ARREST, REMAND AND AWAITING TRIAL SYNDROME IN CRIMINAL JUSTICE: FIXING THE JIGSAW TO END PRISON CONGESTION

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1.01 INTRODUCTION:

A viable criminal justice system is expected to secure the lives and property of members of the society. Crime prone societies will invariable result in low productivity, strife, discord, lawlessness and indiscipline. It is an invitation to the status of a failed State.

This presentation will focus on the administration of criminal justice in Nigeria with particular references to the issues of arrest, remand and the challenges of awaiting trial suspects.

In his dissertation on the subject of personal freedom, the ***Rt. Honourable Lord Denning, Master of the Rolls*** posited thus:

> ***"It must be matched with social security, by which I mean, the peace and good order of the community in which we live. The freedom of the just man is worth little to him if he can be preyed upon by the murderer or the thief. Every society must have the means to protect itself from marauders. It must have powers to arrest, to search and to imprison those who break its laws. So long as those powers are properly exercised, they are the safeguards of freedom. But powers may be abused, and if those powers are abused, there is no tyranny like them."***[1]

In safeguarding our freedoms, we need an efficient and effective criminal justice system that will protect us from the unwholesome activities of miscreants in our society. Presently, there is an upsurge in the spate of violent crimes like murder, armed robbery, kidnapping, rape, insurgencies and terrorism. Our criminal justice system is under great strain. The system is characterized with vices such as delayed trials, congestion of the police and prison cells and a general sense of lack of confidence in the system of criminal justice. The only cheerful news is that the system is presently undergoing some progressive reforms.

2.01 THE CRIMINAL JUSTICE SYSTEM:

The term: ***"Criminal Justice"*** has been defined as: ***"the collective institutions which an accused offender passes until the accusations have been***

1.Denning: The Due Process of Law p.101

disposed of or the assessed punishment is concluded[2].” The system envisages at least 3 components, (i) ***law enforcement***, (Police, sheriffs and marshals) (ii) ***the judicial process*** (judges, prosecutors and defence lawyers and (iii) ***corrections*** (prison officials, probation and parole officers). Criminal justice is the branch of law dealing with crime; the branch of law that defines the nature of crimes and sets suitable punishments for them.

In his treatise: ***CRIMINAL JUSTICE SYSTEM IN NIGERIA: FOR THE RICH OR THE POOR?[3] Sunday Abraham Ogunode*** observed *inter alia* that the present criminal justice system was inherited from colonial Britain. It served the colonial power rather well. But with the transformation from colonialism to self governance, democracy, military rule and now a civilian rule and democracy, the inherited system has come under severe strain to the extent that it can safely be said to be non functional or at least comatose. That is why the Police are inefficient and mistrusted, the courts or justice system prostrate and the correctional system outdated. A criminal justice system that is inefficient, inadequate, corrupt, infrastructurally deficient, under-financed, undermanned and prone to abuse is a threat to the Rule of law and all other indices of democracy and good governance.

He posited that to understand the criminal justice system in Nigeria, one needs an illustration of how it works. The process commences when the police has a reasonable suspicion that a person has either committed a crime or is committing a crime. It continues through to the end of trial, and continues, in case of conviction, through sentencing, imprisonment and release upon the completion of sentence.

If a police officer believes that a person has committed or is committing a crime, an arrest occurs. What happens after that or the processes that such a person goes through all the way to acquittal in court or release after his jail term or completion of alternative punishment constitute the criminal justice system.

As is immediately obvious from this simple explanation, the criminal justice process involves several distinct stages. And in any individual case, the process can terminate at any of such stages. The purpose of this commentary is to highlight certain obvious anomalies and shortcomings in the Nigerian Criminal Justice system with a view to remodeling the system and restoring its lost glory through conscientious overhauling and the introduction of radical reforms.

2.Black’s Law Dictionary 8th Edition, p.403

[3] *Humanities and Social Sciences Review*,CD-ROM. ISSN: 2165-6258 :: 04(01):27–39 (2015)

3.02 PRE-TRIAL PROCESSES:

The Nigeria factor is present and very potent in several of the pre-trial processes in criminal matters. When a complaint is made, the amount of seriousness to be attached to the investigation of the complaint depends on a number of factors, chief among which is the Complainantôs ability and willingness to fund the police investigations. Where the complainant is either impecunious or unwilling to part with any reasonable sum of money, the investigation may be stalled or shoddy. The common complaint of investigating police officers (IPOôs) is lack of logistic support.

Another problematic aspect of the pre-trial process is in the issue of the grant of police bail. It is a well-known fact that the grant of bail is designed to ensure that a suspect is made available any time he is required in the course of investigation of the case or at the trial.

The common slogan in every police station is that: BAIL IS FREE. In actual practice bail is usually granted on the condition of payment of some amount of money negotiated with the police authorities. This unfortunate practice is a major drawback in our criminal justice system. It is more unfortunate when we realize that sometimes, legal practitioners are even involved in this bail racketeering. They collect money from their clients to bribe the police to secure the release of suspects.

Should a suspect or his relations insist on being released without payment, such a person runs the risk of spending more time in custody than is necessary as the police would apply one delay tactics or the other to frustrate his release.

Sometimes, some unscrupulous lawyers make profit from such base transactions by secretly withholding part of the bribe for themselves. Some even negotiate with the police on the basis of ***kill and divide***. They collect the money from their client and share with the police on an agreed ratio of 50:50; 60:40; 40:60 etc. etc. All such clandestine arrangements leave a sour taste in the mouth as it portrays the profession in bad light. Why hire a lawyer if his role is simply to serve as a conduit for the payment of base bribes? That is certainly not the role or the calling of a lawyer. All such nefarious practices are a clog in the system of criminal justice.

3.03 THETRIAL PROCESS:

When a matter is properly before the Court for trial, then some other inadequacies in our criminal justice system come to the fore. This is mainly in the aspect of delay in trials. It is axiomatic that ***justice delayed is justice denied***.

Indeed, the trend of delay in the system runs through pretrial, trial and post trial stages of the criminal justice system.

A preliminary point which must be borne in mind is the fact that some kind of delay is inevitable in the criminal justice system. Consequently, the distinction between avoidable and unavoidable delays must be borne in mind.

Thus, while the Criminal Justice System disapproves of unnecessary delays, it condones delays which are necessary and desirable. Against this backdrop, it has been held that even where the request for adjournment will result in delayed trial, such request should at least in the interest of fair trial be granted. What emerges from the careful analysis of the views reflected above is that while justice must not be delayed, there is hardly any virtue in hurried justice. Accordingly, the Criminal Justice System must seek to strike equilibrium between delayed and hurried justice.[4]

The courts have always frowned at any form of inordinate delay in criminal trials. In the case of: ***Justice Akpor & Ors v Ighorigo*, 2SC, (1972) 115**, the Supreme Court set aside the judgment because there was a delay of two years and nine months between conclusion of trial and judgment. In ***Ekiri v Kemiside & Ors, NWLR145 (1976)*** the Supreme Court set aside a judgment which was about 16 months late. In ***Joseph Ozoma & Ors v M. Osanwuta UHC/30/679(1969)***, where the judgment was given 17 years after the institution of the case, the Supreme Court ordered a retrial. Again in ***Agiende Ayambi v The State, 6NCLR141(1985) Olatawura JSC*** held that a criminal trial which lasted for over two years could not be said to have been conducted within a reasonable time.

The causes of inordinate delay in trials range from: the manipulations and antics of legal practitioners; the commitment or cooperation of the complainants; and of course the attitude of the Court. In Nigeria, it is not surprising for a simple case of assault occasioning harm to last for over five years during which the accused may be remanded in prison custody.

In his paper titled: ***Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint***[5]***, Dr. AGBONIKA John, Alewo Musa*** highlighted some of the causes of delay in trials. His views are adumbrated hereunder:

3.04 THE PROBLEM OF CASE FLOW MANAGEMENT:

The overall objective of the court is a just and timely determination of every case that comes before the court. The courtôs process should be open, efficient, understandable and accessible. Case flow management processes are intended to

[4] **Osipitan, Y.,1992:490**

[5] **Journal of Law, Policy and Globalization www.iiste.orgISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)Vol.26, 2014**

contribute to the achievement of these objectives and in the process, to make a better day for those who work within the system and for the public they serve.
Each judge is expected to manage the cases filed before him in order to avoid congestion in his court. But when new cases come to him in rapid succession as does happen in some jurisdictions, congestion will build up and become unavoidable. However, even in such circumstances, one can easily discover a lazy judge from a hardworking judge.

Some judges crawl in writing, others engage in unnecessary arguments with counsel during hearing, while still others cannot sit for long at a stretch. All these and many more, bring their varied and variegated drawbacks to speedy criminal trials.

For judges who prefer to have a call-over day, cases are fixed, sometimes with the judgeôs knowledge and sometimes without his knowledge. This is an area that will continue to create problems unless the judge can monitor the fixtures made by the Registrar. This is because some registrars can hardly turn down applications of lawyers who will prefer a particular date, which invariably will not be suitable for the court. Consequently, and with no intention to hamper the work of the court, more matters that cannot be dealt with in a day are fixed for that day.

Some of the problems bordering on case flow are caused by the judge, albeit, oftentimes unwittingly. For instance, some judges make it a policy to fix only one case for a day, if it is set down for hearing. This is unwise because where an unforeseen impediment occurs, such as illness of counsel or inability to serve subpoenas; the result is that such a day is wasted.

Some judges, due to pressure from counsel, neglect to hear cases in accordance with their priority in time of filing; the result is that before they know it, cases that were filed about ten years ago are left pending. Eventually, the potential witnesses in the case become disenchanted and stop attending the court, thus frustrating the justice of the case.

3.04 DELAY CAUSED BY INADEQUATE COURTROOMS AND INFRASTRUCTURES FACILITIES AND POOR WORKING CONDITIONS:

Sometimes, the trials of accused persons, who are remanded in prison custody, are often adjourned due to either the lateness in the arrival or the non-arrival of such accused in court on dates fixed for trial. The lack of vehicles with which to convey accused persons to court during trials also account for such lateness or non-arrival of such accused persons in court.

There is also the problem of inadequacy of infrastructural facilities. Most courts lack adequate library facilities to facilitate prompt legal research to guarantee prompt delivery of judgments and rulings.

Sometimes, there are inadequate courtrooms; the facilities of such courtrooms are shared by more than one judicial officer. So some Courts sit for only two hours, out of the expected six hours sitting period in a day. Invariably, many criminal cases suffer adjournments as a result of inadequacy of courtroom facilities.

Closely interlinked with inadequate courtroom facilities, is the problem of inadequate staff quarters for judicial officers. Such judicial officers therefore spend precious time in shuttling between their faraway personal residence and their Courts.

Closely linked with inadequacy of infrastructural facilities is the negative attitude of some judicial officers to their judicial responsibilities. Some courts commence sitting as late as 11.00am on daily basis instead of 9.00am. These same courts will rise by 1.00pm as against the official time of 4.00pm.

There are also the very glaring problems of dilapidated court rooms, obsolete and broken down equipments and other hydra headed infrastructural deficiencies. Instances abound where; stormy winds had blown off parts of the roofs, of Court buildings without any consequential repairs.

3.05 DELAY BY LEGAL PRACTITIONERS:

Legal practitioners also cause delay in the administration of criminal justice. One major cause of delay on their part is lack of industry. Though it is a fact that most counsel have professional expertise, the problem is that some counsel do not sufficiently involve themselves in pre-trial preparations, and so, can hardly keep up with the tempo in court.

Sometimes, some defence counsel, deliberately delay trials by requesting for adjournments, purposely to ensure the full payment of their professional fees, prior to the conclusion of the trial. Some defence counsel, who are paid on the basis of the number of court appearances, consciously delay criminal trials with a view to beefing up their fees.

Aside the delay, due to non-payment of professional fees, the structural organization of the legal practice further contributes towards the delay of criminal trials. Most law firms are basically, sole practice in outlook. Some private legal practitioners with sole practices personally handle most of their cases. They either refuse to employ junior counsel or where they employ such juniors, they fail to entrust these juniors with the cases. Such legal practitioners frequently experience

conflict of dates in different courts. Invariably, this will result in applications for adjournments, or stand down all resulting in delay of proceedings in Court.

In the case of: ***Ndu v. The State 7 NWLR PT.164 (1990)***, the Supreme Court berated a defence counsel who defended a murder convict. The case was bedeviled with several adjournments at the instance of defence Counsel, giving various reasons such as his fees not being paid, ill-health, trying to procure witnesses etc., etc. Obaseki JSC did not hesitate to express his displeasure at the lackadaisical attitude of the defence counsel when he said in his judgment that the attitude of the Counsel from the time the prosecutor closed his case had been one showing an unwillingness to proceed with the defence. He said that the frequency of applications for adjournment was ***sickening and unbecoming*** of Counsel instructed to conduct the defence of an accused person charged with murder.

The learned Justice further stated that murder being a capital offence, once trial has commenced, any defence counsel in the proceedings is not only bound to appear but also bound to perform his duty to his client, the failure of his client or inability of client to pay his fees notwithstanding. He concluded that the attitude of the learned counsel was despicable and ought to be condemned in no uncertain terms.

Lawyers are ministers in the temple of justice and must discharge their duties with utmost sense of responsibility. It is appreciated that adjournments are needful sometimes to ensure adequate preparation of cases but this must not be abused or be allowed to cause unnecessary delay.

3.06 DELAY CAUSED BY THE COURT:

Some of the delays caused by the Court have been mentioned. Some other delays caused by the Court may arise from lack of industry or inadequate legal knowledge. It is pertinent that sometimes, counsel may raise an elementary point of law, which necessitates a ruling. But where the Court is not equally knowledgeable, the matter may be adjourned for a ruling, instead of giving a bench-ruling.

On some occasions, cases are adjourned because a particular ruling or judgment is not ready. Some even adjourn cases arbitrarily to go and pick children from school or to go to the market to buy foodstuffs.

Supporting staff of the Court can also cause delay in trials. Sometimes, a matter is fixed for trial and they are unable to find the file. Sometimes, a court process is not filed in the court file. Other times, the exhibits cannot be found. Some cases may be omitted in the cause list. It has been found over the years that the delay in filing and completing many cases fixed for hearing are traceable to the bailiffs and process servers. Sometimes, Affidavits of service are often omitted or

misplaced in the case file. Oral testimonies of witnesses are not interpreted properly. Thus, where the judge does not speak nor understand the local language of a witness, he takes a long time to ensure that he is not misled by any misinterpretation of the court staff so as not to commit a miscarriage of justice.

Again delays can be caused by the frequent transfer of judges from one location to another. Sometimes when a judge is transferred, most of the part heard matters will commence *de novo.*

3.07 DELAY CAUSED BY PROSECUTING COUNSEL/OFFICER OF THE DIRECTOR OF PUBLIC PROSECUTION:

In criminal justice process, it is the state that prosecutes on behalf of the complainant. Thus, whether a case would be disposed of timeously depends largely on the efforts of prosecuting counsel. Furthermore, under the Nigerian Criminal Justice System, an accused person is presumed innocent until proven guilty. Consequently, the burden of proving his guilt rests on the prosecutor and not the accused to prove his innocence. The police, after conclusion of investigation of a case, send the case file to the Director of Public Prosecutionôs office for legal advice. Sometimes, such case files are not usually treated with dispatch.

When eventually the trial is commenced, the case may suffer incessant adjournments which prolong the case unduly, simply because sometimes, the Counsels are not ready with their evidence or they may lack required infrastructure or funds to prosecute the case.

Where the matter is being prosecuted by the police the case may suffer some hiccups due to lack of legal expertise on their part. Delays are often caused in court because most police prosecutors have no basic legal training for prosecuting even simple offences. Sometimes they call a number of irrelevant witnesses and leave out the important ones.

However, the cheerful news is that lawyers in the police force are now authorized to prosecute matters in superior courts. See the decision of the Supreme Court in the case of: ***FRN V. Osahon (2006) 5 NWLR (Pt.973) 361 at 406.***

3.08 DELAY ARISING FROM PRISON AUTHORITIES:

Prison authorities also contribute to the problem of delay in the administration of criminal justice. This often arises in the area of pre-trial detention. In certain cases, accused persons are remanded in prison awaiting trial. Many suspects remain in prison custody awaiting their trial. Most intriguing is the fact that armed robbery and culpable homicide cases top the list.

It is common to find trials being held up for days, weeks and even months because of the unavailability of accused persons in court to stand their trial. A number of reasons are responsible for this situation. First, is the communication gap between the prison authorities, and prosecutors. Such a situation may occur when prosecutors do not give proper notice to prison authorities of the date of trial.

Second, is the unavailability of vehicles to convey the accused persons to court. Third is, the poor medical facilities available to pre-trial detainees which result in their constant breaking down in health while awaiting trial. The result is that on the day of trial, an accused person is reported ill. Fourth, is the reluctance to work on the part of prison and police personnel to convey accused persons to court to face trial. This means that trials are delayed or protracted.

There have also been reported cases of prison officials colluding with awaiting trial inmates to escape from custody either while they are in transit *en route* to the court of trial, or by leaving prison doors loosely open or improperly guarded and feigning jail break among the detainees to enable them escape. This usually frustrates the entire trial and prematurely throws the accused persons back into the society to commit more havoc.

4.01 PRISON CONGESTION:

One of the inevitable consequences of the delay in criminal trials is the problem of congestion in our prisons.

In his article: **PRISON CONGESTION IN NIGERIA: CAUSES AND SOLUTIONS**[6], ***Ugwuoke Kelvin Abuchi,*** an Assistant Superintendent of Prisons at the Maximum Security Prison in Jos, Plateau state observed that Prisons in Nigeria are bedeviled by severe over-crowding due to the obvious collapse of the criminal justice system in Nigeria. The prison sector is regarded as the dumping ground of both the convicted and the awaiting trail inmates.

According to him, in the real sense of it, the prison system is designed to house only convicted inmates. Apart from keeping custody of the legally interned, the prisons are meant to provide services that tend to improve the lots of offenders. The cardinal objective of any prison is to keep inmates, reform them, rehabilitate them and afterwards, reintegrate them into the society so that they can live law abiding lives after serving their jail terms. However, the situation today in Nigeria is the opposite. It is common sight to see a cell that is meant for four inmates housing more than 50 inmates, living under life threatening situations.

[6] **Htpp://roundtablewithkelvin.blogspot.com/2013/10.**

The United Nations Minimum Standard Rules for the Treatment of Offenders (SMR) spelt out the borderline condition in which every prisoner should be accommodated or incarcerated[7]. The SMR has made a speculation for the space allowed a prisoner in the cell. However, the situation in Nigerian prisons are a clear opposite of what the SMR spells out.

Nigerian Prisons nationwide have a total capacity of 47,284, but presently it houses 53,816 inmates. Out of the 53,816 inmates in the Nigerian prisons, only 25% have been convicted, while a whopping 75% are awaiting trail inmates. As a matter of fact, from available statistics, many awaiting trial inmates have spent more than the number of years they would have spent if convicted. This is quite an unfortunate situation.

What is the way out of this quagmire?

5.01. SOLUTIONS TO PRISON CONGESTION:

The old English adage says: ***"Remove the cause, and the effect will cease".*** This adage is practically applicable to the problem of prison congestion in Nigeria. Since the severe over-crowding is due to the collapse of our criminal justice system, the solution is for us to carry out a holistic reform and overhaul of our criminal justice system. The reforms should be aimed at eliminating any form of delay in the dispensation of criminal justice.

Since the inception of the present civilian dispensation heralded by the 1999 Nigerian Constitution, there have been several spirited attempts to address the challenges associated with the administration of criminal justice.

At the beginning of the dispensation, the various tribunals set up by successive military administrations to try sundry offences created by various Decrees (now Acts) were dissolved. Offences like armed robbery, arson of public buildings, tampering with oil pipelines, narcotic offences and other kindred offences are now tried by the regular courts.

Also, sometime in 2003, the erstwhile Attorney General of the Federation set up a scheme to decongest the courts by collating the names and particulars of accused persons on remand in various prisons all over the country, charged with various offences that ordinarily are not entitled to legal aid under the Federal Legal Aid scheme. Such cases were assigned to private legal practitioners to be remunerated by the Federal Government. The aim was to fast track such trials by solving the common problem of indigent suspects who are unable to retain the services of counsel. Unfortunately, the measure did not achieve much success because the cases were still subject to the same procedural bottlenecks inherent in

[7] ***http://www.unodc.org/pdf/criminal_justice//UN_Standard_Minimum_Rules.***

the practice and procedure in criminal trials as enshrined in the Criminal Procedure Act (Criminal Procedure Laws for the States) and the Criminal Procedure Code.

Eventually in 2004, the Federal Government inaugurated a National Working Group on the Reform of Criminal Justice Administration. The Working Group after a year of deliberation came up with the Administration of Criminal Justice (ACJ) Bill which was aimed at reducing delay in criminal trials and generally modernizing the criminal justice system in Nigeria. The bill was passed by the National Assembly and signed into law in May, 2015.

5.01 ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015:

The enactment of the Administration of Criminal Justice Act, 2015 marks a watershed in the administration of criminal justice in Nigeria. The Act has 495 sections, divided into 49 parts, providing for the administration of criminal justice and for related matters in the courts of the Federal Capital Territory and other Federal Courts in Nigeria. With the ACJA, Nigeria now has a unique and unified law applicable in all federal courts and with respect to offences contained in Federal Legislations. The law repeals the erstwhile Criminal Procedure Act as applied in the South and the Criminal Procedure (Northern states) Act, which applied in the North and the Administration of Justice Commission Act.

The ACJA, by merging the major provisions of the two principal criminal justice legislations in Nigeria, that is CPA and CPC, preserves the existing criminal procedures while introducing new provisions that will enhance the efficiency of the justice system and help fill the gaps observed in these laws over the course of several decades.

The law has been described as the much awaited revolution in the criminal justice arena as the criminal justice system existing before the coming into force of this law had lost its capacity to respond quickly to the needs of the society, check the rising wave of crime, speedily bring criminals to book and protect the victims of crime.

Since the enactment of the ACJA, several states have gone ahead to domesticate the Act. On Tuesday March 20, 2018 the Governor of Edo State Mr. Godwin N. Obaseki signed into law the bill for the Administration of Criminal Justice Law 2016 which had earlier been passed by the House of Assembly.

5.02 ADMINISTRATION OF CRIMINAL JUSTICE LAW 2016:

The Administration of Criminal Justice Law (hereinafter called ñthe Lawò) is essentially a domestication of the ACJA 2015 (hereinafter called ñthe Actò). Most of the provisions of the Law are not new but are a replication of the provisions of the Act.

In a recent presentation[8] at the 2018 Law Week of the Benin Branch of the Nigerian Bar Association, one of our erudite Legal Practitioners, ***A.O.Okungbowa Esq***. carried out a very illuminating review of this new statute. I will be regurgitating most of his erudite views in this presentation.

Before I proceed to consider some salient provisions of the Law, I must point out an obvious anomaly regarding the statute. As earlier stated, the Governor assented to the Bill only on the 20th of March 2018.But the citation of the Law states clearly that: ***"This Law may be cited as the Edo State Administration of Criminal Justice Law, 2016".***Now, if the assent of the Governor was given in 2018, it is obvious that in 2016 the Bill was not yet a Law. For the avoidance of doubt, ***section 100 of the 1999 Nigerian Constitution*** regulating the passage of a Bill into Law provides as follows:

> ***"100.(1) The power of a House of Assembly to make laws shall be exercised by bills passed by the House of Assembly and, except as otherwise provided by this section, assented to by the Governor.***
> ***(2) A bill shall not become Law unless it has been duly passed and, subject to subsection (1) of this section, assented to in accordance with the provisions of this section.***
> ***(3) Where a bill has been passed by the House of Assembly it shall be presented to the Governor for assent."***(Underlining, mine).

From the foregoing, it is evident that the Law ought to be cited as: the ***Edo State Administration of Criminal Justice Law, 2018*** and not 2016ò.It is seriously recommended that a bill should be forwarded to the House of Assembly to amend this error because the present citation gives the impression that the law has been in operation since 2016 which is not the case at all.

The purpose of the law is clearly spelt out in section 1. It is to ensure that the system of procedure and administration of criminal justice in Edo State promotes;

(1) Efficient management of criminal justice institutions,

[8] **A.O.Okungbowa Esq.: THE ADMINISTRATION OF CRIMINAL JUSTICE LAW 2016: MARKING THE BIRTH OF A NEW ERA OF CRIMINAL JUSTICE ADMINISTRATION IN EDO STATE.**

(2) Speedy dispensation of justice,

(3) Protection of the society from crime, and

(4) Protection of the rights and interests of the suspect, the defendant, and the victim.

In subsection (2) of the same section, the Courts, law enforcement agencies and other authorities or persons involved in criminal justice procedure and administration are to ensure compliance with the provisions of this Law for the realization of its purposes.

By Section 493 of the Law, the erstwhile Criminal Procedure Law, Cap49, Vol. II, Laws of the Bendel State of Nigeria (1976) as applicable in Edo State was repealed. Many of the provisions of the repealed law are replicated in this new law. However some new provisions have been introduced to fast track the administration of criminal justice in the state. I will hereafter highlight some of these novel provisions.

5.03 ARRESTS AND REMAND:

One significant milestone intended to be achieved by this law is the prohibition of arrest by proxy. In the past, arrest by proxy was common place. Friends, relatives of suspects were arrested and taken into custody even when they had no connection whatsoever with the offence allegedly committed. Happily, the Courts have come down heavily against this practice in the past. See the case of ***African Continental Bank v. Okonkwo (1997) 1 NWLR (Pt. 48) 197***.

The new Law now provides the legislative framework for a paradigm shift in the foregoing behalf. Sections 3 ï 7 provides for the procedure to be followed when the Police effect arrests. A novel provision is ***section 7*** which categorically states that: ***"A person shall not be arrested in place of a suspect."*** From these provisions, it is clear and unmistakable that it is illegal to arrest a person in place of another.

5.04 NOTIFICATION OF ARREST:

Section 6 deals with notification of arrest and rights of suspects. In summary, it provides that where a suspect is arrested, the Police Officer or other person making the arrest shall inform the suspect **immediately** of the reason for the arrest.

This provision is not new. The repealed Law contained a similar provision in section 5 (albeit, the law now requires that the suspect must be informed immediately) and in any case, the Constitution also contains a similar provision in section 35(3).

As it was under the CPL, under the new law, three situations are exempted. They are:

1. Where the suspect is in the actual course of the commission of an offence;
2. Where the suspect is pursued immediately after the commission of offence; and
3. Where a suspect has escaped from lawful custody.

Section 6(3) provides *inter alia*, that the Authority having custody of the suspect shall have the responsibility of notifying the next of kin or relative of the suspect of the arrest of the suspect and that this shall be without cost to the suspect. However, our law goes further to create a proviso that where a suspect refuses to disclose the name or address or other means of reaching his next of kin or relative, the Authority having custody of him shall be discharged from the responsibility of notifying his next of kin or relative.

5.05 HUMANE TREATMENT OF AN ARRESTED PERSON AND PROHIBITION OF ARREST IN CIVIL CASES:

The Law provides in Section 8 that a suspect shall be accorded humane treatment, having regard to his right to the dignity of his person and shall not be subjected to any form of torture, cruel, inhuman or degrading treatment.

In subsection (2) it provides further that a suspect shall not be arrested merely on a civil wrong or breach of contract. The intendment behind this provision is clearly to put a stop to arrest and detention or prosecution resulting from disagreements that are not criminal in nature. This has, before now, been a source of concern in criminal Justice administration as people use the police machinery to enforce civil contracts by detaining those in breach.

However before now, the Courts have frowned at the practice of enforcing civil contracts through police action. In ***Arab Contractors Nigeria Ltd. v. Gillian Umanah (2012) LPELR-7927 (CA)*** the court held that:

> ***"There is a plethora of cases on the fact that a civil arrangement is not a matter for the Police".*** The Court further held that ***"the Police…are not a***

debt collecting organization". See also ***Igwe v. Ezeanuchie (2010) 7 NWLR Pt. 1192 Pg. 61, Agbai v. Okugbue (1991)7 NWLR Pt. 204, Pg. 391 and Nkpa v. Nkume (2001) 6 NWLR Pt. 710 Pg. 543.***

This provision is an attempt to provide legislative backing to reinforce the posture of the Courts.

However, we must take cognizance of the salient fact that sometimes certain offences are offshoots of civil contracts. In the course of entering into a civil contract, a party may commit a crime. The very fact that a crime was committed during a contract will certainly invoke the powers of the police to investigate the crime and possibly prosecute the offender. For example offences like advanced fee fraud (419), issuing of dud cheques, fraud and forgery sometimes arise from commercial contracts.

5.06 INVENTORY OF PROPERTY BY THE POLICE:

Section 10 of the law requires the Police to take inventory of all items or property recovered from the suspects upon arrest. It also requires that the Police Officer and the suspect must duly sign the inventory. Failure by the suspect to sign will not invalidate the inventory.

A copy of the inventory shall be given to the suspect, his legal practitioner or such other person as the arrested suspect may direct and the Police are permitted to release such property on bond upon request by either the owner of the property or parties having interest in the property. The police officer is to make a report to the court of the fact of the property taken from the arrested suspect and the particulars of the property where he refuses to release same.

5.06 RECORDING OF ARRESTS:

In Section 15 (1) & (2), provision is made that the process of recording personal data of suspect shall be concluded within a reasonable time of the arrest of the suspect, but not exceeding 48 hours. The provision is intended to put a stop to illegal and unwarranted pre-trial detention by the Police and other Law enforcement agencies. It is noteworthy that the particulars required to be taken pursuant to section 15(1) are to be done immediately after arrest and, as we shall see in section 29 (2), these particulars are important for the purpose of preparing the report expected to be rendered by the Commissioner of Police to the Attorney General pursuant to Section 29(1) of the Law.

5.07 ELECTRONIC RECORDING OF CONFESSIONAL STATEMENT OF SUSPECTS:

Section 15 (4) of the Law makes significant positive adjustment to the process of recording confessional statements. It provides that where a person arrested with or without a warrant of arrest volunteers to make a confessional statement; the police officer shall record the statement in writing and shall record the making of the confessional statement electronically on a retrievable video compact disc or such other audio visual means. Subsection (5) goes further to provide that notwithstanding the provision of subsection (4), an oral confession of arrested suspect shall be admissible in evidence.

This provision is expected to go a long way in laying to rest allegations of violence and extortions of statements from suspects in custody; It is also intended to significantly ease the process of proving the voluntariness of confessional statements. This will obviate the need for the conduct of a trial within trial to ascertain the voluntariness of a confessional statement. There is no doubt that trial within trial waste precious time and inevitably delays the main trial. As the Supreme Court observed in the recent case of: ***State v. Sani*** **(2018) LPELR-43598(SC)**

> ***"The sole purpose of a trial within the main trial is to test whether the confessional statement to be tendered by the prosecution was made voluntarily by the accused person or whether he was forced or induced to make it. Once a trial within trial is ordered by the trial judge the main trial is suspended until the conclusion of the trial within trial".***

In Edo State, in a very pragmatic response to the enactment of the ***Administration of Criminal Justice Law, 2018*** the ***Honourable Chief Judge of Edo State, Hon Justice Esohe Frances Ikponmwen*** issued a ***Practice Directions*** in criminal trials which came into effect on the 1st of June 2018. In Order 5 Rule 18 thereof, the practice of trial within trial was abolished in all criminal trials in the state.

Still on electronic recording, section 364 of the Law provides that, without prejudice to section 348(2) (sic), the court may record proceedings electronically. This will have the effect of expediting trials. It will also help in recording evidence as originally as possible and save criminal courts the time and energy expended on manual recording. With this, comes a higher level of concentration as the courts

will be able to follow the trend of evidence. However, where this is not done subsection (2) provides that the recording may be manually done.

5.08 ESTABLISHMENT OF A POLICE CENTRAL CRIMINAL REGISTRY:

Section 16 (1) provides that there shall be established in the Nigerian Police Force a ***Central Criminal Records Registry***. It also creates a Criminal Records Registry in every State Police Command which shall keep and transmit criminal records to the central records registry.

The Law also makes it compulsory for the Edo State Police Command to transmit to the Central Criminal Records Registry, decisions of courts in all criminal trials within 30 days after delivery of judgment. This Registry will be useful for Prosecutors in verifying or tracking past records of suspects. Usually, when after conviction, a court seeks to know the criminal records of a convict, the Prosecutor, except in few cases, is unable to provide them. Often times, the answer is: **"Records not known".** Accordingly, courts are unable to consider this vital issue in determining what sentence to give to the convict. With the new law, this situation is expected to improve significantly as the records of suspects will be readily available.

5.09 RECORDING OF STATEMENT OF SUSPECT:

The provisions of Section 17 represent some of the major innovations of the new system of criminal procedure encapsulated in the new law. Subsections (1) & (2) provide as follows:

> ***"(1) Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.***
>
> ***(2) Such statement may where the suspect so elects, be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice. Provided that the Legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner or such other person."***

These two provisions are carefully designed to prevent the oft-reported incidents of forced or involuntary statements especially those that are confessional in nature which has, overtime, been a rather needless and otiose albatross in criminal trials. The intendment and hope are that if such statements are in the manner presented, they are more likely to represent or reflect the correct version of the event which constitutes the crime being investigated. This also has the capacity of simplifying the process of proof of extra judicial statements in Court.

5.10 QUARTERLY REPORTS:

Section 29 of the Law requires the Commissioner of Police Edo State and the head of every agency authorized by law to make arrests to remit quarterly, a record of all arrests made with or without warrant in relation to State offences within Edo State to the Attorney-General of the State. The particulars which the report must contain are stated in section 15 as earlier discussed. By Subsection (4), the Attorney-General is expected to establish an electronic as well as a manual database of all records of arrest in the State.

5.11 REPORT TO SUPERVISING MAGISTRATE AND INSPECTION OF DETENTION FACILITIES:

Section 33 provides that an officer in charge of a police station or an official in charge of an agency authorized to make arrest shall, on the last working day of every month, report to the nearest Magistrate, the cases of all suspects arrested without warrant within the limits of their stations or agency whether the suspects have been admitted to bail or not. This, like some other provisions, has the design of preventing unlawful detention which impacts negatively on the fundamental rights of suspects while in detention.

By Section 33(1), every Officer in charge of a police station or an Agency with authority to make arrest shall, on the last working day of every month, report to the nearest Magistrate, the cases of all suspects arrested without warrant within the authority of their respective stations or places of detention and by section 34, the Chief Magistrate (except where there is none) or any other Magistrate designated by the Chief Judge for the purpose, shall conduct an inspection, at least once monthly, of all police stations or other places of detention within their Jurisdiction other than the Prison.

Detailed provisions are made concerning what a Magistrate is to do during the visit. Every such Magistrate is expected to see the full record of arrest and bail, applications made for bail and decisions within the period and any other relevant

information or facility which the Magistrate requires to perform this duty. He can also call for any record of arrest and inspect same or if necessary direct the arraignment of suspects or grant him bail, if need be. These novel provisions are designed to safeguard the rights of suspects as well as enable speedy resolution of criminal trials by cutting down on the time expended on bringing suspects to Court.

To ensure that these provisions are complied with, subsection (4) makes failure to comply a misconduct which can be dealt with in accordance with relevant rules of service. These provisions also have the advantage of keeping overambitious investigators in check.

5.12 RETURNS BY COMPTROLLER- GENERAL OF PRISONS:

Section 111 provides that the Comptroller-General of prisons or other officer in charge of prisons in Edo State is to make returns every 90 days to the Chief Judge and the Attorney-General of the State in respect of all persons awaiting trial held in custody for a period beyond 180 days from the date of arraignment. The returns shall be in a prescribed form and shall contain information which is provided for therein one of which is the passport photograph of the suspect.

5.13 PROFESSIONAL BONDSPERSON:

Section 187 has introduced the novel practice of the registration and use of professional bondspersons. Under that section, the Chief Judge is empowered to make regulations for the registration and licensing of such persons. The bondspersons may undertake recognizance, act as sureties, or guarantee the deposit of money as required by the bail condition of any person granted bail by the court within the jurisdiction in which the bondsperson is registered.

The Chief Judge is given the power to withdraw the registration of a bondsperson who contravenes the terms of his license. (Subsection (8))Where a bondsperson arrests a defendant or suspect who is absconding or whom he believes is trying to evade or avoid appearance in court he shall immediately hand him over to the nearest police station.(Section 18 8(a)) and the defendant must be taken to the appropriate court within twelve hours of his arrest. (Paragraph (b)).

These are pragmatic procedures to facilitate the decongestion of our prisons in relation to awaiting trial suspects.

Order 12 of the new Practice Directions issued by the Honourable Chief Judge is in respect of Bondspersons. It provides that bondsmen shall be registered with the High Court Registry under the guidelines given by the Chief Registrar. It further provides that the guidelines can be reviewed from time to time and that Bondsmen are the only persons apart from blood parents, brothers and sisters that can take any person on bail in all courts in Edo State.

My only worry over this innovation is that the practice seems to have simply legitimized the obnoxious practice of charge and bail. The old charge and bail practitioners who hang around the courts may simply metamorphose into professional bondsmen. Any person who is familiar with the practice of charge and bail workers will appreciate the danger they pose to the administration of criminal justice. Some unscrupulous bondsmen may simply collect the bail sum from the defendant and allow him to abscond. The sanction is for the bondsman to forfeit the amount which he has collected upfront. With this type of unwholesome arrangement, many defendants on bail may jump bail. The solution is to carefully scrutinize the bondsmen to ascertain their integrity and credibility before registering them. Anyone found to be involved in any shady arrangement should be prosecuted as an accessory after the fact.

5.14 REMAND PROCEEDINGS:

Section 293(I) provides that a suspect arrested for an offence which a Magistrate court has no jurisdiction to try shall within a reasonable time of arrest be brought before a High Court for remand. Section 293(2) provides that: An application for remand under this section shall be made ex parte and shall:

(a) Be made in the prescribed ñReport and Request for Remand Form" as contained in Form 8, in the First Schedule to this Law; and

(b) Be verified on oath and contain reasons for the remand request.

The implication of this provision is that for offences which inferior courts do not have jurisdiction to try, they have no power to remand. This effectively eliminates holding charges from our Criminal Justice System. By section 294, a court may remand a suspect in custody, pursuant to a request for remand under section 293, when it is satisfied that there is probable cause to do so, pending arraignment or receipt of legal advice. Probable cause is to be determined with the following factors considered:

(1) Nature and seriousness of the alleged offence;

(2) Reasonable grounds to suspect that the suspect has been involved in the commission of the alleged offence;

(3) Reasonable grounds for believing that a suspect may abscond or commit future offence and,

(4) Any other circumstance.

Section 295 provides that the court may, in considering an application for remand brought under section 293 of the Law, grant bail to the suspect brought before it, taking into consideration the provisions of sections 158 to 188 of this Law relating to bail.

By section 296 of the Law, a timeline is set for remand orders. The timeline stipulates 14 days in the first instance, followed by 14 days extension after which the suspect is released unless good cause is shown.

5.15 SPEEDY TRIAL:

The new Law provides for speedy criminal trials in the State. For instance, it provides that upon arraignment, the trial of the Defendant shall proceed from day-to-day until the conclusion of the trial (S.396 (3)).However, where day-to-day trial is impracticable after arraignment, no party shall be entitled to more than five adjournments from arraignment to final judgment provided that the interval between each adjournment shall not exceed 14 working days. (S.396 (4)).

Where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days inclusive of weekends. (S.396 (5)) It should be noted that in all circumstances, the court may award reasonable costs in order to discourage frivolous adjournments. (S.396 (6)).This reinforces the provision of section 353(2) to the effect that the court may order the payment of costs in the event of failure of either of the parties to appear at a scheduled hearing. Such costs may be ordered against the prosecution.

Another very important provision on the issue of speedy trial is section 110 of the Law which provides that trials in magistrate court shall commence not later than 30 days from the date of filing the charge and that the trial shall be completed within a reasonable time. Where the trial does not commence within the period of 30 days or trial has commenced but has not been completed after 180 days of arraignment, the court shall forward to the Chief Judge the particulars of the charge and reasons for failure to commence or complete the trial.

5.16 STAY OF PROCEEDINGS:

Section 306 of the Law has abolished stay of proceedings in criminal matters. The section provides that an application for stay of proceedings in respect of a criminal matter shall not be entertained. A trial court is enjoined to continue with the proceedings as there can be no application for stay of proceedings. In the case of: ***Olisa Metuh V. FRN and anor. SC.457/2016,*** the Supreme Court gave effect to S.306 of the Act containing the exact same provisions. However it appears that as has been seen from the Olisa Metuh case (Supra), this factor on its own may not result in quick dispensation of Justice.

5.17 THE ADMINISTRATION OF CRIMINAL JUSTICE MONITORING COMMITTEE:

Section 469 of the Law establishes the ***Administration of Criminal Justice Monitoring Committee*** which has the responsibility of ensuring effective and efficient application of the Law by the relevant agencies. Its functions, as spelt out in the subsection, include ensuring:

(a) that criminal matters are speedily dealt with;

(b) that congestion of criminal cases in courts is drastically reduced;

(c) that congestion in prisons is reduced to the barest minimum;

(d) that persons awaiting trial are, as far as possible, not detained in prison custody;

(e) that the relationship between the organs charged with the responsibility for all aspects of the administration of justice is cordial and there exists maximum cooperation amongst the organs in the administration of justice in Nigeria;

(f) collating, analyzing and publishing information in relation to the administration of criminal justice sector in Nigeria; and

(g) submitting reports quarterly to the Chief Judge of Edo State to keep him abreast of developments towards improved criminal justice delivery and for necessary action;

(h) carrying out such other activities as are necessary for the effective and efficient administration of criminal justice.

5.18 LEGAL ADVICE GENERALLY:

Section 376 provides generally on case files, legal advice, and related issues. Subsection (1) provides that where a magistrate has no jurisdiction to try an offence preferred against a defendant, the police shall at the end of investigation submit the original case file to the office of the Attorney-General of the State.

Subsection (2) provides that the Attorney-General of the State shall, within thirty (30) days of receipt of the police case file, issue and serve his legal advice indicating whether or not there is a *prima facie* case against the defendant for which he can be prosecuted. If the advice is in the affirmative, a charge is filed in line with the law. Where it is in the negative, the provisions of subsections 5 and 6 come into operation to secure the release of the suspect.

Moreover, excessive delay in issuing advice may constitute exceptional circumstance for granting bail to a defendant charged with capital offences as provided in section 161 (2) (b).

The Attorney-General is also to give advice where a suspect is arrested for a capital offence. Section 30 (3) of the Law provides:

> *Where a suspect is taken into custody and it appears to the police officer in charge of the station that the offence is of a capital nature, the arrested suspect shall be detained in custody, and the police officer may refer the matter to the Attorney-General for legal advice and cause the suspect to be taken before a court having jurisdiction with respect to the offence within a reasonable time.*

5.19 SUSPENDED SENTENCE AND PAROLE:

By section 460 of the Law, a court, notwithstanding the provision creating the offence and where the court sees reason, may order that the sentence it imposed be suspended. The purpose of this provision is to decongest the prisons and to rehabilitate prisoners by preventing convicts from mixing with hardened criminals. However, the courts are enjoined not to suspend sentence in any offence relating to the use of arms or offensive weapons or where the term of imprisonment exceeds three years.

Again, section 468 provides that when a prisoner has served at least one-third of his prison term, if he is of good behaviour, the Comptroller-General of prisons can recommend that the remaining part of the sentence be suspended with or without conditions. Such a prisoner on parole will usually undergo a rehabilitation program to re-integrate him into the society.

6.00 CONCLUSION:

Undoubtedly, the problem of prison congestion is a direct consequence of the failure of the machinery of criminal justice in our society. From my analysis it is evident that all the key players in the criminal justice system must cooperate to maximize the inherent potentials of the new reforms being introduced by the recently enacted Administration of Criminal Justice Law. The Bar, the Bench, and the Law Enforcement Agents must ensure that the laudable objectives of the law are achieved.

The problems of delay in criminal trials with the attendant consequences of prison congestion can be drastically alleviated if we are all committed to the vision of this pragmatic piece of legislation. Concerted efforts must be made to strengthen all the sectors involved in the administration of criminal justice.

In adjudication, we should give priority to criminal matters where oftentimes, the liberty of the citizen is at stake. The members of the Bar must be the vanguards of this renewed effort. They must rise up to the challenges presented under this new dispensation.

I like to conclude with the immortal words of my mentor, the greatest jurist of all times, ***the Rt. Hon. Lord Denning, Master of the Rolls***:

> ***"The reason for the delay of lawyers is not slackness or dilatoriness. They are as a class the most hardworking of all professional men. It often lies in their choice of priorities. Each case is important and must be dealt with. Each letter must be answered the same day or at any rate the next. A sudden call puts something else out of mind. Sometimes it is that he is a slow worker. More often that he is too meticulous. Sometimes it is that he does not know enough, and he has to look it all up. Sometimes that he is short of staff or someone falls ill. All these are excuses which may avail him before the Almighty. But none of them will avail him before the individual client. Nor before us. The courts expect each client's case to be dealt with expeditiously."***[9]

Thank you and God bless you all!

[9] **Denning: The Due Process of Law p.89-90.**