



## Towards Realization of Criminal Justice System in Nigeria: The Hope of Common Persons in Society

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### Abstract

This paper examined the realization of criminal justice system in Nigeria, the hope of common persons. The criminal justice system helps in addressing such infringements for overall well-being of society. However, the Nigeria criminal justice system has fundamental defects and flaws as manifest in every process of system from the police, judiciary and correctional service as it affects common persons. This paper examines the reality of criminal justice system in Nigeria, the hope of common persons. Marxist theoretical framework is adopted for the study. The study's methodology was derived strictly from secondary data, such as official state documents and government reports. The study found that criminal justice system in Nigeria operates on cash and carry justice as such chasing the common persons out of justice. Unfortunately, from the police to the judiciary and correctional service, the system operates strictly on financial inducement (money bags) which common persons cannot afford. The study recommends that, the National Assembly should make laws that will empower the government to make independent bodies such as Economic and Financial Crimes Commission (EFCC) to strictly oversee or monitor only the activities of criminal justice system in Nigeria. The primary duty and responsibility of the criminal justice system is to dispense justice in accordance to the rule of law. However, in practice the criminal justice system determines the guilt nor innocence of potential suspects, and the allocation of fair and proportional punishment to the offenders.

**Keywords:** Towards, Realization, Criminal, Justice, System, Hope, Common, Persons and Society.

### Introduction

Across the world criminal justice system (CJS) is usually regarded as the hope of common persons that addresses their infringement of rights. The primary duty of the criminal justice system is to dispense justice in accordance with the due process or rule of law (Ajah 2018). The criminal justice system is concern with the determination of the guilt or innocence of suspects, and allocation of punishment that is fair and proportional to convicts' offence (Alemika et al., 2005). Moses (2011) maintains that system is an embodiment of crime regulating techniques, which represents the whole range of government agencies that functions as the instrument of the state to enforce its set rules necessary for the maintenance of peace, order, and tranquility. The system is made of many bodies, groups, institutions and agencies that have been charged with the responsibilities of ensuring social justice and compliance by people. The system is subsumed into different components involving procedures such as arrest, charging, trial and conferment of suspects. It is a system where law and deciding on individual is guilty of violation of laws of the society and appropriate punishment is meted out on individual (s) to serve as deterrence to him and others (Ajah 2018). The system is also saddled with the responsible of care and rehabilitation of offenders of laws and prescribed punishment to be meted out for the offenders (Ukwayi et al., 2017).

Policies in the criminal justice system is built on five components of law enforcement component, court system, prosecution, corrections system and community services (Clare et al., 1977). The effectiveness of the system is measured by its ability to meet the goals and desires of the common persons in deterring, incapacitating, retributing, rehabilitating, and reintegrating the people that infringed on their rights in society. The process commences when the



police having reasonable suspicion that a person has either committed crime or is committing a crime. It continues through to the end of trial, and continues, in case of conviction, through sentencing, imprisonment and release upon fine or the completion of sentence (Akhiero 2018). It is obvious that the criminal justice system involves many processes and several distinct stages.

It is embarrassing that cursory assessment of criminal justice system in Nigeria reveals that many unfortunate things go on in the system particularly regarding the interest of common persons. This wrong starts from the police who set criminal justice in motion, courts and correctional services. Unfortunately, the major drawback of common persons in criminal justice system is kill and divide syndrome which starts from Nigeria police force. This is situation where the money collected from their complaint will be share among police officers based on seniority as agreed upon. When complain is login by the complaint to the police an investigating police officers (IPO) will assign to take responsibility of the case immediately make demand for logistic support. During police investigation it is a well-known fact that the police an investigating police officers (IPO) expected to carry out investigations free without extorting money from the complaint and charge the suspect to court accordingly. However, many times the police an investigating police officers (IPO) keeps extorting money in the course of investigation or at the trial of the case from the complaint thereby making them to lose interest in pursuit of the case. especially when they are unable to meet up with the demands. During trials the mainly in the aspect of delay in trials especially when common persons cannot afford the financial muscles to speed up the case it is always stall for one reason or the other.

In the context of this paper, there are some key concepts that need to be clarified. In general terms, the criminal justice system is comprised of three organs; the law enforcement agencies which is primarily the Nigeria Police Force, the judiciary on one side and defence counsels on the other side, and the correctional service. The criminal justice system involves two issues, the determination of guilt and sentence and punishment established for the purpose of reaching its subjects with justice, by convicting and punishing the guilty and helping them to stop offending while protecting the innocent (Njoku 2019). The criminal justice system provides support to the public, through justice system which effectively brings offenders to justice. The ministry of justice, in turn, oversees the work of the criminal justice system, aiming at addressing crimes by developing laws that help contribute towards a better justice system through the instrumentality of police whose duty in line with the Police Act provides that:

The police shall be employed for prevention and detection of crime, apprehension of offenders, preservation of law and order, protection of life and property as well as due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within and without Nigeria as may be required of them, under the authority of this country or any other act (Police Act, Cap.19).

Common persons are cannons commoners arose in the classical civilization of ancient Rome around the 6th century BC, with the social division into patricians (nobles) and plebeians (commoners) (Gary, 2001). Common persons refer to those who have no authority nor influence that are ordinary in society. In another way they are refer as ordinary citizen in a given community or nation that lacks the power or any significant social status, especially those who do not belong to either the royal family, nobility, clergy, or aristocracy family.

The history of criminal justice system in Nigeria is traced to pre-colonial Nigeria which is the brain child of British administration in Nigeria dates back to 1861. Prior to the British influenced laws and institutions, there were spectrum of customary laws and institutions that were guiding the conducts and behaviours of the natives. Most ethnic groups and tribes have their spectrum of customary laws and institutions that sufficed were recognizable way of dealing with criminal offenders. Their laws were largely unwritten and simple in nature. Only the Muslim community in the North where operating written laws under different structures called Maliki School (Olaposi, 2021).

However, the colonization of the country in the late 1800s by Europeans, who introduced imprisonment based on their own correctional systems ushered in a new face of criminal justice system (Otu, 1999). British government in Nigeria introduced a penal policy based on the British system and the societal need. Some events that influenced the British criminal justice system in Nigeria include the British occupation of the country, the Nigeria-Europe confrontation and the slave trade (Otu, 1999). The Nigeria criminal justice system was formed to protect the Europeans from the natives they were exploiting and oppressing (Otu, 1999). The first interference of the British administration



with the customary criminal structure was in 1863, when the Common Criminal Laws were introduced to the Colony of Lagos. The introduction of this common law was difficult to obey as it was unwritten and unascertainable. In 1904, the colonial system under the administration of Lord Frederick Lugard introduced a criminal code to the northern region of Nigeria. Thus, making a tripartite criminal law system in the country, wherein the English criminal law obtained in Lagos, and the criminal code in the North and ingenious rule in the South. The criminal code became applicable in the whole of Nigeria in 1916, after the Northern and Southern protectorates were amalgamated in 1914 (Olaposi, 2021).

Today in Nigeria there are two distinct but simultaneously principal codes operating for the determination of crimes in the country. The criminal code and the penal code. A section of the Bill of Rights, which became section 22 (10) of the Nigeria Constitution, 1963, provided “No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law. In section 8 (3) of the Administration of Criminal Justice Act, 2015, provides, a suspect shall be brought before the court as prescribed by this Act or any other written law or otherwise released conditionally or unconditionally. The criminal code that had existed since 1916 (now operative in the Southern region) and the Penal Code of 1959, operating in the Northern Region of the country. Nigeria has its major sources of criminal laws from two principal codes namely, the Criminal Code Act Cap C38 laws of the Federation of Nigeria, 2004 and the Penal Code Cap C8 laws of the federation of Nigeria, 2004. Other sources of the Nigeria criminal laws include the Constitution of the Federal Republic of Nigeria 1999, the Criminal Procedure Act (Southern), the Criminal Procedure Code (Northern), the Administration of Criminal Justice Act, 2015, other Statutes and Acts of the National Assembly, International Treaties and case laws. The criminal code operates in the southern region of the country, while the penal code operates in the northern region.

This action led to the introduction of the Nigerian prison system now Nigeria Correctional services. The history of correctional services dates back to colonial power as it is known today, was introduced by the British during the time when Nigeria was her colony (1861-1960). Rotimi (1982) posits that Nigeria established its prison in 1872 in Lagos on Broad Street to contain the natives who were against their exploitation agenda. The British left a two-tier system (Native and Federal) of prisons which became unified into one prison system in 1968. In all circumstances the philosophical objective of the criminal justice system in Nigeria initially was not only to punish criminals but also to prevent, control and deterred all category criminals from committing crime.

The relevant theory for this study is the Marxist theory, which classifies society into two distinct groups; the haves (bourgeoisies) and the have-nots (proletariat). Karl Marx is probably not identified as a criminologist, though he is often seen as a political economist, critical historian of economics, and sociologist. Marx’s writings were concerned with the rise of social institutions during industrialization which included the development of criminal law, the power of police, prisons, and processes of criminalization. Marxist view about the criminal justice system is anchored in the boarder Marxist view of class interest (Marx, 1853 cited in Munir 2018). Marxist theory of criminal justice begins with a recognition that for the society to function efficiently, social order has to be maintained (Box, 1987). The capitalist has to exploit the poor to maintain their standard and continue with their accumulation of wealth, while the working class, on the other hand has to resist the exploitation. Marxist theory believes that the whole criminal justice system is unjust. Crime is a product of social structure, mostly a response to the capitalistic environment. Marxists argues that crime is a reaction to the unequal power relation and unequal distribution of resources. The way to address crime, therefore, is not through criminal justice system or incarceration offenders; it is through equal distribution of power and resources.

The theory maintains that the whole system of criminal justice system is skewed against the poor because the capitalists are the one who influence the passage of the laws. They pass laws that will benefit them and protect their property (Fattah, 1997). As such, most of the laws are passed to ensure that no matter how the working class is deprived, it will always respect private property, that is, the property held by the rich. Even when the capitalist themselves are not in power, they use their resources to influence state policies and laws (Marx, 1853 cited in Munir 2018). This is always a scheme by the capitalist to ensure they have senior people in high offices to protect their interests, either through government policies or legislations. For instance, the case Senator Ahmed Lawal vs Bashir Machina; Senator Godswill Akpabio vs Udom Ekpoudom the Supreme Court held that the Federal High Court and



the Court of Appeal were wrong to have assumed jurisdiction in the suit because the issue of candidate nomination lies squarely with political parties (Ejekwonyilo 2023).

According to Marxist, it is not that crime is domiciled in the low-income earners (common persons) only, the propensity to cause crime cut across all the social status. The law, obviously designed by the ruling class, is lenient to crimes committed by the rich. Such an outcome is ironical because as the law gives much weight to street crime, against crimes committed by the bourgeoisies' classes (Taylor, et al., 1973). There are many instances, of corporate crimes that go unpunished, and when they are punished, the punishment is not proportionate. Selective justice is targeted and designed in a way to neutralise those members of the oppressed class (common persons) who try to oppose the oppressive system (Gordon, 1991). It is a warning that those who refuse to accept the status quo will be imprisoned. Marxist point to the high number of the poor people in current Nigeria correctional services to justify this claim. The socially deprived and disadvantaged members (common persons) of the community often constitute the highest percentage of people in prisons (Hartney, et al., 2009; Carson, 2014). Based on the foregoing assumptions of Marxist theory, is accepted as the theoretical framework to guide the study of towards realization of criminal justice system in Nigeria, the hope of common persons

In all intends Nigeria correctional services are designed to house only convicted inmates. Apart from keeping custody of the legally interned, the correctional services are meant to provide services that tend to improve the lots of offenders especially common persons who are convicted. The cardinal objective of any correctional service is to keep inmates, reform, rehabilitate and afterwards, reintegrate them into the society so that they can live as law abiding lives after serving jail terms. Nevertheless, the situation today in Nigeria is the opposite. It is common sight to see correctional service that is meant for common persons that is supposed to house four inmates housing more than one thousand inmates who are common persons, living under life threatening situations (Akhiehiero 2018). All such clandestine arrangements leave a sour taste in the mouth as it portrays criminal justice system in bad light against common persons in Nigeria. It is against backdrop that this paper examines the towards realization of criminal justice system in Nigeria: the hope of common persons in society

## Objectives of the Study

This study is anchored on the following objectives;

1. To examine the factors responsible for the treatment of common persons in criminal justice system in Nigeria
2. To ascertain the position of common persons in criminal justice system in Nigeria

## Research Questions

The study is built upon following research questions;

1. What are the factors responsible for the treatment of common persons in criminal justice system in Nigeria?
2. What is the position of common persons in criminal justice system in Nigeria?

## Methodology

The paper dwells specifically secondary data which was derived strictly official state documents and government reports. The sources of information, were obtained from journals, books, conference papers, and media reports by others, in order to achieve the set goal. The data gathered from official state documents and government reports were thematically analysed in line with objectives of the study.

## Results

### Research Question 1

What are the factors responsible for the treatment of common persons in criminal justice system in Nigeria?

### The Factors Responsible for the Treatment of Common Persons in Criminal Justice System in Nigeria

The criminal justice system is public agency that responsible for maintenance of law and order, law enforcement and imprisonment of offenders. The criminal justice system encompasses several institutions and actors



within the executive, legislative and judicial arms of government as well as private legal practitioners. The legislative, police courts and prisons are the core institutions of criminal justice system in Nigeria (Alemika et al., 2005). Thus:

The Nigerian criminal justice system cannot be properly classified as a system. On the contrary it is more of an assemblage of uncoordinated institutions. Thus, the various institutions of criminal justice in the country are oriented towards the punishment of the offender and the control of the common citizens. Consequently, there is minimal concern for the rights of the accused person at all levels of the system from the legislative to the prisons (Alemika et al., 2005:5).

Although the system is overburdened with corruption, heavy caseloads and suffer from insufficient financial and human resources. It has been argued that criminal justice system and officials are ineffective, corrupt, and repressive in African (Hills 2000). They attribute these problems to the colonial origin of the institutions as partisan agencies for the protection of the interests of the colonial rulers; and the absence of fundamental transformation of inherited colonial legal order by the post-colonial rulers, who also became autocratic, repressive, corrupt and insensitive (Joireman 2001). In both colonial and post-colonial eras, the legal institutions and law enforcement officials functioned as instruments to be used by the rulers for the suppression of the common persons (Alemika 1993a). This leads to various malfunctions of the justice system, such as high levels of impunity, delays in administration of justice, overuse of pretrial detention often for lengthy periods, insufficient use of alternative sentencing options, overcrowded prisons that cannot fulfil their rehabilitative function and high rates of reoffending as such cannot deliver justice that will favour the interest of the common persons. Laws in Nigeria create petty offences which are inconsistent with the principles of equality before the law and non-discrimination on the basis that they either target or have a disproportionate impact on the poor and other vulnerable persons (Kunle 2022).

In principle, it is always said that criminal justice system is the hope of the common person. By virtue of section 17 (2) (a) of the Constitution of Nigeria, as amended in 1999 every citizen shall have equality of rights, obligations and opportunities before the law. However, in practice, the rich and poor defendants are not treated equally by Nigerian courts (Falana 2019). Approaching the criminal system from police to courts one needs to have some financial muscles to pay fees, and also engage the services of layers who collect legal fee among other expenditures (Igwe et al., 2021). There are many cases of incessant and arbitrary arrests and detentions for conduct either not or vaguely codified by the Nigeria police force in society. Data compiled by various non-governmental organizations with a focus on the decriminalization of petty offences reveal that a significance number of citizens targeted by minor offences laws are common persons who suffer violations through arrests or detention for wandering and loitering by Nigeria police force (Kunle 2022). For instance, data compiled by Lawyer Alert between April 2021 and September 2021, which show that seven hundred (700) wandering and loitering cases representing 16 percent of petty offences cases tracked nationwide were recorded by Nigeria police force which are mostly common persons (Kunle, 2022). The report further revealed that the Nigeria police force young males are more regularly held for the offences and in the process forced to unlock their phones for proof that they are not rogues or vagabonds. Notably, another 10 percent of the recorded cases involved hawking and seven (7) percent of the cases involved commercial sex workers, during the period (Kunle, 2022). Torturing of common persons by Nigeria police force remains passive, routine and widespread, with force confessions to extracted evidence that will be used against them in trials (Amnesty International, 2008). A study by Rehabilitation and Welfare and Action (PRAWA), maintain that about 2,431 people charged with petty offences got pro bono services across five states from February 2020 to April 2021 (Kunle, 2022). The report, further added that Abuja had the highest of 1,897 common persons 77.13 percent, while Lagos State followed with 147 persons or 6.05 percent. Abia State in south-east Nigeria came third with 136 cases, Enugu State also in the South-east had 137 cases and Kano State in the North-west had 114 cases (Kunle, 2022). The deputy director of PRAWA, Ogechi Ogu, maintain that some of the offences classified as petty/minor are usually connected to the poor, vulnerable and marginalized persons in society such as women and children (Kunle, 2022). Unfortunately, the common poor offenders are arrested and put in detention they are not given options of fine and even given they cannot afford to pay. Some of the offenders are children who regrettably are taken into custody to be contaminated by adult offenders. The criminal justice system itself is criminal and punishes the common poor (Kunle, 2022).



Aside the fact that rich persons have the access to hire the services of the best advocates in any area of the law the courts are piloted by judges who are not neutral in the class struggle being worked daily by the Nigerians (Falana 2019). Realising that the significance of number of people are economically downtrodden who have no access to legal representation the State has set up the Legal Aid Council to offer legal services to common person. Due to the fact that it is poorly financed, each state government has established the Office of Public Defender to ensure that common persons are offer with legal services (Falana 2019). Nevertheless, the Legal Aid Council is faced with some peculiar contradictions that undermine its effectiveness in delivering of judgment in favour of common persons. This makes the task of the Legal Aid Council impossible to common persons who are poor and downtrodden member of the society.

## Research Question 2

What is the position of common persons in criminal justice system in Nigeria?

### The Position of Common Persons in Criminal Justice System in Nigeria

Kunle (2022) reports that many people who goes out daily to earn a living end up been in troubles of arrest, detente, exorbitant fines and imprisonment in different parts of the country. Those targeted by the police are the deprived of their rights, particularly on the basis of social origin, social status or fortune; the negative socio-economic impact of the enforcement of these offences. Olonisakin, et al., (2017) contend that it has become very glaring that a system whose principal constituents demonstrate utter disregard for the office and purpose for which they are sworn to uphold is a complete negation of the ideal and the very essence of the system. A society that promotes evil on the basis of social status but lays claim to be fair, just and egalitarian in handling suspects. Attah (2022) posits that the chairman of Nigerian Bar Association (NBA), Onitsha, Anambra State, branch, Onyechi Ononye, and his ‘learned friends’ have raised alarm that the Nigerian justice system and access to justice are under serious threat as a result of corruption in the country. According to him, ordinary citizens and those in the legal profession are badly hit by the development as most cases are now decided based on the content of Ghana most go bags (Attah, 2022). A Senior Advocate of Nigeria, Prof. Yemi Akinseye-George, raised alarm on the 20<sup>th</sup> of August 2020 over the stuck of prosecuting twenty-five (25) high profile corruption cases for years without making progress at various courts in the country (Attah, 2022).

Similarly, Amnesty International (2008) express concern over the appalling state of Nigeria Correctional Services (NCoS) today that NCoS are filled with people whose human rights are being systematically violated. The criminal justice system is utterly failing the Nigerian people, calling it a conveyor belt of injustice, from beginning to end (Amnesty International, 2008). Amnesty International, (2008) further reveal that at least 65 percent of Nigeria’s inmates have never been convicted of any crime, with some awaiting trial for up to ten years. Most in Nigeria in people in NCoS are too poor to afford lawyer, with only one in seven awaiting trials having access to private legal representation. The appalling conditions of Nigeria Correctional Services are severe overcrowding, and seriously damaging the mental and physical health of thousands common persons. The problems of criminal justice system in Nigerian especially its Nigeria Correctional Services are so blatant and egregious that the Nigerian government has no choice but to recognize them as it is with many pledges to reform the system of no avail (Amnesty International, 2008). The reality is that those common persons in Nigeria Correctional Services stand little chance of their rights being respected. Those are common persons without money stand even less chance. Some common persons could end up spending the rest of their lives Correctional Service with appalling conditions without ever having been convicted of a crime sometimes simply due to their case files having been lost by the police. Many inmates awaiting trial common persons who are effectively presumed guilty despite the fact that there is little evidence of their involvement in the crime of which they are accused of committing (Amnesty International, 2008). Common persons who not suspected of committing any crime are imprisoned along with convicted harden criminals.

Some of them are arrested in place of family members the police could not locate while others suffer from mental illness are brought to Correctional Services by families unable and not unwilling to take care of them (Amnesty International, 2008). For instance, a 35-year-old woman Bassy, with mental illness, was brought to Nigeria



Correctional Services by her brother, who reports that the family could no longer cope with her. Bassy, was classified by authorities of Nigeria Correctional Services as a civil lunatic. Charged with no crime and never brought before a court of competent jurisdiction, she exhausted close three years in prison, sleeping on the bed floor in jail with eleven (11) other female prisoners (Amnesty International, 2008). It too the intervention of organization like PRAWA, human right organization on her appalling condition and welfare of other prisoners, before Bassy was finally transferred to a hospital treatment. It is very unfortunate that when people are arrested sentence to jail for sole aim that they are a relative of a suspect or is suffering from mental disorder, this negate the rights of common persons of not to be subjected to arbitrary arrest and detention a right guaranteed in the Universal Declaration of Human Rights. Suspects who are regarded as common persons are kept so long before taking them to court and those that are been tried and convicted do not have the resources to launch an appeal so they remain reluctant in prisons. Even those who are innocent still risk staying in prison longer waiting for their appeal to be heard and simply serve their jail term because they are common persons. Some prisons officer often extort the prisoners, thereby creating security risks for the poor prison inmates. Nigeria government is simply not already to comply with the interest of common persons when it comes to issues of national and international obligations regarding the criminal justice system. The appalling conditions of common persons across Nigeria prisons are scandal that desires total reform and rehabilitation to conform with international best practices.

## Recommendations

Based on the objectives of the study the following recommendations are made:

1. The study recommends that, the National Assembly should make laws that will empower the government to make independent bodies such as Economic and Financial Crimes Commission (EFCC) to strictly oversee or monitor only the activities of criminal justice system right from the Nigeria Police, Courts and Nigeria Correctional Services.
2. It is also essential to employ independent foreign body organization that will monitor and observe arrest, prosecution and imprisonment of persons assume to have committed crimes, from the Nigeria police force, judiciary to imprisonment to reduce the unjust punishment of common persons.
3. Equally important is to reform the criminal justice system that will uphold the rule of law and the effective adjudication of justice for the hope of common person in Nigeria.

## Conclusion

The primary duty and responsibility of the criminal justice system is to dispense justice in accordance to the rule of law. However, in practice the criminal justice system determines the guilt nor innocence of potential suspects, and the allocation of fair and proportional punishment to the offenders. It is determined to equity and equality in the enforcement and interpretation of justice that only be realized with minimum disparities in political and bourgeois class against common persons. The reality is that the criminal justice system in Nigeria gives spacious opportunity for all manners of maneuvers which, are not being strictly illegal, are decisively amoral.

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