

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.

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Abstract

Criminal cases in Nigeria, unlike civil cases are preceded by investigation. A good and thorough investigation unravels facts that would support the conviction of an accused person. In Nigeria, the process of investigation is usually undermined by a lot of obstacles and challenges which include: political interference, Ethnic bias etc. This article analyzed the process of investigation, indentified these obstacles and challenges as well as proffered solutions to them.

A INTRODUCTION

Crimes or rather offences are said to be wrongs against the society and the victim. This informs the reason for the investigation into allegations of these wrongs by a government agency which is empowered, equipped and funded to do so. Investigations, where properly, objectively and sincerely done will enhance the criminal justice delivery. While in other parts of the world, the prosecution does the investigation, in Nigeria, the Police or other specialized agencies investigates. For quite some time now, there have been complaints on the manner and quality of investigations and prosecution by the investigating agencies. These complaints include: complaints on possible compromise on grounds of ethnic affiliations with the accused persons as well as complaints on interference at high and political level. This paper will discuss all these issues and make recommendations

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B THE INVESTIGATION AND PROSECUTION OF OFFENCES IN NIGERIA

B (I) The Nigerian Police

The Investigation of offences in Nigeria is the primary duty of the police¹. Section 117 of the Criminal Procedure Code of Northern Nigeria 1963, and section 23 and 24 of the Police Act empower the police to investigate the commission of offences as well as prosecute offenders.

B (II) OTHER INVESTIGATIVE AND PROSECUTING BODIES OR AGENCIES IN NIGERIA

Though the police is the Government agency that is vested with the primary duty of investigation, other specialized agencies too have also been given investigatory powers. These agencies include:

1. The Nigerian Police
2. Economic And Financial Crimes Commission
3. Nigerian Drugs Law Enforcement Agency
4. Economic and Financial Crimes Commission
5. Independent Corrupt Practices Commission
6. Nigerian Security and Civil Defence Corp

1. **The Economic And Financial Crimes Commission:** The Economic and Financial crimes Commission is a commission established in 2004. Its membership includes a chairman who shall either be a serving or retired security personnel² and has experience of not less than 15 years in service. A secretary and a representative from other financial institutions and security agencies, the function of the Commission include the investigation and prosecution of all financial crimes including advance fee fraud, Money laundry, counterfeiting, Illegal Charge transfer, futures market fraud, fraudulent enrichment of negotiable instruments, computer credit fraud, contract scam etc. the Commission also has the powers to cause ³ investigations to be conducted as to whether any person, corporate body or organization has committed an illegal offence under the Act or other law relating to economic and financial crimes⁴ cause investigation to be conducted into the properties of any person if it appears to the commission that the person's life style and extent of properties are not justified by his source of income. The Commission in order to exercise its power of investigation establishes the General and assets

1 See sections 3 to 25 of the Police Act.

2 Section 2(1)(a) of the Economic and Financial Crimes Commission Act.

3 Ibid at section 7(1)(a).

4 Ibid section 7(1)(b).

investigation unit⁵ which has wide range of powers including the investigation of assets and properties of persons. The commission has investigated a lot of cases and offense pursuant to its investigatory powers.

2. **The Independent Corrupt Practices Commission:** This is another special agency that is vested with investigatory powers on matters of corruption. It was established in the year 2000. The commission comprises 12 members whose membership includes a legal practitioner, a judge, a retired Police officer, A public servant, a chartered accountant and a chairman of the board who would be a judge of a superior court of record⁶. The officer of the committee shall have the power to investigate and prosecute cases of Corruption⁷. Where reasonable grounds exists for suspecting somebody. The commission investigates any person who conspires, attempts to commit or has committed an offence under the act or any other law prohibiting corruption or offences for which the commission can investigate under the act include offences in section 7
3. **The National Drugs Law Enforcement Agency:** The National Drugs Law Enforcement Agency was established in 1989 with duties that include investigating persons suspected to have dealings with drugs and other related matters. The agency consists of a chairman, a representative of NPC, a director Military intelligence, the controller general of customs, the director of security services, a representative of the federal Ministry of justice not below the rank of a director, the Director General National intelligence Agency, a representative of the ministry of Foreign affairs and health not below the rank for a director. The agency investigates and prosecutes and can also cause an investigation to be conducted on any suspect
4. **The Nigerian security and Civil Defence Corps:** the Nigerian security and Civil Defence Corp is also an agency that investigates and prosecutes offences particularly of terrorism, petroleum pipe line vandalization.

C OBSTACLES AND CHALLENGES IN BRINGING CHARGES AGAINST INDIVIDUALS DUE TO THEIR SOCIAL OR ETHNIC ORIGIN

The above agencies with investigatory and prosecutor powers ordinarily have no limitation on whom to investigate or prosecute except the president, vice president the Governors and their deputies. This implies that the Agencies can investigate everybody in Nigeria and prosecute such person for any offence allegedly committed by them. Though these agencies do not have any statutory limitation or bar on their powers to investigate and prosecute, in practice they encounter obstacles and challenges in investigating and bringing charges against some people because of either their social or ethnic origin. Some of these challenges or obstacles are:

- 5 Ibid section 12(1)(a.).
- 6 Section 3(2) of the independent Corrupt Practices act.
- 7 Ibid section 5(1.).

1. Impunity of Government Officials and interference with the process of investigation and prosecution by Government officials alleged to have committed offences.
2. Fear of protest by members of the same ethnic group with the suspect and the security implication.
3. Poor funding of the agencies and corruption
4. Compromise and Reluctance of victims and witnesses to cooperate with investigating and prosecuting agencies

C (I) IMPUNITY OF GOVERNMENT OFFICIALS ALLEGED TO HAVE COMMITTED OFFENCES AND THE INTERFERENCE WITH THE PROCESS OF INVESTIGATION AND PROSECUTION

The biggest challenge encountered by security agencies during investigation of highly placed individuals in the society and particularly political heavy weights is interference with the process of investigation and prosecution by those in Government. The reason for this is not farfetched: all the agencies above that are charged with the duty to investigate and prosecute are under the executive arm of government. Being under the executive arm of government means that their officials are appointed by Government of the day; the promotion and remuneration of staff and the funding of the agencies come from the Government. While this control is not strange in democratic Governments around the world, the manner in which it is used to satisfy selfish and subvert the rule of law is alarming. In Nigeria, interference with the process of investigation and prosecution by those in power is more visible in the area of investigation of two kinds of offences namely:

- a) Political Assassination
- b) Investigation of Corruption Cases

(a) POLITICAL ASSASSINATIONS

Investigation and prosecution of Assassinations cases, particularly those that appear to have been politically motivated have always either not yielded results. In most cases, the cases die at the stage of investigation. Even if they survive investigation and are prosecuted, they don't end in Conviction and this is for no other reason other than interference with the process of investigation and prosecution. Few examples of cases that have suffered red this fate are

Dele Giwa's case: on the 19th of October 1986, at sun set, Dele Giwa a renowned journalist was killed by a parcel Bomb⁸. He was just about to eat his meal when a large envelope addressed to him and carrying the Government official Seal was brought to him⁹. The parcel

8 *Dan Agbese* "When the sun set in Nigeria: *Dele Giwa's* awful murder" <https://cpj.org/blog/2009/10/nigerian-editor-dele-giwas-unsolved-murder.php> accessed 7/2/2018.

9 *Ibid.*

was brought by two men allegedly sent by the then president, Gen Ibrahim Badamasi Babangida¹⁰. Upon opening the parcel, the bomb exploded and killed him. Two days before his death, Lt Col AJibola Kunle Togun had interrogated the deceased and falsely accused him of gun running and planning to destabilize the Government¹¹. Col Halilu Akilu had asked Dele's wife for the description of their house the previous day. Despite availability of facts, the death of Dele Giwa has not been seriously investigated for obvious reasons talk more of the prosecution of Suspects¹².

The Murder of Bola Ige: Bola Ige was the Attorney General and Minister of Justice of the Federation between 1999 to December 2001 when he was killed¹³. Ige was murdered in his house shortly after the security men detailed to work with him took permission to go and eat outside¹⁴. All of them allegedly went to eat leaving Ige alone. Despite the public outcry on the manner he was murdered, the investigation and prosecution of suspects has not yielded any positive results for obvious reasons of interference¹⁵.

The murder of Marshal Harry: on the 5th day of March 2003, Marshal Harry was murdered by four assassins dressed in white¹⁶. They murdered him and molested his daughter in his house which was close to a Police Station and a Check point¹⁷. The Police at the check point were informed of an assassination being carried out at Harry's house but they only responded by saying they did not have fuel to go to house. Harry died in the hospital from as a result of gun shots wound¹⁸. His death was alleged to be politically motivated as he had not only left the Ruling party then, PDP but was in a faceoff with Governor of Rivers, Peter Odili. The investigation into his death has not yielded any results despite pointers¹⁹.

The Murder of Barnabas and Abigail Igwe: Barnabas Igwe, the Chairman of the Nigerian Bar Association, Onitsha branch and his wife Abigail were ambushed and brutally murdered in Onitsha in September 2002. There was strong evidence that the killing was sponsored by the then Governor, Chinwoke Nbadinuju who had been constantly criticized

10 Ibid.

11 Ibid.

12 Ibid.

13 *Kingsley Omonobi & Ola Ajayi* "Buhari orders IGP to re-open Bola Ige, Dikibo's cases On July 18, 20167:30" <https://www.vanguardngr.com/2016/07/buhari-orders-igp-re-open-bola-ige-dokubos-cases..>

14 Ibid.

15 Ibid.

16 Nigeria: Obasanjo, Odili Killed Marshal Harry Dokubo... <http://allafrica.com/stories/200806130279.html> accessed 7/2/2018.

17 See Human Rights Watch press release, "Nigeria: Government Critics at Risk After Political Killings," September 19, 2002. <http://pantheon.hrw.org/reports/2003/nigeria0403/nigeria0403-04.htm#TopOfPage> accessed 7/2/2018.

18 Ibid.

19 Ibid.

by Barnabas and his wife²⁰. Shortly before the killing, the deceased received direct threats from serving Government officials in the state. Though all fingers pointed towards the Governor and his officials and allies, there has been little or no investigation of these officials talk more of their prosecution²¹. Barnabas and his wife were brutally murdered²². Even when they had died, their killers in a broad day light had the time and effrontery to run over them with a car.

There are many other cases of assassinations that have neither been investigated or even if investigated nothing meaningful came out of it or the suspects have not been charged to court or convicted. These cases include: the death of Bagauda Kaltho, Alfred Rewane, Shehu Musa Yar Adua, Hon Odunayoo Olagbaju in Osun state, Chief Ogbonnaya Uche in March 2003, Yemi Oni in Ado Ekiti, Andrew Agwom on the 4th of March 2004, Ikenna Ibor in March 27 2003, Hon Tony Dimegwu, Mr. Issa Zaria, Chief Onyewuchi Iwuchukwu, Mr. Luka Shingaba, Chief Philip Olorunnipa, Mr. Esho Egbelu etc. the list is endless.

(b) CORRUPTION CASES INVOLVING GOVERNMENT OFFICIALS

Most politicians that are rich and highly placed in the society have one allegation of corruption or unjust enrichment or the other against them. Investigation of these offences as well as the prosecution of alleged offenders usually suffers setbacks. This is because these individuals will use all within their means to frustrate the process of investigation and prosecution. Few examples that illustrate this point are:

Bribery Allegation against Farouk Lawan: Mr. Farouk Lawan the then Chairman on the House of Representatives Committee that investigated Federal Government Fuel subsidy in 2012 was accused by Mr Femi Otedola whose company was under investigation, of demanding \$500,000 from the Business mogul²³. Mr Otedola had invited Lawan to come and Collect the money²⁴. Little did Lawan know that the Dollars had been marked and the transaction of “giving the bribe” was done under camera²⁵. Otedola furnished facts to substantiate his allegation²⁶. Though Farouk Lawan was arrested, it took the prosecution close to a year to charge him to court. Even when Otedola has secured more evidence that

20 See Human Rights Watch press release, "Nigeria: Government Critics at Risk After Political Killings," September 19, 2002. <http://pantheon.hrw.org/reports/2003/nigeria0403/nigeria0403-04.htm#TopOfPage> accessed 7/2/2018.

21 Ibid.

22 Ibid.

23 The Sahara reporter “How Farouk Lawan, Ozekhome Used Frivolous Allegations To Stall \$500k Bribery Trial” <http://saharareporters.com/2017/07/02/how-farouk-lawan-ozekhome-used-frivolous-allegations-stall-500k-bribery-trial> accessed 7/2/2018.

24 Ibid.

25 Ibid.

26 Nigerian Farouk Lawan charged over \$3m fuel scam 'bribe' <http://www.bbc.com/news/world-africa-21294154> accessed 7/2/2018.

police would have secured or even needed to charge him to court, the reason for the inordinate delay cannot be explained. The case against Farouk is still in court about six years after the incident. Farouk has petitioned and had his case transferred to over four different judges at one stage or the other²⁷. Nigerians are still waiting for the outcome of the case

Halliburton scandal: some years back, the \$182 million Halliburton scandal was a topic for the press. Top Nigerians were alleged to have demanded for and were given \$182 million as bribe to secure a \$6 Billion Naira contract for KBR a subsidiary of Halliburton for the construction of a liquefied Natural Gas plant in the Conflict ridden area of Niger delta. While the Houston based KBR engineering firm has pleaded guilty to US charges in the Bribery saga and has since been fined and Jeffery Tesler the lawyer through whom the money was siphoned has since been convicted, sentenced and been released, the Nigerian counter parts have not been charged to court. The reason for this is not farfetched: the persons mentioned to have benefited from the bribe were former leaders and heads of state.

There are many other cases that involve highly placed Government officials, the investigation and prosecution of which have suffered setbacks as a result of interference from politicians

C (II) THE FEAR OF REACTION BY MEMBERS OF THE SAME ETHNIC GROUP WITH THE SUSPECT AND THE SECURITY IMPLICATION.

Investigation into a lot of offences or prosecution thereof have abetted as a result of a perceived protest or reaction by loyalist or members of the same ethnic group with the suspect. While the government or the investigating agencies will never admit that security implication is the reason why some individuals will not be investigated, and prosecuted, the obvious disposition of the Government shows that. For example, the former chief of army Staff has been indicted by the Australian negotiator as being one of the persons that sponsored Boko Haram²⁸. There has been no investigation into this allegation talk more of prosecution of the said former army chief. It is also alleged that Ihejirika may have been out to revenge the killings of Igbo's, his ethnic group by Northerners during the 1967 to 1970 civil war²⁹ yet he has never been invited for interrogation and prosecution. Another case, the investigation of which may have been abetted because of a perceived embarrassment of a people and security implication is the investigation of corruption charges against the emir of Kano,

27 The Sahara reporter Loc cit.

28 ENDS: Every Nigerian do something: "Nigerians Have Known That Army Chief Ihejirika Was Behind Boko Haram; We Said It Earlier" <http://ends.ng/nigerians-have-known-that-army-chief-ihejirika-was-behind-boko-haram-we-said-it-earlier/> accessed 7/2/2018; NAIJ.COM "Australian Negotiator Reveals Boko Haram Sponsors" <https://www.naija.ng/283220-australian-negotiator-insts-modu-sheriff-ihejirika-boko-haram-sponsors.html#283220..>

29 Ibid.

Sanusi Lamido Sanusi³⁰. Sanusi was alleged to have misappropriated funds for emirate council. The House of Assembly had commenced probe on the activities of the emirate when prominent Nigerians, Civil Society Groups and Former Heads of States intervened³¹ on what would have been an embarrassment to the emirate and the office of the Emir.

C (III) ETHNICITY AS AN OBSTACLE TO INVESTIGATION AND PROSECUTION

Finally ethnicity is an obstacle to the investigation and prosecution of offences. a good example of this is the killings by the Fulani herdsmen and the failure of the Federal Government to take drastic measures against them is believed by Nigerians to be an example of the failure of the security and investigative bodies to investigate and prosecute offenders on account of their ethnic origin³². It is widely believed that the failure of the federal Government to prosecute Fulani herdsmen is not unconnected with the fact that Fulani people in the Government including the president himself is a Fulani man³³. The fulani herdsmen have killed as many people. 1,229 people were killed in 2014³⁴, up from 63 in 2013 and Benue State seems to be the hardest hit in recent times³⁵. Barely five days to the end of Governor Gabriel Suswam's administration in May 2015, over 100 farmers and their family members were reportedly massacred in villages and refugee camps located in the Ukura³⁶, Per, Gafa and Tse-Gusa local government areas of the state³⁷. In the southern part of Kaduna, people resident therein have also been victims of Fulani herdsmen attack, same goes for Plateau State.

30 *Muhammad Ahmad* "Kano Assembly suspends Emir Sanusi probe after 'Osinbajo, IBB intervention" May 22, 2017 <https://www.premiumtimesng.com/news/headlines/231836-kano-assembly-suspends-emir-sanusi-probe-after-osinbajo-ibb-intervention.html> accessed on the 7/2/2018.

31 Ibid.

32 *Barr. Adesina Ogunlana* " Silence Of President Buhari On Herdsmen Killings Is Enough Ground For His Impeachment" – <http://saharareporters.com/2018/01/12/silence-president-buhari-herdsmen-killings-enough-ground-his-impeachment-barr-adesina> accessed 7/2/2018.

33 Understanding the Fulani herdsmen crisis in Nigeria: Here is everything you need to know <http://venturesafrica.com/understanding-the-fulani-herdsmen-crisis-in-nigeria-what-you-need-to-know/> accessed 27/4/2018.

34 Ibid.,

35 Ibid.

36 Ibid.

37 Ibid.

C. IV. POOR FUNDING OF THE AGENCIES AND CORRUPTION

Most of these security agencies are poorly funded and this in turn affects the quality of investigation which also affects the prosecution of offenders³⁸. It is undisputable that the quality of investigation is key to the success of the prosecution of any offence³⁹. It is said that most criminal cases are lost at the state for prosecution. The above investigatory agencies are not well funded to investigate offences. For example when crime is reported to the police, the police always request for money from the Complainants to open a file⁴⁰, to fuel the car so as to visit the scene of crime, pay for post Mortem where murder is involved⁴¹, pay for DNA etc. the end result of this is that the investigating officer no longer does deep investigation. They only take statements and proceed to court for prosecution⁴². Also connected with the forgoing is the fact that these officers are corrupt. They sometimes compromise investigation where the accused person offers big money in bribe.

C. V. POOR TRAINING OF INVESTIGATING OFFICERS

Most of the officers particularly the police officer involved in the investigation of cases are ill trained. Investigations are usually conducted by officers bellow the rank of sergeant and most of these officers do not have any academic qualification other than the GCE result. The world has gone digital, science and technology have taken over every aspect of man's life include criminality or the commission of crime⁴³. This then means that the investigative agencies need to upgrade their investigations by training investigators over and over as well as equipping them for investigation⁴⁴.

C. VI. COMPROMISE AND RELUCTANCE OF VICTIMS AND WITNESSES TO COOPERATE WITH INVESTIGATING AND PROSECUTING AGENCIES

A lot of criminal cases die before they come to court. This is because the victims of the offences who are the star witnesses meet outside the police station with the suspects or accused persons and discuss or negotiate settlement. When they would have finished negotiation, they would agree that the complainants should not come to court to testify or that the complainant should not cooperate in the investigation. The process of investigation and

38 *Oluwafemi Alexander Ladapo* "Effective Investigations, A Pivot To Efficient Criminal Justice Administration: Challenges In Nigeria" *African Journal of Criminology and Justice Studies: AJCJS*, Vol.5, page 76.

39 *Ibid* at page 81.

40 *Ibid*.

41 *Ibid*.

42 *Ibid*.

43 *Ibid* at page 82.

44 *Ibid*.

prosecution will then be frustrated. In some cases however, the nominal complainants or victims will be threatened by the accused persons not to testify and because there is no witness protection law in Nigeria, the threatened victims or complainants will not cooperate with the police and prosecution in the investigation and prosecution of the offences⁴⁵. In rare instances, the protracted nature of trial discourages the witnesses to come and testify⁴⁶.

D. CONCLUSION AND RECOMMENDATION

1. The above paper has successfully discussed agencies with investigatory and prosecutor powers as well as the problems faced by investigating and prosecuting agencies in Nigeria. These agencies that investigate and prosecute include, the Nigerian police, The Economic and Financial Crimes Commission, the Independent Corrupt Practices Commission, the Nigerian Drugs Law Enforcement Agencies and the Nigerian Security and Civil Defence Corp etc. the problems faced by these agencies include: interference with the process of investigation and prosecution; Fear of protest by members of the same ethnic group with the suspect and the security implication; Poor funding of the agencies and corruption; Compromise and Reluctance of victims and witnesses to cooperate with investigating and prosecuting agencies. It is hereby recommended as follows:
 - a) That these agencies should be more strengthened to do their job without fear or favour. They can be strengthened by reducing the influence of the executive arm of Government on them
 - b) There should be a witness protection law to protect victims of offences who are also witnesses throughout the process of trials.
 - c) Lawyers should form part of the Police investigation team to help facilitate investigations as they are well knowledgeable with the ingredients of each offence to help secure convictions in court.

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⁴⁵ Ladapo Op cit at page 80.

⁴⁶ *Ogundare vs. State* 1995) 5 NWLR Part 395 p. 266.

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