

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

#### THE RETREAT OF THE LEGAL PROCESS

Legal process has a fairly well defined meaning. It includes the whole gamut of civil and criminal justice. The processes prior to commencement of the actual proceedings and judicial outcomes in both civil and criminal causes constitute 'legal process'. Consequently, in criminal justice, legal process for our purposes refers to the entire spectrum of institutions rules and practices aimed at social control, by the prevention, detection, investigation, prosecution and punishment of crime, the police and policing arrangements, public prosecution, the courts and the prisons.

It is in this broader remit that legal process includes those measures Denning describes as constituting 'due process of law'. Namely, 'those measures authorized by the law so as to keep the stream of Justice pure: to see that trials and inquiries are fairly conducted: that arrest and searches are properly made: that lawful remedies are readily available: and that unnecessary delays are eliminated'

His Lordship's further remark that 'It is in the long run, on the maintenance of law and order that civilized society depends' not only widens the ambit of the subject but emphasizes its fundamental importance.

The definition clearly exposes the inordinateness of any ambition of the topic. Surely in about an hour or so one can hardly do justice to any one feature of the issues associated with legal process. This is my excuse for taking the liberty to randomly select some of the issues and hopefully make the point clearly enough that the legal process in Nigeria, at least in fundamental respects may well be on the retreat.

'Retreat' by itself suggests some shifting backwards from a position of advancement. This is important because indeed there has been notable progress. The Supreme Court's pro-active constitutional pronouncements have more clearly defined the contours of our federalism and in many respects broadened the democratic space. Similarly, the Court of Appeal has in many instances restored hope in the electoral process by voiding rigged elections and restoring

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

mandates to the lawfully elected representatives of the people. Generally speaking, from even the High Courts, there have been great and bold judicial pronouncements, many of which better clarified the rights of citizens, institutions and governments under a civilian constitution. The profound challenges and reverses especially in the past five years appear to suggest, to borrow the term, that ours is a 'recursive' legal process, that is one which takes one step forward and two steps backwards.

The result of this phenomenon is that its effectiveness, relevance and ability to attain its objectives as a crucial and integral part of the society's architecture is not only weakened but it has compromised the overall ability of the State to fulfill the obligations of Statehood.

The efficacy, speed, fairness and credibility of our system of civil justice impacts commerce and business significantly. Failures in criminal justice for example not only are a significant disincentive to foreign investment but constitute a consoling burden on the cost of doing business. Any sense those crimes especially serious crimes against persons or property create a debilitating sense of helplessness and desperation that makes self-help the only real option.

#### Civil cases

The resolution of civil disputes is of course of great importance especially to commerce and the overall economy.

The civil aspects of legal process have also in the past 12 years suffered huge challenges to its effectiveness. Again one of the most significant problems is delay in the trial process. The most recent surveys on the length of trials in civil cases show disturbing lengthy delays.

A survey on length of length of trial time in civil cases in Lagos State shows:

General civil cases (2001-2006)

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the

Nigerian Institute of Advanced Legal Studies. 17th March, 2011

National Average

Court

Years

High Court

3.4

Court of Appeal

2.5

Supreme Court

4.5

Total

10.4

From High Court to Supreme Court, 10.5 years (this does not include interlocutory appeals).

Land cases

Land cases (2001-2006)

National Average

Court

Years

High Court

3.4

Court of Appeal

2.5

Supreme Court

4.5

Total

10.4

Anecdotal evidence gathered as part of the Lagos Justice Sector reform and the lands registry reform projects show that three areas of commerce and industry are worst hit by delaying in civil trials, these are housing, mortgage lending and land transactions sectors which are the fundamentals of most economies. Delays in resolving some of the largest commercial disputes in the Nation's history have led to flight to jurisdictions offering more certainty of closure within a reasonable time frame. The Econet shares dispute has since 2004 not gone beyond

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

interlocutory stages in the Federal High Court, as is the case with many other large disputes.

Clearly, it is the case that again legal process appears to have run into a brick wall. It is my view that the problems, of delay especially require some hard thinking and collaborative interaction between the Chief Justice of Nigeria, the Attorney General of the Federation and heads of the National Assembly. These interactions must address fundamental issues on changing civil procedure rules to engage the challenges of our peculiar circumstances. Clearly, there ought to be a more stringent costs regime to prevent dilatory tactics of counsel. Judicial accountability for delays in delivering Rulings and judgments must be closely monitored. The Courts are a public resource paid for by tax payers money, its operators and litigants must be held to account where it is found to be inefficient.

Interlocutory appeals on practically any issue have remained a major hindrance to early disposition of cases especially as it almost always involves a stay of proceedings of the Court appealed from. In criminal cases in Lagos State and under the EFCC laws, stay of proceedings in such circumstances are prevented by law. Constitutional amendments providing for the termination of interlocutory appeals at the Court of Appeal is much needed. There need also be clear and definitive intervention by the Supreme Court on notorious and recondite issues frequently deployed to delay trials. Issues of jurisdiction require one clear Supreme Court decision which lays down the principles and the law.

Some disciplinary action may be required with the full backing of our courts to check counsel who in the face of clear authorities delay trials by raising such issues.

#### CONFLICTING DECISIONS OF APPELLATE COURTS

Conflicting decisions of appellate courts by themselves, though frustrating for legal practitioners, are to be expected. However, where conflicts are frequent, the reliability of decisions of our courts, a vital aspect of our precedential system of adjudication is lost. In the past few years, conflicting decisions of the different zones of the Court of Appeal in particular give some cause for concern.

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

In *E.S. & C.S. Ltd v. NMB Ltd* (2005) 7 NWLR (Pt.924) 215 at 265, the Court of Appeal, Lagos Division held, per Ogunbiyi JCA, that an interlocutory mareva injunction ex parte cannot be so granted. In the opinion of the Court, it would be unconstitutional to grant an interlocutory mareva injunction ex parte as it would offend the principles of fair hearing to do so. At par B – F, the Court held as follows:

...On the other hand however, an interlocutory order of injunction pending determination of a suit cannot be on an ex parte basis. The case of *Akapo v Akeem-Habeeb* and *Sotiminu v. Ocean Steamship Co.* (supra) are both relevant and in support...

,In my humble opinion, to make an order of mareva injunction at an ex parte stage and to state same to last until the final determination of the suit was certainly contrary to our laid down constitutional principles and that which amounted to a breach of the defendant's fundamental right to fair hearing in the absence of its being heard either in person, or by counsel, before such orders were made.'

In 2008, the Court of Appeal, Port Harcourt Division, contrary to the earlier decision in *E.S. & C.S. Ltd v. NMB Ltd*, did not only approve of granting interlocutory mareva injunctions ex parte, it went ahead to grant same itself in *IFC v DSNL Offshore Ltd* (2008) 7 NWLR (Pt. 1087) 592. At page 605 par D, the Court of Appeal, per Galadima JCA said:

,A court of law which is a court of equity is always cloth with jurisdictional powers to grant an interlocutory injunction ex parte pending the trial of the plaintiff's action, restraining the defendant from disposing of the assets.

At pages 603 – 604, Rhodes-Vivour JCA added:

,In all mareva applications, the factors to be borne in mind are:

- (a) It should be applied for ex parte. This is so because secrecy from the defendant is essential
- (b) Speed. It should be applied for with dispatch.

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

,...In the end, I adjudge this application ex parte as highly meritorious. It succeeds.

Again on the issue of the correct interpretation of the statutory stipulation that a public officer seeking elective office must resign from his employment 30 days before the elections before he could be eligible to contest. In *Mele v. Mohammad* (1999) 3 NWLR (Pt. 595) 419, the Appellant was employee of the Local Government Services Board. His employment was governed by the Revised Local Government Staff Regulation of 1986. Under the Regulation, he was required to give a 3-month notice or pay three months' salary in lieu of notice in order to properly terminate his employment.

However, he wished to contest for the chairmanship position of Guzamala Local Government Council. Section 11 (1) (f) of the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 36 of 1998 provided that:

,A person shall not be qualified to hold the office of chairman if

'he is a person employed in the public service or civil service of the Federation or of any State, or of any Local Government Council or Area Council and has not resigned, withdrawn or retired from such employment 30 days before the date of the election'

Purporting to comply with the Decree, the Appellant gave one month's salary in lieu of notice to his employers, rather than 3 months stipulated in his employment Regulation. His victory at the polls was challenged on the ground that he did not properly resign his employment. It was argued that the Decree could not have intended to override the subsisting employment contract but must be construed in such a manner as to perpetuate such contract. In essence, for 'resignation' to be valid and proper under the Decree, it must comply with the prospective candidate's subsisting employment contract. In sustaining the objection, the Court of Appeal, Jos Division, at page 433, par E – H, said:

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

,Meanwhile, if I must say, no difficulties whatsoever is anticipated in construing the provisions of Section 11 (1) (f) of Decree No. 36 of 1998. From the wordings it ought to present no problems of interpretation. It is clear and free from ambiguity and therefore admits of literal interpretation. My reaction to these submissions is that for the purpose of determining whether a candidate for elections under this Decree has effectively resigned, withdrawn or retired from his employment (i.e. as regards the modus), one has necessarily to look beyond the confines of s. 11 (1) (f) of Decree 36 of 1998 in the instant appeal more appropriately to Regulation 25 of the Revised Local Government Staff Regulation of 1986 and that is in deciding the appellant's retirement. Section 11 (1) (f) has not made provision as to how and when a candidate for election has to resign, withdraw or retire from his employment.

,As for Regulation 25 again, I hold the same view of it as respecting s. 11 (1) (f) above that the language is clear and simple and construing it literally, it requires an officer who was intent to retire with pension and gratuity or where the Local Government Services Board was intent to retire an officer for 3 (three) months' notice to be given on either side. The implication of this is that a

candidate subject to the Revised Local Government Staff Regulation, 1986, desirous to contest an election under Decree 36 of 1998 has to make his application for resignation, withdraw or retire in good time to allow matters of his disengagement to be in place 30 days before the date of election. Simply put, in the instant matter, the 1st respondent's retirement has to commence 30 days to the date of the election proper, in this case 5/12/98.'

Interestingly, when the same issue came up again in 2004, the Court of Appeal, Ilorin Division, gave a different view. The case is *Adefemi v. Abegunde* (2004) 15 NWLR (Pt. 895) 1. In this case, Section 107 (1) (f) of the 1999 Constitution was in contention. It is in pari material with Section 11 (1) (f) of the Decree of 1998 in the *Mele v. Mohammad's* case. One would have thought that as a principle of statutory interpretation would apply to the effect that where two statutes are identical, the interpretation placed on one should be a precedent to the interpretation place on the other. See *Nwobodo v. Onoh* [1984] NSCC 1 at 14. On

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

the contrary, Onnoghen JCA held in the *Adefemi v. Abegunde* case, at page 29 par E – G as follows:

,It is trite law that a right conferred or vested by the Constitution – in this case, the right to resign his appointment 30 days before the election – cannot be taken away or interfered with by any other legislation or statutory provision except the Constitution itself. That being the case, granted that the fact that the provisions of section 107 (1) (f) of the 1999 Constitution is subject to the provisions of the conditions of service of the 1st respondent, is pleaded and therefore relevant; which is not conceded; it would be void to the extent of its inconsistency with the said section 107 (1) (f) of the 1999 Constitution.

ON WHETHER FUNDAMENTAL RIGHTS PROCEEDINGS NOT SET DOWN FOR HEARING WITHIN 14 DAYS OF FILING IS INCOMPETENT, the interpretation placed on O.2, r. 2 of the Fundamental Rights (Enforcement Procedure) Rules of 1979 which provided that:

,The motion or summons must be entered for hearing within 14 days after such leave has been granted.'

In *Ogwuche v. Mba* (1994) 4 NWLR (Pt. 336) 75 the Court of Appeal, Jos Division, held that where hearing date is fixed beyond the statutory 14 days, then the entire proceedings is a nullity. In this wise, Ora JCA, at page 88, par E - G said:

,With respect to issue 2- it is a fact that the respondents in this case were on a motion ex parte granted leave to enforce their fundamental rights. The return date was fixed for 7th September, 1989 more than 40 days after the leave was granted to the respondents, a period more than 14 days contrary to Order 2 R. 2 Fundamental Rights (Enforcement Procedure) Rules 1979...

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

,I agree with the learned law Lord O. A. Okezie JCA that the return date, fixed outside the 14 days from the grant of the motion ex parte, 40 days after 7/9/89 is an express violation of the mandatory provisions of the statute. The violation of the said provision renders the proceedings of the lower Court a nullity.'

This position was followed by the lower Courts until 2000, when the Court of Appeal, Lagos Division, per Aderemi JCA, departed from it in the case of AG Federation v. Ajayi (2000) 12 NWLR (Pt. 682) 509 at 532 par F in the following words:

,The practical meaning, in my view, is that the notice or the process shall be filed in court within the time prescribed by the rule. Once that is done, the applicant, in my view, has complied with the provision of the rule. The fixing of the application for hearing is the exclusive function of the officials of the court and an applicant has no control over that.'

Interestingly, the earlier case of Ogwuche v. Mba supra was cited to the Court in the AG Federation v. Ajayi's case but the Court of Appeal refused to be bound by it and in fact, relying on the Supreme Court case of Ezome v. AG Bendel (1986) 4 NWLR (Pt. 86) 448, expressly overruled it. But the issue in Ezome v. AG Bendel was not the construction of O.2 r. 2 of the Fundamental Rights (Enforcement Procedure) Rules 1979 nor was it about the effect of not setting down a case for hearing within time stipulated by statute.

The Supreme Court has added a bit of confusion to the issue of conflicting decisions of the Court of Appeal where it held that the Court cannot depart from even its per incuriam decisions.

In Bi Zee Bee Hotels Limited v. Allied Bank (Nig.) Limited (1996) 8 NWLR (Pt. 465) 176 at 185, the Court of Appeal (Kaduna Division) interpreted the provision of section 230(1)(d) of the 1979 Constitution (as amended by Decree 107 of 1993) to mean that the jurisdiction of the Federal High Court is ousted in banker/customer relationships.

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

In Union Bank of Nig. Plc v. Integrated Timber and Plywood Products Ltd (2000) 12 NWLR (Pt. 680) 99, the Court of Appeal (Benin Division) also held in that the jurisdiction of the Federal High Court has been ousted. This decision was however given in ignorance of the existence of the Supreme Court's decision in F.M.B.N V. N.D.I.C (1999) 2 NWLR (Pt. 591) 333 which vests concurrent jurisdiction in the State High Court and Federal High Court in banker/customer relationships.

However, in Afribank (Nig.) Plc v. K.C.G (Nig.) Ltd (2001) 8 NWLR (Pt. 714) 87, Ba'aba, JCA of the Benin Division of the Court of Appeal, departed from the decision in Integrated Union Bank of Nig. Plc v. Timber and Plywood Products Ltd (2000) 12 NWLR (Pt. 680) 99 on the ground that the decision was given per incuriam. Commenting on this departure, the Supreme Court, per Ogbuagu, JSC, in Integrated Timber and Plywood Products Ltd v. Union Bank of Nig. Plc (2006) 12 NWLR (Pt. 995) 483 said:

,With the greatest respect, the learned Justice was in effect reviewing the decision in Bi zee Bee Hotels Ltd. V. Allied Bank (Nig.) Ltd (supra). In this wise, let me refer to the case of Archibong Jatau v.

Alhaji Ahmed<, also cited and relied on by the respondent in its brief, where this court per Kalgo, JSC frowned at the attitude of the Court of Appeal setting aside or reviewing its own decision in another division. It was/is stated that that court can do so only where the decision is a nullity.' (italics in original)<sup>1</sup>

## LAW MAKING

Law making is a crucial component of legal process. Indeed, „legislative power not executive, says Nwabueze, is the distinctive mark of a country’s sovereignty, the index of its status as a state and the source of much if not the preponderant portion of the power exercised by the executive in the administration of government’. Legislative power then ought never to be exercised capriciously,

<sup>1</sup> The House of Lords had taken this stand as well after Lord Denning’s attempt in *Bristol v. Young Aero plane Co. Ltd* [1944] KB 718 CA to break away from this slavishness to precedent, describing his Lordship as a “lone crusader”.

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder’s Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

but with the greatest sense of the public good, circumspection and responsibility. Unfortunately, in the last three years or so the National Assembly has demonstrated an egregious propensity for pushing for and effecting legislation, even constitutional amendments for the evident purpose of giving electoral advantage to the ruling party.

For example, the independence of the Independent National Electoral Commission (INEC), its power to set dates for elections had been well provided for in the constitution. Indeed given our sorry history of electoral malpractices it would seem most reasonable that the common weal would be further constitutional fortification rather than a weakening of that independence.

Para 15(1) of the 3rd schedule part 1 sets out the functions of INEC:

„the commission shall have power to organize, undertake and supervise all elections to the offices of President, Vice President, Governor and Deputy Governor of a State and to the membership of the Senate, the House of representatives and the House of Assembly of each State of the Federation.’

To put the matter beyond doubt, sections 16, 116, 132 and 178 of the Constitution provided that elections to each house of the National Assembly, a House of Assembly, to the office of President and Governor respectively ,shall be held on a day to be appointed by INEC’.

One would have thought that it made perfect sense for an ‘independent’ INEC to have the power to determine the order of elections. However, the National Assembly with the Peoples Democratic Party ‘PDP’ in overwhelming majority (in obvious complicity with the executive) apparently reasoning that setting the order of elections in such a way that the National Assembly and Presidential elections precede all State elections would give ‘a bandwagon effect’ (were the federal elections to go their way) effected constitutional amendments and amended the Electoral Act, merely to achieve this narrow purpose.



Even more recently, again the ruling party using its majority in the National Assembly, in apparent reaction to the reverses they suffered at the election petition tribunals especially in Edo, Ondo, Ekiti and Osun States effected an

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the

Nigerian Institute of Advanced Legal Studies. 17th March, 2011

amendment inter alia to section 140 (2) of the Electoral Act 2010. That amendment which came into force on December 29th 2010 reads:

,Where an election tribunal or court nullifies an election or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election or that the election was marred by substantial irregularities and non-compliance with the provisions of this Act, the election tribunal or the court shall not declare the person with the second highest votes or any other person as elected, but shall order a fresh election.'

The provision if it is allowed to stand will have the effect of preventing the Court from nullifying as it did in Edo, Ondo, Ekiti and Osun States the purported election of the Respondents in areas where malpractices were proved and on the balance declaring the Petitioner the rightful winner of the elections. What the amendment would mean is that a person who had become the incumbent to an office on account of proven malpractices, corruption, ballot stuffing, multiple thumb printing etc (who really should be disqualified from contesting elections as penalty) now gets a second chance to contest the elections but this time with the power and resources of incumbency!

Clearly, there has been hijacking of legal process for narrow partisan and even private objectives in the past few years. But for the national outcry against the move, members of the National Assembly had proposed legislation which would have essentially put them in control of their party's National executive committees and another giving them a right of first refusal within their parties to their seats in the National Assembly!

#### THE ELECTORAL PROCESS

The credibility of the legal process is greatly enhanced where it is able to deliver judicial outcomes, which satisfy reasonable notions of justice, speedily and efficiently in the majority of disputes. When it fails in these fundamental tasks, its usefulness is in serious doubt, but more importantly, it demystifies the

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the

Nigerian Institute of Advanced Legal Studies. 17th March, 2011

potency of legal options to dispute resolution and encourages self-help and other extra-legal options.

The 2007 elections have been described as probably the worst in the electoral history of the nation.

The European Union Election Observation Mission (EUEOM) in their report on the elections said;

,The 2007 State and Federal elections have fallen far short of basic international and regional standards for democratic elections< They were marred by poor organization, lack of essential transparency, widespread procedural irregularities, significant evidence of fraud, particularly during the result collation process, voter disenfranchisement at different stages of the process, lack of equal conditions for contestants and numerous incidents of violence. As a result, the elections have not lived up to the hopes and expectations of the Nigerian people and the process cannot be considered to have been credible`

Richard Gomer, then British High Commissioner to Nigeria said:

,It was not just a question of disorganization but there was outright rigging and the results were frankly not credible.`

The Transnational Monitoring Group (TMG) said:

,The reports of TMG Observers, other local and international monitors and observers show monumental fraud during the elections into Federal executive and legislative position`

These damning findings, if they are to be believed, would suggest at least that a substantial number of elected officials are in office, by rigging and other electoral malpractices. That the legal process appears incapable of reversing the perfidies is tragic especially in so far as this may suggest for the future that rigging actually pays.

The big question is why has the legal process failed to affirm these grave charges in the majority of cases against the reliability of the elections. One fairly clear reason is the weakness of the adjectival system provided to operate the electoral tribunals. The situation is one in which the procedures and rules of proof and

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the

Nigerian Institute of Advanced Legal Studies. 17th March, 2011

their application are neither robust nor flexibly applied enough to address the scope and sophistication of electoral malfeasance in most cases.

For example, the effect of placing the burden of proving that elections were marred by irregularities and malpractices on the Petitioner, has often led to a situation where INEC opposes all petitions and in many cases fails or refuses to tender electoral materials used in contested elections or even to give evidence. Obviously, if INEC had the burden (even in a limited sense) of proving that elections were properly held and was obliged to produce election materials the burden on the Petitioner would be greatly reduced.

The length of trial time in these cases has also been a source of embarrassment. Ekiti took 42 months, Osun took 45 months. If the Presidential elections were challenged on the basis of electoral malpractices in 2/3 of the States and in specific local governments and polling booths it is certainly unlikely that such a petition could be decided in 4 years.

Again the application of the criminal standard of proof, to sustain allegations of corrupt practices e.g. ballot stuffing, multiple thumb printing etc usually presents needless obstacles for the

Petitioner. Strangely, even where the standard is met, the party against whom crime has been established is never prosecuted!

Rejection of useful evidence sometimes out of the lack of tribunal's familiarity with certain types of evidence is yet another problem, forensic evidence i.e. evidence of finger print experts showing extensive multiple thumb printing was rejected twice by separate elections petition tribunals in Osun , Ondo and Ekiti State before it was finally accepted at the Court of Appeal in the Osun gubernatorial appeal. Here was the evidence of 52 forensic experts from the British police (in addition to 10 Israeli experts) who found in many cases in Osun, Ekiti and Ondo States evidence that one or two persons simply thumb printed thousands of votes.

Another piece of evidence which was rejected by the tribunal but later upheld by the Court of Appeal was one confirming multiple thumb printing in many booths in Osun, Ekiti and Ondo States by demonstrating that the time it would

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

have taken each voter to vote, could never have accommodated the votes recorded for the Respondent accommodated the votes recorded for the Respondent (PDP) unless there was multiple thumb printing.

For Example, in the Oduduwa Hall Polling station at the Obafemi Awolowo University, (Osun Election 2007), a total of 2,000 votes were recorded for the PDP and 300 for the ACN (the Respondent). The voting period was between 8 am to 3pm (420minutes), dividing 2,300 by 420 minutes, you get 11 seconds. In other words, the entire voting process for each voter beginning from searching the register for his/her name, to being given a ballot paper to actually thumb printing, voting and returning to get a mark on the thumb, took 11 seconds per voter! The tribunal held the man who made this simple calculation and gave evidence of it was not an expert having not undertaken any courses on electoral malpractices

Clearly, new procedures and rules of evidence are required. The use of INEC's biometric data, in proof of multiple thumb printing could cut trial time considerably. The use of arithmetical calculations (as was eventually accepted by the Court of Appeal in the Osun State case) which showed the impossibility of the votes recorded for the Respondent, and which established a pattern of ballot stuffing are all important new ways of reducing trial time.

#### CRIMINAL JUSTICE SYSTEM

The major function of the state is undoubtedly social control, the protection of lives and livelihoods, and general security in the community. In many ways the success of other human engagements in the society largely depends on the extent of law and order, and or the assurance of personal and corporate safety. The failure of the criminal justice system is consequently a failure of the State itself. Indeed one of the most reliable indicators of a failed state is a criminal justice system that cannot deliver law and order.

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the

Nigerian Institute of Advanced Legal Studies. 17th March, 2011

The NDS/EFCC Survey 2007 showed that crime and corruption represents major concern of the business community. Over 75% and 71% of over 2,200 businessmen interviewed respectively said that crime and insecurity and corruption represent very serious obstacles to doing business. Of greater moment is the fact that 50% of interviewed businesses experienced at least one crime along the 12 months before the survey. In 40% of the cases, the crimes were perpetrated with the use of a weapon. 30% of the interviewed businesses indicated that they had been victims of burglary in the preceding 12 months while 20% reported theft or fraud of employees.

Regarding the prevalence of corruption, the survey showed that over 34% of interviewed businesses who had interacted with public officials paid bribes to those public officials. On the average 1 in 3 of the surveyed businesses paid bribes to public officials when carrying out administrative procedures.

The most worrisome aspect of the problem is the almost complete absence of detection and punishment of these offences.

In order to assess the state of our criminal justice system – both hard facts and perceptions are important. It is probably true to say that perceptions are often more important than reality. Most people do not have access to the empirical data on rates and frequency of crimes, heavy reliance is placed on anecdotal information and the perceptions of others.

Personal and corporate security concerns, and the decisions that follow them, are often made on non-empirical information.

But what does the hard data on the Nigerian Criminal justice system reveal? First, are the figures on the rates of conviction per capita in Nigeria as compared with other nations of the world; the purpose of this being to show how many people have been convicted and imprisoned as a percentage of our population compared with other countries.

#### COMPARATIVE POPULATION FIGURES

#### COUNTRY AND POPULATION PRISONERS

#### NO OF CONVICTED

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the

Nigerian Institute of Advanced Legal Studies. 17th March, 2011

#### NIGERIA (140 MILLION)

39,011

#### USA (298.2 MILLION)

2,198,798

#### RUSSIA (143 MILLION)

871,693

SOUTH AFRICA (47.4 MILLION)

160,198

UNITED KINGDOM (59.7 MILLION)

88,197

The figures show that relative to our population, the number of convicts per capita is extremely low. This may either mean that Nigerians are an incredibly law abiding people or that custodial sentences are not frequently used or that the criminal justice system has quite significant problems. Russia with a population of only 3 million higher than ours has almost 20 times as many convicted prisoners as Nigeria. South Africa with about a third of Nigeria's population has almost 5 times as many convicts as Nigeria has.

NIGERIA'S ESTIMATED PRISON STATISTICS (AUGUST 2009)

No of Prisoners

40,447

Pre-trial detainees

63% of total

Share of prison capacity filled

105%

Male prisoners

91.1%

Source: NationMaster.com

The number of pre-trial detainees and the inordinate length of pre-trial detention has been a long running embarrassment. It is indicative of some of the

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

grave problems of delays in processing suspected criminal activity through the criminal justice system. The implications are profound. First, there are issues of violations of the rights of detainees ranging from rights to fair and prompt trials to possibly torture and degrading treatment and other violations of the right to dignity of the human person created by the congestion in prisons and its associated problems. Second, is the non-effectiveness of the penal system's stated objective of rehabilitation and reform of the prisoner. Clearly, where the vast majority of inmates using prison facilities and subject to its regimen are not convicts and may never be, those for whom the system is meant can hardly benefit from its programs.

The data on police performance and public confidence in the police is also not particularly cheering. 79.7% of victims of crime in the CLEEN FOUNDATION NATIONAL CRIME SURVEY (2006) did not report crimes to the police. Reasons given by the victims for not reporting (aside from where the victims thought the offenses were minor) include ,self-help`, the ,police would not do anything`, ,did not want any police involvement`, ,fear of reprisals`, ,did not have any money to give police`, and ,police would inform the offender`. Of those who reported, a total of 56% were either ,not at all satisfied`, ,not satisfied` or ,neither satisfied nor dissatisfied`.

How about the time it takes to conclude criminal cases? Again the statistics are quite depressing.

NATIONAL AVERAGE OF TIME TAKEN TO CONCLUDE CRIMINAL CASES ACROSS THE COUNTRY (2001-2006)

High Court

1.5 years

Court of Appeal

3.5 years

Supreme Court

2.0 years

Total

7 years(from the High Court to the

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the

Nigerian Institute of Advanced Legal Studies. 17th March, 2011

Supreme Court assuming there are no interlocutory appeals)

Interminable delays of course reduce the chances of ever concluding cases in a satisfactory manner. In many cases, witnesses have lost interest, investigating police officers have been posted outside of the states where the offences were committed, sometimes also judges or magistrates are transferred or elevated and the cases have to start de novo. Besides, it also invariably impacts the volume of pre-trial detainees. Some of the causes are procedural. Rules which encourage dilatory tactics of counsel (especially defence counsel whose ploy especially where the accused persons can afford it is to frustrate trial and hope that the changing political circumstances may lead to release) such as stay of proceedings pending interlocutory appeals. Others have to do with infrastructural and logistic challenges sometimes as mundane as there being no fuel, tires or batteries for the black maria which conveys accused persons to and from court. Judges in many jurisdictions still take verbatim notes of proceedings in long- hand, and have to contend with power outages, uncomfortable court rooms, shortages of stationery and other office consumables.

Perceptions of foreign countries of the safety and security situation in the nation are also quite disturbing, even though many would consider them exaggerated. Travel advisories issued by the

embassies of some countries to their citizens considering business or other visits to Nigeria poignantly show these concerns:

The current US travel advisory reads inter alia:

,Violent crimes committed by individuals and gangs as well as by some persons wearing police and military uniforms is an ongoing problem especially at night. Crime is particularly acute in Lagos. Travelling outside major cities during the hours of darkness is not recommended due to both crime and road safety concerns. Visitors to Nigeria, including American citizens have been victims of armed robbery on the airport roads from Lagos and Abuja during both daylight and night time hours. Some visitors and resident Americans have experienced armed muggings,

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

assaults, burglary, kidnappings and extortion, often involving violence as well as carjacking, road blocks robberies and break-ins.'

The Australian High Commission's advisory on travel to Nigeria (March 2011) reads:

,We advice you reconsider your need to travel to Nigeria at this time due to the high threat of terrorist attack and kidnapping, the unpredictable security situation and the heightened risk of violent civil unrest. The security situation could deteriorate without warning'

The High Commission of New Zealand on its own part advises that:

,There is a high risk to your security everywhere in Nigeria due to the threat of terrorism, kidnapping, violent crime and the unpredictable security situation and we advice against all tourist and other non-essential travel<More than 250 foreign workers have been kidnapped, killed or injured in Nigeria since 2007 ,.

The poor record of apprehension and conviction of 419 (Advance Fee Fraud) perpetrators is probably responsible for the increase in the incidence of this crime and the stereotyping of Nigerians as fraudsters all over the world. It is unlikely that any other phenomenon has affected the image of Nigeria as profoundly as has 419.

But perhaps the most troubling development especially from a perception point of view is the several unresolved high profile crimes, especially homicides. The inability to satisfactorily resolve high profile cases has, relative to the actual numbers of those cases a disproportionate impact on both local and international perception of the effectiveness of the criminal justice system. The logic, of course, is: how can a system that cannot deal with offences against the ,high and mighty' deliver justice to the ordinary person?

I intend to briefly examine the facts and circumstances of some of these cases, with a view to showing where the possible weaknesses in the criminal justice response to them lie.

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

## THE BOLA IGE ASSASSINATION

Chief Bola Ige, SAN was Attorney-General of the Federation and Minister of Justice at the time of his assassination, on the 23rd Dec 2001, in his home in Ibadan. Chief Bola Ige was shot in his home by a few armed men, who accessed his residence quite easily because a short while before the incident, all the official security detail attached to him, had ostensibly gone to have a meal. Prior to his death, Chief Bola Ige had apparently forwarded a letter of resignation as Attorney-General of the Federation to the President, his reason being that he wished to spend time organizing his party for the 2003 elections, when he perhaps hoped to vie for the Presidency.

Also about a week before his death, Chief Iyiola Omisore, then deputy governor of Osun state was involved in an incident at an event in Ibadan, where Chief Ige was rough-handled and his cap removed. The incident was apparently somewhat related to the assassination of an Osun state PDP chieftain, Chief Olagbaju – which the local PDP held the AD (Chief Bola Ige's party) accountable for.

Some highlights of the subsequent investigation of the killing are that:

1. Forensic evidence, either of finger prints or ballistics did not feature in the investigations. The prosecution was not provided with evidence as basic as whether fingerprints at the scene of the incident matched those of any of the suspects.
2. Ademola Adebayo alias 'Fryo' swore to an affidavit, which he handed over to his counsel Mr. Festus Keya, where he alleged that Chief Iyiola Omisore had offered him N5 million to kill Chief Bola Ige.
3. The police later arrested 'Fryo' and his lawyer, Mr. Keyamo. After two weeks in detention 'Fryo' recanted; and alleged that he was tutored by Mr. Keyamo to make the allegations. 'Fryo' also wrote a letter on the 11th of

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

February 2002 de-briefing Mr. Keyamo. Photocopies of the letter were distributed to the media by the police.

4. Mr. Keyamo was charged to court by the Police allegedly for making false declarations and perverting the course of justice. Mr. Keyamo maintained his position that 'Fryo' had confessed to him on tape and hand-wrote his confession. Mr. Keyamo also claimed that 'Fryo's' testimony showed that he was familiar with Chief Omisore's itinerary and had in fact been present in his house on specific occasions.
5. Alani Omisore, a cousin of Chief Iyiola Omisore, was identified by Andrew Olotu (the security guard on duty the night Bola Ige was assassinated) as the leader of the assassination squad. Alani presented an alibi, claiming that he was not in Ibadan that day.
6. Keyamo, (in an interview with researchers for this study) claimed that while in detention he was in a cell next door to Chief Iyiola Omisore and Andrew Olotu and that Andrew Olotu and Omisore were in the same cell for months. He alleged that Andrew Olotu was well taken care of by Omisore, and



that frequently Omisore would shout across to him that he had just bought food for Olotu and he could get Keyamo some food if he desired it.

7. Andrew Olotu, who had earlier identified Alani Omisore later recanted, claiming that his earlier statement was extracted by torture. ACP Amusa Bello, who headed the investigations denied the allegations of torture and recalled that Olotu was about to be released on bail after being interrogated, but just before he was released, he (Olotu) saw both Alani and Iyiola Omisore entering the premises of the Alagbon Police station, and informed him (ACP Musa Bello) that he had seen the man who led the assailants ( Alani Omisore)

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

8. ACP Musa Bello claimed to have a video tape of Andrew Olotu demonstrating how he was held at gun point and forced to take them to Chief Bola Ige's room.

9. Muyiwa Ige, Chief Bola Ige's son who was in Chief Ige's home on the night of the assassination, identified a Mr. Pade Omisore, as one of the assailants who had ordered him to lie down on a bed at gunpoint. Pade Omisore, was arrested, questioned and later released by the police.

10. By May 29th 2003, a PDP government had taken over in Oyo state. A nolle prosequi was entered by the DPP, Mrs Olubunmi Oyesina for most of the suspects except Chief Iyiola Omisore. In October 2004 Justice Atilade Ojo ruled that the prosecution had failed to prove its case beyond reasonable doubt against Chief Omisore.

11. All the principal investigators of the case, DIG Abimbola Ojomo (then head of force Criminal Investigation Department) ACP Amusa Bello, were redeployed or otherwise taken off the investigation long before it was concluded and the suspects charged to court.

12. In May of 2007, the Obasanjo administration announced that an alleged drug baron Moshood Enifeni had confessed while in detention to some fellow inmates that he was responsible for the assassination ostensibly because Chief Bola Ige was Attorney-General and Chief Prosecutor in a drug-related case against him. The IGP, Mr. Sunday Ehindero, in a most bizarre television interrogation of Moshood Enifeni by some hooded individuals who claimed to have been his cell mates, declared that the Enifeni was the culprit. Enifeni's family at a press conference stridently denied the allegation and claimed that the alleged case against him was plea-bargained in August 2001, when he was released and that he could therefore not have borne a grudge of any kind as of December 2001 when Chief Bola Ige was killed.

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

There is little doubt that the quality of police investigation in this case was to put it mildly, superficial. The police appeared more actively concerned with ensuring that neither the government nor functionaries of the ruling party were implicated in any way in the assassination than in discovering the perpetrators. The police, it appeared, were determined to discredit and intimidate both Fryo and his counsel as evidenced by their detention and the haste in charging Mr. Keyamo.

Haz Iwendi, the police spokesperson was quoted as saying that a confession made to a lawyer was not usable by the police.

Fryo's detention and his recant during the period certainly did not help the credibility of the conclusion that he somehow invented the facts and got his lawyer involved in it. Again that Andrew Olotu who had positively identified Alani Omisore as the leader of the gang of assailants was kept in the same cell or even within interacting vicinity of Iyiola Omisore and that the said Olotu eventually recanted is the sort of poor judgment in witness protection that reeks of pre-meditation on the part of the police.

#### THE ASSASSINATION OF FUNSO WILLIAMS

Funso Williams, a PDP candidate for the governorship of Lagos State was killed in his study at home in Dolphin Estate, Ikoyi, Lagos on the 27th July, 2006.

Prior to his assassination, a fractious disagreement had developed amongst the top contenders for the PDP gubernatorial ticket for Lagos state, which had degenerated into violence between supporters of one such candidate and them Minister of Works, Senator Adeseye Ogunlewe and those of Funso Williams.

Some of highlights of the investigation:

1. The period between the discovery of the assassinated Funso Williams and when examination by a forensic pathologist was allowed by the police was about 6 hours, during which time several persons were allowed into the room where the late Funso Williams was still lying face down with his hand tied behind his back.

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

2. A police team had also visited the scene hours before the pathologists arrived, but had failed to secure the scene.

3. The three-man detective team from Scotland Yard, from where the Federal Government sought help to investigate the case were taken to the home of the deceased a few days after his death, noted that the crime scene was not preserved at all for forensic investigation. The police even days after the incident had not secured and taken control of the scene and the keys to the room were still in the custody of a family member of the deceased.

4. According to the Scotland Yard team, over 7,000 fingerprints were collected from the scene, including those of policemen. Far too many fingerprints to make much progress.

5. Although media reports suggested that he was stabbed to death, largely because a blood stained knife was found at the scene, and at least one stab wound was identified on his body, the autopsy report shows that Funso Williams was strangled to death before he was stabbed and that the stab wounds were not the cause of death.

6. Aside from Funso Williams' political rivals including Senators Ogunlewe and Obanikoro, and the co-coordinator of the Federal Road Maintenance Agency, Kehinde Oyenuga, 9 other suspects were arrested. The three mobile policemen on guard duties at his home were suspected of complicity on account of their inability to explain their absence from their duty post when the incident occurred.

7. A jubilant text message, congratulating someone for a job well done was found on the phone of one Mr. Felix John, who was also arrested. Mr. David Cassidy, Funso Williams' day security guard who had the

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

keys to the vacant building through which the assailants accessed the Williams' home was also arrested and detained.

8. Frank Uzuegunam, Funso Williams' Media Assistant was also questioned, especially about why he prevented Williams' domestic servants from going upstairs to invite him to breakfast when he was unusually late coming downstairs. He had apparently told the domestic staff that Funso Williams was getting dressed upstairs. It was apparently after a long wait that Funso Williams' driver ignored the directive, went upstairs and found him dead.

To date no one has been charged with the killing of Funso Williams.

#### ATTEMPTED ASSASSINATION OF IYABO OBASANJO-BELLO AND THE KILLING OF ADEIFE SODIPO AKIN-DEKO (AGED 14 YRS) AND AKINOLA SODIPO AKIN-DEKO (AGED 11YRS)

The tragic killing of the Sodipo-Akindeko siblings, Adeife, aged 14 and her brother Akinola, aged 11, occurred on Easter Sunday, April 20th 2003, while travelling in an FGN numbered car, with fully tinted windows and screens, belonging to then Mrs. (now Senator) Iyabo Obasanjo-Bello, daughter of the then president. Also killed in the same car were a police orderly, the driver, and an elderly man. The police claimed that the victims were killed by one of the gangs working for the Beninois trans-border robbery king pin, Ahmad Tijani, who specialized in snatching cars in Nigeria and selling them in Cotonou. According to the police, Ahmad Tijani had confessed to the crime.

The mother of the deceased children, Dr. (Mrs) Bisola Sodipo Akin-Deko, (who was interviewed by researchers for this study on the 10th October 2009), refuted the police story, she alleged that:

1. The children and others killed in the incident were not killed by robbers but by hired assassins, whose target was Senator Iyabo Obasanjo-Bello.

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

2. That on the date of the incident, both herself and Iyabo were travelling from Lagos to Abeokuta and had stopped over at Igbogun to go to Ota. In the course of the journey, Iyabo decided to join her, Bisola, in her car and suggested that her children move into her (Iyabo's) car, an FGN marked vehicle, which was driving behind them, while Iyabo and herself were in her (Bisola's) car.

3. On passing the Ifo junction she noticed that her driver looked alarmed, which prompted her to look back only to discover that Iyabo's car, carrying the deceased persons, was ambushed by about 10-12 armed men who had forced the car into a valley and were literally spraying the car with bullets. She said she saw the leader of the assassins, dressed in white, and carrying a live tortoise around his neck.

4. As the assailants continued to shoot, her driver accelerated to escape the scene. She said: ,I told the driver to stop but he refused, It was when I opened the car door and attempted to jump out that he stopped. It was then I heard Iyabo telling the driver, ,don't wait, it's me they want.'

5. Dr. Sodipo Akin-Deko, claimed that she was eventually prevailed upon not to come down from the car but to seek help at a police check point and also from the President's home.

6. A team of policemen was then dispatched to the scene by the president. She was dissuaded from going to the scene as she was told that the children had been taken to hospital; no one being bold enough to tell her that no one survived the assailants' bullets.

Her children were later identified by a priest and her sister for burial.

7. Although Ahmad Tijani was later extradited to Nigeria for robberies committed in Nigeria, mostly car robberies, he was never charged for

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

the murder of the victims of the Easter Sunday killings at Ifo junction, nor for attempting to assassinate Mrs. Iyabo Obasanjo-Bello.

8. The two suspects, who were reportedly members of Tijani's gang, were never presented for identification by Dr. Bisola Akin-Deko, Iyabo Obasanjo-Bello, or any other eye witnesses of the incident.

9. There was no evidence of any attempt to snatch the car or steal from it.

10. The Assistant Commissioner of Police investigating the case was transferred before the conclusion of the investigations.

It is apparent that for whatever reasons whether it is as a part of an official cover up or merely a lack of desire to thoroughly investigate, that the police prefer the explanation of armed robbery to any suggestion of assassination.

The approach is clearly wrong-headed. Even the least intelligent procurer of assassins would probably remember to instruct them to make the incident look as much as possible as a robbery. That, going by even past experience with police investigations is a story line that would throw the police off the trail of the possible sponsors of an assassination. In several of the high profile killings we have examined, good reasons usually exist for at least investigating assassination allegations more tenaciously. The sum effect of the ,armed robbery theory' of the police in high profile killings is the continuing impunity with which they are effected.

We have spent considerable time on the facts of these cases, police investigations and conclusions, and possible judicial outcomes because these cases though high profile are typical of the way cases are processed in our criminal justice system. It must be apparent that a great deal is wrong.

Evidently, there is a grave problem with the quality of investigations. The reasons include inadequacy in terms of quality of human resources and expertise available for investigations, as well as funding and necessary equipment.

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

An overarching issue in the investigation of many of the high profile cases is the sometimes almost brazen incidence of political interference. The possibility is itself indicative of weakness in the calibre of leadership of the police force and its lack of independence from even direct interference from the Executive. A possible answer to that, at least in the short term, might be greater independence from the point of view of funding and tenure of police chiefs once appointed. There is no reason why the police cannot like the judiciary be funded directly from the consolidated revenue fund and be self-accounting. The Inspector-General of police may be appointed for a fixed one-term tenure without the distraction and compromises that tenure renewal brings.

However, the larger issue is with the structure of the police force itself, and the aberration of a centrally controlled police force in a federation of over 140 million people. The operational and management challenges of that arrangement are evident in the chaotic state of the Nigerian Police. From the point of view of effective coordination of the institutions of criminal justice, it is evident that there is a problem where the chief law officer of the state cannot determine how many police men he requires to keep law and order.

Many of the delays in the criminal process are based on the conflicts in priorities between the federal command of the police and local needs, the transfer of investigating police officers out of state without consultation with the state directorate of public prosecution. Besides it would seem quite basic that effective policing must be community-based, most criminal behaviour is local. How can a Hausa speaking police officer from Katsina State be effective in detecting and investigating crimes as DPO in a village in Ebonyi state when he cannot speak or understand the local dialect? The case for State police is one that has made itself in so many ways. In that kind of arrangement there is ample room for a Federal police force as well, which deals with cross-border crimes, (both internal and external) Federal offences, and collaborates with the local police in national assignments like censuses

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

and elections. With the State police, States can rather like state judiciaries currently do, compete in innovation, reform and standard setting.

There is very little doubt that without the use of forensic science in criminal investigation, the most significant resources are simply excluded! There can be no excuse today, for the non-use of the

broad range of criminalistics, i.e. the application of various sciences in the gathering of evidence which are the results of examination and comparison of biological evidence. These include Impression evidence, such as fingerprints, footwear impressions and tyre impressions, ballistics, (scientific examination of firearms and ammunition). Forensic DNA Analysis is also quite common place in many jurisdictions. That the Nigeria Police does not have its own laboratories with the capacity of DNA Analysis is regrettable indeed.

How about digital forensics? Which deals with the many scientific methods of recovery of data from electronic and digital equipment? A great deal of these forensic resources are quite affordable and the technology and training are easily accessible today. Fingerprint technology is clearly not rocket science. It is perhaps the oldest of the forensic technologies and had been available in the Nigeria Police force for decades. It however fell into disuse and along with the fact that no database of fingerprints even of suspects or convicts exists. Without such data bases, gathering fingerprint evidence is of limited use since there is little to match what is gathered with.

From practically all the cases examined but especially the Bola Ige and Funso Williams killings, it is quite obvious that crime scene management is alien to many police operatives. Standard procedures to be adopted at crime scenes, cordoning off the scene, wearing appropriate clothing and accessories to prevent interference with prints, impressions and other biological evidence which may be available are completely ignored.

The extensive potential for the investigative use of mobile phones and even the banks' very comprehensive data base (which is accessible across the

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

country at the touch of a button) has remained largely untapped in police investigations.

No great intelligence is required to demonstrate that impunity thrives in criminal behavior when there is no certainty of detection and punishment. The wave of kidnappings which began in the Niger Delta, its victims usually being expatriates, has now spread across the country. Essentially, the spread of kidnapping is based on the successes of the perpetrators in the Niger Delta and now everywhere else. While all official statements after kidnap victims have been released, claim that no ransoms were paid, almost everyone knows that there is no greater falsehood and that payment of a ransom is the almost invariable resolution of kidnap. Many perpetrators possibly find this new enterprise far more rewarding from a financial point of view and perhaps less dangerous from a personal safety point of view than armed robbery.

There would appear to be no imaginative response from police and other law enforcement agencies to this new threat to lives and property, a serious disincentive to living, working, or even tourism in Nigeria. One would have thought that perhaps the police would have taken active steps either by itself or with assistance from jurisdictions that have had a history of kidnappings, to establish special units to study the phenomenon and design strategies to deal decisively with it. As we had noted earlier slow criminal trials are a great disservice to the criminal justice system but must be understood as a function of the systemic problems of the entire criminal process. Poor

investigations, absence of key witnesses including investigators at trials, delays in the prosecutorial advice, will slow down even the best resourced and prepared courts.

Some practical steps can be taken. In 2007, Lagos State introduced comprehensive provisions on plea bargaining under its new Administration Of Criminal Justice Law 2007 (ACJL). The provisions formally introduce plea

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

bargaining but one in which adequate checks and balances are provided to prevent some of the abuses that had given previous efforts a bad name. Plea bargaining will help reduce trial time and the attendant docket congestion.

The ACJL following a similar innovation in the EFCC Act, now specifically prohibits stay of proceedings pending interlocutory appeals. In addition, quashing of criminal charges before arraignment is also now specifically disallowed. An application to quash is essentially now only possible after the prosecution has closed its case. These provisions specifically target procedural rules that have been used to delay trials especially by defence lawyers.

The ACJL also provides for a specie of the Habeas Corpus process for use in the magistrate courts. Any person in detention for over 24 hours may apply in writing to a magistrate to have his detention reviewed. Under the new provisions, magistrates in Lagos State now have extensive supervisory powers over awaiting trial detainees. When the full complement of the provisions is applied it should significantly impact the number of awaiting trial detainees in Lagos State.

## CONCLUSION

There is little doubt that the legal process in Nigeria is challenged. There is a palpable sense in the polity that law and due process simply do not deliver on their promises on law and order, fair and speedy justice and security of lives and property. Few people today will leave their safety in the hands of the police. Fewer believe that the system can hold the wealthy or influential to account. Litigation in the resolution of commercial disputes is viewed by the discerning as only a poor last resort, between tales of judicial corruption and long delays in the trial process the prognosis is usually quite bleak. The rise in new crimes, kidnappings, and lately bombings is frightening enough. But the shocking impunity of the likes of the Boko Haram uprising which

Paper presented by Professor Yemi Osinbajo, SAN at the 2011 Founder's Day Lecture of the Nigerian Institute of Advanced Legal Studies. 17th March, 2011

apart from hundreds of slain victims has taken the lives of 26 policemen in Borno alone heighten the sense that the State may have lost the capacity to respond to challenges to its very being. This perhaps explains why Nigeria is classed as No. 14 in a list of 63 failed or failing States, war torn Somalia being No. 1.

The situation is not irredeemable. The inhibition to reversing these trends is in not recognizing just how close to the edge we are today. A serious commitment to implementing well thought out,

practical and measurable solutions some of which we have highlighted, to the many problems offers perhaps a glimmer of hope that the retreat of the legal process does not become a surrender.

But I must not end without telling you this story. On the 27th of December 2001, a few days after the assassination of Chief Bola Ige, the body of Attorneys-General, comprising 36 Attorneys-General, chaired by the Federal Attorney-General, decided to pay a condolence visit to the family of our fallen chairman, Chief Bola Ige. We all agreed to meet at the Premier hotel for 12pm. We were all there. After the shock of the killing of the Federal Attorney-General, many came with extra security detail and all with at least an orderly. We were to leave our cars at the hotel and go in two buses-one for us and the other for our large retinue of policemen and security detail. At the lounge of the hotel, while getting ready to go we talked about how suspicious the killing was and especially how security detail and policemen, could all leave for a meal at the same time leaving the nation's Chief Law Officer's home without armed security. At about 1.30pm we all went out to board the bus. There was only one bus. Where was the other bus? Where was all the security detail? The hotel doorman then quickly solved the riddle; „Den say den wan go chop sir,.

All our security detail and policemen had gone in one bus to have a meal somewhere.