

## Time to Reform Nigeria's Criminal Justice System

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### Abstract

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This paper examines the performance of Nigeria's criminal justice system, using quantitative and qualitative indicators. An effective criminal justice system is one of the key pillars upon which the concept of the rule of law is built because it serves as a functional mechanism to redress grievances and bring violators of social norms to justice, and how well a country manages its criminal justice system affects its overall performance on the governance index. Unfortunately, the Nigerian criminal justice system is fundamentally flawed and the defects manifest at every processing point on the entire criminal justice system line. This paper finds that the failure of governance institutions to design a suitable criminal justice policy, the inability of the legislature to appropriately transform policies into laws, an oddly designed judicial system, an outdated and counterproductive style of policing and a correctional services that inhumanely warehouses those considered 'innocent' by the very law of the society that imprisons them are the factors that have collectively rendered the system out of sync with contemporary global best practices in criminal justice system administration.

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**Keywords:** Nigeria, Criminal Justice Policy, Magistrate Courts, Awaiting Trial Inmates, Prisons.

### 1. Introduction

The Nigerian criminal justice system is fundamentally flawed and the problem is represented and manifested at every processing point on the entire criminal justice system line - from the failure of governance institutions to design a suitable criminal justice policy that serves the current need of the country, to the inability of the legislature to appropriately transform policies into laws, from an oddly designed judicial system plagued by massive corruption, incompetence and crippling bureaucratic bottlenecks to an outdated and counterproductive style of policing and a correctional services that inhumanely warehouses those considered "innocent" by the very law of the society.

Criminal justice can be defined either as a system or as process (Moore, 1997). Defined as a system, it refers to the set of agencies and processes established by the state to manage crime and impose penalties on violators of criminal law (Newman, 1978). Criminal justice process which is subsumed under the criminal justice system involves the procedure for arrest, charging, trial and conferment of a suspect. Policies on the criminal justice system are built on five components and these are: the law enforcement component, the court system, the prosecution, corrections system and the community. (Clare & Krammer, 1977)

Governance determines how the criminal justice system as an institution of social control in a country is defined and utilized. Furthermore, how well a country manages its criminal justice system affects its overall performance on the governance index. An effective criminal justice system is one of the key pillars upon which the concept of the rule of law is built because it serves as a functional mechanism to redress grievances and bring violators of social norms to justice (Garland, 1990).

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A country that gets its criminal justice system right has effectively addressed a great part of its governance concerns because of the centrality of the criminal justice system to order and stability. This paper seeks to undertake the following: measure the performance of Nigeria’s criminal justice system, using quantitative and qualitative indicators; review the adequacy of the Nigerian criminal justice policy and analyze how the trio of criminal legislations, court system and the prison services collectively undermine the criminal justice system.

**2. Measuring The Performance Of The Nigeria’s Criminal Justice System**

**2.1 Share Of Conversation**

The perception about the criminal justice system in Nigeria is overwhelmingly negative. Amnesty International tagged the criminal justice system in Nigeria a “conveyor belt of injustice, from beginning to end” (Amnesty International, 2008). A senior Advocate of Nigeria, Chief Bolaji Ayorinde referred to the system as “dysfunctional, outdated and absolutely not fit for purpose”. The former Speaker of Nigeria’s House of representative once stated that “our criminal procedure has remained largely old and unresponsive to the quick dispensation of justice” (Punch). Alhaji Abdullahi Yola, The Solicitor General of the federation and permanent secretary at the ministry of Justice, also stated that the Nigerian criminal justice system lacks the necessary policies and legislation that facilitates fair trial of suspects (Daily Trust).

**2.2 Timing and Relevance**

Utilizing timing and relevance as another index of measurement reveals that the system’s critical components are out of sync and underperforming. Four out of the five major legislative pieces that collectively regulate criminal justice in Nigeria- the Penal Code, the Criminal Code, the Criminal Procedure Act and the Evidence Act are all substantially relics of colonial legislations and culture and all amendments have failed to effect a Nigerian-specific agenda on criminal Legislation. The same can be said of the Police Act 1943, which was reenacted by a decree in 1967. The Judiciary in terms of speed and quality of Justice does not fare better, as it takes an average of 5.9 years for a contested case to move from filing to delivery of justice (Peter Anyebe, 2012). The Prisons are nothing but overwhelmed human warehouses, the actual capacity of the Nigerian prisons is about **50,153** but the prison currently holds **57,121** inmates. **39,577 (69%)** of the total prison inmates are awaiting trial inmates (Nigerian Prison Service, 2014).

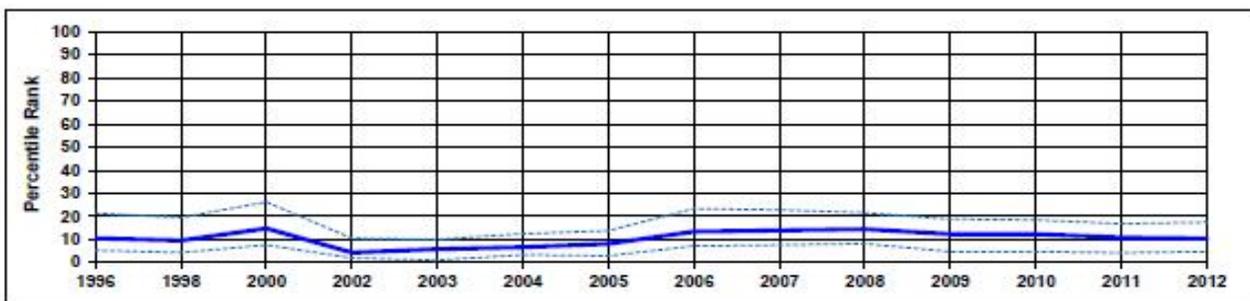
**2.3 Quantitative Indexes**

**2.3.1 Criminal Justice System Ranking: World Justice Project**

Nigeria	Global Ranking	Regional ranking	Scores
2010	29/35	4/5	0.42/1
2011	53/56	7/9	0.41/1
2012-2013	94/97	18/18	0.28/1
2014	91/99	17/18	0.39/1

Source: World Justice Project Criminal Justice System Component of the Rule of Law Index, 2010-2014

**2.3.2 Aggregate Indictor for Rule of Law 1996-2012: World Bank**



Source: World Bank

The World Bank Country Data Report summarizes the data from other global Governance polling sources and the rule of law is one of these fundamental indicators. The three measurement methods indicate that the criminal justice system in Nigeria is underperforming and one of the contributory factors for the country's overall poor governance ranking.

### **3. The Nigerian Criminal Justice Policy**

The design of each country's criminal justice system should reflect its social and cultural orientation as criminal justice as an instrument of social control must be situated within the cultural milieu within which it operates. An effective criminal justice policy regime requires every society to create its own institutions of social control, which reflects popular societal mores and values. Criminal law legislation should holistically mirror government's policies as it relate to the control of conducts that threaten law and order in a territory. However, there is no policy document articulating comprehensively the end of criminal justice system in Nigeria. (Onimajesin, 2009)

Criminal legislation is the most important component of the criminal justice system because it defines rights, duties, obligations and relationships with other components. The basic law dealing with crime in Nigeria is the Criminal Code, which is applicable southern states and the Penal Code, which operates in the Northern states. These pieces of legislation were originally enacted in 1902 and 1960 respectively and are more reflective of British colonial interests than current Nigerian social needs. They are not products of public policy processes targeted by the Nigerian government at defined social problems within Nigeria's current social milieu.

Continuous changes in the social interactions and configuration demands a progressive review of criminal legislations. Basing a criminal justice system on an outdated criminal code that has limited alternatives to imprisonment, in an age of non-custodian sentencing, indeterminate sentencing systems and Community supervision is certainly one of the reasons for Nigeria's dysfunctional criminal justice system.

16 years of democratic governance has not produced a fundamental change in the criminal justice system regime in Nigeria, only Lagos State out of the 36 States in Nigeria has comprehensively reformed its criminal justice legislations. Some The following six critical criminal justice system bills are pending before the federal legislature in Nigeria: Administration of Justice Commission Bill, Police Act Amendment Bill, Community Service Bill, Victims of Crime Remedies Bill, Prisons Act Amendment Bill and The Elimination of Violence in Society. The social framework of our criminal legislations is foreign and outdated; it is therefore safe to state that Nigeria has no comprehensive criminal justice policy, engendered by contemporary social demands.

### **4. The Judiciary And The Criminal Justice System**

The court system is the second most important component in a triangulated relationship of the criminal justice system involving laws, courts and enforcement agencies. The court system is the only formal institution through which legal actions against accused persons are channeled. The decisions and disposition of the court system bears important marks on other components of the criminal justice system, Such as the investigative and the imprisonment stages of the process

Magistrate courts in Nigeria are the most important courts when talking about the criminal justice system, as more than 90% of criminal cases that get tried commence in the court (Pedro, 2012) and 80% or more of those cases terminate in magistrate court. (Yusuf Ali, 2006). However the same court that manage the bulk of criminal trials in Nigeria is relegated to the background by the managers of the system, so much that the bulk of allocation to the judicial sector is spent on other levels of courts systems and magistrates have to resort to the use industrial actions such as strikes as a bargaining tool to get better condition of service (Vanguard).

Beyond this, superior courts though they receive the bulk of attention in term of budgetary allocation and manpower but do not fare better in the adjudication of criminal cases. It is believed that presently, it will take an average of 15years to successfully prosecute a criminal case from High Court to the Supreme Court (Davidson Iriekpen, 2013). One survey by the Nigerian Prison Service using some select states as samples showed that in a period of 6 months, some states recorded less than 3 criminal convictions (Orakwe, 2005).

Holding charge practices by magistrate courts is one of the causative factors responsible for the unusually high pre-trial inmates' population in Nigerian prisons. Holding charge refers to the practice of arraigning a person accused of a crime before a court that lacks the capacity to try him/her for the purpose of securing a remand order. The Chief Judge of Lagos State on a visit to a prison in the state affirmed this fact stating that "[...] some of you have just been languishing here without appearing in court or being charged with any offence" (Punch). Nigeria has 11<sup>th</sup> highest global percentage of pretrial prison inmates population in the world (International Center for Prison Studies).

Punishments and sentences imposed by courts are not reflective of any institutional design aimed at achieving specific set ends across social classes and groupings. The current situation reflects an arbitrary patchwork dependent more on extralegal factors than policy ends. Although the sanctions in the criminal and penal codes infer deterrence, retribution and humiliation as the goal of these legislations, judgments do not uniformly and comprehensively reflect this for the same classes of offences. Court judgments are discriminatory against the poor and politically unconnected, for instance a magistrate court imposed a N2,000 fine on Salisu Buhari, a former speaker of the House of representatives for forgery and perjury, while another magistrate court sentenced one Godson Onyeorozire to 17 years imprisonment without an option of fine for the same class of offence. (PM News). One Federal High Court handed John Yakubu Yusuf, a former director in the civil service, a two year jail term, with a N250, 000 fine option after the latter admitted to taking part in the stealing of N32.8billion Police Pension fund, while yet another court sentenced Kelvin Ighodalor to 45year imprisonment for stealing a mobile phone belonging to a state governor (Punch).

Furthermore, there is an overwhelming negative public perception on the integrity of courts in Nigeria, with a survey stating that 70% of Nigerians believe that there is corruption in the Nigerian Judiciary (SERAP) and another survey stated that "Nigerian courts of law receive the biggest and highest bribes from citizens among all institutions in which corruption is rampant" (NBS and UNODC). Beyond ethical issues, the judicial system is bedeviled with procedural deficiencies that make it difficult to dispose off cases expeditiously

## 5. Corrections And Prisons

Like other component of the criminal justice system, policy, structure and operation of the Nigerian correctional services remains in a colonial time capsule, although the prisons are currently regulated by a 1972 Act, which sets the goal and orientation of the prison as custody and production of inmates on court order, rehabilitation and reintegration into the society, prisons in Nigeria are nothing but tortuously punitive medieval institutions... Congestion, human rights violation, abysmal health conditions, poor funding, improper management and ill-trained officials are all challenges facing the prison services in Nigeria. (NHRC, 2012)

At present, Nigeria has **145** Prisons and **83** Satellite Prison Camps, **10** prison farms, 2 Borstal Institutions and **9** cottage industries for the training of inmates. These prison complexes are old and dilapidated colonial heritages dating back to the early part of the 19<sup>th</sup> century. The Warri Prison was built in 1805, Azare 1816, Ningi 1820, Misua 1827, Degema 1855 and Suleja 1914. (NHRC, 2012). However, a number of new prison complexes have been built since 1999 and these are Makurdi, Benue State – 2002; Lamingo Prison Agric Project, Plateau State – 2012;; MSP Keffi, Nassarawa State – 2009; MSP Nassarawa State – 2010; MSP Minna, Niger State – 2001; Kontogora Prison, Niger State –1999; Boastal Training Institute Ilorin, Kwara State – 2005; Mandala, Kwara State –2009; Medium Security Prison Omu Aran, Kwara State – 2008; Lafiagi Prison, Kwara State – 2000;; Okene Prison, Kogi State – 2007 and Dukpa Model Farm, Gwagwalada FCT – 2009. The Federal government is responsible for the feeding of prison inmates in Nigeria and less than \$1.5 (N200) is allocated to feed each prisoner per day, which contrasts to around \$5.2 (N800) that is allocated by the prison authority to feed the prison dogs (Sunnewsonline). Only few prison facilities in Nigeria are equipped with functional hospitals and appropriate medical staff, while a good number of them have nothing beyond first aid boxes manned by dispensary assistance. Recreational facilities are equally totally lacking in most of prison facilities and where it exists, it is grossly inadequate. In the North-West Zone, about 60% of prisons have no form of recreational facilities. (NHRC, 2012) One outstanding feature of the prison system in Nigeria is the high percentage of awaiting trial inmates and a consistent decrease in the number of convicted prisoners who paradoxically are the central fulcrum of prison of the prison policy in Nigeria.

The tendency to deem remand of suspects as the end of judicial process is perhaps one of the most important factor responsible for this consistent percentile increase.

### Awaiting Trial Inmate %

Year	Prison Population	Awaiting Trial Inmates	Percentage of Awaiting Trial Inmates
1985	53,786	21,515	40%
1990	55,331	27,665	50%
2000	43,312	26,485	61%
2005	38,328	28,363	74%
2010	41,524	29,372	71%
2013	53,841	36,983	68.7%
2014	57,121	39,577	69%

Source: Sola Ogundipe, Controller-General of Prisons 2010-2012

The fact that awaiting trial inmates crisis affects mainly 30 prisons located in urban centers validates the argument that the criminal justice system as presently composed is neither a product of carefully thought-out policy meant to address states' unique law and order challenges (Ogundipe, 2009). Kirirkiri medium security prison with built-up capacity for 835 inmates, houses 2,554 inmates while more than 2,100 of them are awaiting trial inmates; The Owerri Prisons, originally built to accommodate 548 prisoners, now houses 1,827 inmates and 1, 663 of these are awaiting trial inmates (Vanguard); the Port Harcourt prisons has a built-up capacity for 804 prisoners, but houses 2,798 inmates, out of which about 2,487 are awaiting trial.

With this reality the prison services expends more of its resources on securing an inmate group considered innocent by the law (because no guilt is yet established at law against them) rather than reforming and preparing convicts for the outside world, which is the primary mandate of the establishment. The monetary cost of the failure of the criminal justice system is huge and prohibitive. The cost of feeding awaiting trial inmates alone stand at N5.5billion naira per year, which translate to around N72,000 per prisoner at an average cost of N200 per prisoner. Furthermore, the system as presently constituted is a waste of human capital, the largest chunk of the Nigerian prison inmate is between the age bracketing 26 and 50 (Vanguard). The system has negative social effect in the in the areas of post release unemployment, poor health, weakening social identity, social alienation, poverty and the risk of reoffending. Imprisonment affects more disproportionately, families living in poverty.

### 6. *Why Is The System Averse To Change?*

Why is the judiciary operationally indifferent to the crisis of the awaiting trial inmates in the Nigerian prison beyond the worn ritual of Chief Judges's sporadic visitation releases of inmates when the court system is culpable in prisoners' unjustified incarceration? What is the incentive for the prison system to retain so many awaiting trial inmates? Why has 14 years of democratic governance not engendered a humane and human rights respecting criminal justice policy in Nigeria? Is the low prisoner per capita in Nigeria indicative of Nigeria's low crime rate or asymptomatic of a non-functioning criminal justice system? What is the political economy of the criminal justice system in Nigeria today? What governance indicator does this problem point to?

The legislature as one of the fundamental pillars of democratic governance is tasked with transforming policies and frameworks into laws via the processes of enactment, repeals, revision and regulation, but the legislature across all tiers of government in Nigeria has failed especially in the area of engendering appropriate and functioning criminal justice legislations. Clumsy legislative processes and procedure, inadequate experience in technical areas such as policy reform, appropriation procedures and processes, corruption, political and social differences all combine to impede legislature in Nigeria in creating criminal policies that work expeditiously. The political elites have benefited from the delay in the administration of justice by exploiting weaknesses in the system to delay or frustrate their trials. The tale of the criminal justice system is one of a system that lacks the capacity and the will to conclude trials involving rich and politically connected individuals while conversely increasing the number of indigent people held without trial in the prisons.

While senior judicial officials in Nigeria have described corruption as the most important impediment to criminal justice administration in Nigeria, the flawed process of appointment, inadequate funding, archaic judicial infrastructure, excessively bureaucratic processes, poorly trained and inefficient supporting court staff, poor remuneration and non consideration of the magistracy as judicial officers even though it handles 75% of all court cases in Nigeria and flawed administrative policy all are all hefty contributing factor in the inefficiency of the judiciary. These factors explain the indifference of the judiciary to the crisis of mounting pre-trial prison inmates in Nigeria and why the only response has been the tokenism of releasing prisoners who have no business being in prison in the first place. The judiciary is as guilty as any other sector in the value chain.

### **Conclusion**

An effective criminal justice system is fundamental to democratic governance and the rule of law. Democracy functions as a system with formal and informal institutional interrelated mechanisms serving the purpose of translating social preferences into public policies. Criminal justice, because it addresses behavioral issues, must be dynamic, proactive and culturally relevant. Therefore there is the need for an active collaboration of all tiers and organs of governments in Nigeria in order to formulate a coherent and peological policy that countenances the input of all sectors in the criminal justice value chain.

### **Policy Recommendations**

- There is the need for a national forum of experts to facilitate the design of a criminal justice system policy
- There is a need for a criminal code that effectively addresses the current law and order issues that plagues different segment of the Nigerian society and talks to the current problems of incomprehensible and inaccessible legal regimes
- A holistic review of the management and funding of court systems in Nigeria
- There is the need to find alternatives to imprisonment as it is being done in other systems
- The management and control of prisons should be removed from the exclusive legislative list to the concurrent legislative list in order that state governors and the Chief Judges of the states will have input in the entire criminal justice process in their states.

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