

Justice Sector Reform

The Problem

By 1999 when the country had transitioned from military rule to civil rule, the problems that had confronted the Nigerian justice sector under the previous military administrations had continued to rear their ugly heads despite the introduction of democratic governance. The major problems faced by the justice sector include the following:

1. Delay in the administration of criminal justice remained a major challenge. Criminal trials were often delayed, especially when the defendants were able to engage the services of legal practitioners who could exploit the weaknesses in the system to delay or even frustrate the trial of their clients. As a result of this, many cases that were filed by prosecutors against highly placed individuals could not progress significantly after the initial arraignment and the grant of bail. This led to the unfortunate situation in which the criminal justice system lost its capacity to conclude criminal trials involving the wealthy and politically powerful persons. Yet, the population of prisoners, mostly poor people being held without trial, kept growing.
2. The archaic nature of *evidence law* that was first enacted in 1958. Notably, it did not permit the admissibility of electronically-generated evidence. The implication is that many trials that relied on electronically-generated evidence could not progress. Although the Supreme Court eventually ruled in favour of admissibility of electronically-generated evidence, there are still delays in the proceedings of cases.
3. The archaic nature of *criminal procedure laws*. The two principal codes that govern criminal prosecutions in the country are the Criminal Code, applicable in southern Nigeria, and the Penal Procedure, applicable in the Northern States of the country as well as the Federal Capital Territory
4. (FCT). First passed into law in the colonial era, these codes did not make clear provisions on the issue of venue of trials, timelines for role-players to perform their statutory functions, sentencing guidelines, alternatives to imprisonment, holding charges, etc. These glaring loopholes created avenues for delays in the trial and detention of persons.
5. Other notable problems are: (a) the defective aspects of the 1999 Constitution, which contained many impediments to the smooth administration of justice, as its provisions were often cited to justify the postponement of cases and stay of criminal proceedings; (b) corruption in the administration of justice; (c) lack of access to justice for all irrespective of means and rule of law; (d) abuse of human rights and civil liberties; (e) lack of effective coordination and cohesion among justice institutions; (f) congestion of the prison, particularly in urban prisons, which results from high percentage of inmates awaiting trial; (g) poor infrastructures and conditions of the Nigerian prison services; (h) inadequate data due to poor record keeping and file management; and (i) inadequacies of judicial personnel, lack of modern management technology, and the absence of case management techniques.

Reforms Actions

In response to the numerous problems confronting the justice system, government embarked on a number of strategic initiatives.

First, it sent a draft bill to the National Assembly aimed at removing frivolous injunctions, interlocutory motions, adjournments, and abuse of court processes. As a result of the concerns raised in this bill, the Judiciary has been addressing the issue of speedy dispensation of justice, as well as corruption by some court judges.

Secondly, the enactment of the Freedom of Information Act (2011) and the mainstreaming of its implementation sought to enhance transparency and accountability thereby addressing some of the identified problems earlier.

Thirdly, there was the enactment of the new Evidence Act in 2011, which now allows the use of computer-generated evidence, which hitherto was inadmissible.

Fourthly, there was also the enactment of the Legal Aid Council Act, 2011, which widened access to justice irrespective of means.

Fifthly, there was the enactment of the Terrorism Prevention Act (2011) to address the new insecurity problem.

Lastly, the establishment of Federal Justice Sector Reform Committee (FJSRC), which has brought to the fore the need for a comprehensive review of the long out-dated Nigerian Prisons Standing Order.

Main Achievements

The main achievements of the Justice Sector reforms yielding results are as follows:

1. The new Evidence Act in 2011 has made it possible for the courts to make use of computer-generated evidence, which hitherto was inadmissible.
2. The Legal Aid Council Act, 2011 has broadened the scope of state-funded legal aid regime while empowering non-state legal service providers. The multiplier effect of this Act is the legislative widening of access to justice irrespective of means.
3. The Freedom of Information Act, 2011 has raised the bar on the level of transparency and accountability in the conduct of government business.
4. The establishment of the Federal Justice Sector Reform Committee (FJSRC) has made possible for the conclusion of the work on the comprehensive review of the Nigerian Prisons Standing Order made as far back as 1961.
5. The establishment of a Panel on the Implementation of Justice Reform, which has been working in collaboration with other stakeholders and development partners to bring about the implementation of reforms in the justice system administration, is a step in the right direction. Among the activities of the panel is the proposal for the adoption of Guidelines for Prosecutors nationwide and the Administration of Criminal Justice Bill, 2012. The Bill is expected to bring about far-reaching reforms in the Nigerian criminal justice administration, including the introduction of the central records registry system, restorative justice measures, and mandatory timelines for carrying out specific tasks by the operators of the criminal justice system. The Bill also seeks to address the persistent problem of prison congestion by checkmating the 'Awaiting Trial Inmates' (ATIs) syndrome in the nation's prisons.
6. Submission to the National Assembly of the Bill for an Act to provide for the Enforcement and Punishment of Crimes Against Humanity, War Crimes, Genocide and Related Offences, 2012 is a notable achievement

7. Enactment of the Terrorism (Prevention) Act 2011 and the Money Laundering (Prohibition) Act, 2011 will help in the fight against terrorism and money laundering.
8. Enactment of the Cybercrime Bill, 2011 and the Terrorism (Prohibition) Bill, 2012 are positive steps.
9. Strengthening the capacity of Judicial Officers has been given priority.
10. The enthronement of discipline and transparent conduct in the rank and file of judicial officers have been welcomed by Nigerians. For example, no judge can travel out of Nigeria now without the written authorisation from the Chief Justice of the Federation (CJN) and no judge can leave his judicial division without the authorisation of the head of the court. Corrupt judicial officers are also either suspended or dismissed from service.

Key Challenges

Over the years, the Nigerian criminal justice sector has been identified with the following challenges. These include:

1. Chronic delay in the trial of cases
2. Lack of effective coordination amongst the agencies of the criminal justice system (the police, prisons, prosecutors and the courts)
3. Absence of clear and consistent sentencing guidelines
4. Growing number of awaiting trial inmates
5. Problem of 'holding' charge
6. Limited alternatives to imprisonment
7. Dichotomy between federal and state offences
8. Indiscriminate transfer of investigating police officers
9. Insufficient courts with environment conducive for trial, equipped with electronic recording devices, adequate manpower, and other facilities
10. Failure of the Nigerian prison system to meet several benchmarks set within the UN standard minimum rules for the treatment of prisoners. As examples, (a) juveniles are not separated from hardened criminals; (b) women prisoners are jailed in overcrowded rooms with their children; and (c) the mentally ill prisoners remain incarcerated, rather than receiving psychiatric treatment.

Assessment of Reform Initiative

Judged against the 10 assessment criteria, the justice system reform has recorded some achievements, though there are still daunting challenges to be surmounted.

S/N	Assessment Criteria	Result of Assessment
1.	Has the justice system reform improved the quality and quantity of public services?	The reform in the judicial system has improved the quality and quantity of the public service to an appreciable level, in terms of the courts making use of computer-generated evidence, which hitherto was inadmissible, broadening the scope of state funded legal aid regime while empowering non-state legal service providers, and enacting the FOI Act, which has raised the bar on the level of transparency and accountability in the system.
2.	Do more people now have access to services, including disadvantaged groups such as women, young persons, and people with disabilities?	More people now have access to service through the Legal Aid Council Act, 2011, which has broadened the scope of state-funded legal aid regime while empowering non-state legal service providers. The multiplier effect of this Act is the legislative widening of access to justice irrespective of means.
3.	Has the judicial system reform reduced the cost of governance?	There is no evidence that the reforms have reduced the cost of governance.
4.	Has the judicial system reform made services more affordable for citizens?	No. There is no evidence that this is the case.
5.	Has the judicial system reform reduced corruption?	Yes, it is beginning to do so. But the enthronement of discipline and transparent conduct in the rank and file of judicial officers, as well as dismissal of corrupt judicial officials are only just beginning to reduce corruption in the system.
6.	Has the judicial system reform reduced unnecessary bureaucracy and red tape?	The reform in the judicial system has not reduced unnecessary bureaucracy and red tape as the growing number of awaiting trial inmates is traceable to unnecessary bureaucracy.
7.	Has the judicial system reform led to improved development outcomes?	Not Applicable
8.	Are things improving, staying the same, or getting worse?	Things are improving in the system in terms of continued effort to reform the criminal justice administration system and addressing the persistent problem of prison congestion.
9.	Where things are improving, will those improvements endure?	The reforms are likely to endure because efforts are being made to consolidate the reforms in the

S/N	Assessment Criteria	Result of Assessment
		system
10.	Where things are not improving, what should be done?	Not applicable.

Proposed Next Steps

The proposed next step actions to further deepen the justice sector reforms are as follows:

1. Enactment of the bills that have been presented to the Federal Executive Council (FEC) for adoption as executive legislations and now pending before the National Assembly for passage into laws:
 - (1) *Bill on Criminal Justice Administration*: to harmonise and consolidate the criminal procedure laws, reduce delays, and provide for more humane treatment of suspects
 - (2) *Administration of Justice Commission Bill*: to ensure effective supervision and coordination of the administration of justice by all the relevant organs
 - (3) *National Human Rights Commission (Amendment) Bill*: to improve the autonomy of the National Human Rights Commission and give it more investigative powers
 - (4) *Community Service Bill*: to encourage the award of non-custodial sentences under the criminal justice system, particularly in minor offences and offences involving young persons
 - (5) *Victims of Crime Remedies Bill*: to improve respect for the rights of victim of crime in the criminal justice system
 - (6) *Elimination of Violence in Society Bill*: to control violence in society, especially violence directed at vulnerable groups like women and children
 - (7) *Bill to Amend the Legal Practitioners Act*: to improve the standard of legal practice by, among other things, introducing continuing legal education requirements for practitioners
 - (8) *Prison Act (Amendment) Bill*: to provide a more appropriate legal framework for prisons administration and the treatment of offenders, consistent with constitutional and international standards, as well as to make the prisons more corrective institutions
 - (9) *Police (Amendment) Bill*: to introduce fundamental changes in the mission and operations of the police and improve its effectiveness in providing security services to communities
2. There is need to review the 'holding charge practice' because the system lacks an in-built review process. There must be a balance between effective policing/investigation and the rights of accused persons. It is to be noted that various important safety nets are missing from the remand procedure as presently practiced under the holding charge phenomenon.
3. There is need to reform the Bail Procedure to Check Abuse of the Right to Bail and Protect Remand Prisoners (Awaiting Trial Inmates). Many reasons account for the huge population of awaiting trial inmates. Some of these reasons include inability to post bail; missing case file; unavailability of investigating police officer or prosecution witnesses; inmates with incomplete investigation; minor offences; and holding charge.

4. There is an urgent need to decongest prisons and improve conditions in line with minimum international standards. Improvements can be made by:
 - (1) Reviews of sentencing policy so that people are not sent to prison for minor offences
 - (2) The use of community service, suspended sentences, cautions, etc. for less serious offences and decriminalisation of the most minor offence
 - (3) The use of approved schools for juvenile offenders and the segregation of children from adults in prison
 - (4) The use of bail for those awaiting trial
 - (5) Improvements in prison conditions, e.g. through prison farms, open prison and better disease control, including the spread of TB and HIV/AIDS
5. There is a need to strengthen judicial integrity and hold judicial officers accountable in a manner that promotes the rule of law and public confidence in the justice system where they have been found to have engaged in misconduct.
6. There is a need to benchmark the Nigerian prison system within the UN standard minimum rules for the treatment of prisoners. Juveniles should be separated from hardened criminals, women prisoners should not be jailed in overcrowded rooms with their children, and mentally ill prisoners should receive psychiatric treatment.