

COVID-19 PANDEMIC AND ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA: A CALL FOR A BETTER APPLICATION

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Abstract: *The world is moving into an uncertain future and one does not need a crystal ball to agree that uncertainty stares the whole world in the face; one only need reference the global pandemic caused by the dreaded corona virus. Famously, for a long time it has been known that when America sneezes the whole world catches a cold, but this time China Coughed and the whole globe was affected. Nigeria was not spared and neither were its security apparatus spared nor the Criminal Justice Administration (CJA) which struggled to cope with the new challenges that surfaced due to the pandemic. In this entire viral hurricane witnessed globally how did the Criminal Justice Administration (CJA) and its attendant legal framework in Nigeria fare? This paper has as its focal point to review said legal framework viz a viz attendant challenges leading to a call for better application of the legal framework to the administration of criminal justice in Nigeria hoping that lessons were learnt from mistakes made.*

Keywords: *Corona virus, COVID-19, Pandemic, Legal Framework, Criminal Justice Administration, Lockdown, social or physical distancing.*

Introduction

“The chickens have come home to roost; the center can no longer hold and the shaky criminal justice system is falling away like a pack of casino cards”

The problem with administering criminal justice in Nigeria at the height of the corona virus outbreak, when the virus was imported from northern Italy after traveling via Wuhan, China, was appropriately described by the above caption. On February 27, 2020, news headlines about an Italian man who had arrived at the Murtala Muhammed International Airport two (2) days earlier on a trip from northern Italy revealed the first confirmed case of Covid-19 in Nigeria.¹ Therefore, in

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¹ Aloy Ojilere, ‘Covid-19 Restrictions and Safety Protocols; Implication for Woman’s Dignity and Sexual Rights in Patriarchal Nigeria’ *Nigerian Bar Journal*, (2021) vol. 11, 201.

response to the pandemic, the Presidential Task Force on Covid-19 recommended safety protocols that included using alcohol-based hand sanitizers, washing hands with soap, wearing face masks over the nose and mouth, keeping a distance from others physically or socially, and maintaining general good hygiene.² Subsequently, lockdowns, isolation, closure of schools, courts, workplaces, places of worship, airports, seaports, train stations and all borders were also mandated as cautionary measures to suffocate the virus and prevent further rapid escalation. Thankfully by a mere stroke of heavenly providence things are settling back to normal even though Nigeria as a nation is yet to recover from the rude awakening witnessed by its shabby response to an unanticipated event some would attribute to as a force majeure of a monumental scale. In this entire viral hurricane witnessed globally how did the Criminal Justice Administration (CJA) and its attendant legal framework in Nigeria fare? This paper has as its focal point a call for better application of the legal framework to the administration of criminal justice in Nigeria hoping that lessons were learnt from mistakes made. The modus operandi adopted here is to first clarify key terms in the subject matter of discuss, then examine the appropriate legal framework for criminal justice administration during the pandemic, after examination of said legal framework to underscore its reactionary pace in ensuring access justice amidst the pandemic cogent recommendations would be proffered to help strengthen the sectors.

Administration of Criminal Justice in Nigeria; Meaning, Nature and Purpose

An ideal Criminal Justice administration must ensure that there is expeditious dispensation of justice, efficient management of enforcement agencies, seamless protection of the populace from crime, protection of the crime victims, accessible safeguards for suspects or accused person etc. consequently, any criminal justice administration regime that fails to capture the aforementioned elements fails woefully. What is criminal is defined by statute or put differently what amounts to a crime has been codified and made certain.³ This part of the work seeks to define key terms used in this paper. The Black's Law Dictionary⁴ explains the word 'criminal' in three senses. One; 'criminal' refers to having the character of a crime or in the nature of a crime. Two; 'criminal' refers to anything connected with the administration of penal justice. Third; 'criminal' refers

² Ibid at [204]

³ See typically the Criminal Code and the Penal Code for the Southern and Northern parts of Nigeria respectively.

⁴ Bryan A Garner, *Black's Law Dictionary, Abridged*, 9th (Minnesota: West 2010) 49.

to one who has been convicted of a crime. A key word in all definitions of criminal is the word “crime” and “crime” per Black’s Law Dictionary is an act that the law makes punishable; in other words, it is a breach of a legal duty treated as the subject-matter of a criminal proceeding. This leads back to our point made earlier that what is criminal or what amounts to a crime is codified in statute.

The word ‘administration’ on the other hand is defined by the Black’s Law Dictionary as the management or performance of the executive duties of a government institution or business or in the alternative the practical management and direction of the executive department and its agencies.⁵ The last term is the term ‘Justice’ which is defined as the fair and proper administration of laws.⁶ A collation of the three terms ‘Criminal Justice Administration’ would reveal that we refer to the practical management of crime and criminals with the objective of ensuring fair and proper administration of criminal laws to offences. The crucial question then is how has the Criminal Justice Administration (CJA) fared amidst the novel corona virus pandemic ravaging the entire globe since 2019? Did the pandemic expose loopholes in the Nigerian Criminal Justice Administration (CJA)? Were the institutions of Criminal Justice Administration crippled or did they operate seamlessly? Or ultimately did the pandemic point attention to much needed reform in the CJA sector? The objective of this paper is to critically appraise these questions posed above viz a viz the handling of the corona virus outbreak reaching conclusions on the need for reforms and better application.

Since 2019, the corona virus, a pandemic-level illness, has spread throughout the entire world⁷. Because the corona virus is zoonotic, it typically spreads between people and animals. A new corona virus strain (SARS-Cov-2) that has not been previously found in people is what causes the corona virus disease (Covid-19). On December 31, 2019, in Wuhan, China, the World Health Organization (WHO) first reported it. The Federal Government of Nigeria have established a Presidential Task Force on Covid-19 to provide a high-level, strategic national response to the illness in Nigeria. The Federal Ministry of Health has activated an NCDC-led national COVID-19 Emergency Operations Centre (EOC) to coordinate the national public health response activities are being coordinated

⁵ Ibid at 49.

⁶ Ibid at 942.

⁷ ‘POLICY BRIEF the Impact of a Pandemic on Organized Crime CRIME and CONTAGION’ (2020) <<https://globalinitiative.net/wp-content/uploads/2020/03/GI-TOC-Crime-and-Contagion-The-impact-of-a-pandemic-on-organized-crime-1.pdf>> accessed 21 September 2021.

through Public Health EOCs in each state.⁸ With the conceptual clarification of the key terms used in this paper it is crucial to consider the legal framework for criminal justice administration operational in the pandemic era.

Examination of Legal Framework on the Control of Crime and Criminal Justice Administration in Nigeria amidst the Covid-19 Pandemic:

1. The Nigerian Police Act 2020

The Nigerian Police Act 2020 repeals the previous Police Act of 2004⁹ with the aim of guaranteeing a more effective Nigerian Police Force (NPF) driven by principles of excellence, transparency and accountability, operationally and in its management of resources. Key innovations of the Nigerian Police Act 2020 (NPA) include establishment of appropriate funding framework for the Nigerian Police to ensure that all Police formations nationwide are appropriately funded for effective policing. The 142 sectioned Federal legislation seeks to enhance professionalism in the Nigerian Police Force and create synergy between the Police Force and the communities, its policies to maintain law and order while combating crimes nationwide.

The NPA 2020 is the primary legislation to consider in criminal justice administration in Nigeria as the Nigerian police is the first point of contact in the criminal justice sector noting crucially that the law was passed in the pandemic year hence very relevant. The Act has XVII parts dealing with key components concerning the entire operations of the NPF. Part 1 is the preliminary part which irons out the objective of the Act both general and specific. Section 1 provides for the general objective of the Act by stating categorically that 'the objective of this Act is to provide for a more efficient and effective police service that is based on the principles of accountability and transparency,¹⁰ protection of human rights¹¹ and fundamental freedoms and partnership with other security agencies.¹² On the other hand the specific objectives of the Act include *inter alia*:

A. To provide for a police force that is more responsive to the needs of the general public and has entrenched in its operations the values of fairness, justice and equity;¹³

⁸ NCDC, 'NCDC Coronavirus COVID-19 Microsite' (*covid19.ncdc.gov.ng*) <<https://covid19.ncdc.gov.ng/faq/>> accessed 20 June 2022.

⁹ Cap P19 Laws of the Federation of Nigeria 2004

¹⁰ The Nigerian Police Act 2020, s. 1(a).

¹¹ The Nigerian Police Act 2020, s. 1(b).

¹² The Nigerian Police Act 2020, s. 1(c).

¹³ The Nigerian Police Act 2020, s. 2(a).

B. To reposition the police force to uphold and safeguard the fundamental rights of every person in Nigeria in its operations;¹⁴

C. To bring about a positive change in the public perception of the NPF by ensuring that its functions are performed in a manner sensitive to the needs and well-being of the general public;¹⁵

D. To empower the NPF to effectively prevent crimes without threatening the liberty and privacy of persons in Nigeria;¹⁶

E. To strengthen the NPF in the performance of its functions, including safety and security of all persons, communities, and property in Nigeria;¹⁷

F. To ensure that the police perform its functions by creating the enabling environment to foster cooperation and partnership between it and the communities it serves to effectively prevent, reduce or eradicate crimes;¹⁸

G. To develop professionalism in the police force by providing relevant training in all police formations in Nigeria for enhanced performance and¹⁹

H. To respect rights of victims of crime and an understanding of their needs.²⁰

In order to ascertain the effectiveness of policing during the pandemic the simple question would be whether the said objectives have been achieved or not? An explanation of the situation of the administration of criminal justice during the COVID-19 outbreak would be helpful.

Part II makes elaborate provisions for the establishment, composition and duties of the NPF Section 4 is of particular interest as it marshals out the primary functions of the Police Force. Consequently, the primary functions of the NPF are:

1. To prevent and detect crimes, and protect the rights and freedom of every person in Nigeria as provided in the CFRN, African Charter on Human and Peoples Rights;²¹

2. To maintain public safety, law and order;²²

3. To protect lives and property of all persons in Nigeria.²³

4. To enforce all law and regulations without any prejudice to the enabling Acts of other security agencies;²⁴

¹⁴ The Nigerian Police Act 2020, s. 2(b).

¹⁵ The Nigerian Police Act 2020, s. 2(c).

¹⁶ The Nigerian Police Act 2020, s. 2(d).

¹⁷ The Nigerian Police Act 2020, s. 2(e)

¹⁸ The Nigerian Police Act 2020, s. 2(f).

¹⁹ The Nigerian Police Act 2020, s. 2(g).

²⁰ The Nigerian Police Act 2020, s. 2(h).

²¹ The Nigerian Police Act 2020, s. 4(a).

²² The Nigerian Police Act 2020, s. 4(b).

²³ The Nigerian Police Act 2020, s. 4(c).

5. To discharge such duties within and outside Nigeria as may be required of it under this Act or any other law;²⁵

6. To collaborate with other agencies to take any necessary action and provide the required assistance or support to persons in distress, including victims of road accidents, fire disasters, earthquakes and floods;²⁶

7. To facilitate the free passage and movement on highways, roads and streets open to the public; and²⁷

8. To adopt community partnership in the discharge of its responsibilities under the Act or under any other law; and²⁸

9. To vet and approve the registration of private detective schools and private investigative outfits.²⁹

The above cited Section 4 is a massive expansion and improvement from the former Section 4 of the Police Act of 2004. An assessment of these functions viz-a-viz the prevailing actions of the NPF in tackling crime amidst the Covid-19 pandemic would determine the effectiveness or otherwise of the Police in fulfilling its statutory functions thus bolstering administration of criminal justice. Section 5 is also crucial as it provides for duty of the police in the light of our constitutional democracy. Consequently, the NPF is responsible for promoting the fundamental rights of persons in Police custody as guaranteed by the CFRN 1999 (as amended).³⁰ It is to accomplish this duty by collaborating with and maintaining close working relationship with government agencies and private initiatives especially those offering legal services to accused persons or detainees.³¹ Section 5(3) importantly charges the NPF with the responsibility for promoting and protecting the fundamental rights of all persons as guaranteed under the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act³² and other international instruments on human rights to which Nigeria has assented to³³. Other parts of the Act make provision on Nigerian Police Council,³⁴ IGP,³⁵ and other key administrative heads such as the Assistant IGP and Deputy

²⁴ The Nigerian Police Act 2020, s. 4(d).

²⁵ The Nigerian Police Act 2020, s. 4(e).

²⁶ The Nigerian Police Act 2020, s. 4(f).

²⁷ The Nigerian Police Act 2020, s. 4(g).

²⁸ The Nigerian Police Act 2020, s. 4(h).

²⁹ The Nigerian Police Act 2020, s. 4(i).

³⁰ The Nigerian Police Act 2020, s. 5(1)

³¹ The Nigerian Police Act 2020, s. 5(2).

³² Cap A9 LFN 2004

³³ The Nigerian Police Act 2020, s. 5(3)

³⁴ The Nigerian Police Act 2020, s. 6.

³⁵ The Nigerian Police Act 2020, s. 7 (Part iii).

IGP.³⁶ The IGP and National Police Council work together to administer the Act and the whole force. The National Assembly appropriation and financial allocations provide funding for the police. This and every other sum of money received by the police department is deposited into the Police General Fund, which was created in accordance with section 26 of the Act.

Part VII provides for the powers of police officers which includes the powers of investigation and arrest.³⁷ No matter the circumstance, arrest in lieu is prohibited by Section 36 of the Act whether the arrest is made with or without a warrant. Arrest in lieu has always been a hot topic. The police officer is also to prevent offences and ensure security not just of lives and property but of good behaviour.³⁸ The police officer is the primary contact between the citizen and the security apparatus or institutions of state. According to Section 96 (2), a police officer in Nigeria is prohibited from discriminating against anyone while performing his or her duties on the basis of that person's nationality, gender, socioeconomic status, ethnicity, political affiliation, or any type of handicap.³⁹ Additionally, a police officer is not permitted to speak or behave in a manner that shows bias against any particular group.⁴⁰

The creation of Community Policing Committees in Section 113, whose goals include fostering communication, cooperation, and transparency between communities and the NPF, is an intriguing novelty. There is also the States Community Sub Policing Committee and the Divisional Policing Committee. This is to foster community policing since the issue of state police remains unresolved. The NPF Act 2020 has made some marked changes or upgrade from the 2004 Act but still falls short as it does not contemplate pandemic level disaster, most likely in the next amendment it is recommended that a section or part be dedicated to making provisions on the modus operandi for policing during a pandemic or a health epidemic. Later in this work it would be crucial to evaluate justice administration during covid-19 by using the functions and duties elucidated above as a measurement rod.

2. Administration of Criminal Justice Act, 2015 (ACJA)

The most important Federal law governing the administration of criminal justice in Nigeria is the Administration of Criminal Justice Act, 2015 (ACJA), The Act signed into law in May 2015 is made up of 495

³⁶ The Nigerian Police Act 2020, Part IV.

³⁷ The Nigerian Police Act 2020, s. 31-83.

³⁸ The Nigerian Police Act 2020, Part IX.

³⁹ Administration of Criminal Justice Act 2015, s. 2(a) i – v.

⁴⁰ Administration of Criminal Justice Act 2015, s. 2(b).

sections in 48 parts of the ACJA. This goal of this Act is to make sure that Nigeria's system of criminal justice administration fosters effective management of criminal justice institutions, prompt justice delivery, defence of society against crime, and defence of the rights and interests of the suspect, the defendant, and the victim. Section 2(1) of the ACJA specifies its applicability, making it applicable to criminal proceedings for offenses established by an Act of the National Assembly and any other offenses punishable in the Federal Capital Territory, Abuja, without prejudice to Section 86. A Court Martial, however, is not covered by its requirements.⁴¹ (The Evidence Act of 2011 and the ACJL employ the preferred terminology "defendants" instead of "accused persons," which is how those who are being tried for crimes are referred to in the ACJA.) The ACJA employs the preferred terminology "defendants" instead of "accused persons," which is how those who are being tried for crimes as evidently used in the Evidence Act, 2011. The Criminal Procedure (Northern States) Act⁴² and the Criminal Procedure Act,⁴³ are repealed by the ACJA. Criminal Procedure (Northern States) Act.⁴⁴ Criminal proceedings for offenses defined by a National Assembly Act as well as other offenses punishable in the Federal Capital Territory of Abuja are subject to the provisions of the ACJA.

The Federal High Court has exclusive jurisdiction over the majority of offenses created by the National Assembly⁴⁵, with the exception of those crimes created by the Robbery and Firearms (Special Provisions) Act⁴⁶, which are tried in the High Court of the State in question.⁴⁷ Thus, it is argued that the Act has federal application under Section 2(1) of the ACJA. More specifically, Section 494 of the ACJA defines "court" under the Act to encompass Federal Courts, the Magistrates' Court, and Federal Capital Territory Area Courts presided over by attorneys. Whereas, State High Courts or Magistrates' Courts in the several Southern States would not necessarily be included in this list, despite the phrase "include" indicating that it is not exhaustive. This argument is valid considering Section 490 of the ACJA, which grants exclusive authority to make general court rules for implementing the ACJA's goals to the Chief Judge of the Federal High Court, the Chief Judge of the Federal Capital Territory, or the President of the National Industrial Court. It is imperative to note that the

⁴¹ Administration of Criminal Justice Act 2015, s. 2(2)

⁴² Cap C 42 LFN 2004

⁴³ Cap C41LFN 2004

⁴⁴ Cap C 42 LFN 2004

⁴⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 251(2) and (3).

⁴⁶ Cap R. 11 Laws of the Federation of Nigeria, 2004.

⁴⁷ Robbery and Firearms (Special Provisions) Act, s. 9.

aforementioned authorities are not allowed to establish regulations that will apply to State High Courts or Magistrates' Courts in line with section 490 of the ACJA. Hence, the Federal High Court, the National Industrial Court, the High Court of the FCT, the Magistrates' Court of the FCT, and the Area Courts of the FCT are the only courts that may be subject to the supervision of the aforementioned authorities as the case may be.

The Administration of Criminal Justice Monitoring Committee (the Committee) is also established by the ACJA by virtue of Section 469 and this committee consists of nine members, with the Chief Judge of the FCT serving as its chairman. Section 470 of the ACJA provides that the Committee is tasked with ensuring that the Act is applied by the appropriate agencies in an effective and efficient manner. To accomplish this, the Committee must, among other things, see to it that criminal matters are dealt with swiftly, that the backlog of criminal cases in courts is reduced significantly, that the overcrowding in prisons is kept to minimally, and that people who are awaiting trial are, to the greatest extent possible, not held in prison custody. A secretariat is established for the Committee under Section 471 of the ACJA, a fund is established for the Committee under Section 472 of the ACJA, and the Committee's proceedings and quorum are covered by Section 476 of the ACJA. With this establishment, the ACJA becomes the foremost legislation in Nigeria's framework for administering criminal justice to create a body tasked with ensuring the Act is applied effectively. As will be demonstrated, the many advances made by the ACJA involve the Committee's involvement in criminal justice administration.

According to Section 9 of the ACJA, the police are authorized to search suspects who have been arrested using whatever amount of force that is justified. A police officer operating on an arrest warrant is authorized to conduct a warrantless search of a location where they suspect a suspect is hiding.⁴⁸ Generally, like other criminal justice legislations a search warrant is required to search a property. When investigating, a police officer requests a search warrant from a court or a Justice of the Peace and such warrants are issued in the conditions provided under Section 144 of the ACJA, such as upon information given under oath and in writing. According to Section 151 of the ACJA, a search warrant may be executed outside of the court's jurisdiction; in this event, the person carrying out the order must apply to the court and follow its instructions. Also, under section 153 of the ACJA, extensive guidelines are provided regarding the detention of items found during a search.

Furthermore, when a complaint is brought before a magistrate in accordance with Section 115 of the ACJA and the magistrate chooses to

⁴⁸ Administration of Criminal Justice Act, s. 12 and 152.

issue a summons, Section 117 of the ACJA provides for the issuance of the summons. According to section 115 of the ACJA, a complaint may be filed against an offense committed by a person whose appearance the Magistrate may compel. Like the CPA,⁴⁹ section 116 of the ACJA allows summonses to be issued and served on any day, including Sundays and public holidays.

The ACJA is a monumental piece of federal legislation that is essential to the administration of criminal justice in Nigeria since it contains provisions that address the investigation stage through the conviction and sentencing stage. Its major constraint is that except there are a few rare, unusual circumstances, it only applies federally. As a result, when Covid-19 arrived, the law was flawed and left a gap in the criminal justice system. Another limitation of the law is that it lacks foresight in establishing provisions for the modus operandi in the event of a health epidemic or pandemic.

3. Criminal Code Act⁵⁰

The fundamental laws that define offenses and crimes and further categorize them into felonies, misdemeanours, and simple offences are the Criminal Code Act and its equivalent, the Penal Code (applicable in Northern Nigeria).⁵¹ The Criminal Code Act also specifies punishment for various offenses, adhering to the legal principle that an accused can only be tried for an offense that is specified in writing and carries a specific punishment. This also complies with the provisions of the Constitution, which states that "No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute a criminal offense."⁵² See the case of *Aoko v. Fagbemi*⁵³ where the accused was exonerated since adultery was a crime under the penal code but was not explicitly listed as such and did not carry a sentence.

A cursory look at the interpretation section of the criminal code which is Section 1 reveals the omission of any definition of terms such as pandemic, virus, outbreak, social or physical distancing etc., leading one to opine that the framers of the code did not contemplate or anticipate a global level health emergency crisis and thus did not provide for situations in such instances. The humongous code with 521 Sections has 55 Chapters and 8 Parts making provisions for every possible offence within Nigeria

⁴⁹ Criminal Procedure Act.

⁵⁰ Cap C38 LFN 2004

⁵¹ Criminal Code Act, s. 3, Cap C38 LFN 2004

⁵² Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 36(8).

⁵³ [1961] 1 ALL NLR 400.

from theft to arson to conspiracy. It is the combined duty of the police, security agencies, the court system and correctional services to see to it that offences and sentences for crimes offending the code are severely dealt with and carried on to the latter. It is crucial to highlight a few sections with the objective that at the end of this work one would be able to assess the effectiveness of criminal justice administration looking at how the criminal code has been enforced in the pandemic.

The definition of a principal offender in Section 7 of the code clarifies the parties to offenses. Hence, a principal offender is somebody who commits the actual act or omission that results in the offense,⁵⁴ as are those persons or “a person who enables or aids another to commit an offence”,⁵⁵ so also is “a person who counsels or procures another to commit an offence.”⁵⁶ All these persons are directly culpable for the offence committed. The same rule is applicable to those who have a similar intention to pursue an illegal objective;⁵⁷ they are both culpable as having committed the resulting offence. In support of the Latin maxim *ignorantia juris non excusat*⁵⁸ section 22 is quite intriguing in that it states that, unless knowledge of the law by the offender is expressly declared to be an element of the offence, ignorance of the law does not excuse any act or omission that would otherwise constitute an offense. Furthermore, Section 24 offers essential guidelines on motive and intention. A person is not criminally liable for an act or omission that occurs independently of the exercise of his will or for an occurrence that occurs by accident, subject to the stated provisions of the code relating to negligent acts and omissions.⁵⁹ Additionally, in accordance with section 24, the outcome intended to be produced by an act or omission is immaterial unless the purpose to cause a certain result is clearly stated to be an element of the offense constituting the act or omission in whole or in part. Moreover, unless clearly stated otherwise, the reason(s) behind which a person is persuaded to commit a crime, refrain from committing a crime, or establish an intention is irrelevant.⁶⁰ These provisions are insightful considering the requirement to wear face mask in public and the need for adhering to vaccine mandates⁶¹ in some places. The code also provides some exculpatory

⁵⁴ Criminal Code Act, s. 7(a).

⁵⁵ Criminal Code Act, s. 7(b) & (c).

⁵⁶ Criminal Code Act, s. 7(d).

⁵⁷ Criminal Code Act, s. 8.

⁵⁸ Ignorance of the law is no excuse

⁵⁹ Criminal Code Act, s. 24.

⁶⁰ Criminal Code Act, s. 24 Criminal Code Act Cap C38 LFN 2004

⁶¹ This refers to the mandatory requirement of evidence of having received the covid-19 vaccination as a condition to receive or render services or have access to certain benefits.

indices such as intoxication,⁶² insanity,⁶³ mistake of fact,⁶⁴ and immature age⁶⁵ to limit criminal responsibility.

According to Nigerian criminal law, a child under the age of 12 is not considered to be criminally responsible for an act or omission unless it can be shown that at the time the act or omission was committed, the child had the mental capacity to understand that he should not have committed the act or made the omission.⁶⁶ Evaluating the full code is unsuitable for this paper, we must concentrate on Chapter 23, which deals with offenses against public health, in order to be precise and avoid veering off course.

Ultimately, sections 243 to 248 of Chapter 23 of the Code make various provisions on issues like offering for sale items that are unfit for consumption,⁶⁷ adulterating food or drink for sale⁶⁸ and dealing in diseased meat.⁶⁹ These are all minor offenses. On noxious acts Section 247(a), it is unlawful to pollute an area's atmosphere in a way that endangers the health of nearby residents, businesspeople, or others passing by on a public pathway. On the other hand, Section 247 (b) forbids any action that could spread any disease that poses a threat to human or animal life. This offense has a minor punishment of six months in prison. The code obviously does not account for a widespread pandemic, so how can it properly provide for such an occurrence? It is crucial to draw attention to other laws that are relevant to the administration of the criminal justice system during the pandemic.

Obviously, even the code does not contemplate a widespread pandemic how can it then rightly cater for such occurrence? It is crucial to also highlight other legislations as they relate to the issue of criminal justice administration during the pandemic.

4. The Nigerian Correctional Services Act 2019

The Nigerian Correctional services Act repeals the Prisons Act⁷⁰ and has its major objective addressing issues not covered under the repealed Act alongside providing clear rules setting out obligations of the Nigerian Correctional Services (NCS) and inmates rights. The Act has 47 sections with two parts, with part I deal with custodial service while part II deals with non-custodial service. We shall briefly examine the law to see if it

⁶² Section 29 Criminal Code Act Cap C38 LFN 2004

⁶³ Section 28 Criminal Code Act Cap C38 LFN 2004

⁶⁴ Section 25 Criminal Code Act Cap C38 LFN 2004

⁶⁵ Section 30 Criminal Code Act Cap C38 LFN 2004

⁶⁶ Section 30 Criminal Code Act Cap C38 LFN 2004

⁶⁷ Section 243 Criminal Code Act Cap C38 LFN 2004

⁶⁸ Section 243 (2) Criminal Code Act Cap C38 LFN 2004

⁶⁹ Section 244 Criminal Code Act Cap C38 LFN 2004

⁷⁰ Cap P29 LFN 2004.

contemplates health emergencies. Section 1 establishes the Nigerian Correctional Services (NCS) to provide both custodial and non-custodial services with the Controller General the person in charge of administration of the correctional service.⁷¹ The Controller-General has the help of a minimum of eight Deputy Controller-Generals, one of whom is responsible for the non-custodial arm of the institution.⁷² The Head Quarters of the NCS is in the FCT. Section 2 spells out the objectives of the Act which includes ensuring compliance with international human rights standards and good correctional practices;⁷³ to provide enabling platform for implementation of non-custodial measures;⁷⁴ to enhance the focus on corrections and promotion of reformation, rehabilitation, and reintegration of offenders;⁷⁵ to establish institutional, systemic and sustainable mechanism to address the high number of persons awaiting trial.⁷⁶

A cursory look at the legislation shows that only a few sections concern us here in that these are the sections that make provisions related to health. Section 9 proviso declares that 'provided that in every building so declared as a custodial centre, sleeping accommodation shall meet all requirements of health with consideration given, among other things, to adequate floor space, water and sanitation amenities, lighting and ventilation'. This provision states what is ideal and one might add that there is need for physical distancing and crowd reduction to avoid chances of a spread of corona virus. The functions of custodial service are provided for in Section 10 of the Act. These functions are many but chiefly include taking custody of all persons legally interned,⁷⁷ providing safe, secure and humane custody for inmates,⁷⁸ conveying remand persons to and from courts in motorized formations,⁷⁹ empowering inmates through the deployment of educational and vocational skills training programs, and facilitating incentives, and income generation through custodial centres, farms and industries; administering borstal institutions; initiating behaviour modification in inmates through the provision of medical, psychological, spiritual and counselling services for all offenders including violent extremists and implementing reformation and rehabilitation programs to enhance the reintegration of inmates back into the society⁸⁰

⁷¹ Section 1 (3) NCS Act 2019

⁷² Section 1 (3) (b) NCS Act 2019

⁷³ Section 2 (1) (a) NCS Act 2019

⁷⁴ Section 2 (1) (b) NCS Act 2019

⁷⁵ Section 2 (1) (c) NCS Act 2019

⁷⁶ Section 2 (1) (d) NCS Act 2019

⁷⁷ Section 10 (a) NCS Act 2019

⁷⁸ Section 10 (b) NCS Act 2019

⁷⁹ Section 10(c) NCS Act 2019

⁸⁰ Section 10 (f) NCS Act 2019

etc. Section 12 is crucial as it declares every confined person in a custodial centre to be in the legal custody of the Superintendent and subject to discipline and regulations made under the Act whether or not the person is within the precinct of the custodial centre.

Documentation of inmates is provided for in Section 13 hence; the details of person's offences, biometrics, personal history, risk and needs assessment as well as person's psychological mental health status and his criminal antecedents must be obtained by the administrators of the custodial center. This is crucial and should involve all round health status of the inmate whether the inmate has been vaccinated against the Corona virus or not. For the purpose of this work focus must be narrowed down to Section 23 on health care services in custodial centers. Section 23 (1) states that the correctional service shall put in place health care services for the promotion and protection of physical and mental health, prevention and treatment of diseases. By section 23 (2) health practitioners shall inspect the custodial center daily and advise the superintendent, state controller of correctional service or Controller Generals as appropriate on the quality, quantity, preparation of food;⁸¹ hygiene and cleanliness of inmates and custodial centers;⁸² sanitation, lighting and ventilation of the custodial center;⁸³ suitability and cleanliness of the inmates clothing and beddings.⁸⁴ This seems workable and if adhered to ought to curb the spread of COVID-19 in the correctional centers but this provision is observed in breach rather than in obedience. Section 23 (3) of the Act mandates the superintendent to take immediate steps to give effect to the recommendations and if they are not within his competence, to immediately submit a report to the State Controller who would take appropriate action. The correctional center ideally is to establish a health care center and deploy at least one medical doctor in all main custodial centers.⁸⁵ Importantly, in the event of death per Section 32 (2) an inquest by a coroner shall be instituted in all cases of death in custody to ascertain the nature and circumstances of the death. Where death is caused by the corona virus then it would be important to carry out contact tracing to isolate known cases and prevent further spread of the virus in the custodial center. In all the legislations cited so far, it is only the Nigerian Correctional Services (NCS) Act 2019 that seems to be near prepared for health crisis and yet the law still falls short of envisaging a viral outbreak.

⁸¹ Section 23 (2) (a) NCS Act 2019

⁸² Section 23 (2) (b) NCS Act 2019

⁸³ Section 23 (2) (C) NCS Act 2019

⁸⁴ Section 23 (2) (d) NCS Act 2019

⁸⁵ Section 23 (4) NCS Act 2019

5. The Covid-19 Regulations 2020

The COVID-19 Regulations 2020 is the most recent addition to the legal framework on COVID-19 and even though the focus is on criminal justice administration during the pandemic the auspicious timing of the regulation is quite crucial to our discussion. An executive order designating COVID-19 as a serious infectious illness and outlining additional measures to stop its spread is known as the COVID-19 Regulation 2020. In accordance with Sections 2 and 3 and Section 4 of the Quarantine Act,⁸⁶ the President of the Federal Republic of Nigeria (FRN) issues the Regulation. Even if the majority of the regulations were in effect throughout the lock down, it is important to look at their specific contents. The Federal Republic of Nigeria's President signed the Regulation on March 30, 2020, and it contains seven (7) major components.

Section 1 declares a halt to all movement in Lagos, the Federal Capital Territory, and Ogun State for a duration initially of 14 days, although this was later extended when the need arose. This cessation of movement became popularly known as “the Lockdown”. Other states of the federation followed suit and movement inter-state and intra state became restricted except for medical personnel and essential services workers. Schools, churches, businesses etc. had to close for the period. During the containment stage, the authorities planned to locate, track down, and isolate every person who had come into contact with verified cases. However, the regulation permitted money market activity and a minimal financial system.⁸⁷ Only court matters urgent, essential and time bound according to extant laws pursuant to the Chief Judge of the Federation of Nigeria (CJN) CIRCULAR No: NJC/CIR/HOC/11631 of 23rd March 2020 and other succeeding circular from the head of the judiciary were to be allowed. This played out in the use of the ZOOM media platform for court hearings and hearing without parties present. The flexibility was a whole new experience for the Criminal Justice sector and the Nigerian judiciary as a whole and our unpreparedness was exposed like the proverbial wind that exposes the fowl’s anus when it blows bringing the justice system to a near standstill. While Section 3 of the Regulation suspended both commercial and private passenger flights, Section 2 of the Regulation allowed seaports in Lagos to remain open. Section 4 of the Regulation begged with the populace to comply, pointing out that it was an obligatory sacrifice required for the greater good.⁸⁸ Section 5 contains provisions under which the federal government promised relief materials and

⁸⁶ Cap Q2 LFN 2004

⁸⁷ Section 1 (8)

⁸⁸ COVID-19 Regulation 2020, s. 4.

sustenance of the school feeding program. Whether this is feasible remains a mystery as more Nigerians suffered hardship without palliatives. The situation escalated into violence and chaos with the scandal involving state Governors hoarding palliatives and other relief materials meant for the people in warehouses across the country. The government subsequently stipulated in section 5(9) that all federally owned stadiums, pilgrims' camps, and other buildings be transformed into isolation facilities and makeshift hospitals. The presidential task force on COVID-19 was designated as the coordinating body even for the management of cash from charitable contributions provided by private individuals and businesses. The government's commitment to combating the virus is reaffirmed in the final section, section 7. As previously stated, the Regulation was general in nature and didn't specify what specifically needed to be done to combat crime at this time.

Factors currently affecting Criminal Justice Administration in Nigeria amidst the Covid-19 Pandemic:

1. Population Explosion Debacle

Nigeria is a country with an extremely dense population that is rapidly expanding⁸⁹. The most recent official population census was last conducted in Nigeria in the year 2006 by the Nigerian government through the Nigerian Population Commission (NPC) resulting in 140, 431, 790⁹⁰ persons in total in Nigeria. Since then, there hasn't been a census, but the population has been growing steadily, therefore estimations based on the anticipated growth are used. Below is a graph of the projected and predicted growth in Nigeria's population from 2016 to 2026 provided by statista.com, a worldwide business data platform with statistics, data, facts, and insights from over 150 countries and 170 sectors.⁹¹

⁸⁹ Paul Ani Onuh, 'Nigeria's Response to COVID-19: Lockdown Policy and Human Rights Violations' *African Security* (2021), 1.

⁹⁰ 'Nigeria Census - Nigeria Data Portal' (nigeria.opendataforafrica.org/xspplpb/nigeria-census).accessed 12 July 2021

⁹¹ Ibid.

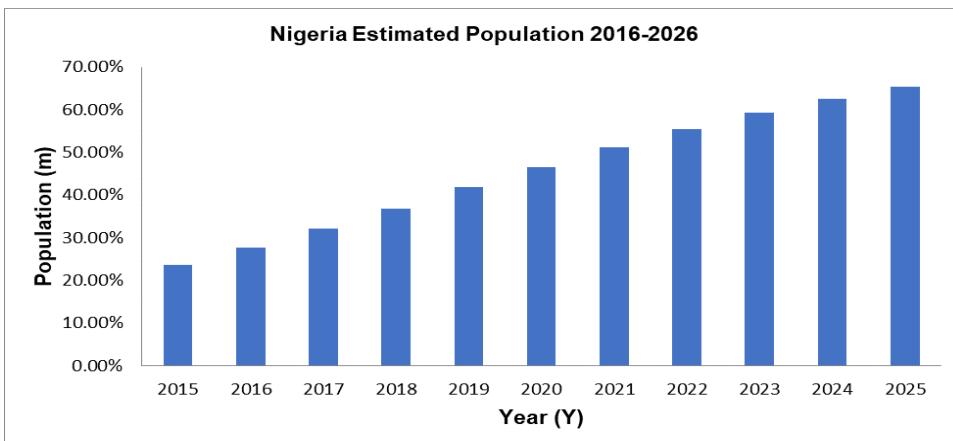


Figure 1.0 Nigeria Estimated Population 2016-2026.⁹²

The population explosion is a problem because then there are many mouths to feed with less and less jobs being created by the Nigerian government and the private sector the potential for crime becomes too immense.

2. Covid-19 Pandemic

Our facilities and laws weren't prepared for the new normal that the Covid-19 pandemic has brought about. The need for distancing and remote court hearing means an increased need for digital facilities and extra funds to equip our criminal administration institutions for the digital life which among other things includes virtual hearings and court sessions. The Police Act, Administration of Criminal Justice Act and the Correctional Services Act did not contemplate this new normal; it would then take legislative activism and brilliance to incorporate the much-needed changes.

Nigeria performed poorly in both prevention and response during the 2017 World Health Organization (WHO) Joint External Evaluation (JEE) of IHR core capacities (an independent collaborative multi-sectoral effort to assess a country's capacity to prevent, detect, and respond to public health risks and challenges).⁹³ This shows that we did not learn the obvious lesson of being ready for medical emergencies. A global pandemic

⁹² Aaron O'Neill, 'Nigeria - Total Population 2014-2024 | Statista' (Statista 31 May 2022) <<https://www.statista.com/statistics/382264/total-population-of-nigeria/>> accessed 16 April 2022.

⁹³ Siddharth Dixit, Yewande Kofoworola Ogundehi and Obinna Onwujekwe, 'How Well Has Nigeria Responded to COVID-19?' (Brookings2 July 2020) <<https://www.brookings.edu/blog/future-development/2020/07/02/how-well-has-nigeria-responded-to-covid-19/>> accessed 16 November 2022.

such as Covid-19 shuts down not just the health sector, but it spills over to the criminal justice administration arena as we have seen already.

3. Palliatives Hoarding and Non-Provision

In every sane democratic state and even in authoritarian regimes during times of crisis the government in power takes deliberate steps to alleviate the hardship on its citizens. The Nigerian government purported to do the same when it imposed the nationwide lockdown. Demographic respondents received palliative measures from the Federal Government of Nigeria to lessen the consequences of the lockdown.⁹⁴ However, protests followed the widespread distribution of these palliatives, with citizens complaining that the distribution process had been politically hijacked.⁹⁵ In places like Calabar, the coastal city known for its serenity was marred with chaos as teeming youths went on a rampage due to the discovery of palliatives hidden or hoarded for reasons still unknown. It is the author's view that the hoarding of palliative at the time became a direct consequence for an increase in crime rates as looters hijacked the several protests to commit atrocities on innocent citizens. Going forward it would be safer to distribute any such palliatives once they arrive in order to avoid a repeat of the menace witnessed so far. The resultant crisis from hoarding palliatives put more pressure on the security operatives and put a serious burden to an already overloaded criminal justice system.

4. Political Instability

The level of insecurity and instability in Nigeria presently is at an all-time high comparable to the pre-civil war period which witnessed ethnic sectarianism and extra judicial killings from unknown state actors. The next election cycle is close being 2023 yet the problem of political instability does not seem to be going away anytime soon. With no intention to sound like a prophet of doom the catastrophe waiting to happen if we don't get things right may be immense such that can threaten the very fabric of the 'one Nigeria mantra'. The pressure on the criminal justice system is tension level high and requires more attention than the sector is receiving currently. Political instability in the polity is one of the major challenges with non-state actors such as IPOB, herdsmen, Unknown gunmen and kidnappers running riot in the North, south, east and west of Nigeria.

⁹⁴ Isaac Omo-Ehiabhi Eranga, 'COVID-19 Pandemic in Nigeria: Palliative Measures and the Politics of Vulnerability' *International Journal of Maternal and Child Health and AIDS (IJMA)*, (2020), vol. 9, 220.

⁹⁵ Ibid.

Other challenges facing the justice administration sector this period include poor government policies and measures, incessant industrial actions affecting access to justice, low budgetary allocation for security, and lack of political will to end insecurity. In the concluding section recommendations are made which we consider pivotal in bolstering the criminal justice administration and phasing out these challenges.

Conclusion

It is regrettable that difficult social and economic circumstances have affected crime and efforts to curb it and to probe, prosecute, and swiftly dispense justice.⁹⁶ The lockdowns created new obstacles for criminal justice and crime prevention, allowing some illicit marketplaces to flourish while disrupting others.⁹⁷ We have examined the laws and regulations that are supposed to be operational in the criminal justice administration within this period and have found the laws wanting and deficient coupled with the challenges already bedevilling the system. The author is poised to make a few recommendations or suggestions that if taken seriously can help make up for a better application of the instruments for better criminal justice administration.

The use of Executive Orders by the President and state Governors is one very elegant way of making quick changes to the status quo. It is recommended that the executive arm of government subscribe to the use of executive orders and regulations in bridging any noticed gap in criminal justice administration until the national or states houses of assembly can pass a law to cover the field. Secondly, legislation related to criminal justice administration must be amended to make provisions for the modus operandi to be carried on by security operatives during a health emergency. Currently this is lacking in the ACJA, Criminal code and Police Act. It is only the Nigerian Correctional Services Act that has some health provisions highlighted above. There has been an increase in crime that takes advantage of communications technologies, including an increase in fraud and financial crimes.⁹⁸ The capacity of the Police should not just be focused on offline securing of lives and properties but also online security strategies to avoid cybercrimes and the incidents of computer fraud. The global impact of the corona virus is so great that new regulations are now

⁹⁶ Freedom Chukwudi Onuoha, Gerald Ekenedirichukwu Ezirim and Paul Ani Onuh, 'Extortionate Policing and the Futility of COVID-19 Pandemic Nationwide Lockdown in Nigeria: Insights from the South East Zone' *African Security Review*, (2021), 1.

⁹⁷ UN Congress on Crime Prevention and Criminal Justice, 'For Information Only - Not an Official Document' (2021)

<https://unis.univieenna.org/pdf/2021/Crime_Congress/o2_COVID_19_FINAL.pdf> accessed 15 November 2022.

⁹⁸ Ibid at [2].

in place to limit people's movements, working habits, and lifestyles⁹⁹. Governments must also adjust transition from the previous standard of living to the new standard.¹⁰⁰ The criminal justice administration, police, courts, and other general institutions that are directly or indirectly related to it must adapt to the new normal.

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⁹⁹ Ayobami Ademola Akanmu and others, 'The COVID-19 Pandemic and Insecurity: The Furiousness in Nigerian Communities' *Urban, Planning and Transport Research*, (2021) vol. 9, 368.

¹⁰⁰ James Okolie-Osemene, 'Nigeria's Security Governance Dilemmas during the Covid-19 Crisis' *Politikon*, (2021) vol. 1.

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