

Role of Police in Lagos criminal justice law reforms

By Olasupo Sasore

THE success of any system of criminal justice administration depends on the level of efficient performance of responsibility imposed by law on agencies involved in criminal justice delivery. Some of the problems confronting the administration of criminal justice in Lagos State are traceable to the failure by criminal justice agencies to perform the legal responsibilities. One of the major reforms introduced by the Criminal Justice Administration Law 2007 (CJA 2007) is to impose some new responsibilities on agencies to ensure that the overall objective of an efficient, fair and speedy administration of criminal justice is achieved.

The Police and new responsibilities

The Police is one of the agencies involved in the administration of criminal justice that the new law has imposed additional responsibilities. The Police exercise the power of arrest and detention. The exercise of these powers present opportunities for infraction of fundamental human rights. Consequently, the law has introduced provisions, which impose more responsibilities on the Police to ensure that fundamental human rights are not infringed. The new law regulates the power to arrest and detain suspects in the following ways:

(i) A Police officer is obliged to notify a person arrested the reason for the arrest and his rights upon arrest, including the duty to inform the person of his right to free legal representation through the Office of the Public Defender established by the Lagos State Government - see Section 3.

(ii) A Police officer has no power to arrest a person who has not committed an offence in lieu of another - Section 4.

(iii) It is now mandatory for a Police officer effecting an arrest to make an inventory of items recovered or taken from the body, premises, or about the person arrested and to ensure that the person retains a copy of the inventory -Section 6.

(iv) Objections to voluntariness of confessional statements are a fundamental cause of delays in criminal trials arising from time spent conducting trials within trials. Section 9(3) requires that making and taking of confessional statement should be recorded on video and in the absence of a video facility, the said statement shall be in writing in the presence of a legal practitioner chosen by the person arrested. This forward-looking provision hopefully will reduce the temptation of law enforcement authorities to use brute force and torture to obtain information from suspects. Arguably any statement taken without complying with the provisions of the law is rendered illegal and should not be relied on by any court.

(v) Unlawful detention of criminal suspects and the lack of adequate data regarding the number of people detained in Police custody is one of the significant flaws that existed before the introduction of the new law. Section 20 establishes a supervisory framework that obliges the officers in charge of police stations to report to the nearest magistrate court, the cases of all persons arrested without warrants within the geographical limits of their respective stations. The Chief Magistrate shall notify

the Chief Registrar of the High Court of such report who shall forward a report to the Director of Public Prosecutions for necessary action.

(vi) It is the duty of the Commissioner of Police to forward all duplicate case files with respect to indictable offences to the Office of the Attorney General for the purpose of issuance of legal advice -Section 74(1). This new provision gives legal force to an existing practice.

The courts and new responsibilities

The new law imposes the following new responsibilities on courts:

(i) Magistrate Courts are empowered to supervise the detention of a person who has been arrested and taken into custody. The provision allows a Magistrate to be notified of such detention by application. This enables the Magistrate to supervise the process of detention. This would assist in decongesting our prisons and police detention centres. The provision is akin to creating a simplified Habeas Corpus Procedure in Magistrates Courts - Section 18.

(ii) Remand proceedings - The provisions on remand proceedings in Section 268 were motivated by the need to provide a release valve for decongesting the long list of persons awaiting trial who are detained in detention centres across the state. The interval between arrest, investigation, arraignment and trial has led to a growing list of detainees awaiting trial, some of whom have not been charged with the commission of any offence. Some of the detainees are lost in the system because the existing provisions on remand in Sections 236 - 238 of the old law, lack the adequate framework to ensure that the system keeps track of the detention of persons remanded.

The provisions of the new law on remand are designed to achieve the following objectives:

(i) Manage the process between arrest, investigation and formal charge and arraignment before a court of competent jurisdiction to try the offence;

(ii) Vest in Magistrate courts the supervisory jurisdiction and discretion to oversee the process of remand and to make appropriate orders and ensure that the relevant agencies perform their respective duties;

(iii) Empower the Magistrate by statutory provision to deal with remand proceedings, although the magistrate does not have jurisdiction to try the substantive offence; and

(iv) Ensure that the periods of remand is within the constitutional stipulations of when a person can be detained without trial under Section 35(4) of the 1999 Constitution.

The constitutionality of Section 236 of the old law on remand was sustained by the Supreme Court in *Lufadeju v. Johnson* (2007) 9 QCCR 67. The Supreme Court held that there is no conflict between the provisions of Section 236(2) of the old law on remand and the provisions of Section 32 of the 1979 Constitution. The provision of

Section 236 has been retained in the new law in Section 268 and substantially amended to empower a Magistrate to ensure that constitutional right of the person remanded is not infringed.

Stay of Proceedings - A veritable source of delay in criminal trials is stay of proceedings following an appeal against an interlocutory decision of a trial court. Such interlocutory applications usually filed by defendant may delay the trial of the substantive case after the proceedings have been stayed pending appeal. Section 277 of the new law states that an application for stay of proceedings in respect of a criminal matter in a High Court and Magistrate Court shall not be entertained until judgement is delivered. The provision of Section 277 will stand the test of constitutionality on the following grounds:

(a) The constitution only guarantees a right of appeal. It does not guarantee a right to apply for stay of proceedings;

(b) Stay of proceedings is a matter within the discretion of the court and a matter falling within the inherent powers of the court. A matter falling within the inherent powers of the court is subject to regulation by statutory provisions, which may make other prescriptions;

(c) Stay of proceedings may adversely affect the right of a defendant to fair hearing within a reasonable time and depending on the length of time taken to conclude the appeal, the trial court may lose its impression of the evidence of witnesses and some of the witnesses may die or relocate before the conclusion of the substantive appeal, thereby impeding the just administration of criminal justice.

The Supreme Court in *Ariori v Elemo* (2001) 36 WRN 94 held that there are certain rights of a defendant, which he may not be permitted to waive. The court ruled that waiver of a right to a speedy trial is not permissible where the adjournments requested is of such a nature that the court will lose the advantage it has of accurate assessment of the witnesses it had observed in the course of trial; and

(d) The provision will promote a better administration of criminal justice. The provision may also be to the advantage of a defendant because the issue of a charge hanging over him would have been decided first and he would still be at liberty to raise whatever grievance he has against the trial on appeal.

(iv) Procedure After Filing of Information - In practice, a lot of time is wasted between the filing of the information, the service of such information and the fixing of a date for hearing. This was in the past a source of delays in criminal trials. Section 256 in the new law replacing Section 340 of the old law clearly stipulated time limits within which the relevant steps must be taken from the time of filing of the information up to the date of hearing. After the filing of the information the Chief Judge is required to assign it to a judge within 15 days. The court to which the information is assigned is expected within 14 days of assignment to issue hearing notices to witnesses and the defendant also to issue a reproduction warrant for service on the superintendent of prison if the defendant is in custody. The Chief Registrar is to ensure the prompt service of the notice and information not more than three days from the date they are issued. The provisions are designed to fast-track the process of filing, service and the trial of criminal matters in the High Court.

(v) Community Service - The courts are now empowered to order a person convicted of minor offences to render community service. The objective of introducing community service is to decongest the prison by avoiding committal to prison of first time offenders for minor offences and to avoid mixing them with hardened criminals. It is also aimed among other things to serve reformatory and deterrent purposes. The courts can impose community service order to punish people who commit offences punishable with not more than two years imprisonment. - Sections 345(1) and 350. The community service, which a person may be committed

includes (a) environmental sanitation; (b) assisting in the care of children and the elderly in government approved homes; or (c) any other type of service which the court considers to have a beneficial and salutary effect on the character of the offender. The court is empowered where the terms of the order of community service is breached to proceed to conviction and make a custodial sentence.

(vi) Power of court to order deposit of money for bail - Courts are now empowered to require the deposit of money as security for bail. The money deposited is to be kept in an interest yielding account by the registrar of the court and at the end of the trial it shall be returned to the applicant and or his surety- Section 116.

(vii) The new law imposes obligations on the court to ensure that the practice of plea bargaining introduced by Section 76 is not abused and it empowers the court to supervise the process without necessarily getting involved in the actual negotiation of a plea bargain. More information will be provided about this in the presentation on plea bargaining, which will come up later.

Obligations imposed on the office of the attorney-general

The procedure for the issuance of legal advice is stipulated in Section 74. It provides that the Commissioner of Police shall forward all duplicate files with respect to indictable offences to the Office of the Attorney General for the purpose of issuance of legal advice. This provision domiciled processing of legal advice in the Office of the Attorney General (the AG) presumably to enable the AG actively supervise the process. Section 74(2) provides that the legal advice issued by the office of the AG with respect to indictable offences shall be conclusive. Section 74(3) provides that notwithstanding the provisions of Sections 74(1) and (2) the may request for duplicate files relating to any offence for the purpose of issuance of legal advice. The provisions flow directly from the constitutional provisions vesting general prosecutorial powers in the Attorney General. The provisions are aimed at removing any controversy as to the legal status of legal advice and to give legislative recognition to the supervisory role of the Attorney General in criminal matters. This provision stipulates that request for legal advice should be directed to the Office of the Attorney General of Lagos State.

Obligations imposed on defence counsel

The new law imposes the following obligations on defence counsel:

(i) Change of Legal Practitioner - Section 238 provides that a legal practitioner representing a defendant is bound to represent a defendant until final judgement unless allowed by the court to withdraw. The counsel is expected to duly notify the court before disengaging from a criminal matter- Section 238. The new provision is

designed to ensure that counsel representing a defendant owe the court the duty of notification and requires the leave of the court before ceasing to represent a defendant. This is intended to curb the practice of counsel withdrawing from criminal cases without duly notifying the court. Notification would enable the court to draw the attention of defendant to facilities such as the Office of the Public Defender which may come to his aid and thus save valuable time. This would also safeguard the constitutional rights of the defendants.

(ii) Arraignment; Time for Making Certain Objections- Section 264 (2) provides that an objection to the sufficiency of evidence disclosed in the proof of evidence attached to the information shall not be raised before the close of the prosecution's case. The rationale for the inclusion of this new provision is that an objection to a charge on grounds of sufficiency of evidence disclosed in the proof of evidence may prove to be premature. This is because the prosecution reserves the right to amend the charge and introduce more proof of evidence. Allowing such an objection, which may subsequently be cured by an amendment by the prosecution, may end up prolonging criminal trials. It may also result in a defendant been let off on mere technical grounds.

The case of *Ohwovoriole v. F.R.N* (2005) 1 Q.C.C.R. 108 is an apt illustration of this kind of situation. The appellant and some other persons were alleged to be involved in an alleged act of bribery. The charge was filed under Section 185(b) of the Criminal Procedure Code of Northern Nigeria after the consent of a judge of the High Court was obtained. The appellant filed a motion to quash the charge on the ground that the offence therein was not disclosed by the proof of evidence. The application failed at the High Court and at the Court of Appeal. At the Supreme Court the application succeeded. One of the points in favour of the defendant was that the Court of Appeal should not have considered the provision of paragraphs 4 & 5 of the Counter Affidavit of one Mr. Obuotor, which was not placed before the trial court at the time consent was granted. The contents of the said affidavit clearly linked the appellant with the alleged offence. The charge here would not have been quashed if the objection were raised at the close of the prosecution's case. This is because the evidence of Mr. Obuotor, which incriminated the defendant would have been available to the Court.

Conclusion

The aforementioned reforms represent a determined legislative effort to address some of the challenges confronting the administration of criminal justice as far as reform of criminal procedure rules is concerned. It is important however that the best rules may not achieve the desired results if the practitioners are willing to make it work. It is therefore imperative that all stakeholders in the administration of criminal justice must work together to make the new law achieve the lofty objectives it was designed to achieve.

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