

JUSTICE DELAYED

By Bonny Ibhawoh

It was Justice Akinola Aguda, the distinguished jurist who drew public attention to what he termed the crisis of justice in Nigeria. He said Nigeria "is wallowing in a mesh of unequal justice and we seem not to recognise the crisis it has created." Indeed, few will disagree that the Nigerian criminal justice system, as presently structured, suffers from serious inadequacies such as delays in the criminal justice system.

Although delays have been a feature of the general system of the administration of justice in the country, recent developments clearly indicate that this has reached disturbing and alarming proportions. Social, political and economic factors have combined to constrain the quick dispensation of justice in Nigeria today. One of such factors is the advantage the rich and affluent has over the poor and indigent. To a large extent, in today's Nigeria, the quality of justice one gets in judicial proceedings depends considerably on how much money he is able to spend on the judicial proceedings.

In cases where the suspect wields substantial influence and resources, he is able to "expedite" the course of justice in his favour. He is able to "prompt" the

"...inefficiency and delay will drain even a just judgement of its value"

- Warren Burger,
former Chief Justice of the United State of
America



□ Agbamuche: Attorney General

police to grant bail and in some cases even slant the case in his favour.

However, where the criminal suspect is neither rich nor influential, the tendency is that he is denied the benefit of quick dispensation of justice. The factors which impede the quick dispensation of justice cuts across the various arms of the criminal justice system i.e. the police, the office of the Director of Public Prosecution and the judiciary. Perhaps the most significant in this regard is the police.

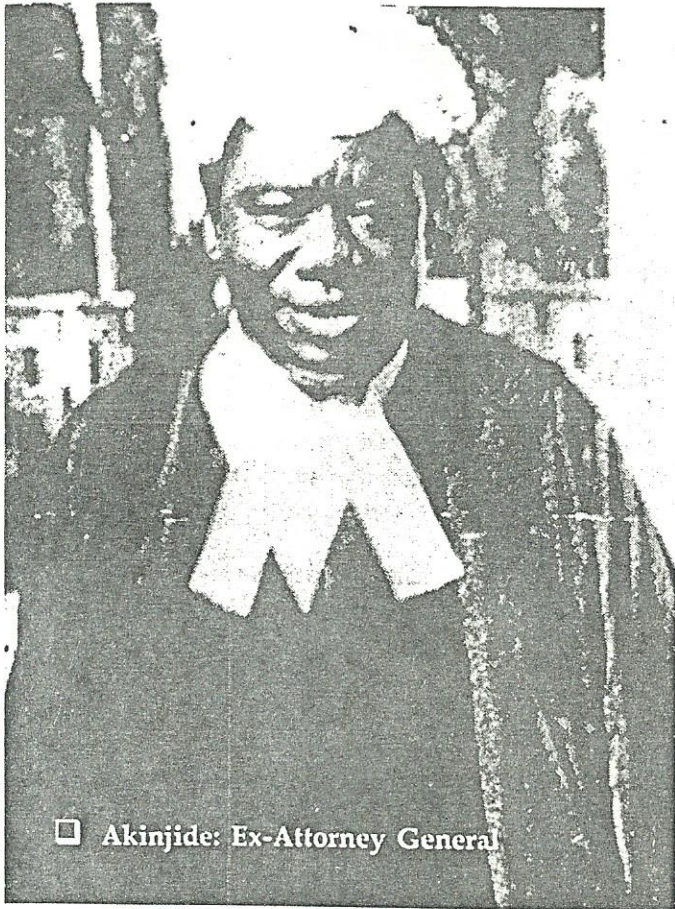
The statutory duty of the police in

Nigeria includes *inter alia*, "the prevention and detection of crime; the apprehension of offenders; the preservation of law and order; the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged". While appreciating the numerous constraints the police face, the force has not lived up to its statutory responsibility particularly in the area of the prompt prosecution of suspected criminal offenders. In some respect, this is also a constitutional issue.

Section 32(4) of the 1979 Constitution makes clear provisions that were intended to check incidents of inordinate delays in the criminal justice system. It provides that a person suspected of committing a crime must be brought before a court of law within a reasonable time. Where bail is not granted the suspect, he should be charged to court within 24 hours of arrest. To detain a person beyond 24 hours, the police requires the order of a court. Furthermore, Section 17 of the Criminal Procedure Act requires that an arrested suspect be brought to court "as soon as practicable whether or not police enquiries are completed" (Emphasis writer's).

The experience in Nigeria today is that these statutory provisions are hardly respected. Not only do the police fail to bring criminal suspects to trial within the specified minimum duration, they tend to deliberately keep criminal suspects in custody indefinitely. In a recent research undertaken by the Constitutional Rights Project (CRP), it was discovered that the attitude of the police towards the prosecution of criminal cases before them can at best be described as non-chalant.

In many cases, as soon as the police are able to secure an order from the magistrate for the continued remand of the suspects on a "holding charge", pending the "completion of police investigations", the suspect is practically forgotten in the cell. Investigations often never take place thereafter. Where they do take place, it is only due to the pressure from an aggrieved complainant who is determined to see justice done quickly.



□ Akinjide: Ex-Attorney General

It is important to stress here that the courts have questioned the legality of the pervasive police practice of securing a "holding charge" as the basis of the indefinite detention of a suspect. In the landmark judicial ruling of the Court of Appeal in *Onagoruwa Vs The State*, the court declared unequivocally that; "...before the prosecution takes the decision to prosecute... it must have at its disposal all the evidence to support the charge."

The court further observed that:

"The police in this country rush to court on what they generally refer to as a holding charge, ever before they conduct investigation, although there is nothing known in law as a "holding charge"... (When) the investigation does not succeed in assembling the relevant evidence to prosecute the accused to secure conviction, the best discretion is to abandon the matter and throw in the towel... On no account should the prosecution go out of its way to search for evidence when it is not there."

Unfortunately, although this ruling was made in 1993, the practice of securing a holding charge as a basis for keeping a suspect indefinitely in custody

remains a feature of the nation's criminal justice system.

Another related issue is what one jurist described as the "tendency on the part of the police to sit in judgement over cases in their offices. This, according to the jurist derives from the fact that the police suffer from a gross misconception of what their role is in criminal cases. Invariably, they turn themselves into persecutors rather than prosecutors.

The police, on their part complain that they lack manpower and logistic resources to carry out quick investigations. It is either that there is no vehicle to take the

suspects to court or that there are no funds to reach relevant witnesses. These may be legitimate excuses, but the implications of these on the unfortunate suspect is that he continues to languish in the cell under the most inhuman conditions which are characteristic of police and prison facilities in Nigeria.

A recent research discovered that over 60 per cent of the entire Nigerian prison population are Awaiting Trial Persons, ATPs. Many have remained in remand for long periods ranging between two and 10 years. The Ikoji Medium Security Prison for instance has a population of 2,300 people, 65 of whom are ATPs. At the Kirikiri Women Prison 20 per cent of the 296 inmates had by April 1992 been granted bail which were yet to be honoured. In addition to others yet to be granted bail, those on the awaiting trial list came to more than 50 per cent of the entire inmate population. This situation is replicated in other Nigerian prisons across the country.

In cases where suspects are eventually brought forward for prosecution in the courts, such prosecution often drags on indefinitely. This is where the other arms of the

criminal justice system come in - the DPP's office and the judiciary. Sometimes, in cases where a criminal suspect is brought before a magistrate court for trial, the case file may be referred to the office of the Director for Public Prosecution (DPP) for appropriate advice.

Ideally, this should be done promptly to ensure speedy dispensation of justice, although in practice, this is almost never the case. Rather, case files referred to the DPP's office remain unattended to for months and sometimes years. In some cases, the case file gets missing owing to careless handling. In such event, the suspect is condemned to remain in custody for as long as it takes the DPP's office to attend to his case file. Under such circumstances, corruption thrives. Officers of the DPP's office have been known to selectively attend to or "suppress" files depending on which party comes forward with material inducement. In one pathetic case, CRP through its legal aid scheme was able to secure the release of two suspects who had been held in custody on a holding charge for 10 years. Such cases are not uncommon in the nation's criminal justice system.

The judiciary is another arm of the justice system that must take part of the blame for the delay in the administration of criminal justice. Factors such as the lack of probity on the part of some judicial officers, lack of commitment and motivation, corruption and inadequate funding, all combine to constrain the effective functioning of the judiciary. Some judges and magistrates see nothing wrong with the consistent and often unnecessary adjournments of criminal cases before them.

All these factors result in monumental miscarriages of justice through inordinate delays in the nation's criminal justice system; delays which have adverse effects on the society as a whole. Justice Aguda cautioned: "No nation on earth can survive unless justice is allowed to reign supreme. Not the unequal justice we at present practice... what is required is equal legal justice based on social justice." ○