

# THE NIGERIAN FACTOR AND THE CRIMINAL JUSTICE SYSTEM

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## Introduction

Nigeria as a political entity is bedeviled with a myriad of socio economic and political problems, which are inherently multifarious in nature.<sup>1</sup> Some of these problems include political instability or uncertainty, corruption,<sup>2</sup> poverty, moral decadence, and various forms of economic crimes such as currency trafficking, product adulteration and piracy among others. It is often said that these problems are indicative of the level of underdevelopment in the country, nay, Africa as a whole.<sup>3</sup> As grave as these problems are, the country continues to trudge on. What is however more depressing is when these problems impinge upon, and seem to overwhelm an essential arm of government that is supposed to provide the required succor and redress when the basic rights of citizens are being violated.

This is more so when reference is made to the criminal process which necessarily entails an infraction or curtailment of certain rights of citizens. The criminal process by its very nature is constructed in such a manner as to give full effect to the inquisitorial system being practised in the country.<sup>4</sup> One of the requirements of this system is the application of necessary rules and provisions for the protection of the rights of an alleged offender. Thus in a criminal trial, an accused person can decide not to say anything throughout the trial and the court cannot use this one way or the other against him.<sup>5</sup> When, therefore, this elegantly constructed edifice is being penetrated and almost destroyed by a phenomenon that has come to represent the worst virtues in Nigerians, then any reasonable Nigerian must be alarmed. It is the pervasive nature of this

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<sup>1</sup> Ubeku, A K, "The Social and Economic Foundations of Corruption and Other Economic Crimes in Nigeria," in Kalu, A and Osinbajo, Y (eds), *Perspectives on Corruption and Other Economic Crimes in Nigeria*, Lagos, Federal Ministry of Justice, 1991, 39, 41, 43. (hereafter Kalu and Osibanjo, *Perspectives on Corruption*.)

<sup>2</sup> Musa, S, "Anatomy of Corruption and Other Economic Crimes in Nigerian Public Life," in Kalu and Osibanjo, *Perspectives on Corruption*, 30. For the various types or instances of corruption see Odekunle, F, "Illustrations of Types, Patterns and Avenues of Corruption in Nigeria: A Typology," in Kalu and Osinbajo, *Perspectives on Corruption*, 94-96.

<sup>3</sup> For the historical perspective of the African situation, see Rodney, W, *How Europe Underdeveloped Africa*, BLO Publications, 1972, 223-244. See also Ake, C, *A Political Economy of Africa*, New York, Longman, 1981. A graphic exposition of the problem and impact of underdevelopment in Africa is contained in Eze, O, "African Democracy, Governance and Development," in *The Challenge of African Development*, CASS 1998, 71-74.

<sup>4</sup> Under this system an accused person is presumed innocent and the burden of establishing his guilt lies on the prosecution. Failure to do so will invariably lead to the discharge of an accused person. This principle is also reflected in s.36(5) of the 1999 Constitution; see *Ikhazuagbe v COP* [2004] 7 NWLR (Pt 872) 346. For the position in the Northern States of Nigeria, see Ofori-Amankwah, E H, *Criminal Law in the Northern States of Nigeria*, Zaria, Gaskiya, 1986, 98-102.

<sup>5</sup> See s.287 Criminal Procedure Law; *Nasiru v State* [1992] 2 NWLR (Pt 589) 87.

phenomenon and the tremendous injury it can cause to the corporate morality of the nation and its legal development that has necessitated this article.

The paper therefore attempts to examine the amorphous and growing concept of “Nigerian factor” and how it has impeded progress in the criminal justice system. An attempt will be made to examine this multifaceted concept as it applies to pre-trial criminal process, namely, report and investigation of complaints, arraignment and trial in a court of law, legal advice from the Ministry of Justice, judgment and execution of same.

Suggestions will also be proffered on how to de-emphasize or minimize the impact of this growing concept in our criminal justice system and ensure a more effective and responsive system of criminal trial in Nigeria.

### **The Nigerian Factor: Meaning and Emergence of Concept**

This emerging ubiquitous concept as a subject of national discourse has been traced to the late 1980’s during the government of General Ibrahim Babangida.<sup>6</sup>

The Nigerian factor basically refers to a peculiar characteristic identifiable as Nigerian, which strives to ensure that things and issues are handled the negative way. The concept covers such unhealthy and unsavory conducts as corruption, dishonesty, fraud, favouritism, ethnicity, tribalism and even villagism.<sup>7</sup>

According to Prof Munzali Jibril, the Nigerian factor “has come to mean unfortunately, corruption, nepotism, dishonesty, fraud and anything that is negative in our national life.”<sup>8</sup> According to him, although corruption and dishonesty “are universal tendencies that have always existed in every land and clime, what gives cause for worry is the degree to which they are practiced by Nigerians and our openness and indiscretion in doing so.”<sup>9</sup> It is now a common feature for someone who could hardly eke out a living with members of his family but who finds himself in the corridors of power either as a Minister, Commissioner or even member of any of the Legislative Houses to literally swim in money soon after his appointment or election. How he acquired this apparently unmerited wealth is not the concern of Nigerians. On the contrary, such a person would be hailed or extolled as having made it by behaving as a true Nigerian.<sup>10</sup>

Indeed, this is usually done so unashamedly that we have elevated the instrument through which bribe is often given to a high pedestal with the phrase “*Ghana must go*”, in reference to the bag used in bribing officials with huge sums of money.<sup>11</sup>

It is also part of the Nigerian factor that in political matters, election rigging is the order of the day. It is a well-known fact that during such exercises, results

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<sup>6</sup> According to Prof Munzali Jibril, it was first used by the then Military Vice-President, Admiral Augustus Aikhomu in reference to the difficulties arising from the non-workability of the economic reform measures introduced by the government of General Ibrahim Babangida: see Jibril, M, “The Nigerian Factor and the Nigerian Condition,” *The Guardian*, Thursday, October 2, 2003, 8, 10.

<sup>7</sup> See Odekunle, F, supra, p 94.

<sup>8</sup> Jibril, M, supra, p 8.

<sup>9</sup> Ibid

<sup>10</sup> such a person would readily be the beneficiary of chieftaincy titles in his community and even receive national honours. The present spate of chieftaincy titles being given to the various state governors underscores this point. For example, the Rivers state Governor, Dr Peter Odili was recently given the title of Obafuniji of Yorubaland by the Ooni of Ife, Oba Okunade Sijuwade Olubuse II.

<sup>11</sup> The attempt by the present government to tackle head-on the corruption issue has not produced any tangible result; and corruption remains one of the main problems militating against the country’s economic development.

are rolled out which often do not have direct bearing with what happened at the field. Not surprisingly, both national and international observers were of the view that the recently concluded elections in Nigeria were far from being free and fair.<sup>12</sup>

Moreover, it seems to be an accepted norm in contemporary Nigeria that with money, power and connections, one can get whatever one wants. This perception is usually manifested in various spheres of life:

Thus it is not unusual for people to secure both government and company contracts in clear contravention of laid down rules and procedures simply because the contractor happens to be opportune and well-connected with those responsible for the award of the contract.

It also seems pedestrian for people to secure admission into universities without passing the qualifying examination at the required level, if they have the necessary contacts, while those that scored much higher grades are not admitted.<sup>13</sup>

Concerning access to justice, the Nigerian factor is seen as a weapon through which justice can be manipulated to suit the personal interests of the high and mighty. The maxim "equality before the law" appears to be honoured more in breach than in its observance.<sup>14</sup>

While one can go on and on cataloguing the manifestations of this obnoxious concept, it can also be argued with equal force that the Nigerian factor could be used to describe such qualities in Nigerians as resilience, doggedness, fearlessness, outspokenness, pursuit of excellence, national pride, integrity and incorruptibility. It is a well-known fact that Nigerians are used to enduring and working under very difficult conditions. They even excel in various fields of human endeavour in spite of such difficulties. The argument is that these are qualities that have produced world-class role models in various spheres of life in Nigeria.<sup>15</sup>

As desirable and persuasive as this connotation of the term may be, the facts on the ground do not justify its adoption as the reference point each time the phrase is used. In general and popular discussions, the earlier interpretation is always used and it is in that connotation that the term is used in this article.

### **Pre-trial Processes**

As indicated earlier on, the Nigeria factor is present and very potent in several of the pre-trial processes involved in a criminal matter. It is accordingly intended to examine the various manifestations of this concept in a criminal trial, from commencement to its conclusion.

#### *a. Complaint about Commission of Offence*

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<sup>12</sup> See *Daily Trust* Friday August 22, 2003, p 30 where the Transition Monitoring Group carpeted the 2003 elections in the country and suggested a number of surgical reforms in the electoral process.

<sup>13</sup> Abati, R, "How to be a Nigerian," *The Guardian*, Sunday November 2, 2003, p 18.

<sup>14</sup> Aguda, T A, *The Crisis of Justice*, Eresu Hills, 1986, pp 31-2 where examples and illustrations are given of the extent of inequality in the present system.

<sup>15</sup> Notable Nigerians such as Nobel Laureate Professor Wole Soyinka, the computer wizard Dr Emeagwali, the literati icon Chinua Achebe, renowned footballer Austin Okocha easily come to mind.

It is a mandatory statutory requirement that when an offence is alleged to have been committed, the complainant must report to the police which has the duty of investigating allegations of the commission of an offence.<sup>16</sup> It is based on this statutory injunction that the courts have consistently maintained that once there is an allegation of the commission of an offence, report must be lodged with the Police.<sup>17</sup>

In practice, however, that dangerous concept of “Nigerian factor” usually creeps into this process. Thus when a complaint is made, the amount of seriousness to be attached to the investigation of the matter depends on a number of factors, chief among which is the complainant’s ability and willingness to ‘grease’ the palms of the police. Where a complainant is either so impecunious or unwilling to part with any reasonable sum of money, the matter cannot be investigated or properly investigated. The reason often given for this unfortunate state of affairs, revolves around lack of necessary logistic support.<sup>18</sup> It hardly needs to be mentioned that in the course of investigation, policemen may need to move from one point to the other. This invariably entails the provision of vehicles, boats, motorcycles and other means of mobility. Unfortunately, the refrain is usually that these essential tools of movement are absent, thus compelling investigating police officers to rely on assistance from complainants.

Yet complaints must be investigated and reports written. It is on this score that investigating police officers usually request for necessary mobilization from complainants to enable them effectively carry out their investigation. The result is that where a complainant fails to, is unable, or refuses to provide these basic tools of movement, his complaint cannot be investigated. Boxed to this corner, and, to act like a true Nigerian, and ensure that his case makes progress, the complainant is expected to co-operate by giving money to the police officer to enable him carry out the investigation. The second aspect of this problem is that a complainant who refuses to give money to the police for investigation is usually called names and cast in a mould of somebody not behaving like a Nigerian.

A number of questions may therefore be raised here; are there no provisions for the police to take care of the incidental expenses to be incurred by its officers in the course of investigation of cases reported to them? If funds are regularly allocated for this purpose, how are such funds disbursed and managed?

An even more worrisome aspect of the pre-trial process where the Nigerian factor easily comes to play is in the issue of 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.<sup>19</sup> The crucial question then is, what happens in practice? Bail has become one of the avenues through which the notorious Nigerian factor is manifested.

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<sup>16</sup> Section 24(1) Police Act; s.10 Criminal Procedure Law.

<sup>17</sup> The principle is so strictly applied that even in civil cases, once there is allegation of the commission of an offence the courts insist that it must first be investigated by the Police and tried by a criminal court: *Olarewaju v Afribank Nigeria Plc* (2001) 7 NSCQR, 22.

<sup>18</sup> This rationalization is somewhat surprising in view of the huge allocations made to the Police on a yearly basis.

<sup>19</sup> See ss.17 and 18 of the Criminal Procedure Law; Okagbue, I, *Bail Reform in Nigeria*, Lagos, NIALS and Caltop, 1996, 2-6.

While bail is required to be free, in practice it is usually granted on the condition of payment of given sums of money. In most cities in Nigeria, the rate of police bail varies from Division to Division and it ranges from N2,000 to N10,000 depending on the gravity of the alleged offence and the willingness of the suspect or his relations to pay for same. These unholy and illegal practices take place even where there are notices at the police charge room boldly stating that "bail is free". Indeed, the recognizance form usually contains a clause that the bail was granted free.

Should a suspect or his relations insist on being released or releasing the relation free, such a person runs the risk of spending more time than is necessary as the police would apply one delay tactics or the other, resulting in the suspect spending more days in detention; of course, the pre-conceived motive for this is to compel him to pay and have his freedom. The usual excuse could be lack of bail forms,<sup>20</sup> absence of the approving officers,<sup>21</sup> that investigation is still going on,<sup>22</sup> or that some of the suspects are yet to be arrested.<sup>23</sup> However, in the Nigerian fashion, as soon as the suspect or his relations comply with the demand, these contrived and well oiled justifications disappear or pale into insignificance and bail is immediately granted.

Another worrisome aspect of the pre-trial process where this Nigerian factor plays a significant role is where a radical transformation could take place such that a complainant would eventually become the suspect: Although in law there is nothing wrong in this happening if it is based on findings during investigation, it very often happens that this phenomenon usually manifests after water has passed under the bridge between the initial suspect and the investigating police officers. More often than not, this usually happens where a suspect is wealthier than a complainant and is able to release enough funds to suppress the other side of the matter.

***b. Arraignment Before Court of Law***

Once investigation is completed, a charge would be prepared and the suspect arraigned before a court of law which could be either a Magistrate's Court or the High Court depending on the gravity of the alleged offence. At this level, the ubiquitous Nigerian factor also emerges. After the grant of bail to the accused person by the presiding Magistrate, the other requisite processes to facilitate his actual release commences. Forms copied with less than N10 would now be sold to the accused or his relations for N500 or more by the Court Clerks depending on the bargaining powers of the accused's relations. This is merely the first step in the process of perfecting court bail.

Upon the completion of the form, another round of bargaining will commence, where it is sometimes said that the Magistrate has fixed the bail fee

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<sup>20</sup> To be used in processing the bail application. This relates also to the excuse of lack of necessary working tools and logistics.

<sup>21</sup> This could be deliberately contrived to ensure that the suspect is not released on time. Either the approving officer would be away or the impression is given that he is not available.

<sup>22</sup> This is one of the commonest excuses often given. Indeed, the fact that investigation is still going on is sufficient reason to refuse the release of the detained suspect on bail.

<sup>23</sup> This is also used to continue to detain the arrested suspect. The rationale being that if released, the arrested suspect may interfere with Police investigation.

for a certain amount.<sup>24</sup> Very rarely will this be brought to the notice of the Magistrate who would have completed his own first assignment by granting bail to the accused person. It also happens that in those few cases, where the Magistrate is aware, he would, in the spirit of the Nigerian factor wait and insist that the stated sum be paid before he finally approves the bail. For some of the Magistrate Courts in Nigeria, this has become the norm and the clerks act as veritable fronts in this unholy arrangement.

Moreover, in order to ensure that prosecuting Police Officers participate or have a feel of this, some Magistrates in granting bail often require the verification of the addresses of sureties. Although this procedure may be adopted based on genuine considerations, it has become the instrument through which the Nigerian factor percolates the criminal process. It is a well-known fact that most Police Prosecutors do not even bother to verify the addresses submitted by sureties as long as they are properly settled.

### **Advice from Director of Public Prosecutions**

Where a matter is very serious, especially in murder, armed robbery and related offences, and the accused person is arraigned before a Magistrate's Court in what is loosely referred to as "a holding charge",<sup>25</sup> the normal practice is to require the advice of the Director of Public Prosecutions (DPP) first, to determine whether the matter can be handled by the Magistrate's Court or would have to be sent to the High Court. This procedure which is premised on a very solid foundation is designed to enable the DPP to critically examine the proofs of evidence to ascertain whether the accused person should actually face the charge preferred against him or not.<sup>26</sup>

Where the DPP advises that the charge cannot be sustained, the accused person would be discharged at that stage. On the contrary, if the advice is that the charge can be sustained as presently constituted or in an altered manner, he drafts the proper charge and sends the matter to the appropriate court.

As laudable as this procedure is, it has again turned out to be enmeshed in this phenomenon of Nigerian factor. In practice, the length of time a matter remains in the office of the DPP as well as the eventual outcome of same depend on how far the relations of the accused person can go, and their contact with the appropriate officers assigned to handle the matter in the Ministry of Justice. This entails not only using relations and friends to urge the Officer to attenuate the tenor of the advice but also ensuring that this is done through financial inducement.

It is not uncommon therefore for some of these matters to linger for years as the advice would usually not be ready. Whereas for those that have moved,<sup>27</sup> and made the necessary financial sacrifice the advice can be given in a matter of weeks, and usually in a pre-determined manner.

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<sup>24</sup> This could be as much as N10,000 or more depending on the nature of the charge.

<sup>25</sup> It has been held that a "holding charge" is unknown to Nigerian law: *Onagoruwa v The State* [1993] 7 NWLR 49, 107 per Tobi JCA and *Enwere v COP* [1993] 6 NWLR (Part 299) 33.

<sup>26</sup> Usually, the report of the DPP would be accepted and acted upon by the Magistrate's Court.

<sup>27</sup> This involves seeing the appropriate officers and making necessary contacts

## Trial Process

When a matter is properly before the Court for trial, it is then the manifest inadequacies of our criminal justice system come to the fore. This entails reckoning with the attendant delays in the trial process, the manipulations and antics of legal practitioners, and of course, the attitude of the Presiding Judge or Magistrate.

In Nigeria, it is not surprising for a simple case of assault occasioning harm to last for over five (5) years. Instances where cases have lasted between ten to fifteen years are legion.<sup>28</sup> Some Lawyers are in the habit of seeking unmerited adjournments from courts, and this usually happens where the Barrister is either not prepared to go on with the case or has not been properly settled financially by his clients.<sup>29</sup> Although it is a principle of law that adjournments are not granted as a matter of right,<sup>30</sup> the courts very often oblige lawyers when they apply for adjournment of cases, sometimes on very flimsy reasons.<sup>31</sup>

Unfortunately, this practice has also robbed off on Judges and Magistrates. It is not uncommon therefore for such judicial officers to arrive court either very late or even fail to go to Court for some days without any extenuating or compelling reasons. The cumulative effect of this is that litigants continue to groan under this debilitating scenario of undue delays in the dispensation of justice. According to Dr. Akinola Aguda, this "slow motion judicial process"<sup>32</sup> has adverse effect on the quest for the quick dispensation of justice.

Another aspect of the criminal trial process where the Nigerian factor manifests itself is in the taking of evidence and determination of cases by the presiding Magistrate or Judge. While judicial officers are expected to perform their duty without fear or favour, affection or ill will,<sup>33</sup> in practice, this is hardly the case. It is unfortunately becoming a common practice for Judges and Magistrates to hear and even determine cases based on prior arrangements or settlements<sup>34</sup> arrived at either directly with litigants or their relations or agents. This has given rise to the belief today in Nigeria that as long as one is well connected with the Judge or Magistrate, one is sure to obtain favourable judgment in any particular case.

It is equally common for the relations of accused persons or complainants to strive to know not only the addresses of Judges and Magistrates but also their hometowns for the purpose of soliciting the delivery of judgment in a particular manner. In order to actualize this, desperate litigants either go through Court Clerks or Registrars or sometimes directly trace the residences of Judges and

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<sup>28</sup> see Aguda, T A, "The Challenge for Nigerian Law and the Nigerian Lawyer in the Twenty-First Century," Nigerian National Merit Award Winner's Lecture delivered on Wednesday, September 14, 1988, p 20; see also Aguda, T A, *The Crisis of Justice*, Eresu Hills, 1986, 14-15 where concrete examples of over-delayed decided cases are given.

<sup>29</sup> Even though there is provision for him to sue to recover his bills and charges from clients. See Ojukwu, E, *Legal Practitioner's Charges in Nigeria: Law and Practice*, Aba, Helen-Roberts, 1997, p 35.

<sup>30</sup> This is entirely within the discretion of the court, and in exercising its power to grant or refuse application for adjournment, it must be done judicially judiciously after considering all the circumstances of the case. See *Echaka Cattle Ranch Ltd v Nigerian Agricultural and Cooperative Bank Ltd*, [1993] 8 NWLR (pt 310) 233.

<sup>31</sup> See the observations of Olatawura JSC in *Okon Akpan v The State* [1991] 3 NWLR (Part 182) 646, 661 on the over-indulgence of the trial judge in granting the State Counsel several adjournments in the case.

<sup>32</sup> See Aguda, T, *supra*, pp 20-21.

<sup>33</sup> As stipulated in the oath of office for judicial officers, contained in the 7th Schedule to the 1999 Constitution.

<sup>34</sup> This is common at the lower courts where the perception is unfortunately gaining grounds that unless a litigant sees a Magistrate, he cannot have judgment in his favour.

Magistrates with requests for judgments to be given in their favour.<sup>35</sup> In this mad rush, they even identify and make use of the relations, wives, husbands or friends of such Judges and Magistrates who are believed to have the ears of such officers.

Indeed, the practice has become so commonplace that at the conclusion of any case in Nigeria, litigants usually endeavour to attain the above objective. The story is usually told of a particular matter where the two disputing parties in the matter coincidentally met themselves at the residence of the presiding Judge.<sup>36</sup> The resultant embarrassment not only to the parties but also the judicial officer can better be imagined. The effect of this is that in contemporary Nigeria, in a great majority of cases, judgments are rarely given on merit. The ultimate sufferer in this ugly situation is usually justice.

The Nigerian factor also comes to play in relation to the conclusion and delivery of judgments. It is common practice for parties to appear in Court on a date fixed for the judgment only to be informed that the judgment is not ready. This results in judgments being delayed sometimes much longer than the constitutionally stipulated period.<sup>37</sup> This excuse of "judgment not being ready" is sometimes repeated for several months thus making it difficult for the Judge to even remember the exact demeanor of parties involved in the case at the time of writing the judgment. This could also result in a miscarriage of justice.

### **Sentencing and Post-Conviction**

At the conclusion of a criminal trial, if the accused person is found guilty, he has to be given the appropriate punishment for his reprehensible conduct. It is through such punishments that the society's abhorrence of the conduct in question is usually expressed.

While sentencing itself is a special act which requires proper assessment and passionate consideration, Judges and Magistrates sometimes operate as if it were a mechanical process of merely giving fixed tariffs.<sup>38</sup> The result is that very often, sentences are passed which do not have cognate relationship to the circumstances of an accused person, nor do they have any rational or consistent basis.<sup>39</sup> This problem was recognized early enough by Justice Atanda Fatayi-Williams, when he declared as follows:

there are many instances of irrational sentences passed by various courts [in Nigeria]. In fact, one of the main defects today of our criminal law is the incoherent, irrational and incredibly intricate variety of sentences legally

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<sup>35</sup> This is quite pervasive and some courageous judges and magistrates have had cause to warn litigants in open court to desist from coming to their residences to discuss matters pending in their courts.

<sup>36</sup> Aguda, A, *op cit*, 12.

<sup>37</sup> The constitutional stipulation in s.294(1) of the Constitution is often ignored in this process. The provision is to the effect that every court established under the Constitution shall deliver its judgment in writing not later than three months after the conclusion of evidence and final addresses.

<sup>38</sup> Okonkwo, C O, *Criminal Law in Nigeria*, 2nd ed., London, Sweet & Maxwell, 39; Okogbule, N S, "Towards a Rational Theory of Criminal Punishment in Nigeria," (1993) 2 *Journal of Jurisprudence and Contemporary Issues*, p 50, 68-9.

<sup>39</sup> Such irrational sentences often have far-reaching social and psychological consequences on the lives of convicts. Some are sentenced for very long terms of imprisonment when they ought not to have been so sentenced, and they ultimately turn out to become hardened criminals, while others face extreme social problems of re-adjustment and re-settlement upon the conclusion of their prison terms.

pronounced by different courts exercising the same jurisdiction in respect of the same or similar offence.<sup>40</sup>

This statement is not only relevant today but has sadly assumed a merited significance in deference to the overbearing influence of the Nigerian factor in the criminal justice system.

Even in the execution of sentences imposed at the conclusion of a trial, there is a manifestation of the Nigerian factor. Thus sentences are often executed bearing in mind extraneous circumstances. It is common for sentences meant for certain convicts to be applied to others. The recent pathetic case *Bello v Attorney General of Oyo State*<sup>41</sup> is a case in point. It would be recalled that in this case, the appellant, a convict whose appeal was pending in a superior court was wrongly executed by the Oyo State Government.

It is a well-known fact that prison cells in Nigeria are extremely congested such that cells designed to accommodate 100 inmates, for example, often accommodate well over 400 inmates, thus making it increasingly difficult for the reformatory conceptions of the prison to be put into operation.<sup>42</sup> Add to this the fact that prisoners go through harrowing experiences at the prisons in terms of feeding, medical and other welfare matters, then the Nigerianess of our criminal justice system becomes more manifest.

## Conclusion

That the Nigerian factor has become an important subject of social and political discourse is axiomatic. It is seen as the source of most of the woes befalling the country today. This perception is so deep-rooted that whether it is in respect of social, economic or even political matters, the Nigerian factor is usually fingered as the cause of such problems. Indeed, it has become a hydra-headed object that has permeated every facet of life in Nigeria and defied spirited, but often unsustainable efforts to tackle it.<sup>43</sup> In relation to the criminal process, its impact remains negatively profound and fundamentally debilitating. Starting from the point of lodging a complaint with the police, through the trial process, to conviction and sentence, the overwhelming role of the Nigerian factor can easily be felt.

The crucial question then is, how do we de-emphasize the over bearing role of financial inducement which is a manifestation of the Nigerian factor in the criminal process in Nigeria. It may be suggested that one way of doing this is for concerted efforts to be made on the revival of our social values. It hardly needs to be mentioned that there is an overwhelming need to engineer a change of attitude and a re-discovery of our traditional norms and values, which placed much emphasis on merit and respect for achievement attained through legitimate means. There is no doubt that the arrival of Europeans and the commercial

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<sup>40</sup> Fatayi-Williams, A, "Sentencing Processes, Practices and Attitudes," in Elias, T O (ed) *The Nigerian Magistrate and the Offender*, Benin City, Ethiope, 1972, p 23.

<sup>41</sup> [1986] 5 NWLR (Part 45) 828; the Supreme Court generously lamented this pathetic state of affairs and consequently ordered the payment of compensation to the family of the deceased appellant.

<sup>42</sup> Onwubiko, E, "Search for Improved Justice and Prison System," *The Guardian*, Tuesday, January 6, 2004, p 13.

<sup>43</sup> The fundamental problem has been the lack of commitment on the part of successive administrations in Nigeria to continue the crusade of its predecessors. Thus emphasis placed on the fight against corruption by any particular regime very often disappear with the exit of the initiating government.

economy they introduced had the negative effect of relegating our customs and values to the background.

As we have demonstrated earlier on, the quest for material possession has been the driving force in the enthronement of the Nigerian factor in the criminal process. Officers and men of the Nigeria Police often engage in some of the despicable things highlighted above such as insistence on payment before grant of police bail, changing of the complaint such that a complainant becomes a suspect, etc because of financial inducement from one of the parties. In the same vein, Judges, Magistrates and Court Clerks do some of the things they do in relation to the criminal process largely because of financial consideration. It is only through such a re-orientation that the required social values can be entrenched in the consciousness of Nigerians.

Perhaps even more importantly, from the legal point of view, is the need for proper enforcement of sanctions against those found guilty of corruption to deter others.<sup>44</sup> This requires the cultivation of the requisite political will and the ability of key public institutions to live up to their responsibilities and expectations. As has been rightly observed:

corruption has blossomed in Nigeria not because of absence of relevant legislation to tackle the problem, but essentially due to the weakness of key public institutions and the lack of political will to enforce the laws.<sup>45</sup>

In this connection one must mention the commendable role of the Independent Corrupt Practices and other Related Offences Commission.<sup>46</sup> While the relevance, usefulness and efficiency of the Commission remains the subject of intense controversy,<sup>47</sup> the point remains that it serves as a constant reminder to public officers of the need to maintain moral rectitude in the performance of their official duties. The same can also be said of the Economic and Financial Crimes Commission,<sup>48</sup> which has very recently succeeded in arraigning some prominent Nigerians, involved in economic crimes before the Tribunal established under the Act.

It only needs to be added that there is an overwhelming need to add more teeth to these Commissions by strengthening their machinery so that they can properly bark and bite those who fall foul of these Laws. This is the only way to demonstrate in practical terms, the seriousness attached to the anti-corruption posture of the present Nigerian Government and assure the citizens that there are no sacred cows in this noble fight to restore sanity and transparency in public administration. The recent endorsement by Nigeria of the United Nations Anti-

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<sup>44</sup> Although there is a recurring controversy as to the efficacy of deterrence as principle of criminal punishment, the point remains that it has a significant role to play in influencing criminal behaviour: see Okogbule, N S, *op cit*, 62; contrast Adeyemi, A A, "Sentencing of Imprisonment: Objectives, Trends and Efficacy," in Kasunmu, A B (ed), *The Supreme Court of Nigeria 1956-1970*, Ibadan, Heinemann, 1977, 133.

<sup>45</sup> The editorial of *The Guardian*, Sunday December 21, 2003, p 16.

<sup>46</sup> Established under s.31(1) of the Corrupt Practices and Other Related Offences Act No 5 of 2000.

<sup>47</sup> The Commission is now variously perceived by the political class because its crusade recently led to the apprehension of some judicial officers who were members of the Election Petition Tribunal in Akwa Ibom State as well as the Chief Judicial Officer of the State: see *The Guardian*, Wednesday April 21, 2004, p.1.

<sup>48</sup> Established under the Economic and Financial Crimes Commission Act No 5 of 2002.

Corruption Convention is equally a salutary effort on the part of the Nigerian Government.<sup>49</sup>

It is also necessary to suggest the formulation and religious implementation of a forward-looking compensation package for public officers of all cadres including attractive retirement benefits in order to improve the sense of security of such officers and reduce the temptation to corruption. A situation where a public officer<sup>50</sup> living in government quarters retires and does not have a house of his own is a clear invitation to corruption for serving officers who would be forced to engage in such illegal practices as a way of providing for the rainy day.

It is only when we begin to tackle this hydra-headed monster through these avenues that we can have a society where the Nigerian factor will become a negligible element in the criminal process. This will ultimately create greater confidence in the criminal justice system in the country for

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<sup>49</sup> *The Guardian*, Sunday, December 21, 2003, p 16. Of course the crucial question of proper and effective implementation is still a critical matter.

<sup>50</sup> A "public officer" has been defined to mean "a person holding any of the offices specified in Part II of the Fifth Schedule to the 1999 Constitution." See also *Anya v Iyayi* [1993] 7 NWLR (Part 305) 290.