







# Behind Bars: Unpacking the Nexus Between Nigeria's Federal Structure, Criminal Justice System, and Alarming Rise of Awaiting Trial Syndrome in Correctional Facilities – Challenges, and Pathways to Reform

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## Abstract

Federalism features three tiers of government alongside the traditional arms of government concurrently. The former constitutes the federal, state and local government which portrays a classical feature of federalism while the latter constitutes the executive, judiciary and legislature. However, the pattern of interplay and overlapping nature of responsibilities of the components units as created avenue for glitches and frictions for smooth operations of the criminal justice structure in practice. The objective of the paper is to appraise the effects of Nigeria's federal structure on general management of criminal justice administrations, with concomitant effects of increasing awaiting trials across correctional centers in Nigeria. This study primarily relied on interview of key stakeholders within the justice delivery system and secondary from panel data of relevant international organizations, journals, articles, government publication and the internet. The population for this study was purposively selected across the police, judges, clerks, and correctional officers. The study discovered that Nigeria's obtuse operation of the federal system of government constitutes delays in justice dispensation, power tussle, jurisdiction tussle and huge cost of operations. The study however, recommended creation of state police, speedy judicial and investigation process, clear jurisdiction of authority, review of the law framework among others as the remedy to the effects of the problems posed by the Nigeria federal structure on the justice system linking to the increase awaiting-trial syndrome among other recommendations.

## Introduction

The inclination behind citizens submitting their affairs to a body called government is principally doctrine towards the protections of life's and properties, and to ensure effectiveness in justice

dispensation. This position is in cognizance with the social contract theory of the state as postulated by Thomas Hobbes, John Locke, and Jean-Jacques Rousseau (1651). Thus, Government through its administration which constitutes its structures and agencies has been on the track to provide for

a peaceful environment that could help it carryout its functions and achieve its obligations. In realizing these governmental goals, several bodies that could foster the attainments of these aims and objectives in terms of realization of the state function were established for proper state functioning. It's in pursuit of this, that government had established groundwork for the criminal justice system that serves as the brain-box and provides the footing upon which social order rests within the state.

Hence, criminal justice system is essential for attaining effective and efficient administration of affairs as it encompasses bodies of institutions responsible for detaining suspect, making rulings and punishing offenders. Governmental apparatus in the ambit of the justice process are nothing different from the police, court/judicial system and the correctional officers.

Nigeria operates a three tiers structure. Though, Federalism entails a process whereby the states as a sub-part constitute or makes up the federal structure. Notwithstanding, they are constitutionally grounded and as an order of arrangement. This sub-part may be three or two however, are recognized and has a legal backing by the state constitution establishing the state. For example, Nigeria runs a federal structure which is the federal; the state and local government and all these levels are constitutional recognized. Operating federalism made it possible for the statutory separation of commands among the central, state and local governments in Nigeria. This structure allows for decentralization of power in order to promote efficiency and effectiveness in governance. Conversely, this arrangement was to cope with the issues of its population size, geographical size, diverse ethnicity and religious plurality. Federalism as a system therefore preaches unity in diversity. These conditions made it possible for the creation of state sharia, customary court and state house of assembly

were by each state can deal with matters affecting individual state and that suits individual states. Even though there has been constant clash of supremacy and power tussle between each component parts in terms of power jurisdiction despite the principle of unity and diversity.

Over time, the conflict between federal – state structures has been a cog in the realization of governmental goals. Lack of cooperation and coordination has hampered the effectiveness and efficiency of this system. For instance, they component of justice system, the police and prison services are of the exclusive list while the judicial and the legislative arms are of both federal and state structures. This structure shows the level of intergovernmental relations and interdependence within the system. However, the existing nature of the intergovernmental relationship has not been working effectively due to the constant overlapping of functions, tussling for supremacy, and diversity of interests among the component units of the criminal system. For instance, the Police as a federal agency can make transfer of an officer in charge of a crime investigation without consulting the court which leads to delays or interrupt justice process due to lack of coordination among the component. In another instance a police officer is not obliged to serve has a prosecutor in other cases or court of law. Also there are some cases that are beyond the jurisdiction of some courts of law and also correctional officers does not always know the actual details of who her to be brought to court, the time and the date of such case vice-versa. These irregularities among others are part of the problem posed by the federal structure. Moreover, the reduction of awaiting trial inmates depends on harmonization and collaboration of these machineries of criminal justice process (Eze et al., 2021). The country had been undergoing inter structural rivalry on issues of constitutional jurisdiction, income sourcing, wealth mechanism, resource distribution principle,

these all aggravated inter-institutional conflict among the structures (Ukwayi & Okpa, 2017; Ojo, 2020).

It is bothersome from the commitment, plethora of institutions and resources that has been apportioned to this sector in order to ensure ease and quick administration of criminal justice system, those efforts has only been seen but success still remains a mirage. The consequences in the failure of this system as resulted or to say contributed to incapability of the justice system. This has further exuberated the large number of awaiting trials inmates. In the data base of the World Prison Trial/Remand imprisonment List data reports shows that over 3.2 million people held in awaiting-trial confinement around the world (WPTRIL, 2023). Categorically, data provided it that about 76 % of Nigeria's prison populations are on awaiting trial (WPB, 2023). There has being large number of awaiting trial inmates across Nigeria prisons with majority spending more than one year in detentions. For example, in an interview report by the former comptroller of Nigeria correctional service Lagos state Mr. Adewale Adesbi he the attested that there are prisoners on 12 years awaiting trials at the kirikiri maximum prisons. Ideally, this contradicts against the Nigeria 1999 law book as stipulated in Section 35 sub section (5), which clears it out that "a person must be taken to court within 24 hours from the date of arrest, where there is a court of competent jurisdiction within the radius of 40 km or within 2 days or such period considered by the court to be reasonable." Nonetheless, this provision by the constitution as been negated among these is other several factors militating against the ease and speedy justice delivery process in the country.

It's in cognizant of the above; the paper intended to carry out research on the effect of Nigeria's federal structure on justice administration with the overgrowing rate of awaiting trial inmates across correctional facilities.

## Conceptual Review

### *The Concept of Federalism*

In modern political discourse, the concept of federalism was asserted by scholars to be traced and accredited to the work of K. C Wheare's. However, the genesis of the notion Federalism was asserted to be lay claim from the word "Foedus", which connotes "treaty", "covenant". "League" or "compact". This countenance was in line with the ideas of Ogudiya and abdullahi (2012) as cited in Alfakoro (2020), that avers that the concept of federalism was a derivation of the Latin word "Foedus" which portrays league or treaty. In the declarations of Kenneth, he grasps federalism as an approach of government that is established through a constitutional framework that allows for the laws making powers and state functions to be disentangle between the recognized tiers of government usually the federal and regional were each has it competence and jurisdiction and are independent and coordinate. Defining federalism in a more clear view, it entails a system of government or an established political arrangement that consist of people of different traditional, historical, and political background with divers ethnics groups, multiple religious faith but are united under one political arrangement to come together has one so as to cooperate together in areas of commonality and part away in areas of their diversity. This view above made people term federalism as a system of "unity in diversity". According to Aderonke (2015), she posited federalism has a political settings that permits for the principle of mutuality, progress and development through joint sacrifice were by sub-component denotes some of their powers and right of the government at the center while holding some for their diversities by collective ownership of material and national wealth. To Friedrich (1963:585) federalism is "a union of group united by one or more common objectives but retaining their distinctive group being for other purpose". In the words of Takan

(2011), federalism connotes a governmental process where by the sub components parts contribute to national power and are allocated functions in a define manners in respective of their ethnicity or clans. Federalism therefore, connotes an organized political arrangement which is guided by a federal constitution, with specification on how commands, resources and tasks are distributed and managed. This definition goes in line with the federal structure in Nigeria where by there is a legal separation of tasks between the tiers of government with each having its area of jurisdiction and areas where they jointly perform task. I.e. exclusive, concurrent and residual list. Lastly, Federalism to Yusuf (2013) is the process in which political sovereignty is shared in-between the center and other parts forming the federation or federal government. From all the above submissions, it was asserted that federalism means voluntary unionism of different member states with an established constitutional framework which forms the basis of authority and power distributions specifying areas of unity and diversity between member states.

### *The Concept of Criminal Justice System*

Justice system is an essential element or to say component of any state that has a functional government and uphold a good practice of democratic system other than authoritarian system of ruler-ship or autocratic system. The imperativeness of these machineries of the justice system is expedient for the smooth administration of government as it provides for the basic framework of the do's and don'ts, and the penalties for contravening the constituted laws and authorities. The components of the criminal justice process are the police which are referred to as the gatekeeper, the court/judiciary which performs the god function of judging and the correctional service which punishes the offenders and housekeeping of suspects. The agencies that chair the justice system are the police,

courts, and the correctional service (Igbo, 2007). There are certain features that have been attributed to the criminal justice system these features include impartiality, honesty, egalitarianism efficacy and competence (Alemika, 2014).

In discussing about the justice process, Ikohm, M. U (2011) sees CJS as the collections of misconduct modifiable bodies, it embodies conglomerations of government bodies which are responsible for enforcing duties that set documented in order preserve amity, and edict, passing of judgment and correction, retribution and rehabilitation of inmates after convictions. In a similar assertion by Schubert (2018), he conceptualize criminal justice system as interconnectivity between the components of CJS agencies and the established strategies designed to monitor crime, curb crime and prescribe penalties that are commensurate with such crimes. In another opinion, criminal justice system is viewed as an agency established to question the guilt-ridden or incorruptibility of a suspect, and delivering the required judgment by the jurisdictional court and the ration of retribution proposed with the committed misconduct in query (Alemika and Chukwuma, 2005).

In the view of Daly (2011, p.3), the criminal justice system is:

*a water shade collection of codependent bodies, each having bureaucratic interests and each having specific functions that are subject to legal regulations, where agency workers have great discretion in making decisions when responding to harms defined as criminal by the state and where value conflicts exist within and across agencies and in the general population about the meaning of justice.*

Going further, Ayorinde (2014) put it that, criminal system is the collections of governmental agencies or institutions through which suspects are scrutinized until such accusations are not traced or matching retributions are received before he/

she could be discharged from such cases. In another related view, the functionality of justice system is performed through the process of examining, striking, trying, arbitrating, and grueling individuals that breakdown the recognized edicts (Ajah & Okpa, 2019). To Alemika (2014), police are by law ordained to arresting, detecting, and investigating crimes and serves as the gatekeeper in the justice system. The judiciary/court according to Lohya (2017) is the final optimism for an ordinary man. Going further, in the word of Osasona (2015) avers that the court system is predominantly the second most necessitated component in the hierarchy of the criminal justice system which consists of the police, court, and the correctional service. Lastly, Bamgbose (2010) affirmed that custodial centers are the last stage of the justice delivery process was attested and awaiting trial inmates are save keep. The correctional centers are completion stage in the justice process in justice dispensation (Nwolise, 2010).

### *The Concept Awaiting Trial*

The conception of “awaiting trial” inmates is among the other cluster of concept in the management sciences and social sciences that as no specific definition or as multiple usage. The concept is mostly used in replace of concept like un-sentenced inmates, un-trial inmates, and un-convicted inmates etc. However, the term awaiting trial inmates denotes a terminology used to refer or align with individual who has case in the court of law but justice is yet to be delivered, prove is yet to be hold on, trial is still in process, or investigation is still going own, but are nonetheless kept in custody or under watch for ease interrogation or court proceedings for the purpose of judgment delivering in other to prove the accused guilty or not guilty.

The concept remand or detention in the opinion of Schonteich (2011) is the practice of deprivation of individual vital rights owing to the

period when the individual will be established guilt-ridden, not or time of appealing. Awaiting trial similarly denotes individual limited to some fundamental rights importantly rights of movement due to is affiliation to a certain crime as defined by the court of the land (Walmsley, 2017).

In the word of a senior British probation officer, he put forth that:

*In a situation where an individual is remanded in custody for over 24 hours, the gradually lose their accommodation, and job, open to different health hazards and the shame of being imprisoned. Going further, he pointsout that awaiting trial inmates usually find it hard to get access to legal representation, and the suicide rate is usually high among remanded prisoners due to frustrations.*

Notwithstanding, International Covenant on Civil and Political Rights (ICCPR), offers regulation for individual aligned to criminal offense nevertheless have not been proven or sentenced. Article 9.3 of the ICCPR provides that:

*It shall not be the general rule that persons on awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for the execution of the judgment.*

### *Methodology*

This research paper espoused the cross-sectional survey design. The qualitative data sourcing method was used to generate data for the study through a comprehensive review of literatures on the subject matter. This study primarily relied on interview of key stakeholders within the justice delivery system while the secondary data are of relevant international organizations, journals, articles, government publication and the internet. The population for this study was purposively selected across the police, judges, clerks, and correctional officers. For the purpose of data analysis the qualitative data are analyse in thematic or narrative form.



## Discussions of Findings

The idea behind adopting a federal system of government was to foster cooperation among the different federating units and reduce interest conflict among a diverse group. The relationship between the federal-state administrative structures and the persistent rise in its inter-institutional conflict has called to question why the system is no longer ensuring effective, efficient, speedy delivery of public service that suit the population, geographical nature, diverse needs, and peculiarities of Nigeria. The research paper tries to find why the federal-state inter-institutional conflict has been increasing overtime notwithstanding its motive for adoption to foster cooperation, peace, and effectiveness in service delivery.

Buttressing this, a court clerk acclaimed that; *the reason behind the federal-state inter-institutional conflict was a problem of the constitution. He asserted that the constitution was created for both the federal and state agencies and also delineated each particular jurisdiction has power nonetheless, gives the federal veto power to decide on the issue where there is a clash of jurisdiction among the central and other component structures. The respondent referred to the January 4, 2022 issue between the Lagos state government and Nigeria police force on the issue of vacating Magodo estate.. The problem is that the constitution clearly spelt that governors are the chief security officer of their individual states and have power above others on state security matters.*

However, this issue above was over rule by the federal government. Echoing the above claim, Fayemi and Olonisakin, (2008) posit that in a legal standing, the army, police, and correctional officers are accountable to the central government as scheduled in the constitution under the exclusive matters. In illustration, all the commissioners of police serving in the respective states of the federation are answerable to the Inspector General of police assign by the President. In reference to

Section 215 of the Nigeria law book he spelt out that before the commissioner of police comply with the state governor on security matters, he could “request that the matter be referred to the president or such minister of the government of the federation as may be authorized in that behalf by the president for his directions”. The ill-fated fact is that the state police commands are under the framework of the Inspector General. Thus, if the country needs to ameliorate the present issues of the central-state relations, there is the need to amend the constitutional section in other to coincide with today’s situations.

Another respondent asserted that a clash of interest most occur in the federal-state relationship as every tier claims to promote individual interest and also the federal government is a conglomeration of the federating units. That is why Harun (2016) started that disputes amongst diverse levels of government in a federal system are inevitable. In a similar view, Hogg Peter, as cited in Adem (2013), claimed that the presence of stages of government and official separation of authority mandates the possibility of class clashes amid diverse echelons of the government. However, all these challenges are expected to be addressed by the constitution so therefore the constitution is the reason for the high rate of federal-state inter-institutional conflict. This made the former Deputy Senate President, a barrister and the head of the Senate Committee on Constitutional Review, stated that the country demands citizens targeted constitution (Ekweremadu, 2012).

A divisional police officer also avers that; *“the reason behind the federal-state structures and inter-institutional crisis was due to lack of spirit of nationalism. He went further that each ethnic group is just under forceful marriage in Nigeria. That the effect of the forceful marriage is the agitation for Biafra, Boko haram, bandit, and kidnapping in the country”.....*

In a similar response;

*"a court official stated that federalism was aimed at national integration and national development but this has been a mere dream as there was no movement for this since the creation of the country".....*

This scenario has been forecasted by the early nationalist. In the word of:

Sir Abubakar Tafawa Balewa, recounted the need for federalism as follows:

*I am thrilled that the federal arrangement necessitated the current situations, the solitary main basis in which Nigeria can stay unified. We must know our difference and commonality in which the diverse ethnic societies live... hence... we must do all in our power to see that this federal system is held together and continuous (Quoted in Elaigwu, 2000, pp.41- 42).*

However, they current Nigerian situation does not depict the dreams, aspirations, and yearning of our nationalists. Nigeria's state as it appeared currently portrays an image of a typical weak state in respects of its structural arrangement and principal control power (Onuoha, 2011). Notwithstanding, Ikelegbe ((2004), acclaimed that the embracement of federalism in Nigeria since its inception voids collective agreements owing to foreign intrusion, and also Nigerian state is been acclaimed to be an incoherent state arising from a fragmented people leading to disorganized bodies.

It was also pointed out by another respondent that federal practices in Nigeria are not full flagged. The respondent argued that there is an imbalance in the allocation of jobs among federating states down to ethnic and religious sentiment in the allocation of employment benefits. This contradicts the principle of federal character as the reason behind its establishment is to ensure equitability in employment and other opportunities across the thirty-six states putting into attention political, indigenous, and ethnic balances. The federal character principles as provided in the

constitution clearly stated: "compliance with the principles of proportional sharing of all bureaucratic, economic, media and political posts at all levels" (Constitution of the Federal Republic of Nigeria 1999, Third Schedule, C).

Rationale behind federal principle was envisioned "to promote national unity, and also to command loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or sectional groups" (Constitution of the Federal Republic of Nigeria 1999, Section 14(3) in the government or any of its agencies. The legal framework clearly necessitates equality among states in sharing of jobs and holding of government offices. The work discovered understanding federal principle by many Nigerians was far away from promoting harmonious working relationship and national unity but the ideas by the citizens were taken as requirement for peaceful co-existence, in which inhabitants of a state of the federation are shared into ethnics and religious sects.

Similarly, it has been portrayed by another respondent that the reason behind federal-state structures and inter-institutional conflict was the genesis of institutional deficiency and he also linked these issues to corruption, ethnic jingoism, and power tussle between them. In a related view Obiyan (2010) claims that conflicting Intra and intergovernmental affairs and processes is the causative factors of structural irregularities while to others assertions, problems such as fraud, tribal and religious differences, regional politics and martial resurgences alongside other variables as consolidated inefficiency and non-inclusiveness in the country.

Stating another respondent, he believes that the reason behind federal-state administrative structure and inter-institutional conflict lies in the problem of fiscal federalism. In a similar response another respondent, said financial autonomy is the reason behind the federal government's veto

The country had encountered clashes and clamor among its tiers on matters of revenue generation, power control, and models of revenue sharing which intensify the struggle for supremacy among governmental structures and bodies in the country (Ukwayi & Okpa, 2017; Ojo, 2014).

In a newspaper report, it was reported that, fiscal autonomy is the major cog to the country hope towards true federalism in the recent political era. Going further, he posed that; the country has been deepening into debt financing resulting in structural inefficiency and collapse (Guardian, Nov., 28th, 2015:49; Nigeria Tribune, 8th 2015: PP.6, 10 and 14). In a related view, Ikelegbe, (2004) and Obiyan (2010), avers that the major hindrance rumpling the nation affairs is the lack of financial independence of states to carry out their constitutional functions in terms regular disbursement of state salaries.

Babatunde Fashola, former Governor of Lagos State, noted that states governors should device mechanism of funding state owned expenditure rather than depending solely on federal government by venturing into diverse form of business and should to be agricultural reoriented so ... (Punch, Dec. 2014, p.18).

At present, diverse states are indebted to many financial outsourcing outlets. The negative effects of this outcome are that many states have found it tedious to carry out their constitutional assigned functions. (Guardian. Nov., 28th, 2015:49; Vanguard, Oct., 20th, 2011, p.35).

One of the respondents responded that the issue behind federal-state agencies was a problem of resource control. He goes further to start that each state is demanding control over its respective natural endowment despite the derivation formula and percentage allocated to them.

A frequently happenstance challenges in collective governance is tussle for power balances within components parts. For example, the unfairness of position, capability, resources, and

organization among sub-parts hinders other stakeholder's privileges to participate in collective process on same levels with other stakeholders, which gives rooms for manipulation by actors with strong economic wherewithals. In the words of Dunmoye (2002), four interconnected dynamics could pledge or disintegrate a federation. They include: - the matter of equal political representation, specifically at the central level; the problem of fair job opportunities to different tribes and religions; siting of industries or infrastructures and the allotment of resources or what is known in Nigeria as resource distribution.

## Conclusion

The federal structure system adopted in Nigeria was modeled to suit it diverse ethnic, religious, geographical and population size of the country. One of the features is the presence of federal, state and local government accomplished by traditional executive, legislative and judicial system present in major styles of government. However, the presence of the legislature and the judicial at the other levels of government as complicated the justice delivery process among the component of the criminal system. The effect has been long queues in the justice delivery process resulting syndrome of awaiting trial across correctional homes in Nigeria. The issues were attributed to constant overlapping of functions, duplication of function, claims of supremacy and poor coordination among the component of criminal justice system.

## Recommendations

In regards to this study, the paper recommend this remedies as pathways to address the problem of awaiting trial inmates syndrome across correctional facilities as posed by the federal structure arrangement.

1. There should be creation of state police in order to avoid transfer of prosecutor or officer in



charge of investigation of an ongoing case; this will help curb the problem of delay in investigation process and handling of case more easily

2. There should be recruitment into the judicial system in order to beef up speedy judicial and investigation process and also the adoption of a computerized system that could help judges know specific cases to be handling by them, in regards to the time and date of sittings.

3. The constitution should be amended in other to provide clear jurisdiction of authority especially among courts in other to determine courts which has competence over a specific case and who can trial some cases or were to appeal.

4. The citizens need to be sensitizing about free Bono service by paralegals in other to avoid illegal detentions and extortions by individual in the criminal justice system.

5. The correctional service should also keep proper records of inmates on awaiting trial and sensitizing them on the actual and proper steps to take for fast and ease judgment

The Artificial Intelligence application used in this work was for English grammar and word checking.

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