

**RECOMMENDATION TO THE NIGERIAN BAR
ASSOCIATION**

ON

**EXPLORING CONTEMPORARY ISSUES IN
ADMINISTRATION OF CRIMINAL JUSTICE:
PERSPECTIVES AND INSIGHTS**

DELIVERED BY:

**OLUYEMI ORIJA, ESQ.
EXECUTIVE DIRECTOR, HEADFORT FOUNDATION
FOR JUSTICE
27/8/2024**

Introduction

The Nigerian criminal justice system, while having made significant strides over the years, still grapples with numerous challenges that hinder its efficiency and effectiveness. One of the most pressing issues is the protracted duration it takes to conclude trials, resulting in an alarming 68% of the prison population being pretrial detainees. This paper aims to explore contemporary issues in the administration of criminal justice in Nigeria, offering perspectives and insights that can drive meaningful reforms. While acknowledging the improvements made, it is imperative to recognize that much more needs to be done to ensure a more efficient and just system.

1. Embracing Technology in Criminal Justice

The COVID-19 pandemic has illuminated the transformative potential of technology across various sectors, including the criminal justice system. The unprecedented challenges brought about by the pandemic necessitated a shift towards digital solutions, demonstrating how technology can enhance efficiency and accessibility in justice delivery. To see any meaningful reform in our justice system, it is imperative that we actively embrace technology.

One of the key areas where technology can make a significant impact is in the connection of virtual hearings to prisons. By enabling inmates to attend trials virtually, we can alleviate several persistent issues within the justice system. This approach would eliminate the need for physical transportation of inmates to courtrooms, thereby reducing the government's transportation costs and minimizing delays caused by logistical challenges. Virtual attendance would ensure that trials proceed as scheduled, without the common issue of inmates not being produced in court.

To implement this, we can introduce practice directions mandating the use of virtual hearings for inmates. It is crucial to ensure that prisons are equipped with the necessary technological facilities to support virtual court appearances. Furthermore, as states begin to establish and manage their own correctional facilities, this technological integration must be a priority.

Another significant advantage of embracing technology in our justice system is the elimination of the need for cases to start *de novo* (from afresh) due to the transfer, elevation, or retirement of judges. Currently, such occurrences lead to substantial delays as new judges often have to restart cases to familiarize themselves with the proceedings. This practice has severely impacted our justice system, contributing to prolonged trials and a backlog of cases.

By equipping all courtrooms with cameras and recording facilities, the demeanor of witnesses and defendants can be documented and preserved. This would allow new judges to review recorded testimonies and continue proceedings without starting afresh. The implementation of such technology would ensure continuity and expedite the judicial process, significantly improving the efficiency of our justice system.

At Headfort Foundation for Justice, we introduced a technology to access to justice by designing a digital application called “Lawyers NowNow”, this application connects victims of human rights abuse and indigent people who cannot afford legal services to pro bono lawyers and they are able to access justice for free. This solution and many others can help transform our justice system.

The adoption of technology in the criminal justice system is not merely a convenience but a necessity for meaningful reform. The lessons learned during the COVID-19 pandemic have highlighted the potential for technology to revolutionize the administration of justice. By implementing virtual hearings, and recording courtroom proceedings, we can address longstanding issues and create a more efficient, fair, and accessible justice system. Embracing technology to the fullest will undoubtedly lead to significant improvements in our criminal justice system.

2. State Corrections

The recent constitutional amendment that moved correctional services from the exclusive legislative list to the concurrent list presents a unique and unprecedented opportunity for our prison system to start afresh. This shift empowers states to establish, administer, and manage their own correctional facilities, enabling them to address and rectify the numerous issues plaguing the current prison system. This is a chance to correct longstanding deficiencies in the infrastructure, classification of inmates, and rehabilitation programs.

One of the most significant benefits of states managing their own prisons is the potential for a substantial reduction in prison population. Overcrowding is a critical issue in our current correctional system, leading to inhumane conditions and ineffective rehabilitation efforts. By decentralizing prison management, states can implement more localized and efficient solutions tailored to their specific needs, thereby reducing the burden on federal prisons and improving overall inmate welfare.

At Headfort Foundation for Justice, our mission is to ensure easy access to justice and enhance the quality of justice delivery. We are committed to advocating for states to embrace their newly acquired constitutional duty to establish and manage their own prisons. To this end, we have actively engaged with the Lagos State

House of Assembly and the Legislative Drafting Committee. Recognizing the importance of this issue, we organized a stakeholders' dialogue to discuss the steps being taken towards the implementation of state correctional services.

During our engagement, we received a commitment from the Legislative Drafting Committee that the first draft of the Lagos State Correctional Law would be presented to the Lagos State House of Assembly by the end of 2024. This is a significant milestone, and it sets a precedent for other states to follow. We believe that the Nigerian Bar Association (NBA) has a crucial role to play in this initiative. As the leading professional body in the legal field, the NBA should be at the forefront of advocating for all 36 states to work towards establishing their own correctional facilities.

The potential benefits of state-managed prisons are immense. States will have the flexibility to design and build modern correctional facilities that meet international standards. They can implement effective classification systems to ensure that inmates are housed according to their security needs and rehabilitation requirements. Additionally, states can develop and tailor rehabilitation programs that address the specific socio-economic contexts of their regions, thereby enhancing the prospects of successful reintegration of inmates into society.

3. Judicial Assignments and Delays

At Headfort Foundation for Justice, we have witnessed firsthand the detrimental effects of the current judicial assignment practices on the administration of criminal justice. One of our cases, pending before a High Court judge in Lagos State, exemplifies the systemic issues that contribute to prolonged detention and delayed justice. For over a year, this matter was at a standstill because the presiding judge was assigned to handle election petition matters. Meanwhile, an inmate, presumed innocent until proven guilty by law, remained behind bars, awaiting trial.

This situation highlights a significant flaw in our judicial system. The practice of assigning judges who are actively handling criminal cases to election tribunals is not only disruptive but also harmful to the timely delivery of justice. Election matters are crucial and time-sensitive, yet their prioritization should not come at the expense of ongoing criminal cases, where delays can lead to severe consequences for defendants and the broader justice system.

To address this issue, we propose a fundamental reform: the establishment of dedicated courts and judges exclusively for election tribunal matters. By doing so, judges who are currently handling criminal cases can continue their work uninterrupted, ensuring that trials progress without unnecessary delays. This

approach would mitigate the negative impact on the criminal justice system and uphold the rights of defendants to a fair and timely trial.

The current system, where judges are pulled away from their ongoing responsibilities, contributes to the alarming backlog of cases and the prolonged detention of defendants awaiting trial. This not only undermines the principle of justice but also erodes public confidence in the legal system. Implementing specialized election courts would be a significant step towards remedying this situation, ensuring that both election petitions and criminal cases are handled with the attention and urgency they deserve.

At Headfort Foundation for Justice, we are committed to advocating for these necessary changes. We urge the Nigerian Bar Association to take a leading role in promoting this reform, engaging with legislators and the judiciary to implement dedicated election courts across the country. This initiative would mark a significant improvement in our criminal justice system, ensuring that the rights of defendants are protected and that justice is delivered promptly and fairly.

4. Consequences for Frivolous Prosecution

One of the most pressing issues in the administration of criminal justice in Nigeria is the prevalence of frivolous prosecutions, largely attributed to systemic corruption within the police force. The police, as the first point of contact in the justice system, play a crucial role in maintaining law and order. However, the rampant corruption in the police system has led to a significant number of unwarranted arrests and prosecutions, contributing to the congestion of our courts.

Many individuals are subjected to police raids and, when unable to pay the sums demanded by corrupt officers, find themselves arraigned on baseless charges. These charges often lack any form of substantial evidence and are not supported by proper investigations. As a result, numerous individuals become trapped in the justice system, enduring prolonged detentions and facing unnecessary legal battles.

At Headfort Foundation for Justice, we have firsthand experience with the impact of such practices. Over the past five years, we have secured the release of 689 pretrial detainees from prisons at no cost. Alarming, 78% of these cases stem from police raids, random arrests, and instances where citizens misuse the police to settle personal scores. This highlights the urgent need for reform to address these injustices and prevent further unnecessary incarcerations.

To address this issue, it is imperative to hold the police accountable for their actions. The Administration of Criminal Justice Act (ACJA) provides a

framework for such accountability. Specifically, Section 322 of the ACJA stipulates that in proceedings instituted by a private prosecutor or on the summons or complaint of a private person, the court may order the private prosecutor or complainant to pay reasonable costs to the defendant upon their acquittal. Furthermore, Section 323 extends this provision, allowing the court to order compensation to be paid to the defendant if it is determined that there were insufficient grounds for the arrest or that the accusation was false or frivolous.

However, these provisions currently apply primarily to private prosecutions. To foster a more accountable and effective police force, we must extend these consequences to public prosecutors, particularly police officers. When police officers initiate frivolous charges without sufficient grounds, they should be held personally accountable, with any compensation awarded to the defendant being deducted directly from the offending officer's salary, rather than being paid by the government. This measure would serve as a deterrent against the misuse of prosecutorial powers and ensure that police officers conduct thorough investigations before making arrests and initiating prosecutions.

Implementing this accountability framework requires a concerted effort from all stakeholders in the justice system. Lawyers must actively harness these provisions of the ACJA and advocate for their enforcement in court. Judges, in turn, must be vigilant in applying these provisions to ensure that individuals are not subjected to unwarranted legal proceedings.

By holding police officers accountable for frivolous prosecutions, we can significantly reduce the number of baseless charges clogging our court dockets. This reform will lead to a more efficient and fair justice system, where individuals are not unduly detained and the integrity of the judicial process is upheld.

5. Implementation of Non-Custodial Sentencing

Non-custodial sentencing represents a significant and progressive shift in criminal justice, offering alternatives to imprisonment such as community service, probation, and rehabilitation programs. However, the successful implementation of these alternatives faces considerable challenges in Nigeria, primarily due to the lack of resources and capacity within the Nigerian Correctional Service (NCS).

One of the critical obstacles is that the Nigerian Correctional Service currently lacks the necessary resources to effectively implement community service sentences. This deficiency stems from inadequate funding and logistical support required to supervise and manage non-custodial sentences. Without sufficient resources, the NCS cannot establish and maintain robust community service

programs, thereby undermining the potential benefits of non-custodial sentencing.

The Nigerian Correctional Service does not have the capacity to address the challenges associated with non-custodial sentencing. Courts are often reluctant to impose non-custodial sentences when there are no officers available to ensure compliance with the orders. Consequently, defendants who could benefit from alternative sentencing are instead sentenced to prison, exacerbating prison overcrowding and the associated social and economic costs.

A further complication arises when defendants do not have a verifiable address where they can be monitored. In cases where community service extends beyond a single day, it becomes challenging for correctional officers to ensure that the sentence is properly carried out. This logistical issue deters courts from opting for non-custodial sentences, limiting the application of this progressive approach.

To overcome these challenges, it is imperative that the government provides the Nigerian Correctional Service with the necessary resources and support. This includes funding for the establishment and maintenance of community service programs, as well as training and deployment of non-custodial officers to all courts. When courts have confidence that their non-custodial orders will be enforced, they will be more inclined to utilize these alternatives to imprisonment.

The Nigerian Bar Association (NBA) and other non-governmental organizations must advocate vigorously for the proper implementation of non-custodial sentencing provisions. This advocacy should focus on securing government commitment to allocate resources for the NCS and ensuring that non-custodial officers are adequately trained and available in all courts.

Conclusion and Call to Action

In conclusion, the administration of criminal justice in Nigeria stands at a critical juncture. While there have been notable improvements, it is evident that much more needs to be done to ensure justice is both timely and equitable. The issues highlighted in this paper – from embracing technology and judicial assignments to state corrections, consequences for frivolous prosecutions, and the implementation of non-custodial sentencing – all underscore the urgent need for comprehensive reform.

Embracing Technology in Criminal Justice can revolutionize our system, reducing delays and costs, and ensuring that inmates are not unjustly detained due to administrative inefficiencies. **State Corrections** present a unique opportunity to decongest prisons and improve inmate welfare through state-managed facilities that address local needs and circumstances. By holding law enforcement

accountable for **Frivolous Prosecutions**, we can reduce the backlog of cases and ensure that only legitimate cases proceed to court, thereby safeguarding the rights of citizens. Finally, the **Implementation of Non-Custodial Sentencing** offers a humane and effective alternative to imprisonment, promoting rehabilitation over punishment and reducing the burden on our prison system.

Therefore, we call upon all stakeholders – the Nigerian Bar Association, the judiciary, lawmakers, law enforcement agencies, and civil society organizations – to join hands in this critical mission. We urge the NBA to lead the charge in advocating for these reforms, leveraging its influence to engage with legislators, the executive, and the public to drive meaningful change.

We call on the government to provide the necessary resources and support to the Nigerian Correctional Service to fully implement non-custodial sentencing and ensure that our prisons are managed effectively and humanely.

We implore the judiciary to adopt and integrate technological advancements that can expedite the justice process and reduce unnecessary delays.

Lastly, we encourage every Nigerian to remain vigilant and demand accountability from our justice system, ensuring that it serves all citizens fairly and justly.

Thank you

OLUYEMI ORIJA, ESQ.
EXECUTIVE DIRECTOR,
HEADFORT FOUNDATION FOR JUSTICE