

Criminal Justice in Nigeria: Forensic Science as a Panacea

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ABSTRACT

The Nigerian criminal justice system is assailed with maladies such as corruption, delayed prosecution of offenders, poor funding, tardy investigation techniques, ill equipped court rooms and irregular training of judicial officers. Shoddy investigation techniques have resulted in the existence of a skewed investigation procedure primarily focused on extraction of confessional statements to secure convictions. This often culminates in miscarriage of justice, extra judicial killings of suspects or incarceration of innocent persons and the discharge of criminals. These inconsistencies have enthroned a culture of mistrust and disrespect for the criminal justice system in Nigeria. Jungle justice, voodoo and compounding are the preferred modes of resolving criminal disputes by the largely illiterate populace. To restore the dignity, dependability and efficiency of the criminal justice system in Nigeria with a view to reducing the incidence of human rights abuses and extra judicial killings associated with the investigation process, increased reliance on forensic science has been advocated. This article analyses the lapses in the tripartite organs of the criminal justice system, with emphasis on the Nigerian Police Force as the principal law enforcement agency, with a view to advocating enhanced utilisation of forensic science to bridge the gap in criminal investigation processes.

1. INTRODUCTION

The criminal justice system in Nigeria is comprised of the collective institutions and processes involved in the arrest, investigation, arraignment, prosecution,

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sentencing or discharge of an accused person. As Professor Yemi Osinbajo, SAN¹ states:

“An effective criminal justice system is fundamental to the maintenance of law and order. Criminal justice, because it addresses behavioural issues, must be dynamic and proactive. ... Consequently, many of the provisions are outdated and in some cases anachronistic. Besides, the loopholes in the laws and procedure have become so obvious that lawyers, especially defence lawyers, have become masters in dilatory tactics. It has, thus, become increasingly difficult to reach closure of any kind in many criminal cases. Convictions or acquittals have become exceedingly rare.”

In *Sogbanmu v. COP*, the West African Court of Appeal¹ opined that the expression “administration of justice” is not limited to the hearing of cases, whether civil or criminal, in the courts but rather that it includes steps taken preliminary to the hearing of cases. It is evident that in criminal cases administration of justice begins with the laying of the complaint by the victim at the Police Station. The Nigerian Police Force, as an institution, has been referred to as a “sieving institution” as it sieves information using the barometer of “probable cause or reasonable suspicion” to assess whether or not the complaint it receives is worthy enough to warrant a summons, an arrest or, indeed, the onward transmission of the case to the next agency in the administration of justice, that is, the Courts.²

The criminal justice system consists of three components of the law enforcement agencies, which include the following: the Police Force, the judicial process, which includes Judges, Prosecutors, Defence lawyers, and the office of corrections including the Prison officials, the Probation officers as well as the parole officers.³ The criminal justice process revolves around these three main institutions and, as such, encompasses agencies such as the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices Commission (ICPC), National Drug Law Enforcement Agency (NDLEA), and

1 Former Attorney General of Lagos State in his foreword to *Proposals for the Reform of the Criminal Procedure Laws of Lagos State of Nigeria*, Lagos State Ministry of Justice, 2004.

2 Hereinafter referred to as WACA.

3 E. E. Apeh, *The Nigerian Police Force: Democracy and Criminal Justice*, Benin City, Elaigwu Apeh Law Publications, 2006, pp. 248-249, referred to in O. G. Izevbuwa, Esq., “The Core Institutions in the Administration of Criminal Justice System: A Need for Re-Evaluation”, 1 (1) *Journal of Private and Property Law*, (2012), 52-53.

Federal and State Ministries of Justice.⁴

Issues plaguing the Nigerian Criminal Justice system⁵ have been the subject of debate by criminologists, legal practitioners, judges, academic writers, legislators, police officers, prison officials, other government officials, journalists, and the general populace. Attempts by states to reform their criminal justice system have resulted in the enactment of the Criminal Law 2011 and the Administration of Justice Law 2011 of Lagos State with the introduction of non-custodial sentences like community service, probation and restitution as alternatives to terms of imprisonment for some offences and to ease prison congestion amongst other things.⁶ However, scant attention has been paid to forensic science and manpower development.

The various agencies comprising the criminal justice system are examined below:

1.1 THE JUDICIARY

The Judiciary takes care of the judicial process. This process involves the participation of key agents like Judges, Prosecutors and Defence Lawyers. It, also, encompasses the Sheriffs and Marshals. The duties of sheriffs and Marshals include:

- a. the receipts of writs and processes of a court issued in accordance with the law and to make returns thereto;
- b. to give, at the request of a person delivering a writ to him for execution, a receipt for that writ;
- c. to make arrangements to ensure that at the sessions a sufficient number of police constables are employed within the court premises;

⁴ *Black's Law Dictionary*, 9th Edition.

⁵ Justice L. H. Gunmi, "A Diagnostic Analysis of Criminal Administration in the Federal Capital Territory and Beyond," in Lawal H. Gunmi *et. al.* (eds.), *Judicial Incorruptibility and Reforms* (Essays in honour of Hon. Justice Idris Legbo Kutigi), Enugu, Snaap Press Ltd, (2009), p.3.

⁶ Issues such as the definition of crime, the penal policy, the issue of payment of compensation to victims of crimes, the relationship between the culture of the people and the law of crime, sentencing practices, lapses in the component institutions of criminal justice in Nigeria, delay in the administration of justice, the prison system, the police, human rights and the issue of a uniform system of criminal justice in Nigeria. For the ideas on these issues, see Centre for Criminal Justice Reform & Citizen Awareness, *Agenda for Criminal Justice Reform and Effective Law Enforcement Administration in Nigeria*, May 1999, 4. See also generally, Y. Osinbajo, (ed.), *Unification and Reform of the Criminal Laws and Procedure Codes of Nigeria*, Lagos, FMOJ, (1990).

and

- d. to exercise such other powers and perform such duties as may be conferred or imposed upon him by law.⁷

The judicial process makes use of the output from the law enforcement agencies, which are, thereafter, processed through the process of trial and the output of this process is transferred, where found guilty, to the Office of Corrections/Nigerian prisons.⁸

1.2 OFFICE OF CORRECTIONS/NIGERIAN PRISONS

The Nigerian Prisons is responsible for the custody of the final product of the criminal justice system. Their duties involve preventing the escape of these products of the system, now termed inmates. They do this by erecting high walls or chain-link fences, placing armed guards within and around the premises, constantly checking the cells and implementing measures for rehabilitation.⁹

1.3 LAW ENFORCEMENT AGENCIES

The several law enforcement agencies in Nigeria include the Police Force, the Sheriffs and Marshals, the State Security Services (SSS), the Independent and Corrupt Practices Commission (ICPC), the Economic and Financial Crimes Commission (EFCC), and National Drug Law Enforcement Agency (NDLEA). They are empowered by enabling legislation to investigate and prosecute crimes. Chief amongst these agencies is the Nigerian Police Force.

This article focuses on the Nigerian Police Force as an agency of the

7 As reflected in the reform implemented by Lagos State, such as the introduction of the term ‘defendant’ as a replacement for the term ‘accused’ and change of prosecutorial authority from ‘The State’ to ‘The People of the State’, outright removal of section 10 (1) of the CPA, express prohibition of arrest by proxy, notification of cause of arrest and other due process rights, etc also encapsulated in the Administration of Justice Bill which is yet to be passed into law. See, C. C. Ani, “Reforms in the Nigerians Criminal Procedure Laws” 1 *NIALS Journal on Criminal Law and Justice* (2011), p. 53.

8 Section 4, Part 2, Laws of Bendel State of Nigeria, 1976, as applicable in Edo State Cap 151.

9 A. B. Dambazau, *Criminology and Criminal Justice*, Ibadan, Spectrum Books Ltd, (2012), p. 173; M. H. Moore “The Legitimation of Criminal Justice Policies and Practices,” in J. Q. Wilson *et al.* (eds.), *Perspectives on Crime and Justice*, National Institute of Justice Research Report, 1996-1997 Lecture Series, Vol 1, Nov 1997

criminal justice administration system, its powers, *modus operandi* and the necessity for increased utilisation of forensics as a medium of change to curb some of the inadequacies of the Police investigative techniques currently in use.

The Nigerian Police Force is the principal organ constitutionally empowered to ensure public safety and the security of lives and properties in Nigeria. It derives its existence and authority from the Constitution of the Federal Republic of Nigeria, which provides:

“There shall be a police force, which shall be known as the Nigerian Police Force, and subject to the provisions of this section, no other police force shall be established for the Federation or any part thereof”¹⁰

It is further provided that:

“The National Assembly may make laws for the federation or any part thereof with respect to the maintenance and securing of public safety and public order and providing, maintaining and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services.”¹¹

The Police Act similarly provides:

“The police shall be employed for 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 and shall perform such military duties within or outside Nigeria as may be required of them by or under the authority of this or any other Act.”¹²

It is apparent that the intention of the law is that the Nigerian Police Force be the Principal means of achieving peace and order in the society through the instrumentality of the law. The Nigerian Police Force (NPF) maintains a three-tier administrative structure of departments, zonal and state commands with the Department of Criminal Investigation CDCI as the highest criminal investigation arm of the NPF with the primary function of investigating, prosecuting of serious and complex cases within and outside Nigeria, and the coordination of criminal investigations across the country.

10 *Ibid.*, at p. 197.

11 Section 214 (1), Constitution of the Federal Republic of Nigeria, 1999, as amended.

12 Section 11, Chapter 1, *Constitution of the Federal Republic of Nigeria*, 1999, as amended.

To attain these objectives, police officers are engaged in the control and management of behavioural patterns. Offenders of the law are expected to be investigated, arrested, prosecuted and sentenced, if found guilty. However, the officers are irregularly trained and, basically, equipped with flashlights, batons, and other improvised devices.¹³ They rely on victims to provide them with writing materials and vehicles to visit crime scenes. On arrival at such crime scenes most young persons in the vicinity of the crime scene are arrested and tortured to extract confessional statements. Objects and materials obtained from crime scenes are dumped in police stations due to inability to adequately analyse them. When these materials are tendered as exhibits in court their utility as evidentiary tools are hampered by the limited exposure to forensic science of the Police, Presiding Judges, and the scarcity of forensic experts. The efficacy of the investigation apparatus of the Police is determined by its ability to extract confessional statements from suspects. In the words of Justice Kalgo of the Supreme Court, “[t]here is no doubt that in all criminal allegations, investigation plays an important part and it will make or mar subsequent criminal proceedings.”¹⁴

2. CHALLENGES ASSAILING THE CRIMINAL JUSTICE SYSTEM IN NIGERIA

Crime detection and investigation is the pivot of the criminal justice system. It is so important that where it is absent, tardy or shoddily executed, it may lead to several consequences including delay in the administration of justice, victimization of innocent citizens,¹⁵ and provision of a leeway for guilty offenders to escape punishment in the absence of confessional statements. This

13 Section 4, Police Act, Cap p. 19; Section 25, Nigeria Police Regulations, 1968, provides that “The police shall be employed for 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 and shall perform such military duties within or outside Nigeria as may be required of them by or under the authority of this or any other Act.”

14 S. D. Ashley & L. Golles, “The effect of Police Officer Confidence on Officer Injuries and Excessive Force Complaints,” available at Consulting in Risk Management and Training www.sashley.com/articles/effectsofPoliceOfficer confidence.htm, (accessed on 16 May 2015).

15 Chief *Gani Fawehinmi v Inspector General of Police* (2002) 7 NWLR Pt 767, p. 606 at p. 699, at ratio E.

engenders lack of faith in the criminal justice system and increased quest by citizens to shun justice mechanisms and resort to self help.¹⁶

Lapses in the investigation processes in Nigeria are apparent from the inception of the process, which commences with the arrest of the accused person or suspect named by the complainant or victim. According to Ladapo, there are eight major challenges to criminal investigations. These include the uncooperative informant/witness, poor funding, corruption, improper training of Investigating Police officers, missing case files, delayed duplication of case files, poor public records keeping as well as lack of Forensic Laboratories and insufficient number of trained Forensic Experts.¹⁷

According to the study, informants and witnesses of crime do not make themselves available to the police to give statements or, indeed, assist the police in the investigation of crime for numerous reasons.¹⁸ This attitude has become so rampant that it has received judicial notice. The Supreme Court in its observance of the Police by the average Nigerian citizen noted, in the case of *Ogundare v The State*¹⁹ that “it is common knowledge that in Nigeria witnesses often refrain from coming forward in case they might get into some sort of trouble.”

The challenge of improper funding has compromised the Police. The

16 This delay and victimization of innocent citizens in turn translates to a congestion of the prisons and what has been referred to as the awaiting-trial-inmate’s phenomenon. This phenomenon refers to a situation where though not convicted the inmates awaiting trials spend the better part of the sentence they would have served upon a finding of guilt just waiting to be tried. In fact, according to Chief Bayo Ojo, former Attorney General of the Federation, in the Response of the Federal Ministry of Justice to the Problem of Awaiting Trial Persons in Nigeria’s Prisons to the House of Representatives Dialogue on the state of Awaiting Trial Persons in Nigerian Prisons, available at <http://pcraj.org/Documents/Speeches/Prison%20Act%20-HAGF%20Speech.doc>. (Accessed 30 November 2008); referred to in O. A. Ladapo, “Effective Investigations, A Pivot to Efficient Criminal Justice Administration”, 5(1 & 2) *AJCS*, p. 79. As at 2006, awaiting trial inmates accounted for about 65% of the number of persons incarcerated in Nigerian Prisons and, in 2010, the figure was 65.2%, showing that the problem remains unchecked.

17 O. A. Ladapo, “Effective Investigations, A Pivot to Efficient Criminal Justice Administration”, 5(1 & 2) *AJCS*, p. 79. This position is supported by the bible book of Ecclesiastes 8:11 which states that “Because sentence against a bad work has not been executed speedily, that is why the heart of the sons of men has become fully set in them to do bad”.

18 O. A. Ladapo, *ibid.*; this report was from a three (3) year study conducted between 2006 and 2009, focusing on criminal investigations as a component of the criminal administration of Justice in Nigeria during the author’s employment as a Public Prosecutor in the Office of the Oyo State Ministry of Justice.

19 Sometimes they are afraid that they may be accused of the same crime they are reporting; becoming victims of reprisal attacks from the person that the report is made against simply because of the potential for leakage of information by the police to the suspects; and the possibility of being made to fund the subsequent investigation which may ensue from a report and make endless visits to the police station.

Police expect complainants to fund the investigation process from paying for the purchase of stationeries, like files and forms, to visits to the crime scene, transportation to effect the arrest, and post mortem fees, where necessary.²⁰ It is not uncommon for Police to arrest and prosecute wrong suspects. The issue of corruption within the Nigerian Police force has been so flogged to death that it needs no further elucidation save to say that the authorities of the Force themselves have taken cognizance of the fact of it being rampant within the Force to the extent that when rich or influential people are suspects, it is to be expected that the case will likely go uninvestigated after the Police have been “sorted”.²¹

The principal challenge to investigation is the lack of forensic training of the Police Officers. This is mostly because officers below the rank of sergeant are appointed to carry out the majority of investigations on behalf of the Police. These Constables have no formal training beyond the three (3) months entry training at the Police College, which is more physical oriented than mental.²² The result of the above is that the officers are expected to learn on the job and are detailed to investigate complex cases while still neophytes. Since refresher courses are rare, the officers have to resort to “in-station” lectures, which take the form of experiences delivered by senior officers who, also, have little or no exposure to forensic science.²³ This informs the over reliance on confessional statements in the investigation process.

Since suspects will not easily make confessional statements, the officers tend to resort to coercion, torture in the extraction process. Examples of methods of torture used by the Nigerian Police Force are the following: the tying of arms and legs tightly behind the body; suspension by hands and legs from the ceiling or a pole; repeated and severe beatings with metal or wooden objects (including planks of wood, iron bars, and cable wire); resting of concrete blocks

20 (1995) 5 NWLR Pt 395, p.266, particularly at p. 285, paragraphs B-E.

21 O. A. Ladapo, *supra*, Note 17.

22 M. Okiro, *State of the Nigerian Police Force as at November 2007: A public address of the Inspector General of Police*. Available at http://nigeriapolice.org/public/modules/mastop_publish/?tac=STATE_OF_NIGERIA_POLICE (Accessed 30/11/2008); E. C. Onyeozili, “Obstacles to Effective Policing in Nigeria” *African Journal of Criminology and Justice Studies, AJCJS*, Vol. 1 No. 1: April, 2005. P 41-42 referred to in O. A. Ladapo, *supra*, Note 17.

23 T. N. Tamuno, *The Police in Modern Nigeria, 1861-1965: Origins, Development and Role*, Ibadan, Ibadan University Press, (1970), p. 29.

on the arms and back while suspended; spraying of tear gas in the face and eyes; rape of and other sexual violence against female detainees; use of pliers or electric shocks on the penis; shooting in the foot or leg; stoning; death threats; slapping and kicking with hands and boots; and denial of food and water.²⁴ These methods of torture are not attributed to the Nigerian Police Force alone but to all the various law enforcement agencies in Nigeria.²⁵

The necessity for confessional statement which motivates the torture meted out on accused persons is counterproductive as it results in a vicious circle, as follows: the desire to achieve a conviction motivates a need for the confessional statement; the need for the confessional statement makes the police officer go all out to get one to the extent of breaching the constitutional provisions regarding the rights of suspects by torturing the accused person; the same confessional statement, once obtained by the police, forms the mainstay upon which the ensuing prosecution is based; and, upon the challenge of the voluntariness of the statement in court, the prosecution's case crumbles. Granted, a confessional statement which is "an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime if voluntary is deemed to be a relevant fact as against the person who made it."²⁶ Such confessions are relevant and admissible.²⁷ Confessional statements are expected to be free and voluntary in nature to be admissible. The courts have consistently held that "a free and voluntary confession alone, *properly taken*, tendered and admitted as well as proved as true is sufficient to support a conviction."²⁸

Therefore, there is a need to train the Police to realise that even when a confessional statement is admitted by a trial court, it does not automatically culminate in a conviction and sentence of the accused person because the court is

24 This lack of training has been acknowledged by the Police themselves, in particular by the former Inspector General of Police Mr. Sunday Ehindero. In his first press conference in January 2005 upon assuming office, he said "...the era where neophytes would be assigned to investigate criminal offences is gone.... We are not going to put a tailor to go and investigate, we must have the census of all those people with professional knowledge, accountants... we will make use of them and nobody will be routinely posted to CID (Criminal Investigations Department) unless he has something to offer."

25 Human Rights Watch, "Rest in Pieces: Police Torture and Deaths in Custody in Nigeria", July 2005, Vol.17, No. 11(A), <http://www.hrw.org/sites/default/files/reports/nigeria0705.pdf> (accessed on 20/11/2014)

26 *Ibid.*

27 *Odeh v FRN* (2008) Vol 165 LRCN 12 at 58, 59.

28 *Obosi v The State* (1965) NMLR 119; *Ejinima v The State* (1991) 6 NWLR (Pt 200) 637; (1991) 7 SCNJ. 318; *Durugo v The State* (1992) 7 NWLR (Pt 255) 525; (1992) 9 SCNJ. 46.

still expected to test the veracity of the said confession.²⁹ The result is that most times in the course of the criminal trial, the admissibility of the said confessional statement is called into question and a trial within a trial takes place. This leads to inordinate delay in the prosecution of the case which, also, translates to a mistrust of the system by the victim and interested parties and a lack of faith in the judiciary. This, in turn, leads to frustration with the machineries of justice and an increase in acts of justice as citizens demand swift justice.

Increased utilisation of forensic science in the investigation process has been advocated as a panacea for some of the challenges assailing the investigation and prosecution of crimes in Nigeria.

3. THE CONCEPT OF FORENSIC SCIENCE

Forensic science has been defined as “the application of scientific knowledge and methodology to legal problems and criminal investigations;” it has, also, been defined as “the application of the methods and techniques of the basic sciences to legal issues”.³⁰ It is sometimes referred to as “forensics.” It encompasses many different fields of science including anthropology, biology, chemistry, engineering, genetics, medicine, pathology, phonetics, psychiatry, and toxicology. Forensic science is multi-disciplinary and multi-professional and consists of a collaboration of professionals operating as a team.

3.1 DEVELOPMENT OF FORENSIC SCIENCE

The use of science as a means to solve crimes can be traced to Song Ci³¹ as far back as 1248. By the 16th century in Europe, this method became more formal

29 *Ihuebeka v The State* (2000) NSCQR, Vol 2 (Pt 1) 186 at 189. The first part of this statement might be responsible for the overreliance of the police on the use of confessional statements but they fail to direct their minds to the part which demand that such evidence must be properly taken, tendered, admitted and proved.

30 O. G. Izevbuwa, S. Okoh, “Conviction of an Accused Person Based on His Confessional Statement in Criminal Trials – A Re-Visit”, 1(1) *Journal of Private and Property Law* (2012). Section 218, CPA; *Osuji v Inspector General of Police* (1965) LLR 143; *Rabiu v State* (2005) 5 WRN 54 at 77; *R v Rykes* (1913) 8 CAR 233 at 236.

31 AsisTM Forensic Investigations, “What is Forensic Science: Teacher Background Information” available at http://www.clt.uwa.edu.au/_data/assets/pdf_file/0018/2301552/FSP-03-Teacher-Info.pdf (accessed on 17/3/2015). See, also, definition of Forensic Science at <http://www.all-about-forensic-science.com/definition-of-forensic-science.html> (accessed on 17/3/2015).

when medical practitioners in the army and university environment studied the cause and manner of death. This study was conducted in different ways by different scholars; hence, there was a multidimensional approach.³² By the 18th century, the result of these studies began to appear in the form of writings/books like *A Treatise on Forensic Medicine and Public Health* by the French physician Francois Immanuele Fodéré and *The Complete System of Police Medicine* by the German medical expert Johann Peter Frank.³³

The result of the ensuing enlightenment is that criminal investigations became more evidence-based and rational, torture as a means of acquiring confessional statements was reduced, and such statements ceased to influence court decisions. For example, in 1784, in Lancaster, John Toms was tried and convicted for murdering Edward Culshaw with a pistol. When the dead body of Culshaw was examined, a pistol wad (crushed paper used to secure powder and balls in the muzzle) found in his head wound matched perfectly with a torn newspaper found in Toms's pocket, leading to the latter's conviction.³⁴ In Warwick in 1816, a young maidservant was found drowned in a shallow pool. Her body bore the marks of a violent assault. In the course of the investigation, the police found footprints and an impression from a corduroy cloth with a sewn patch in the damp earth close to the scene of the crime. There were also scattered grains of wheat and chaff. The breeches of a farm labourer who had been threshing wheat nearby were examined and corresponded exactly to the impression in the earth near the pool. This led to the arrest, trial and conviction

32 C. Song, *Xi Yua Lu*, (Translated as *Washing Away of Wrongs*) "Forensics Timeline". Cbsnews.com. Retrieved 2011-12-20, A Brief Background of Forensic Science http://vizproto.prism.asu.edu/classes/sp05/todd_c/forensic_site/intro.html. In the book was an account, amongst others, of an individual who was murdered with a sickle. The investigator realizing that the murder weapon was a sickle after testing various blades on an animal carcass and comparing the wound inflicted with that on the victim, instructed everyone to bring their sickle to one location. Flies eventually gathered on a single sickle after being attracted by the smell of blood on the sickle. In light of this, the murderer confessed. See Haskell, Neal H. (2006). "The Science of Forensic Entomology," in *Forensic Science and Law: Investigative Applications in Criminal, Civil, and Family Justice*, 431–440. Edited by H.C. Wecht and J. T. Rago. Boca Raton: CRC Press, an imprint of Taylor and Francis Group. ISBN 0-8493-1970-6. p. 432.

33 For example, while Ambroise Paré, a French army surgeon, conducted his study on the effects of violent death on the internal organs, two Italian surgeons, Fortunato Fidelis and Paolo Zacchia, laid the foundation of modern pathology by studying changes that occurred in the structure of the body as the result of disease.

of the farm labourer for the murder of the maid servant³⁵

Subsequently, the use of forensics spread to areas such as toxicology and ballistics, anthropometry, fingerprints etc and, more recently in the 20th century, DNA profiling. By the 20th century, the science of forensics had become so well established as a method of criminal investigation that scientific and surgical investigation was heavily relied upon when solving crimes. For example, the Metropolitan Police of England relied heavily on it during their pursuit of the mysterious Jack the Ripper, who had killed a series of prostitutes in the 1880s. Using these methods, large teams of policemen conducted house-to-house inquiries throughout Whitechapel, collected and examined forensic materials which led to the identification of suspects and also eliminated/ exonerated some suspects. Over 2000 people were interviewed, “upwards of 300” people were investigated, and 80 people were detained.³⁶

Over time, there have been different notable strides taken to improve, enhance and facilitate the use of forensic science as a medium of criminal investigation. For example, in 1903, the NY States Prison system began the first systematic use of fingerprints in the US for criminal identification. In 1932, the FBI crime laboratory was created. In 1935, the first British forensics laboratory was established in Hendon. In 1950, the American Academy of Forensic Science (AAFS) was formed. In 1975, the Federal Rules of Evidence were enacted as a congressional statute, based on the relevancy standard in which scientific evidence that is deemed more prejudicial than probative may not be admitted. In 1977, the FBI introduced the its Automated Fingerprint Identification System (AFIS), which first computerised scans of fingerprints. In 1985, the UK police first used forensic DNA profiling. In 1986, DNA was used for the first time to identify Colin Pitchfork as the murderer of two young girls in the English Midlands. In 1987, DNA profiling was introduced for the first time in a US criminal court. In 1991, the Forensic Science Service became an executive body. In 1995, the world’s first national DNA database began operations in

35 N. McCrery, *Silent Witnesses*, London, Random House Books, (year), p. 51; See, also, Forensic Science Central “History of Forensic Science” available at <http://forensicsciencecentral.co.uk/history.shtml> (accessed on 10/3/2015) ; see also “title” available at <http://www.forensic-medicine.info/> (accessed on the 10/3/2015).

36 S. Kind, M. Overman, *Science Against Crime*. New York City, Doubleday, (1972) pp. 12–13; “Forensic Science and Forensic Medicine” available at <http://www.forensic-medicine.info/> (accessed on 10/3/2015).

the UK. In 1996, the FBI introduced computerized searches of AFIS. In 1996, Mitochondria DNA evidence was used in court for the first time in the US. In the same 1996, the Police established the National Criminal DNAD at a base in the UK and in 1998, an FBI DNA database, NIDIS, was put into practice.³⁷

The above steps ensued because the three organs of government, being the executive, legislature and the Judiciary, saw the need to move past the archaic methods of investigation and partook in the transformation thereby enabling other agencies and individuals by creating an enabling environment.

3.2 THE ROLE OF FORENSICS IN CRIMINAL INVESTIGATION

Forensic science plays a pivotal role in criminal investigation and trial process. It provides investigators with scientifically based information through the analysis of physical evidence.

i. To successfully prosecute an accused person and sustain a conviction, it is necessary that the investigating agency gather sufficient legally admissible evidence to convince the court that the suspect is guilty. Criminal investigations generally comprise of two key elements, which are people and things. This means that for a crime to be committed, an individual would most likely do so through the medium of things. These things make up the physical evidence involved in the crime.³⁸ Police departments are often reasonably certain that a particular individual is responsible for a crime but may remain unable to establish guilt by legally admissible evidence. Forensic science bridges the gap between this reasonable certainty and the proof of such guilt. In order to secure the necessary evidence, the police employ a variety of powers and procedures. For example, they have the power to investigate a crime and also search a suspect's person and or property.

The knowledge of forensic science allows an investigative team to

37 Inspector Donald Swanson's report to the Home Office, 19 October 1888, HO 144/221/A49301C, quoted in ?. Begg, *Jack the Ripper: The Definitive History*, place, Evans and Rumbelow, (date), p. 205; ?. Evans and ?. Skinner, *The Ultimate Jack the Ripper Sourcebook*, place, publisher, (date), p. 125.

38 "History of Forensic Science" available at <http://www.forensic-medicine.info/> (accessed on 10/3/2015).

scour a crime scene for evidence, whether trace or otherwise.³⁹ These materials are often compared to others found at other locations like the suspect's person, property or residence to find a link which proves culpability. Such materials are usually held by the police for production as exhibits at any subsequent trial.

Bridging the evidentiary gap is vital to a successful criminal prosecution. Arriving at a crime scene without any shred of evidence or clues can be very frustrating. This is more so when the said police force is in an environment where there is pressure to perform and produce results. This is largely responsible for mass arrests, arrests by proxy and extraction of confessional statements from accused persons under duress.

ii. Clarification of the victim's and perpetrator's identity is one of the attributes of forensic science. The gruesome nature of a crime or an accident may interfere with easy identification of the victim. In such cases, forensic science becomes very useful in identifying the victims particularly through the use of DNA analysis. In some other cases the identity of an individual in terms of paternity may be in issue. In such situations, DNA analysis could be used to resolve such ambiguities and clarify the relationship.

Forensic evidence also helps to clarify the identity of the assailant. For example, DNA samples of semen from a rape victim could exonerate a suspect and identify another person as the perpetrator of the offence. The perpetrator of a crime leaves clues regarding his identity at a crime scene. These clues could come in the form of finger prints, hair particles, and blood splatter, which are easily analyzed with the aid of forensic science.

iii. Certain crimes though committed in secret require corroboration to procure a conviction.⁴⁰ The journey to acquire corroborative evidence can be

39 P. L. Kirk, *Crime Investigation*, U.S.A., John Wesley & Sons Inc., (1974), p. 1; He opines that physical evidence is the most veritable source of evidence because no matter how careful a criminal may be, he may be able to avoid being seen or heard but his effort will be defeated if he cannot avoid the mutual contamination which results from his mere presence in the environment and such contamination can only be avoided by a restraint that ensues from complete mental control, which is uncommon.

40 Trace evidence often refers to minute samples of a substance or tiny fibres, transferred when two objects touch or when small particles are disbursed by an action or movement. It includes materials such as fibres, hairs, glass fragments and paint chips, while regular physical evidence includes materials like saliva, blood, semen, drugs, explosives, fingerprints, tool marks, firearms and ammunitions, documents, impressions, etc.

quite onerous despite being equally vital as it may make a difference between an acquittal and a conviction. Forensic evidence suffices to bridge the gap and provide corroborative evidence in terms of semen analysis, DNA analysis of skin tissue found beneath the fingernails, etc.

According to AIG Hashimu Argungu,⁴¹ apart from the above, the role and function of forensic science in criminal investigation and trial encompasses “the reconstruction of the modus operandi,” “assisting the court prove the existence of a crime,” “ensuring the smooth working from crime scene to trial as well as to ensure the reliability of the forensic examination” etc. Indeed, the role of forensic science in the course of criminal investigations cannot be over-emphasized more so as its efficacy increases daily.

4. DEVELOPMENT OF FORENSIC SCIENCE IN NIGERIA

In spite of the fact that the knowledge of forensic science as a method of criminal investigation is old, Nigeria is yet to be a beneficiary of forensic science because its development is still in its infancy.

The first Nigerian Forensic Laboratory was established in partnership with a Utah based Sorenson Forensics at the Force C.I.D, Alagbon Close, Ikoyi, Lagos, Nigeria, in 2012. The laboratory, however, had no equipments.⁴² In the absence of such equipments, the Nigerian Police have been compelled to take sensitive cases abroad for forensic analysis. When the laboratory got burnt, there was no move to reconstruct it. However, in January 2013, the Inspector General of the Nigerian Police, Mohammed Abubakar, laid the foundation of a ₦77 Million forensic Police Laboratory, which is expected to cater to the modern investigation needs of the Force. Professor Adedokun Adeyemi,

41 That is rape, molestations, etc. See, also, section 218 Criminal Code Cap. C28 Laws of the Federation, Nigeria, which states that any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony and is liable to imprisonment for life with or without caning upon conviction with the proviso that, prosecution for the offence must be commenced within two months of commission and a person shall not be convicted of the offence upon the uncorroborated testimony of one witness.

42 Assistant Inspector General of Police, Zone ‘5’ Headquarters (as he then was) in a keynote address entitled “The Role of Forensic Science in Criminal Investigation and Trials” delivered to the members of Forensic Research Group of the University of Benin, Benin City, at the Inaugural Meeting organized by the Forensic Research and Development Centre of Nigeria (FORDEC), which was held at the College of Medical science, Board Room on 24 June 2014.

however, charged the police authority to ensure that the equipment for the forensic investigation was on ground before the completion of the project to avoid a repetition of the shoddiness of the first laboratory.⁴³

There are indications of capacity which show that should Nigeria set her mind to it, then reform to enhance and develop the field of forensics in Nigeria is achievable. These indications are in the form of reform by the Nigerian Communications Commission requiring fingerprints as a condition precedent to the registration of mobile sim cards. This condition has been met in Nigeria. The University communities regularly engage in biometric registrations. These biometric registrations include the collection of the finger prints of both staff and students of the University. Finger printing is a condition precedent to the acquisition of a permanent voter's card and, indeed, even other documents like the Drivers license as well as National passports. The Nigerian Force CID has a finger print section. However, it is doubtful if Nigeria has a centralized Automated Fingerprint Identification System (AFIS).

The above is proof that with a little more effort, the Nigerian Government can take a first step in the development of forensic science as a medium of investigation by developing a centralized Automated Finger Print Identification System (AFIS).

4.1 CHALLENGES CONFRONTING FORENSIC SCIENTISTS IN CRIMINAL INVESTIGATION IN NIGERIA

According to AIG Hashimu Argungu, about seven factors hinder the use of Forensic Science in the course of criminal investigation and trials in Nigeria. These include the following: power outages; lack of inter-agency co-operation; corruption; and dearth of forensic experts.

⁴³ Eugene Agha "Nigeria: Police's New Forensic Lab Foundation Laid in Lagos" Daily Trust, 2 February 2013, available at www.allafrica.com/stories/201302020083.html (accessed on 18/5/2015).

4.1.1 POWER OUTAGES

Electric power supply in Nigeria, which is the major source of energy, is infrequent.⁴⁴ With the populace and industries relying on generators powered by diesel and premium motor spirits (PMS) which are, also, largely, unavailable, preservation of specimens obtained from crime scenes are susceptible to contamination as their preservation is difficult. The increased cost of conducting criminal investigation in a country grappling with a poverty rate of 60%⁴⁵ could pose enormous challenge to the utility of forensic science.

4.1.2 LACK OF INTER-AGENCY COOPERATION

The law-enforcement agencies in Nigeria are often at loggerheads with each other and instead of working together to solve cases, they sometimes end up working against each other. This was evident in the case of Rev. Ugolor who was arrested as the principal suspect in the murder of Comrade Olaitan Oyerinde, the Principal Private Secretary to the Governor of Edo State along with some other suspects.⁴⁶ Instead of collaborating on this case, the Nigerian Secret Intelligence Agency (SSS) originally paraded six suspects in Abuja as the killers of the said Comrade, stating that they were arrested in the Comrade's house. However, since their powers were restricted by law to intelligence gathering and the protection of certain very important personalities, the SSS were compelled to transfer the six suspects to the Nigerian Police Force for diligent criminal investigation and prosecution. However, the SSS transferred the suspects without a preliminary or interim investigation report, which usually contains the complainants' witnesses and suspects' statements, search warrants and attestations by the Preliminary Investigation Officers. The resulting melee

⁴⁴ *Ibid.*

⁴⁵ A. Oluwole, S. Osafehinti, F. Oluwajobi, O. Oni, "Electrical Power Outage in Nigeria: History, Causes and Possible Solutions" 2 (6) *Journal of Energy Technologies and Policy* (2012); available at www.iiste.org (accessed on 18/5/2015). Since 2009, the situation has become so bad that power outages can last for several days or even weeks and some state houses are powered for the 24 hours of the day by generators.

⁴⁶ The World Bank "Nigeria Economic Report: Improved Economic outlook in 2014 and Prospects for Continued Growth Look Good", [www. Worldbank.org/en/country/Nigeria/publication/Nigeria-economic-report-improved-economic-outlook-in-2014-and-prospects-for-continued-growth-look-good](http://www.Worldbank.org/en/country/Nigeria/publication/Nigeria-economic-report-improved-economic-outlook-in-2014-and-prospects-for-continued-growth-look-good) (accessed on 18/5/2015).

was that some of the suspects were released on the advice of both the Federal and Edo State Director of Public Prosecution (DPP) on the grounds that the confessional statement incriminating Rev. Ugolor was not corroborated and, hence, insufficient to prosecute him. The lack of inter-agency cooperation rendered the investigation inconclusive to the frustration of the forensic telephone tracking efforts exploited by the Nigerian Police Force.

4.1.3 CORRUPTION

Transparency International's Corruption Index (CPI) for 2014, rates Nigeria 136 out of the 175 countries. Corruption has damaged the country's ability to enhance its national development including the manpower and infrastructural development of the Police Force and, impliedly, its criminal justice system. The recent Police Equipment Funds scandal in Nigeria is a classic example of the corruption that mars the Nigerian economy and impacts on the development of forensic science as a medium of enhancing investigation procedure in Nigeria. The Presidential Committee on Police Equipment Fund (PCPEF)⁴⁷ was inaugurated in February 2006 by President Obasanjo with the principal objective of getting the private sector to contribute in cash and kind to equip the Nigerian Police Force. The trio of Messrs. Godwin Ewulum, Joseph Agharite and Ibrahim Dumuje, tried to sell the idea of a voluntary private sector funding of N50,000,000 to buy protective armour for the police to the former Inspector General of Police, Tafa Balogun. They were unsuccessful until they were advised to contact Mr. Kehinde Lola Martins, aka Kenny Martins, then the estranged ex-brother-in-law of the President. Upon inauguration by the President, Martins got himself appointed as its national coordinator.

The PCPEF soon degenerated into a huge racket. They borrowed millions of Naira with Martins admitting that they borrowed ₦50,000,000 (Fifty Million Naira) from First Inland Bank to set up the secretariat. Additional ₦150,000,000 (One Hundred and Fifty Million) was raised from Zenith Bank for vehicles, publicity, salaries and logistics for over one year. According to

⁴⁷ Intersociety-Nigeria "Oyerinde's Murder: Saving Nigeria Police Force From Political and Media Crucifixion" Nigeria Masterweb Citizen News 5 April 2013, available at www.nigeriamasterweb.com/blog/index.php/2013/04/05/oyerinde-s-murder-saving-nigeria (accessed on 18/5/2015).

Martins, they were indebted to the tune of ₦250,000,000 (Two Hundred and Fifty Million naira) before we raised one kobo.”⁴⁸

The House of Representatives’ investigation into the scandal revealed that the Fund allegedly spent five billion Naira on car gifts to “movers and shakers” of the society and to governmental institutions; that it blew away over 200 million Naira for a pre-launch dinner; that two helicopters it reportedly bought for the police from the Ukraine Republic disappeared into thin air? It received ten million Naira that was deducted from each of the country’s 774 local governments making a total of 7.78 billion Naira on the instructions of President Olusegun Obasanjo and received “donations” to the Fund from different government parastatal’s because of its endorsement by the president.

The Economic and Financial Crimes Commission (EFCC) subsequently charged Chief Kenny Martins, as chairman of the Police Equipment Fund, Ibrahim Dumuje, Yaro Gella and Nigerstal Limited for misappropriation of ₦7.78 Billion Naira.⁴⁹ The case was dismissed on the basis of a successful no-case submission made by the suspects. The Appeal against the decision by the EFCC since 2007 is still pending.

Similarly, the ₦3.3 Billion budgeted for Police uniforms annually since 2013 was misappropriated and Police officials made to be personally responsible for their uniforms.⁵⁰

4.1.4 DEARTH OF FORENSIC EXPERTS

The criminal justice system in Nigeria is also plagued by a dearth of forensic experts. This has adversely impacted on the development of forensic science in Nigeria. The few Anatomic Pathologists in the Office of the Chief Medical Officer are too inadequate to significantly address the plethora of cases requiring forensic expertise. This is more so as forensics is multi-disciplinary and requires

48 Hereinafter referred to as PCPEF.

49 Thisday Newspaper, September 23, 2007.

50 H. Mohammed, “Nigeria: Martins and the Police Equipment Fund Scandal” Daily Trust 17 October 2007, available at <http://allafrica.com/stories/200710170651.html> (accessed on 20/5/2015); http://www.thenationonlineng.net/archive2/tblnews_Detail.php?id=48873 (accessed on 20/5/2015); thewillnigeria.com “N7.7B Police Equipment Scam: Appeal Court Orders Retrial of Kenny Martins, Others” <http://www.thenigerianvoice.com/news/93519/1/n77b-police-equipment-scam-appeal-court-orders-ret.html>; Leke Salaudeen, “N50b Police Fund: Kenny Martins in EFCC custody” (accessed on 20/5/2015).

experts with diverse exposure.⁵¹

During the 2015 Presidential, National Assembly and Governorship elections in Nigeria, Card Readers were introduced in the process of accreditation of voters. Due to inadequate experts to train Independent National Electoral Commission (INEC)⁵² ad hoc staff, obtaining proper finger prints of registered voters posed enormous challenge resulting in the malfunctioning of the Card readers. There were cases where the INEC staff members were ignorant of the fact that the protective film on the lens of the card readers needed to be removed for them to function properly. The Independent National Electoral Commission, INEC, confirmed that such incompetence affected the utility of the card readers.⁵³

5. RECOMMENDATIONS

To surmount the above challenges and expose Nigeria's criminal justice system to the benefits of forensic science to criminal investigations, it is recommended as follows:

- i. The reforming of the Nigerian justice system to attain international standards, which require the integration of forensic science into the system's investigation procedures.
- ii. The establishment of a Forensic Science Commission is a pre-requisite to ensure appropriate enforcement.
- iii. The Forensic laboratory that is being built in Lagos should be completed and equipped as a matter of urgency to pave way for the establishment of other forensic laboratories nation- wide.
- iv. Routine training of Police Officers as Forensic experts should be

51 The Punch Newspaper, "Scandal: Policemen buy uniforms despite N3.3bn budget for clothing items –Investigation" <http://www.punchng.com/special-feature/scandal-policemen-buy-uniforms-despite-n3-3bn-budget-for-clothing-items-investigation/> (accessed on 20/5/2015).

52 J. O. Obafunwa, "The Interface of Law and Medicine: Exploring the Forensic Science of Death Investigation – Issues, Challenges and Prospects"; available at <http://www.google.com.ng/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CBwQFjAA&url=http%3A%2F%2Fwww.profjohnobafunwa.com%2Flectures%3Fdownload%3D1&ei=63dcVZPDGuv6yGOKzYDAAQ&usg=AFQjCNHW8jmrT-tq3j3ji1qP3DfHOJi5xuQ&sig2=f5cnuo5sZojTOP9VhTOsaA&bvm=bv93756505,d.bGg> (accessed on 20/5/2015).

53 Hereinafter referred to as INEC.

- embarked upon by the Federal Government of Nigeria.
- v. Forensic science should be incorporated into the curriculum of tertiary institutions for enhanced exposure to the field of forensics.
 - vi. Diversion and embezzlement of funds budgeted for the infrastructural and manpower development should be strictly regulated and sanctioned through proper oversight management of project implementation and punitive sanction of offenders.
 - vii. Nigeria should embark on collaborative efforts with countries like the United States of America and the United Kingdom to assist in its forensic technology advancement and the tackling of organized e-crimes, which requires the Nigerian Police to expand the mode and frontiers of its investigation activities.
 - viii. The issue of infrequent power supply in Nigeria. Nigeria's energy base should be diversified to accommodate increased utilization of alternative energy sources like solar, wind and nuclear energy whose development in Nigeria remains in its infancy.
 - ix. Inter-agency cooperation should be fostered to ensure forensic information sharing and utilization.
 - x. Mass enlightenment of the police and the populace of the necessity to preserve crime scenes should be embarked upon by the Federal Government to enhance the efficacy of forensic science.

The availability and utilization of forensic science services, data and information is the hall mark of an efficient criminal justice system.⁵⁴ To reduce the challenge of terrorism, insecurity, the incidence of high profile murders and other crimes,⁵⁵ the provision of adequate forensic exposure and equipment of the Nigerian Police Force and other law-enforcement agencies should be prioritized by the Federal Government of Nigeria.

54 United Nations Office (UNDOC) Forensics www.undoc.org/en/organized-crime/forensics.html (accessed on 20/5/2015).

55 B. Udo "Why card readers malfunctioned – INEC" Premium Times, March 29, 2015; available at <http://www.premiumtimesng.com/news/top-news/179935-why-card-readers-malfunctioned-inec.html> (accessed on 20/5/2015).