

# Appointment And Legal Career Of A Public Prosecutor In Nigeria: Obstacles And Legal Criteria

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## ABSTRACT

One of the greatest challenges to an efficient criminal justice administration in Nigeria is the limitations experienced by the office of the Public Prosecutor. This work is a discourse on the office of the public prosecutor and how it affects the efficiency of the Nigerian criminal justice system.

## INTRODUCTION

The Constitution of the Federal Republic of Nigeria places the responsibility of prosecution of crime on the Attorney General of the Federation or the state depending on the nature of crime<sup>1</sup>. Being a federation, there is an Attorney General of the Federation and thirty six Attorney-Generals for each state.

The Attorney General carries out this responsibility by himself/herself and through lawyers engaged in either the Federal or State Ministry of Justice<sup>2</sup>. Lawyers at the State Ministry of Justice are commonly called “State Counsel”. The Federal and State Ministry of Justice usually have a Department of Public Prosecution which is headed by a Director of Public Prosecution (DPP).

The responsibilities of the Department of Public Prosecution are as follows<sup>3</sup>;

1. Proffering Legal Advice or Opinion to the Nigerian Police and other Law Enforcement Agencies, Ministries and Extra-Ministerial Departments on criminal matters and letters repertoires and extradition.
2. Public prosecution of accused person in all court of competent jurisdiction including the High Court, Federal High Court, Court of Appeal and Supreme Court.
3. Defending criminal action in courts of competent jurisdiction on behalf of Honorable Attorney General of the Federation such as entering Nolle-prosequi authorized by the Honorable Attorney General of the Federation/State, Bail matters, Human Rights enforcement actions etc.

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1 Section 211 Constitution of the Federal Republic of Nigeria (CFRN), 1999 ( as Amended.).

2 Section 211(2) Constitution of the Federal Republic of Nigeria (CFRN), 1999 ( as Amended.).

3 [http://www.justice.gov.ng/index.php/the-ministry/departments/public-prosecution\(25/5/2018\)](http://www.justice.gov.ng/index.php/the-ministry/departments/public-prosecution(25/5/2018)).

4. Provision of legal advisory services to ministries and Governments departments and supervision of External Prosecutors who are prosecuting criminal cases in various courts in the country.

However, there are other agencies of government which are empowered to prosecute specific crimes;

1. The Economic & Financial Crimes Commission (EFCC).
2. Nigerian Drug Law Enforcement Agencies (NDLEA).
3. Nigeria Security and Civil Defence Corp (NSCDC)
4. State Security Service (SSS).

Legal officers of the Nigeria Police Force are also empowered to prosecute offences.

## **APPOINTMENT AND CAREER OF PUBLIC PROSECUTORS**

The Attorney- General of the Federation is appointed by the President while the various State Attorney- Generals are appointed by their state Governors. The only statutory criterion as provided for under **S. 152 (2) CFRN 1999** (As amended) for appointment is that the person must be a legal practitioner with at least 10 years post call experience.

The office of the Attorney- General is a political appointment usually for the duration of the tenure of the Government. The Attorney- General can be fired at any time by the President/Governor.

The State Counsel who prosecutes on behalf of the Attorney-General are full time public servants employed by the government. The criteria for employment differ in various states. However, generally the criteria seem to be 2-3 years post call experience for the lowest cadre of State Counsel which is Grade Level 10.

The career growth for a State Counsel is guided by age in the bar/duration in service and performance bench marks. A State Counsel can grow to the rank of Solicitor- General of the Ministry of Justice which is the highest ranking position next to the Attorney – General.

## **OBSTACLES TO EFFECTIVE PUBLIC PROSECUTION**

1. **Political Interference.** Politicizing the appointment of the Attorney- General who is the Chief Law Officer with the power to institute, take-over and terminate any criminal proceedings leaves room for unpredictable political interference in the administration of justice. Over the years, we have seen situations where Attorney-Generals have used the enormous powers of the state to frustrate prosecution of politically exposed persons. Thereby making a mockery of the efforts of assigned prosecutors.
2. **Investigative Process-** It is the responsibility of the Police or the relevant agency of government to investigate criminal allegations. The investigation process is still very flawed. Majority of the Police Divisions especially in the rural areas lack the necessary

equipment/technology to aid crime detection and investigation. Majority of the investigating officers do not have the requisite training or competence to handle complex investigations. This is largely due to the faulty recruitment process which is not merit based. The Department of Public Prosecution is only given the case file after investigations have been carried out by officers of the Police Force. This greatly affects their efficiency as their case strategies is limited by the quality or depth of investigation.

3. **Weak Institutions-** Sadly, it does appear that the success of Department of Public Prosecution or even the Police Force seems to be personality driven rather than a factor of a strong institutional framework or policies. The Nigerian system gives so much power to the heads of these organisations that the success of the organisation becomes dependent on their personality. The organisational structures are in such a way that they can easily be influenced. So we find a situation where for instance, a department is headed by a strong willed and self-motivated individual, everything may just work seamlessly. But once such a person leaves office, everybody become docile and the department ineffective.
4. **Delay in Justice Delivery** – In 2015, The Administration of Criminal Justice Act was enacted. This law greatly made provisions targeted at fast tracking our criminal justice delivery system. However, the congested nature of our courts especially in the metropolitan cities makes the application of the Law impracticable. In some states, a judge sitting at the High court or Magistrate court may have up to 25 matters on his/her daily cause list. Consequently, it takes an average of 2-3 years to prosecute a criminal charge.
5. **Resource Deficit:** Largely as a result of mismanagement, these institutions lack some basic facilities that can frustrate an efficient prosecutor’s effort. There are occasions where prisoners are not transported to Court because of breakdown of prison vehicles. There are some regions with no single forensic labs. Same Administration of Criminal Justice Act makes provision for use of video cameras during police interrogation but most Police Stations do not have the cameras.
6. **Poor remuneration.** Money is still one of the major motivators. The salary structure is still relatively poor. For instance, a junior state counsel at the Ministry of Justice may earn as little as N120, 000 (I,e about \$330) as his/her basic salary. However, he/she may be required to prosecute suspected offenders for cases of fraud or embezzlement of public funds in millions of dollars. This invariably affects motivation and can engineer corruption.

## RECOMMENDATIONS

1. The office of the Attorney General should be career based not a political appointment. This will help professionalism and remove political bias.
2. Consistent training programmes for prosecutors and other public officers involved in the administration of criminal justice.

3. The Ministry of Justice should be made independent of the executive to avoid political interference.
4. Better remuneration of public servants involved in the administration of criminal justice.
5. The necessary infrastructures and equipment needed for efficient public prosecution should be put in place.

### **Bibliography**

1. Constitution of the Federal Republic of Nigeria 1999 ( As amended)
2. <http://www.justice.gov.ng/index.php/the-ministry/departments/public-prosecution>