LEGISLATIVE ATTENTION TO CRIMINAL JUSTICE REFORM IN THE PAST 10 YEARS

Being the Contribution of O. A. Onadeko, Esq, Head of Nigerian Law School, Lagos Campus at the 2009 NBA Conference in Lagos on August 18, 2009

INTRODUCTION

Not much of legislative attention to Criminal Justice reform has been recorded in the past ten years i.e. the period from 1999 to 2009. However, some amendments have been made to some legislations that essentially focus on Criminal Justice Administration through legislative processes of the National and States Assemblies.

The manifold challenges faced by our criminal justice system have been highlighted to include: (i) excessive delays in processing criminal cases; and (ii) consequential infraction of the constitutional rights of suspects and victims. The imperfections in the systems are partly occasioned by paucity of legislation and the dynamics of our constantly changing society make it imperative that a holistic approach to the consideration of all the facets of criminal justice, is the key to its development.

In 2004, a National Working Group on the Reform of Criminal Justice Administration in Nigeria was set up by the Federal Ministry of Justice to review and produce a legislation that would reform and modernize the administration of criminal justice in the country. This was not the first effort at reformation and codification of the substantive penal laws and procedural laws for the whole country. There had been an attempt in the late 1980s at the instance of the same Federal agency via a conference held at the Nigerian Law School. The outcome of that effort however did not culminate in legislation.

The 2004 Committee's output made useful and novel suggestions and came up with the Administration of Criminal Justice Bill still before the National Assembly. At the State level, the Lagos State House of Assembly repealed the Criminal Procedure Law of the State and in its place enacted the Administration of Criminal Justice Law 2007.[1] This new law introduced some forward looking and pragmatic innovations and did away with some provisions considered no longer relevant. Some details shall be provided later in this write up.

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1. Law No. 10 of 2007

It may be necessary to consider some legislations that have been enacted and or amended in the past ten years. They include:

1. Advanced Fee Fraud and Other Fraud Related Offences Act.[2] Further to the provision of the law on penalty for laundering of funds obtained through unlawful activity etc under Section 7, subsection 2A has now been added to complement S.7(2) and it provides for the culpability of a financial institution or a bureau de change which as a result of negligence, or regulation in the internal control procedures, fails to exercise due diligence as specified in the Banks and other Financial Institutions Act, 1991 as amended or the Money Laundering (Prohibition) Act, 2003. This was brought in by LN No. 26 of 2005.

   Also, Sections 11A and 11B have been inserted in the Act. While S. 11A now makes it mandatory for any person or entity providing an electronic communication service or remote computing service either by e-mail or any other form to obtain Subscriber's name and address, S.11B makes it mandatory for any telecommunications, internet service providers, internet cafes etc to be registered with the Economic and Financial Crimes Commission, maintain a register of all fixed line customers which shall be liable to inspection by any authorized officer of the EFCC and submit returns to the Commission on demand on the use of its facilities. These present requirements are in addition to the requirements under the Nigerian Communication Commission Act, 2003, brought in by LN 26 of 2005.

   The Federal High Court now has jurisdiction to try offences and impose penalties under the Act.

2. Corrupt Practices and Other Related Offences Act.[3] This Act was enacted in 2000 and it came into effect on June 13, 2000. Some amendments have been effected to it by the National Assembly via LN. No. 6 of 2003.

The Act is to prohibit and prescribe punishment for Corrupt Practices and Others Related Offences and to establish the Anti-Corruption Commission (See the Long title of the Act) S.3 of the Act.

The primary duties of the commission are to receive, investigate complaints and prosecute offenders etc.[4] Section 9 provides that an officer of the Commission when investigating any matter which constitutes an offence under the Act, shall have all the powers and immunities of a Police Officer under the Police Act and any other laws conferring power on the Police, or empowering and protecting law enforcement agents.

The offences under the Act include gratification by an official, corrupt offers to public officers, corrupt demand by persons, bribery of public officers etc. It also provides for the issuance and services of summons and the general power to prosecute offenders.[5]

Child's Right Act.[6] This Act was enacted in 2003 to protect the rights of the Nigerian Child and it makes a number of significant amendments. For instance, Section 221(2) thereof provides that:

> "(2)No expectant mother or nursing mother shall be subjected to the death penalty or have the death penalty recorded against her.
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> "(3)A Court shall, on sentencing an expectant or nursing mother consider the imposition of a non-institutional sentence as an alternative measure to imprisonment.
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> "(4)Where institutional sentence is mandatory or desirable, an expectant or a nursing mother shall be committed to and be held or detained at a Special Mothers Centre.

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4 See S.10 of the Act.
5 See SS.30-37 of the Act.
6 Cap. C50 LFN 2004

"(5)No mother and child shall be held or detained at Special Mothers Centre for a period longer than the time the child would have attained the age of six years."

The combined effect of the above provisions is the radical departure from the provisions of S.368(2) CPA and SS 270 and 271(3) CPC which both provide that where a pregnant woman is convicted of a capital offence, she shall be sentenced to life imprisonment in lieu of the death sentence. The position is that where it is established that the woman who has been convicted of a capital offence is either an expectant mothers or a nursing mother she shall neither be sentenced to death nor have such death penalty recorded against her.

The trial court is also mandated to consider the imposition of a non-institutional sentence as an alternative measure to imprisonment instead of life imprisonment sentence under the CPA and CPC provisions cited above.

The Act further removes the dichotomy between the meaning of a 'child' and a 'young person' under both the CPA and the CPC. It now widens the scope of the definition of a child to "a person under the age of eighteen years".[7]

Now, a child offender can no longer be tried in a Juvenile Court as provided under the various States Children and Young Persons Laws and the CPA and CPC. It now establishes a Court for each State of the Federation and the Federal Capital Territory, to be known as the Family Court for the purpose of hearing and determining matters relating to children.[8]

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7 See S. 277 of the Act.
8 See S.149 of the Act.

The Family Court has two levels i.e. the Court as a Division of the High Court at the High Court level; and the Court as Magistrate Court, at the Magistrate level.[9]

It also has unlimited jurisdiction to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child. S. 204 of the Act provides that:

> "No child shall be subject to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in this Act."

Economic and Financial Crimes Commission (Establishment, etc) Act.[10] This Act was first enacted in 2002. The 2002 Act has been repealed and in its place another Economic and Financial Crimes Commission (Establishment, etc) Act LN No. 1 of 2004. It established the Economic and Financial Crimes Commission with the powers to investigate and prosecute all reported cases of economic and financial crimes among others.[11]

The Commission, in addition to its statutory functions under the Act is also conferred with special powers under Section 7 which provides as follows:

> "7(1) The Commission has power to:
> (a) Cause investigations to be conducted as to whether any person, corporate body or organization has committed an offence under this Act or other law relating to economic and financial crimes;
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> (b) Cause investigations to be conducted into properties of any person if it appears to the commission that the person's lifestyle and extent of the properties are not justified by his source of income;

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9 See S.150 of the Act.
10. Cap. E1 LFN 2004
11. See SS.1 and 5 of the Act.

2) In addition to the powers conferred on the commission by this Act, the Commission shall be the co-ordinating agency for the enforcement of the provisions of:

(a) the Money Laundering Act, 2004; 2003 No. 7, 1992 No.13;

the Advanced Fee Fraud and Other Related Offences Act, 1995;

(c) the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, as amended;

(d) the Banks and Other Financial Institutions Act, 1991, as amended;

(e) the Miscellaneous Offences Act; and

(f) any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.

t is as a result of S.7(2)(f) above that the Commission now prosecutes criminal offences bordering on economic and financial crimes created under a State law as contained in the Criminal Code Law and the Penal Code Law on behalf of the Federal Republic of Nigeria. Therefore, this present position also constitutes an exception to the general principle of criminal justice administration in Nigeria to the effect that the Attorney-General of the Federation or any Agency of the Federal Government can only prosecute offences created by the Acts of the National Assembly. The general position is that a State Attorney-General or any Agency of a State Government can only prosecute offences created by the Law of the State Assembly.[12] The exception being the case of a Federal Act so made to operate as a State Law – e.g. the Robbery and Firearms (Special Provisions) Act Cap. R11 LFN 2004.

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2. See Anyebe Vs The State (1986) 1 SC 87.

5. Money Laundering(Prohibition) Act.[13]This Act was first enacted in 1995 as the Money Laundering Act, before its amendment in 2003 as the Money Laundering (Prohibition) Act. The Act seeks to identify and prohibit all forms of money laundering. S.19(1) thereof confers jurisdiction to try offences under the Act on the Federal High Court.

The fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known sources of income, or that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be accepted by the trial court as proof of money laundering offence under the Act.[14]

Such pieces of evidence may also be taken into consideration by the trial court as corroborating the testimony of any witness against the accused person in such trial.[15]

B. At the State level, as earlier noted, Lagos State House of Assembly appears to be the only known State that has taken the bold step of repealing the Criminal Procedure Law of the State and in its place enacted the Administration of Criminal Justice Law 2007. The new Law came into force on May, 28, 2007.[16]

Several far reaching adjustments and innovations to the former Criminal Procedure Law of the State were made under the new Law. Below are some of the adjustments and innovations:

(i) The prosecutorial authority in Lagos State is now to be exercised in the High Court in the name of :The People of Lagos State" as opposed to "The State" as it used to be under the CPL.[17] What applies now is the "The People of Lagos State Vs X" and not "The State Vs X".

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13. Cap. M16 LFN 2004
14. See S. 19(3) of the Act.
15. See S.19(3) of the Act.
16. See S.376(1) ACJL.
17. See S.253 ACJL.

(ii) Plea Bargaining is now codified under the Law and the procedure for its administration is also provided.[18]

(iii) Application for consent to file an information has now been abolished. This is because, the Law makes no provision for it. Under the CPL, consent of a Judge of the High Court was required to file an information.[19]

(iv) Punishment of canning has also been abolished as no provision is made for it under the new law. Under the old CPL, canning was provided for in S.387.

(v) Institutions of Criminal Proceedings by way of complaint either in the Magistrates Court or in the High Court has also been abolished. S.77 of the ACJL now provides:

> "77. Subject to the provisions of any other enactment, criminal proceedings may in accordance with the provisions of the law be instituted –
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> (a) in Magistrates' Court on a charge; and
> (b) in the High Court -
> (i) by information of the Attorney-General of the State in accordance with the provisions of Section 69; and
> (c) by information filed in Court after the accused has been summarily committed for perjury by a Judge or Magistrate under the provision of Section 303."

(vi) The new Law now provides for the registration and licensing of individuals or corporate bodies or persons by the Chief Judge of Lagos State to act as Bondsperson within the jurisdiction of the Court in which they are registered.[20]

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18. See SS. 75 and 76 ACJL.
19. See S.340(2)(b) of the former CPL of Lagos State.
20. See S. 138 ACJL.

The implication of this is that it is now an offence under the new law for any person to engage in the business of bail bond services without being duly registered and licensed in accordance with the requirements of the Law.[21]

(vii) The new Law also codifies the remedy available to a person taken into a Police Custody without a warrant and whose bail application to the officer in charge of the Police Station is refused without a just cause.

Under the new Law, application may be made on behalf of such person to a Magistrate having jurisdiction with respect to the offence and the Magistrate may, upon such application, order the production of the person detained and inquire into the circumstances constituting the grounds of the detention and where it deems fit admit the person to bail.[22]

THE FUTURE

Legislative reform without the willingness to see the reformative provisions to fruition is of little benefit to the society. As noted before, there does not appear to be a discernible short, medium or even long term policy at any level of government for a coordinated criminal justice system to tackle all its known defects. Legislative input should be one of the outcomes of such project.

Without doubt, the Law Reform Agencies at the Federal and State levels have made some advances culminating in legislations. The constraints inherent in our laws have impeded visible progress because at the State level, some of the component parts of the system are not within the control of the States.

The Nigerian Police Force, for example, is a wholly Federal agency and the ability of a State government to sustain and enforce law and order is invariably beyond its scope. Likewise, the Prison System which is a Federal Government domain. Indeed Section 1 of the Prison Act [23] states that:

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21. See S.138(3) ACJL.
22. See S.18(1) and (2) ACJL.
23. Cap. p.29 LFN 2004

> "There shall be in the civil service of the Federation a Comptroller-General, who shall have the general charge and superintendence of the prisons system in Nigeria to be known as the "Nigerian Prison Service", and such officers subordinate to the Comptroller-General as may be necessary for the proper operation of the service."

In essence, whilst the States operate their court system, the treatment of custodial offenders is wholly beyond their authority!

The judicial system is only partly within the scope of authority of States. Once a case proceeds on appeal to the Court of Appeal or the Supreme Court, the States are no longer involved in processes thereafter.

It is clear that our entire criminal justice system requires urgent holistic intervention with a view to fashioning out a functional system at all levels of government.

CONCLUSION

Reports from past efforts at criminal justice reform should, in the last ten years have culminated in copious legislations at both the Federal and States levels. But that has not been the case so far. The laws that have been enacted, even with best intentions, are confronted by various constraints which impede the achievement of their objectives. It is suggested that all the organs of the criminal justice system must function in unison to ensure legislative success.

It is also recommended that coordinating agencies for criminal justice administration should be established at both the Federal and State levels to monitor and report on its effectiveness and efficiency. This will guide the arms of government (especially the legislature) in making and implementing appropriate laws for the system.

Finally, there should be an overt effort at every level of government to keep the criminal justice system in focus always, knowing that its impact and consequences transcend the suspects and convicts who may come within it. One way or the other we all stand to benefit from its perfection. We also will continue to trivialize its imperfections to our peril.

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