

Abstract

The Nigerian criminal justice system has numerous obstacles that hinder efficacious prosecution of criminal acts. From systemic issues to practical impediments, understanding these challenges is crucial for advancing the rule of law and ensuring justice in the Nigeria. This paper aims to consider the obstacles faced in criminal prosecution within Nigeria's justice system. It also identifies systemic deficiencies, assesses the impact of corruption on the justice system, and proposes targeted reforms to enhance the efficacy of criminal prosecution in Nigeria. The primary contention is that the challenges in criminal prosecution are deeply rooted in systemic inefficiencies, including inadequate resources, procedural bottlenecks, and the influence of corruption. By addressing these issues, the legal system can better serve its purpose of delivering fair and timely justice. This paper is relevant to contemporary legal discourse as it sheds light on the persistent obstacles within Nigeria's criminal justice system. The findings provide a nuanced understanding of the intricate interplay between legal, institutional, and societal factors. Moreover, the proposed reforms offer practical solutions to mitigate these challenges, aligning with global efforts to strengthen legal systems.

Keywords: Criminal Prosecution, Criminal Justice System, Legal Frameworks, Nigeria, Challenges

1. Introduction

The role of prosecution in every jurisdiction cannot be undermined be it private or public and each jurisdiction has a distinct prosecutorial system thereby making it peculiar to its legal jurisdiction.¹ The criminal prosecution process can be long and intricate and usually involves a whole lot of persons starting from the police or any other law enforcement agency, the prosecutors whether public or private, judges, the defendant and his counsel.² Criminal prosecution is not limited to just a body but it cuts across all the criminal justice system with the aim of promoting speedy, fair, and just administration of criminal justice.³ The diversity of each legal system cum jurisdiction brings about the peculiarity in the ways and institution of their criminal justice system. However, to some extent, political and economic situations have impacted on these systems. This paper therefore discussed the concept of criminal prosecution. It also considered the components and challenges of criminal prosecution in Nigeria.

2. X-Raying the Concept and Components of Criminal Prosecution

Prosecution deals with the administration of criminal justice which includes various institutions comprising of the police and any other law enforcement agency as provided for by the law, legal practitioners who may be private or public, the court system which includes the judge(s) and other court officials and the correctional service centers.⁴ Prosecution ensures that any one that is suspected of committing a crime is taken before a competent court, tried and if found guilty is punished according.⁵ The government is saddled with the responsibility of prosecuting criminal acts, as criminal acts are contraventions of public order and stipulated criminal law provisions.⁶ That is, the government or state initiates legal action against an individual or entity accused of committing a crime. Hence, criminal prosecution is an essential tool for maintaining law and order in any society. It is a means of holding individuals accountable for their actions and deterring others from committing similar crimes.⁷ The criminal prosecution process begins with law enforcement officials who are responsible for investigating crimes and collecting evidence to build a case against the defendant.⁸ Law enforcement officials may be police officers, federal agents, depending on the nature of the crime and its jurisdiction.⁹ They are responsible for gathering evidence, interviewing witnesses, and making arrests when appropriate.¹⁰ The key components of modern criminal prosecution promote the basic principles and elements that underline the process of prosecuting defendants and this include the presumption of innocence of the defendant which is a principle holds that a person accused of a crime is presumed innocent until proven otherwise.¹¹ It lies on the prosecution to prove that the defendant committed the crime beyond a reasonable doubt hence, the burden of proof lies on the prosecution.¹² This means that they must prove their case beyond a reasonable doubt to secure a conviction of the defendant. The principle of due process is also necessary as it ensures that the defendant has a right to a fair trial and for that, all legal proceedings must be conducted in accordance with established legal provisions.¹³

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¹A.A.Z. Okemuyiwa, and I.O. Akeem, 'The Role of Police in Criminal Prosecutions in Nigeria' 2023. https://www.researchgate.net/publication/337366915_POLICE_CRIMINAL_PROSECUTION_IN_NIGERIA accessed 22 November, 2023.

²CDPP, 'Steps in Prosecution' <<https://www.cdpp.gov.au/prosecution-process/steps-prosecution>> accessed 7 October 2023.

³D Peters, 'Public Prosecution and the Concept of Restorative Justice in Nigeria' (2005) 2(1) *Fountain Quarterly Law Journal* 79.

⁴Criminal Justice Standards, 'Functions of a Prosecution' <https://h2o.law.harvard.edu/text_blocks/30177> accessed 7 October 2022.

⁵ACE: The Electoral Knowledge Network, 'Prosecution and Judicial Proceedings' <<https://aceproject.org/ace-en/topics/ei/eie/eie05/default>> accessed 7 October 2022.

⁶ *ibid.*

⁷Oyelowo Oyewo, Power of the Attorney General in the Administration of Justice: Establishing constitutional control *Journal of Public Law* (1997) Vol.1 p. 111

⁸United Nations Office on Drugs and Crime, *Handbook on Police Accountability, Oversight and Integrity* (United Nations Publication 2011).

⁹ *ibid.*

¹⁰ *ibid.*

¹¹Dada Ayoola Adekunle, Dosunmu Akinola George, Oyediji Godson Olu-Kehinde, 'Criminal Justice System: The Nigeria Scenario' (2015) 3 *International Journal of Social Science and Humanities Research* 437

¹²J k Ukwayi, J T Okpa, 'Critical Assessment of Nigeria Criminal Justice System and the Perennial Problem of Awaiting Trial in Port Harcourt Maximum Prison, Rivers State' (2017) 16 *Global Journal of Social Sciences* 17

¹³ *ibid.*

In Nigeria, the criminal justice system is based on the adversarial process, which means that the prosecution and defense present their respective cases to a neutral adjudicator, such as a judge.¹⁴ Prosecutorial discretion is also important as it is the prosecutors that would decide which cases to pursue, what charges to bring, and how to proceed with the case.¹⁵ The state is responsible for prosecuting crimes and maintaining law and order within the society.¹⁶ The goal of criminal prosecution is not just to determine the guilt or innocence of a defendant but to determine the punishment to be meted out on the defendant when found guilty.¹⁷ It is also to ensure that the society is protected from crime and the rights and interests of the defendant crime victim and the state are also protected.¹⁸ In essence, in as much as criminal prosecution is to ensure that crime victims see that defendants are punished; it must also ensure that suspects and defendants are afforded their constitutional rights by the prosecution following laid down legal procedures.¹⁹ The burden of proof is on the prosecution, and the punishment must be proportionate to the crime committed.

3. Stages and Procedure of Criminal Prosecution in Nigeria

The first step in the criminal prosecution process is typically the filing of a police report.²⁰ A police report contains details of the crime, including the time, date, location, and any witnesses. Once a police report is filed, law enforcement officials will investigate the crime and gather evidence.²¹ This evidence may include physical evidence, such as DNA or fingerprints, or witness statements.²² Once law enforcement officials have gathered sufficient evidence, they will present it to a prosecutor.²³ The prosecutor will review the evidence and determine whether to file charges against the defendant or not.²⁴ The investigation process is very important as this helps to determine the culpability of a suspect. All necessary evidence and information no matter how minute has to be gotten by law enforcement officials involved in the criminal matter. This usually involve the police officers, detectives, and forensic experts where required²⁵ Here, interviews are carried out with witnesses.²⁶ Physical evidence and the use of surveillance techniques may also be used to gather information. The gathering of evidence must be conducted within the limits of the law, and individuals who are subject to investigation are entitled to certain rights, including the right to remain silent²⁷ and the right to legal representation.²⁸ The use of force or coercion to obtain evidence is prohibited, and any evidence obtained in violation of an individual's rights may be excluded from trial.²⁹

Once the investigation is complete, the prosecution would file charges against the defendants and this may be in the form of an indictment,³⁰ which is a formal accusation of a crime, or a complaint,³¹ which is a less formal accusation. The accused is then notified of the charges and is given the opportunity to plead guilty or not guilty.³² If charges are filed against the accused, the case will proceed to trial. The trial process is a legal proceeding in which the prosecution and defense present evidence, argue their case and address the court or jury.³³ The trial process is designed to determine whether the accused is guilty or not guilty of the charges. The prosecution must be prepared to prove the guilt of the defendant beyond reasonable doubt. This indicates that all the ingredients available for the crime he is accused of must be complete and all evidence must point at the defendant that only him and no other person committed the criminal act. The defendant is entitled to a fair and impartial trial.³⁴ The trial is conducted by a judge and the prosecution and defense present evidence and arguments to support their respective cases. In some cases, the accused may choose to plead guilty to the charges in exchange for a reduced sentence or other benefits.³⁵ This process is known as plea bargaining. Here, the prosecution and defense negotiate a plea agreement, which

¹⁴ Adekunle, Adedeji, 'The Rule of Law and Prosecutorial Policy in Nigeria' Available at SSRN: <https://ssrn.com/abstract=1552225> or <http://dx.doi.org/10.2139/ssrn.1552225> accessed 22 November, 2023.

¹⁵ Tosin Olonisakin, Adedeji Ogunleye, Sulaiman Adebayo, 'The Nigerian Justice System and its Effectiveness in Criminal Behaviour Control: A Social-Psychological Analysis' (2017) IOSR Journal of Humanities and Social Science 33.

¹⁶ Carolyn Ramsey, 'The Discretionary Power of a Public Prosecutor in Historical perspective' (2002) 39 *American Criminal Law Review* 1309.

¹⁷ *ibid.*

¹⁸ Mudasir Bhat, Mehraj Ud Din Mir, 'The Role of Prosecution in the Criminal Justice System in India: An Analytical Audit' (2020) 1 *Indraprastha Law Review* 2.

¹⁹ William McDonald, 'Criminal Prosecution and The Rationalization of Criminal Justice' <<https://www.ojp.gov/pdffiles1/pr/133787.pdf>> accessed 15 October 2022.

²⁰ Birju Kotecha, 'The International Criminal Court's Selectivity and Procedural Justice' (2020) 18 *Journal of International Criminal Justice* 107.

²¹ Lohya Ibrahim Lakai, 'Preliminary Investigation by the Public Prosecutor in Nigeria: Obstacles and Challenges in Bringing a Charge against Individuals due to their Social Class or Ethnic Origin' < https://www.nomos-elibrary.de/10.5771/2363-6262-2018-1-4.pdf?download_full_pdf=1> accessed on 20 April 2023.

²² Zakariyya Muhammad Sarki, Geshina Ayu Mat Saat, 'Nigeria Police and Forensic Criminal Investigations: A Review of Some Critical issues (2020) 15 *International Journal of Criminal Justice Sciences* 1.

²³ The duplicate case file is forwarded to the Director of Public Prosecutions' office where a prosecutorial decision is made.

²⁴ United Nations Office on Drugs and Crime, *Handbook on Police Accountability, Oversight and Integrity* (United Nations Publication 2011).

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ Menrado Valle-Corpus, 'The Role and Function of the Prosecution in Philippine Criminal Justice System' < https://www.unafei.or.jp/publications/pdf/RS_No53/No53_27PA_Corpus.pdf> accessed 20 April 2023.

²⁸ *ibid.*

²⁹ Chinwokwu Eke Chijioko, 'Crime and Criminal Investigation in Nigeria: A Study of Police Criminal Investigation in Enugu State' (2013) 1 *International Journal of African and Asian Studies* 1.

³⁰ *ibid.*

³¹ *ibid.*

³² Constitution of the Federal Republic of Nigeria 1999, s 36(5).

³³ Lohya Ibrahim Lakai, 'Preliminary Investigation by the Public Prosecutor in Nigeria: Obstacles and Challenges in Bringing a Charge against Individuals due to their Social Class or Ethnic Origin' < https://www.nomos-elibrary.de/10.5771/2363-6262-2018-1-4.pdf?download_full_pdf=1> accessed on 20 April 2023.

³⁴ Zakariyya Muhammad Sarki, Geshina Ayu Mat Saat, 'Nigeria Police and Forensic Criminal Investigations: A Review of Some Critical issues (2020) 15 *International Journal of Criminal Justice Sciences* 1; Constitution of the Federal Republic of Nigeria 1999, s 36.

³⁵ Chinwe Mordi, 'The Use of Plea Bargain in Nigerian Criminal Law' (2018) 9 *Beijing Law Review* 153.

must be approved by the court. The accused then enters a guilty plea and is sentenced according to the terms of the agreement.³⁶ This process helps to hasten prosecution as it saves the time of not just the court but all parties involved in the matter.³⁷

It is therefore safe to say that criminal prosecution more often than not begins with investigation and at times lawful arrest.³⁸ Before a case can be prosecuted, the law contravened must be known and the court that will hear and decide on the case must be a court of competent jurisdiction.³⁹ The police or the concerned law enforcement agency must have conducted its investigations, make sure that the arrest was lawful, take statements from the defendant, victim and other witnesses and collate other forms of evidence such as photographs, recordings or any other useful form of evidence.⁴⁰ As soon as investigation has been concluded by the police and a case is established against the suspect, the criminal prosecution journey has commenced. However, according to section 36(5) of the 1999 Nigerian Constitution, an accused person is presumed innocent until proven guilty,⁴¹ therefore the burden of proof in all criminal proceedings rest on the prosecution.⁴² Once a case is established against the suspect, the prosecution goes ahead to charge the suspect and therein commence a criminal proceeding for the alleged crime before a competent court.⁴³ To get a person convicted for a crime, the prosecution must be able to prove the criminal intent and the criminal act beyond a reasonable doubt.⁴⁴ Criminal prosecution involves accusing and investigating a person for violating a provision of the criminal law, it involves gathering of evidence and charging a person for the crime committed by taking the person before the appropriate authority where a criminal trial is commenced and the eventual fate of the offender is decided.⁴⁵

4. Selected Prosecutorial Bodies in Nigeria

Usually, the prosecutor is a public officer that has the duty to initiate and prosecute criminal cases against any one that has breached the law. Aside the officers of the Director of Public Prosecutions at the state and federal level in Nigeria, criminal matters are also prosecuted by the police and other specialized law enforcement agencies which include the Economic Financial Crime Commission (EFCC)⁴⁶ National Drug Law Enforcement Agency (NDLEA)⁴⁷ and National Agency for the Prohibition of Trafficking in Persons (NAPTIP)⁴⁸. The prosecutor is the attorney who represents the government in criminal cases. Their role is to build a case against the defendant and present it in court. Prosecutors are responsible for conducting the investigation, gathering evidence, interviewing witnesses, and making charging decisions.⁴⁹ The prosecutor's duty is to seek justice, not just to obtain a conviction. This means that they must act ethically and follow the law when prosecuting a case.⁵⁰ They are also responsible for disclosing all evidence to the defence, including evidence that may be favorable to the defendant.⁵¹ The prosecutor must prove the defendant's guilt beyond a reasonable doubt.⁵² This is a high standard, and the prosecution must present a strong case in order to meet this burden of proof. If the prosecution fails to meet this standard, the defendant will be acquitted because any gap in the case of the prosecution has to be ruled in the favour of the defendant.

Attorney General

The Nigerian constitution which is the supreme law of the land, bestows powers on the Attorney General both at the Federal level and state level regarding criminal proceedings.⁵³ The combine provisions of Section 150, 174, and 211 of the 1999 constitution creates the office of the Attorney General with its powers and functions which include but not limited to power to institute, take-over and discontinue prosecution before any court in Nigeria. Section 104-106 of the Administration of Criminal Justice Act (ACJA) also vests certain powers in the Attorney General which are the power to 'prefer information in any court in respect of an offence created by an Act of the National Assembly'. He has the power to initiate criminal proceedings⁵⁴ and he may delegate his power to any other person to exercise any or all of the powers conferred on him by law.⁵⁵ He may issue legal advice or give directive to the Police or any other law enforcement agency regarding any crime created by a National Assembly Act. He may request for any case file for any crime created by the National Act from the Police or other agency and such shall be forwarded to him immediately. By virtue of section 106 of the ACJA, the Attorney

³⁶ Nzeribe Abangwu, Adekunbi Imosemi, 'Plea Bargaining and the Administration of Criminal Justice in Nigeria' (2019) 6 International Journal of Innovative science, Engineering & Technology 9.

³⁷ *ibid.*

³⁸ In Nigeria, before investigation is conducted, more often than not, arrest comes first. ??? Reference for this statement???

³⁹ Constitution of the Federal Republic of Nigeria 1999, s 36(12) provides that 'Subject to or as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written Law' This implies that no person shall be punished for an act that has not been proscribed for in any written law in Nigeria. See also the Criminal Code Act Cap 42 Laws of Federation (LFN) 1990, s 2 which provides that 'An act or omission which renders the person doing the act or making the omission liable to punishment under this code or under any act or law, is called an offence'.

⁴⁰ Administration of Criminal Justice Act 2015, s 2 makes provision for the arrest and investigation of the crime suspect. Administration of Criminal Justice Act 2015, s 17 provides for the recording of the suspect's statement if he wishes to make a statement.

⁴¹ Constitution of the Federal Republic of Nigeria 1999.

⁴² Evidence Act 2011, s 135(3).

⁴³ Administration of Criminal Justice Act 2015, ss 96, 97, 98, 102 and 103.

⁴⁴ *Ogundiya v State* (1991) LPELR-2333 Pp. 13, *Komolafe v FRN* (2015) LPELR-41708 (CA).

⁴⁵ CEA: 'Economic Perspectives on Incarceration and the Criminal Justice System' <<https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/CEA+Criminal+Justice+Report.pdf>> accessed 17 October 2022.

⁴⁶ Economic and Financial Crime Commission (establishment) Act 2004, ss 6, 7, 14-18.

⁴⁷ National Drug and Law Enforcement Agency Act, Cap N30 LFN 2004, ss 4(1), 8(2).

⁴⁸ NAPTIP Act 2003, ss 5, 9(1), 9(2).

⁴⁹ Bruce Green, 'Urban Policing and Public Policy- The Prosecutor's Role' (2017) 51 GA Law Review 1179.

⁵⁰ Gloria Shajobi-Ibikunle and Mercy Onoriode, 'A Code for Public Prosecutors in the Nigerian Criminal Justice System: A Necessity or A Nuisance' (2019) 19 Global Journal of Human Social Science: H Interdisciplinary 5.

⁵¹ *ibid.*

⁵² OSCE, 'Doubt in Favour of the Defendant, Guilt Beyond Reasonable Doubt' <<https://atlas-of-torture.org/api/files/1596200461375uswbgi658ys.pdf>> accessed 15 April 2023.

⁵³ Constitution of the Federal Republic of Nigeria 1999, s 174, s 211.

⁵⁴ Constitution of the Federal Republic of Nigeria 1999, s 211(1).

⁵⁵ According to the provision of the ACJA, the prosecution is not obliged to show how the powers to prosecute was delegated to him by the AG as held by the court in *FRN v Jonathan Abutu Attah & 3ors* (2011) FCT/HC/CR/41/11.

General, any legal practitioner authorized by him and any legal practitioner authorized by the Act can prosecute.⁵⁶ Section 107 of the ACJA also confers on the Attorney General the power to discontinue any criminal proceeding and the suspect shall be discharged immediately whether he has been remanded in a correctional centre or he is on bail.⁵⁷ Where a trial proceeding has started, section 108(1) of the ACJA provides that a prosecutor may or on the instruction of the Attorney General may at any stage before judgment withdraw the charge against the defendant in respect of any crime created by the Act of the National Assembly.⁵⁸ Once the charges are withdrawn, the case gets struck out.⁵⁹ These powers are also vested in the Attorney General of various states as provided for in their Administration of Criminal Justice Laws.⁶⁰ Section 174 of the constitution vests power of public prosecution and prosecutorial decision in the Attorney General and as put by Kayode Eso (JSC) as he then was, in the case of *State v Ilori*,⁶¹ that there are three (3) constitutional requirements to be identified in the case. In the exercise of the Attorney General's power, he has to have the interest of the public in mind, he must have the interest of justice in mind and he needs to prevent abuse of legal processes. This aligns with the provision of section 104 of the ACJA that provides for all prosecutorial decisions to be made in the interest of the public. The prosecutor has a responsibility towards the court, the defence and the society at large. Conviction is not to be sought at all cost; rather justice is to be seen as done in the course of exercising his discretionary power. He also has the power to enter a *nolle prosequi* and he does not have to give a reason for this.⁶²

In making prosecutorial decisions, the Attorney General should always consider the effects of the prosecution on administration of law and its effects on the public and not as a political party member.⁶³ He is not expected to discontinue prosecutions on political grounds, which implies that there should not be any form of bias as a result of his membership and loyalty to a political party as this will erode the concept of rule of law.⁶⁴ The prosecutorial discretionary power of the Attorney General is too wide and this makes him unreviewable and unanswerable to anyone. Even the court of law has no authority to review the power of the Attorney General. This wide exercise of the Attorney General's power may lead to abuse of power. However, in the case of the Attorney General of a state, his powers are not extended to cases that involve the state as a party, as his powers to discontinue a criminal case or enter a *nolle prosequi* only extends to cases involving other person(s) or authority.⁶⁵

Director of Public Prosecutions

The office of the Director of Public Prosecutions (DPP) was created to institute, conduct, and supervise prosecutions and other related proceedings.⁶⁶ The Department of Public Prosecution is headed by the Director of Public Prosecutions who is a public officer appointed to the position by the Executive and he is the most senior director at the Ministry of Justice.⁶⁷ Other duties of the DPP include issuance of legal advice to the Nigerian Police,⁶⁸ public prosecution of defendants before courts of competent jurisdiction, handling criminal appeals at the Court of Appeal and Supreme court, entering *nolle prosequi* on behalf of the Attorney General,⁶⁹ handling bail applications and Human Rights enforcement matters.⁷⁰ The Director of Public Prosecutions has total independence of his office and he is expected to make prosecutorial decisions on a professional basis without any political or external control.⁷¹ The Director of Public Prosecutions and the Attorney General are expected to work hand in hand.⁷² The Director of Public Prosecutions also assist the coroner in inquests and inquiries.⁷³ He also can take over and conduct, or discontinue prosecutions instituted by another person other than the Attorney General.⁷⁴ The Director of Public Prosecutions acts on behalf of the public and the state as he is the complaint in criminal matters standing in place of the victim to make his case heard and representing the state to ensure that justice is upheld. The Director of Public Prosecutions is to always act in fairness and seek to ensure fair trial at all times.⁷⁵

⁵⁶ Administration of Criminal Justice Act 2015, s 106.

⁵⁷ *Ibid*, s 107.

⁵⁸ *Ibid*, s 108(1). *FRN v Jonathan Abutu Attah & 3ors* (2011) FCT/HC/CR/41/11.

⁵⁹ *FRN v Alhaji Abubakar Tanko & 2ors* CR/207/15.

⁶⁰ Administration of Criminal Justice Law of Delta State, s105-109, Administration of Criminal Justice Law of River State, s 104- 107.

⁶¹ *State v Ilori* (1983) 1 SCNLR 94,106.

⁶² Yemi Akinseye-George, 'The Administration of Criminal Justice Act (ACJA 2015): An Overview in Relation to Criminal Cases Adjudication in the Federal High Court' <file:///C:/Users/hp/Downloads/fdocuments.net_the-administration-of-criminal-justice-act-acja-2015-an-there-is-probably.pdf> accessed 15 October 2022.

⁶³ Osita Mba, 'Judicial review of the Prosecutorial Powers of the Attorney-general in England and Wales and Nigeria: An Imperative of the Rule of Law' (2010) Oxford U Comparative L Forum 2.

⁶⁴ *ibid*; The AG is always appointed on the basis of political considerations; there have been several calls to separate the office of the Attorney General from that of the Minister of Justice but this has been ignored by the Government.

⁶⁵ Yemi Akinseye-George, 'The Administration of Criminal Justice Act (ACJA 2015): An Overview in Relation to Criminal Cases Adjudication in the Federal High Court' <file:///C:/Users/hp/Downloads/fdocuments.net_the-administration-of-criminal-justice-act-acja-2015-an-there-is-probably.pdf> accessed 15 October 2022.

⁶⁶ The Australian Director of Public Prosecution Act 1990, provides for the several roles of the Director of Public Prosecutions and many of the role tally with the roles played by the Director of Public Prosecutions in Nigeria.

⁶⁷ Ofekeze Okiemute Darlynton, 'Appointment and Legal Career of a Public Prosecutor in Nigeria: Obstacles and legal Criteria' <https://www.nomos-elibrary.de/10.5771/2363-6262-2018-1-80.pdf?download_full_pdf=1&page=1> accessed 19 October 2022.

⁶⁸ *ibid*.

⁶⁹ Fola Arthur-Worrey, *The Prosecutor in Public Prosecution* (Josadeen 2014).

⁷⁰ *ibid*.

⁷¹ Harvey Wheeler, 'Directorate of Public Prosecutions' <http://lagosministryofjustice.org/directorate-of-public-prosecutions/> accessed 10 September 2022

⁷² *ibid*.

⁷³ *ibid*.

⁷⁴ Fola Arthur-Worrey, *The Prosecutor in Public Prosecution* (Josadeen 2014).

⁷⁵ Adedeji Adekunle, 'The Rule of Law and Prosecutorial Policy in Nigeria' <file:///C:/Users/hp/Downloads/SSRN-id1552225.pdf> accessed 18 October 2022.

Police

The police play a major role in investigating crimes.⁷⁶ On the 17th of September, 2020, President Muhammadu Buhari signed the Nigeria Police Bill 2020 into law. The new Act repealed the old Police Act of 2004 and enacts the new Police Act, 2020 in order to provide for a more effective and well-organised police force driven by the principles of transparency and accountability. Before the enactment of the new Act which now prohibits lay police officers from prosecuting criminal matters, police prosecutors found in most Nigerian Magistrate courts were lay police officers. Section 66 of the New Police Act has prohibited lay police officers from prosecuting and section 66(2) provides that a lay police officer may only prosecute the offences which non-qualified legal practitioner can prosecute.⁷⁷ However, a police officer that has been called to the Nigerian bar is allowed to prosecute. Other specialized law enforcement agencies are also empowered to prosecute by virtue of the prosecuting power given to each. They are the Economic Financial Crime Commission (EFCC)⁷⁸ National Drug Law Enforcement Agency (NDLEA)⁷⁹ and National Agency for the Prohibition of Trafficking in Persons (NAPTIP).⁸⁰

Defence Counsel

The defence attorney represents the defendant in a criminal case. Their role is to challenge the prosecution's case and to defend the defendant against the charges. Every defendant has a right to legal representation, although there are instances where the defendant may decide to represent himself. But for capital offences, the service of a legal counsel is required. According to Green, defence attorneys are responsible for investigating the case, gathering evidence, interviewing witnesses, and presenting a defence in court. The defence attorney must also act ethically and follow the law when defending a client. They are responsible for advocating for their client's interests and protecting their rights. This includes ensuring that the prosecution presents a strong case and challenging any evidence that is not admissible in court. The defence counsel is to pursue his client's case with all diligence and the judge is to uphold the rule of law in order to ensure that justice is attained in the case before him.⁸¹

5. Challenges of Criminal Prosecution in Nigeria

Criminal prosecution is a complex process that is subject to many challenges. One of the primary challenges of criminal prosecution is gathering evidence.⁸² Prosecutors need to collect sufficient and necessary evidence to prove beyond a reasonable doubt that the defendant committed the crime they are being charged with.⁸³ This can be difficult, as evidence can be lost, destroyed, or tampered with, and witnesses may be reluctant to come forward. Furthermore, new technologies like social media present new challenges in gathering evidence.⁸⁴ Another challenge in criminal prosecution is ensuring that the defendant receives a fair trial.⁸⁵ This requires that prosecutors follow due process and present evidence that is both relevant and admissible in court. It does not matter that the evidence is also in favour of the defendant. In addition, prosecutors must be careful to avoid misconduct, such as withholding exculpatory evidence, which can result in the dismissal of the case or the reversal of a conviction.⁸⁶ The burden of proof in criminal cases is another significant challenge.⁸⁷ Prosecutors must prove their case beyond a reasonable doubt, which can be a high bar to clear. This can be particularly challenging in cases where the evidence is circumstantial or where there are no eyewitnesses to the crime.⁸⁸ A related challenge is dealing with the possibility of false confessions or erroneous eyewitness identifications, which can lead to wrongful convictions. Prosecutors must be vigilant in ensuring that confessions are voluntary and that eyewitness identifications are reliable.⁸⁹ Another challenge in criminal prosecution is dealing with the media and public opinion.⁹⁰ Public opinion can influence the counsel, judges, and jurors. However, where care is not taken, it can influence the outcome of the case.⁹¹ High-profile cases often receive intense media scrutiny, which can cause bias before the conclusion of trial if care is not taken.⁹²

Resource constraints can also pose a significant challenge in criminal prosecution⁹³ as prosecutors may have limited budgets and staff, which can make it difficult to pursue complex cases or to adequately prepare for trial. This can lead to cases being

⁷⁶ Gloria Shajobi-Ibikunle and Mercy Emetefife Onoriode, 'A Code for Public Prosecutors in the Nigerian Criminal Justice System: A Necessity or a Nuisance?' (2019) 19 *Global Journal of Human Social Science H Interdisciplinary* 5; In some other jurisdiction such as South Africa, USA, Canada, Germany, the police mainly investigate crimes and do not prosecute criminal acts thereby making their functions different from the prosecution.

⁷⁷ Nigerian Police Act 2020, s 66.

⁷⁸ Economic and Financial Crime Commission (establishment) Act 2004, ss 6, 7, 14-18.

⁷⁹ National Drug and Law Enforcement Agency Act, Cap N30 LFN 2004, ss 4(1), 8(2).

⁸⁰ NAPTIP Act 2003, ss 5, 9(1), 9(2).

⁸¹ *ibid.*

⁸² UNODC, 'Integrated Approaches to Challenges Facing the Criminal Justice System' <<https://www.unodc.org/lpo-brazil/pt/crime/challenges-facing-the-criminal-justice-system.html>> accessed 1 May 2023.

⁸³ Nyanzu John Muthini, 'Challenges Encountered by Scene of Crime Investigators: The Case of the Directorate of Criminal Investigations Headquarters, Nairobi (Masters Dissertation, University of Nairobi 2018).

⁸⁴ Mehdi Sheidaean, Mohammad Javad Fathi, Abas Mansourabadi Yazdan Nosrati, 'The Challenges of Developing the Alternative to Criminal Prosecution by Taking the England Laws into Consideration' (2017) 6 *Journal of History Culture and Art Research* 195.

⁸⁵ Iqra Khalil, Ahmed Usman, Aaisha Amjad, 'Challenges Faced by Prosecutors in the Administration of Justice in Pakistan' (2021) 18 *PalArch's Journal of Archaeology of Egypt* 2461.

⁸⁶ *ibid.*

⁸⁷ Rita Selkur, 'Rules and Challenges for an Efficient and Transparent Criminal Proceeding in Nigeria Vis a Vis Challenges and Prospects' <https://www.nomos-elibrary.de/10.5771/2363-6262-2017-3-486.pdf?download_full_pdf=1> accessed 15 April 2023.

⁸⁸ *ibid.*

⁸⁹ Dada Ayoola Adekunle, Dosunmu Akinola George, Oyediji Godson Olu-Kehinde, 'Criminal Justice System: The Nigeria Scenario' (2015) 3 *International Journal of Social Science and Humanities Research* 437.

⁹⁰ Council of Europe Portal, 'Challenges to the Investigation and Prosecution' <<https://www.coe.int/en/web/cyberviolence/challenges-to-the-investigation-and-prosecution>> accessed 3 May 2023.

⁹¹ Wande Fatoki, Aderonke Adegbite 'Criminal Justice and the Public: Assessing the Impact of Social Media on Alleged Offenders and their Trials' 15 *Maiduguri Law Journal* 1.

⁹² *ibid.*

⁹³ Rita Selkur, 'Rules and Challenges for an Efficient and Transparent Criminal Proceeding in Nigeria Vis a Vis Challenges and Prospects' <https://www.nomos-elibrary.de/10.5771/2363-6262-2017-3-486.pdf?download_full_pdf=1> accessed 15 April 2023.

plea bargained or dismissed, rather than going to trial.⁹⁴ Nevertheless, the defendant must receive a fair trial. The prosecution must present a strong case, and the defense must be able to challenge the prosecution's evidence and arguments. The defendant's rights must be protected and this includes the right to remain silent,⁹⁵ the right to legal representation,⁹⁶ and the right to a fair trial.⁹⁷ The prosecutor and the defense must work together to ensure that these rights are respected throughout the course of trial. Due to delay in the trial process as well, crime victims and witnesses may also lose interest in the case and thereby stop coming to court. The police do also delay in duplicating case files and forwarding same to the Director of Public Prosecution's office where a legal advice is rendered to determine whether a person should be charged for an alleged crime or not. Transfer of police especially to very far places from the court jurisdiction is also a challenge as the police concerned in a particular case may not be able to come for trial either due to the high cost of transportation or official workload he has to attend to at his new place of assignment. These challenges have contributed to delay in criminal trials. It has also impeded justice in criminal prosecution process. The judiciary is also not without its challenges. The lack of sufficient funds to run the judiciary adequately may undermine the justice system. Also, delay as commonly seen in Nigerian courts, hampers the timely dispensation of justice, leading to various challenges. Notably, tactics like raising preliminary objections and infrastructural challenges contribute to the problem.

6. Conclusion and Recommendations

To ensure that justice is carried out, all the players involved starting from the police or any other law enforcement agency concerned down to the judge must carry out their responsibilities accordingly and effectively. The police are to conduct investigations efficiently so that an innocent man is not unjustly charged for a crime he has not committed. The prosecutors as minister of justice should not seek to convict by all means, yet they are to dispassionately prove their case beyond reasonable doubts. The defence counsel should take up the case of his client with all seriousness and commitment even if it is a pro bono brief. The judiciary should attend to criminal matters timeously to prevent keeping an innocent man in custody and also to prevent keeping a convicted person beyond the time he should have served upon pronouncement of his sentence. Hence, each player is to work effectively to ensure the smooth flow of the prosecution system. In conclusion, criminal prosecution is a complex and challenging process that requires navigating a range of legal, practical, and ethical issues. From gathering evidence to presenting cases in court, everyone involved in the criminal prosecution process must ensure that justice is served while also upholding the rights of the defendant. It is recommended that to achieve fairness and justice in criminal prosecution, each player involved should carry out its responsibilities diligently and efficiently. Without fairness and justice being applied, the whole process of the criminal prosecution system in Nigeria would continue to be a joke. There is a need for the judiciary to be independent and unbiased especially when a case is a high profile or sensational case. Rather, the applicable law should be adequately followed. Prosecutors are not to seek conviction at all cost thereby depriving the defendant some of his constitutional rights. The police should be provided with the necessary materials needed to conduct proper and timely investigations so that there would be no delay in forwarding duplicate case files to the office of the Director of Public Prosecutions. The police that have been transferred to other places of assignment should also be paid sufficient travel allowance to attending to their pending matters in court. More judges and magistrates should also be appointed and adequately provided for to ease the strain and excess work on the already appointed judges who still write in long hand in some jurisdictions in Nigeria.

⁹⁴ Paul Atagamen Aidonojie, Anne Oyennwosa Odojor, Patience Omohoste Agbale, 'The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria' (2021) 5 *Sriwijaya Law Review* 161.

⁹⁵ Constitution of the Federal Republic of Nigeria 1999, s 35(2).

⁹⁶ *ibid* s 36(6) (c).

⁹⁷ *ibid* s 36