal law; Criminal Justice System is based on a society's willingness to grant legal authority to some individuals to impose punishment. This group of people are called Criminal Justice System Professionals. Criminal Justice Systems may be based on the advisory or the inquistory modes.

Escaping from Criminal Justice System is seem as if it is block, the criminal justice system is not easy getting out of, once one is into it.

Also, in terms of perception, people see it as a step ahead is prevented from a step one should have taken before. Also, no one has a map to chart the way in Criminal Justice System that is, every case has its own specification and direction which no person can understand earlier. As far as Criminal Justice is concerned one can submit that everything in it is arbitrary hence, people tend to submit to fate.

Inspite of all these, criminological studies have revealed a logical structure, even within these logical structure, there is an accommodation for bias, caprices, mistakes, delays and arbitrariness.

As regards the procedure of Criminal Justice System, it seems to be orderly process typifying the industrial production process. Justice is expected as the output of all these process. However, to what existent do we really have justice at the end of this procedure becomes a million dollar questions.

Basically, Gender, age, class/poverty, Education/Literacy, Race/Ethnicity and Religion are factors in the Criminal Justice Systems equation. Meaning that to a large extent these factors or issues influence the criminal justice system in Nigeria at all the stages.

Nigeria justice system composes of three major elements that is, police, the court and the prison. In the course of this discourse attempt will be made to demonstrate the six stages of treatment of offenders through the activities of the components of Criminal Justice System. These stages are:

- Entering into the system
- Prosecution and pre-trial services
- Adjudication
- Sentencing and sanction
- Correction
- Post-correction.

## **2. COMPONENT OF NIGERIA CRIMINAL JUSTICE SYSTEM (POLICE)**

The police department is the largest and most complex company of Nigeria criminal justice system, with officers at the lower level expressing immense authority over citizens.

A criminal act usually becomes known to the police in one of the three ways: The Crime may be committed in the presence of the police, as when the police encounter a robbery in progress; the crime may be uncovered by police

investigation of suspicious circumstances, as when the police find a door or window that had apparently been forced open, or the crime may be reported to the public by private citizens. The last is by far the most common method, at least in big cities like Lagos or Ibadan. That is why the police is always appealing to the general public to help them in their effort to control crime. The public are against the action of some police officers who torture suspects in order to extract confession from them (N.K.U. Ukpa, 1994).

In Nigeria Justice System, the offender suffers a lot from the hand of the police. In most cases the offender get more implicated when the officer in charge of his or her case find out that the offender is not lettered. They use this avenue to exploit the offender. For instance, it is boldly written on the walls of police station that bail is free but the reverse is the case with the Nigerian Police.

Moreover, there is no gain saying the fact that police are very corrupt in the Country, an offender who is ready to bride his way out might be eventually set free without presenting his case before the law court.

At the cell, the offender are faced with problem of overcrowding, in certain instances offenders are kept in police custody for several days without fair hearing which is contrary to the law of the land.

Most a time, arrests are done with warrant of Arrest which is normally prepared by the magistrate. It is important to note that police can arrest without the warrant if: one, in an attempt to prevent the commission of the offence, for instance, a person with a matchet aiming at using it to attack the other individual could be arrested without warrant in order to prevent the incidence and if the officer notice that the offender could run away before the obtain of the warrant.

In order words, arresting without warrant has to fulfill some conditions. Warrant of Arrest can be obtained form any Justice of Peace (J.P) in the community.

Even at the Law Court, the police still perform certain duty. At the adjudicating stage, the offender is arraigned before the law court. The “guilty or not guilty stage” – based on court charges. As far as this stage is concerned, the running of the session is handled by competent judge preside, there are public prosecutors handling the case on behalf of the State. The offender is also to have a defense lawyer (Diffense Lawyer Vs prosecutor).

The social background of the offender, social status, economic status, social network, gender, professional or political affinity of the offender also come to play at this stage.

Inadequate funding has brought about shortcomings in the police as a component of Criminal Justice System in Nigeria.

### 3. THE COURT

The importance of the courts cannot be over emphasized as far as the Criminal Justice System is concerned. There exist in Nigeria a distinction between Federal Courts and the state courts, at least in theory this distinction is recognized by the 1999 constitution.

The foundation of the system of courts in Nigeria is in the constitution of the federation. The constitution not only establishes the courts but also defines the scope of judicial powers. This is found in section 6 of the 1999 constitution.

The Judicial system in Nigeria contrasts with the situation in the U.S.A. where the State courts are the final arbiters of matters of state law and appeals can only lie from the state courts to the federal courts on issues of interpretation and application of the constitution of the union. By and large, courts supervise most aspects of Criminal Justice Systems both in Nigeria and U.S.A.

The courts are to interpret the constitution and to ensure that any law made by the National Assembly do not conflict with the constitution and if there are conflicts, to declare such laws void and of no effect. The courts are to use their impartial judgment without undue regards for the claim, either of the citizen or the State.

Judges determine whether there is sufficient reason to hold a suspect brought in by the police and whether to grant bail to accused person or not. Though, everything depends on the nature of the offence.

Judges supervise the actions of the prosecution and defence. They decide whether to accept or deny a guilty plea. Judges preside over pretrial, hearings and determine crucial issues such as whether evidence may be admitted at trial. In this

case, the law of evidence has to be strictly observed as to the admissibility of evidence in a particular trial. Judges grant or deny motions on other issues such as motion to dismiss.

Trials are supervised by courts. The process of sentencing occurs within courts. All motions after conviction, such as motions for a new trial, and all appeals, and the actions that occurs within them affect all other aspects of Criminal Justice System (Sue Titus Raid, 1999 "Criminal Justice" (5<sup>th</sup> ed)].

In addition, judges play a lot of roles in the Criminal Justice System amongst which are the issue of search warrant and warrant of arrest. After arrest, a suspect must be taken before a neutral magistrate who will determine whether there is a probable cause to hold the alleged offender or to release on bail or some other pretrial procedure or detained in jail awaiting trial.

Judges hear and rule on motions made by the defense and the prosecution before trial. They approve pleas bargains made between the prosecution and the defense. They hear and rule on motions made before, during and after the trial, and in most cases they determine the sentences of convicted offenders. Judges at the appellate level determine whether cases should be revised or affirmed.

At the trial, judges are referees. Theoretically, they are neither for nor against a particular position or issue, but rather are committed to the fair implementation of the rules of evidence and law. They are charged with the responsibility of ensuring that attorneys follow the rules.

In the role of referee, the judge has immense power. If the defense suppressed on the grounds that it was obtained illegally, the judges decision whether or not to grant that motion might be the deciding factor in the case.

Another important responsibility of the trial judge is to rule on whether expert testimony may be admitted. Many issues in criminal cases are beyond the common knowledge of judges or Jurors, so it is necessary to submit expert testimony. To decide whether the area of expertise is acceptable, the judge must determine whether the offered expert is qualified to testify about that evidence. For instance, in a case of Rape, the expert opinion of a competent qualified medical doctor's evidence is required.

The judge must also monitor all activities of the trial, making sure that the defendant's constitutional and statutory rights are protected, that all rules and regulations are followed, and that all participants and spectators behave appropriately.

All that have been said so far about the role of judges in the treatment of offender(s) in terms of the processes and procedures of judges in courts for the purpose of fair hearing and to avoid miscarriage of justice against the offender are only applicable in an ideal setting. But the reverse is the case when we examine so many cases in our courts in Nigeria and elsewhere in the world. It is very disappointing at times when we see or heard the type of interactions between the judge(s) and the offender(s) in court in action especially in Area, Customary and at times Magistrate courts.

The right to fair hearing is central in the scheme of the judicial and legal process. One of the main pillars of this right is the imperative to hear all the sides to a dispute. To what extent are people really getting justice in our court system in Nigeria.

Like in all other professions, the judiciary is characterized by some who fail below the line in their professional and personal lives especially the judges of the Area Courts or Customary Courts, and even some Magistrate Courts. Their shortcomings may affect their abilities to function effectively as judges.

Ideally, judges are expected to be impartial and fair. They should be able to approach a case with an objective and open mind concerning the facts. But in the above mentioned courts in Nigeria, the reverse is the case in most times.

As a matter of fact, one will observe that in the process of prosecuting an offender in court, the attitude of the judge and other court staff involved in the prosecution process towards the offender is in most cases very hostile and even do assumed emotionally as if the alleged offender is already guilty of the offence. Again, the offender at times has to buy his or her way to avoid the judge being harsh or to avoid miscarriage of justice. This type of situation could be referred to as justice purchased in the inner chamber before the court sits in the open.

Besides, there are occasions where the offender's relatives or even defence counsel would have to offer bribe to the judge first in term of gratification. In essence, we are talking of corruption which is the bane to justice system in Nigeria.

The personality, status and ethnic group to which the offender belongs to do influence the outcome of cases in Nigeria Justice System. As a matter of fact most offenders that are sentenced to jail are in most cases from the lower strata in the society in terms of financial capability and social connectivity. This is share nepotism.

Another dysfunction of the court as a component of justice system is the misuse of discretion. Some judges are found of abuses of the judicial process in the name of using discretion in a case. The use of discretion by the judges at times, which is or are wrong discretion(s) do bring about miscarriage of justice against or in favour of the offender. After all the guarantees of fair trial in the constitution prescribe certain minima of fairness and justice below which a judicial forum must not descend in the discharge of its duties. But in the Area Courts, this discretion vested in the judges makes them to be power drunk at times and become very corrupt judicially. It provides an incentive to the judges to bend the rules.

In most cases, the law and procedure in the Area Courts is not what is written in the books of law. It is what the presiding judge in the court finds convenient for his purposes in the name of using his discretion to pervert the cause of justice.

Lack of independence of Judiciary is another problem confronting the Criminal Justice System in Nigeria. The Court system is not really independent to Executive arm of government because he who pays the piper dictates the tune. Therefore, this at times has a lot of implication on the part of offender if the issue is between the offender and executive member(s). The judges have been seen to always dance to the time of executive by not being objective and fair in their ruling.

Moreover, interlocutory injunction if also seen at times to be subject to abuse of judicial process. There are some cases where judges are bribed to slam an interlocutory order on a particular case and whereas, such injunction would have been unnecessary because at times, it does not help the course of justice and fairness.

As regards free legal aid service to the indigent, the offenders especially the poor ones face problem when it comes to the issue of hiring defense counsel during the course of trial of prosecution.

In an ideal settings, where an offender cannot have the services of a legal counsel the court is expected to provide the offender with free lawyer to stand for him or her for the purpose of justice and fairness. This assistance is usually expected to come from the Legal Aid Council to the offender. But in Nigeria Courts system, the reverse is the case. The legal Aid Council is not even being adequately funded by the government who also owns the Courts as well.

#### 4. THE PRISON

*“There is nothing cheering about prison life. The buildings are dull; the cells are semi-dark and the vast majority of inmates are rough in mind and body they constitute a kind of state with functionaries within prisons (Awolowo, O. 1985).*

Modern prison system started in Nigeria in 1872 when then first prison was established at Broad Street, Lagos. Nigeria today has some 132 “modern” prisons spread across the 36 States and the Federal Capital Territory of Abuja.

The society confines offenders in the prison for a number of reasons, these reasons has a social function in the entire structure of the society. The society is a system with various inter-related parts functioning to maintain the whole. Punishment which is equally a social control mechanism, is one of the parts of the society’s structure. It functions independently as a body and jointly as part of a whole body in the view of both the structural functionalist and the functionalist theorists like Radoiff Brown and Broislaw Malinowski. Implicitly, there are functions that punishment exclusively performs in the society, which validates its existence, sustenance and continuity. From the views of the retributivists and the utilitarian philosophers, punishment exists to maintain a social equilibrium, which is the major concern of social order in the society. Precisely, it is noteworthy that because crime is an unhealthy act against the entire social structure, punishments are retribution by the society on those who have transgressed its code of morals or laws. Secondly, punishment can be preventive, reformative, in respect to further crime and state of chaos in the society (Obioha, 1994).

The prison services serves as the correctional agency for the offenders. This is under the executive arm or section of the government. Even though the court has left at the sentencing stage, it can still lend its hand to the offenders at the correction stage. The question to be asked at this point in time is, to what extent does the prison community provide opportunities for altering the group memberships and reversing the socialization process which contributed to the criminal behaviour of those incarcerated in it?

The standard of living of prisoner is a critical issue for discussion. Often it is constructed in terms of many calories per day, so many hours of recreation, so many cubic yards of space per individual and so on. A standard of living can be hopelessly inadequate from the individual's view point because it bores him to death or fails to provide those subtle symbolic overtures which we invest in the world of possessions, and this is the core of the prisoner's problem in the area of goods and services.

The health conditions of inmates can be a function of the prison population. In the first place, evidence abounds that the Nigerian prisons hold population twice their capacity (CLO, 1995). Practically every prison in Nigeria is a slum where people literally live on top of each other. Available statistics indicate that the Nigerian prisons have an over-crowding rate of between 10% and 58%. Adeola (1994:127) while agreeing that over-crowding is endemic in Nigerian prisons pointed out that, the problem is compounded by the "awaiting trial persons" who are invariably left in the circumstances of complete idleness. According to him, the awaiting trial persons are frequently and indefinitely held for periods far exceeding the period if imprisonment were they convicted of the offences for which they are being held without an option of fine. This overcrowding have severe implications on the health of the inmates. Adelola (1994:123) found that in prisons most treatment were limited to administration of drugs such as panadol, and there are occasions when personers have had to procure the drugs through outside sources like asking relations to provide the money for such procurement.

In Nigeria, most prisoners, particularly awaiting trial persons, look emaciated, skeletal with bones almost visible from the skin, curved back and often "decorated" with rashes all over the body (Adelola, 1994). As for the female inmates, they are not given soap, contrary to the provision in the standing order (CLO, 1995). Worse still, they are not given sanitary towels. As for ailment, Adelola (1994), discovered that they reported mostly abdominal pains, skin diseases, fever and cough.

The worst thing about the congestion in Nigeria prisons is the effect it has on sleeping arrangement. The civil Liberties Organization (1995) reported that as a result prisoners sleep in batches. In most prisons there are three to five batches. When it is time to sleep, every other batch makes space for the first batch. They stand at one end of the cell, or sit. Some sleep while standing, but do not lie down until get to their turn.

It is obvious that there can be no talk of suitable bedding where there are neither beds nor mattresses. All prisons in Nigeria supplement their absent or inadequate stock of beds with mats (CLO, 1995). At most prisons, however, the prisoners have to provide mats for themselves.

The civil Liberties Organization (1995) reported, for instance, that it appears that not more than 10% of the inmates of any prison in Nigeria are affixed adequately in clean and strong clothes.

Loss of identity is equally discernible in the Nigerian prisons system. Adelola (1991:4) observed that inmates of Nigerians Prisons suffer personal "defacement" because clothing, combs, shaving sticks, etc. may be denied them. On top of it all, the prisoner is allocated a new number which is inscribed on his uniform together with the "earliest date of discharge". All these confirm him as a sub-human being and also complete the "successful degradation ceremonies" which began at the point of his arrest.

## 5. CONCLUSION AND RECOMMENDATIONS

So far, this paper has been able to demonstrate who can be classified as offenders and how they are being treated through the three major components of the Nigeria Criminal Justice System.

However, it is important to note that the five major issues in the treatment of the offenders' to a large extent influence and determine the application and outcome of Criminal Justice in Nigeria.

In addition, Juvenile Home is also a form of correcting deviants below age eighteen in the society. Aside our discussion, there are other community based institutions and measures for checkmating the offenders by the offenders.

We can hereby conclude that for offender(s) to achieve an ideal treatment, the corruption rate among the components of the justice system should be reduced drastically especially among the police. There should be a proper training and recruitment in such a way that officers and court workers and prison officials will be able to discharge their duties as expected.

In addition, police and judges should be impartial and fair. They should be able to approach a case with an objective and open mind concerning facts. Judges should have high moral and ethical standards, enabling them to withstand political and economic pressures that might influence decisions. They should be able to assume power sensibly without abuse, and to exercise leadership in social reform where necessary and desirable.

Finally, the government should take proper steps in allocating funds that will adequately take care of the needs of all facets of the Criminal Justice System in the Country. And prison system should be reformed in such a way that inmates be trained to acquire skills that will help them sustain the economic challenges of the larger society after their jail term.

#### REFERENCES

- [1] Sue, Titus Reid (1999) Criminal Justice 5<sup>th</sup> ed. Hindsdale, Illinois. The Dryden Press.
- [2] Niya, N.K.U. (1994): Criminology and Penology in Sociology–Theory and Applied edited by Onigu Otite, Mathouse press, Lagos.
- [3] Adelola, I. O. A. (1999): Personal Management in Ado–Ekiti Prisons, Nigeria, African Journal of Sociology Vol. 1, May 1-10, 1991.
- [4] Adelola, I.O.A. (1994): Living and Health conditions: Nigerian Journal for Social Sciences and Humanities, Vol. II, No. 1, 1994.
- [5] Awolowo, Obafemi (1985): Adventures in power: My March Through prisons: Ibadan Macmillan Nigeria Publisher Limited.
- [6] Civil Liberties Organization (1995): Behind the Wall. A report on prison condition in Nigeria and Nigeria prison system, Lagos.
- [7] Federal Government of Nigeria (1990): Criminal Code Cap. 77 Laws of the Federation
- [8] Uche Isiugo – Abanihe et al (eds) (2002): Currents and Perspectives in Sociology: Malthouse Press Limited Ibadan.
- [9] Isreal, Adelola and Adewole Hain Atere (2003): Captives, Captors & Society. Haire prints, Ibadan.
- [10] Giddens, Anthony (1995): Sociology: Polity press Cambridge CB2 IUR, UK.
- [11] Okunola, R.A., A.A. Aderinto and A.A. Atere (2002): The Prison as A Social System In U.C. Isiugo – Abanihe, A.N. Isamah and J. O. Adesina (eds), Current Issues and Perspectives in Sociology, Ikeja; Malthouse Press Limited pp. 319-335.
- [12] Okonkwo, C.O. (2003): Okonkwo and Marsh: Criminal Law in Nigeria (2<sup>nd</sup> ed) Ibadan, Spectrum Books Limited.