A CRITIQUE OF THE ATTORNEY – GENERAL'S POWEI TO GIVE LEGAL ADVICE IN THE ADMINISTRATION O CRIMINAL JUSTICE IN NIGERIA

By

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Abstract

The Attorney –General is the principal law Officer of the Federation or of a State as the case may be. He is empowered by the Constitution of the Federal Republic of Nigeria 1999 (as amended) to institute, take over and continue or discontinue Criminal proceedings against any person before any Court of law in Nigeria except Court Martial. The Attorney – General also issues legal advice or such other directives to the Police or any other law enforcement Agency in respect of an offence created by either an Act of the National Assembly or the law of State house of Assembly. The Problem however is that delay in the issuance of legal advice by the Attorney – General constitutes one of the problems bedeviling the administration of criminal Justice in Nigeria. Using the doctrinal method of research, the paper discusses the Attorney - General legal advice in the administration of criminal justice in Nigeria. The paper finds that delay in the issuance of Legal advice by the Attorney – General Defeats the purpose of the law of ensuring speedy dispensation of criminal justice in Nigeria. The paper recommends that there should be time frame for the Issuance of Attorney – General Legal Advice in criminal justice administration in Nigeria.

Key words: Attorney – General, Legal, Advice, Criminal, Justice

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1.1.1 Introduction

In Nigeria, the Attorney-General is the Chief Law Officer of the Federation and a member of the Federal Executive Council. The Attorney-General at the Federal level is also the Minister of Justice responsible for legal affairs. Likewise, each State in Nigeria has an Attorney-General, who is a Commissioner with similar responsibilities to the Federal Ministry with respect to State laws.[1] The main functions of the Federal and State Attorneys-General in Nigeria are giving legal advices to the government, the institution, taking over and discontinuance of criminal proceedings before any Court in Nigeria except Court Martial. The Attorney-General has an absolute discretion in deciding who to prosecute and for what offence(s), where several people committed the same offence(s). He needs not give reasons for his decision.[2] In practice, the Attorney-General's decisions in criminal cases on whether to prosecute or not are usually conveyed through legal advice which are issued in respect of any matter whether charged to Court or otherwise.

However, one of the identified problems bedeviling the administration of criminal justice in Nigeria is the delay in the issuance of legal advice by the office of the Attorney-General to the Police. Most cases in Magistrates Courts spent years on the ground that they were waiting for the Attorney-General's legal advice.[3] In most cases, the Police case file will still be waiting for duplication at the Police Station while the Police prosecutor may have informed the Court that the case is awaiting the Attorney-General's legal advice. This ultimately causes delay in the administration of Criminal justice in Nigeria

This paper, therefore, appraises the Attorney – General legal advice in the administration of criminal justice in Nigeria. The paper posits that delay in the issuance of the Attorney – General legal advice constitutes one of the problems bedeviling the administration of criminal justice in Nigeria. The paper concludes by proffering some recommendations that will reduce, to the barest minimum, the problem of delay in the issuance of Attorney – General's legal advice in Nigeria's criminal justice administration.

[1] *Ibid.* Section 211(1).

[2] Adebayo, A. M., (2012) *Administration of Criminal Justice System in Nigeria*, Princeton Publishing Co. Lagos, P. 120

[3] This is the experience of the researcher as a Counsel watching brief of the prosecution in the case of *C.O.P. v. Usman Bashir*, pending before Chief Magistrate Court, Daura Road, Kaduna. It is a case of homicide against the accused person. For almost 2 years. the office of the Attorney-General of Kaduna State is yet to give legal advice as to whether to charge the accused person for homicide before the High Court or otherwise. They contended that the I.P.O. is yet to remit the case file to them, to which he denied. Meanwhile, the accused person is still languishing in Kaduna Prison.

1.2 Brief Historical Evolution of the office of the Attorney - General

Historically, the Office of the Attorney – General can be traced back to England in the 13th Century. The Sovereign was unable to appear in person in his own Court to plead in any matter affecting his interests.[4] It was therefore necessary for an Attorney to plead the Sovereign's cause. It was the responsibility of the King's Attorney to maintain the interests of the Sovereign before the Royal Court. The first written record of a professional Attorney appearing on behalf of the Sovereign is of Lawrence Del Brook in 1243 who received an annual fee of 20 pounds for "suing the King's affairs of his pleas before him."[5] The work of the Attorney at this early stage included initiating actions to recover rent and lands, proceeding against those who pronounced a sentence of excommunication against a royal servant and investigating homicides to hear and determine what pertained to the Crown.

In 1461, the first record of the title "Attorney – General" appeared when the King's Attorney, John Herbart was described as the Attorney – General of England in his letter of appointment.[6] At this time, as the functions of the Sovereign became more complex, intensive and acquired a more public character, the functions of the Attorney – General also became wider and started extending beyound the Sovereign's narrow interest into the wider domain of the public interest. He became the Chief Legal Adviser to the Government and was generally consulted on points of law by both Houses of the English Parliament, and was also charged with the conduct of State trials.[7]

As the public role of the Attorney – General extended, he became a member of the English House of Commons and a special member of the Cabinet.[8] He it was who was entrusted with the duty of explaining the implication of Government measures that came before the parliament.

Gradually, the Attorney – General developed from the legal representative of the Sovereign to being an important figure in Government, Chief Crown Prosecutor, member of Parliament and Cabinet with Substantial public responsibilities. His main responsibility was to use his office to protect the public interest, not the political interest of the Head of State.[9] Since 1814, the Attorney – General of

[4] Sagay, I.E. (2007), *The Role of the Attorney – General in the Administration of Justice*, Paper presented at a Workshop to mark the 10th year anniversary of Perchstone & Graeys partnership in Lagos, available at www.profitscsagay.com. retrieved on the 16/5/2018 at 8:40 pm.
[5] Ibid
[6] Ibid
[7] Ibid
[8] Ibid
[9] Ibid

England has also been recognized as the Head or Leader of the English Bar.[10] Thus, his primary duty is the protection of public interest, not that of his appointer.

In Nigeria, the Attorney - General is the most Senior Minister in the Executive Council of the Federal Government and of the States respectively. He is the only appointed member of the Executive Council specifically mentioned and assigned functions in the Constitution.[11] By Section 150(1), the Constitution provides that "There shall be an Attorney – General of the Federation who shall be the Chief Law Officer of the Federation and a Minister in the Government of the Federation." This is repeated in Section 195 of the Constitution in respect of Attorneys – General of States.

1.3 Institution of Criminal Proceedings

The pre – eminent position of the Attorney – General is re – in forced by the wide and the uncontrolled discretion and powers given to him with regard to criminal prosecutions. Under Section 174 of the Constitution, the Attorney – General of the Federation is empowered:

(a) To institute and undertake criminal proceedings against any person before any Court of law in Nigeria other than Court – Martial in respect of any offence created by or under any Act of the National Assembly;

(b) To take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and

(c) To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

From the above, it is clear that the authority of the Attorney – General to institute, takeover and continue or discontinue criminal proceedings is derived is derived from the 1999 Constitution of the Federal Republic of Nigeria (as amended). Therefore, the authority of any agency or person to institute criminal proceedings is subject to the overriding constitutional powers of the Attorney – General.[12] Thus, even the Police power to prosecute criminal cases under the

[10] Ibid

[11] See Sections 150, 174 and 211 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).

[12] Osamor, B. (2012) *Criminal Procedure Laws and Litigation Practices*, Dee – sage (Books + Prints), United kingdom, p. 150

law[13] is subject to the overriding powers of the Attorney – General under the Constitution to takeover such proceedings from the Force.

The Attorney – General of a State is also empowered under Section 211 of the Constitution to institute, take over or discontinue any criminal proceedings before any Court in Nigeria other than A Court Martial.

The Federal Attorney-General can institute criminal proceedings in respect of offences created by the National Assembly, while the State Attorney-General can institute criminal proceedings in respect of offences created by the State laws.[14] Thus, in the case of *Anyebe v. The State,*[15] the Supreme Court expressed the view that, the Attorney-General of Benue State could not validly prosecute an accused person for an offence under Section 28 of the Firearms Act, an offence created by the Act of the National Assembly, except with the express authority of the Attorney-General of the Federation.

It is not, however, in all cases where the offence is created by the Act of the National Assembly that the State Attorney-General cannot prosecute. The National Assembly may make laws that are to take effect as State laws. Such laws are, for all intent and purposes, deemed to be State laws. Therefore, where the Act of the National Assembly is made for the States or to operate within the States, the States Attorneys-General can validly initiate criminal prosecution in respect of it without prior approval from the Federal Attorney-General.[16] In the case of *Emelogu v. The State,*[17] the Supreme Court held that a State Attorney-General could prosecute an accused person under the Armed Robbery (Special Provisions) Decree, 1970 without the consent of the Attorney-General of the Federation. It was further held that, though the Armed Robbery (Special Provisions) Decree, 1970 was a Federal Legislation, it was, however, made to operate within the States.

It is interesting to note that the Attorney-General, whether of the Federation or of a State, can exercise his powers either in person or by delegating it to any of the Officers of his department.[18] The Attorney-General is free to delegate his powers to any Officer of his Department and such delegation cannot be challenged.[19]

[13] Section 23 of the Police Act, Cap p19, Laws of the Federation of Nigeria (LFN) 2004
[14] Osamor, B. op. cit. p. 151
[15] (1986) 1 SC 87. See also the case of *Nyame v. FRN* (2010) 7 NWLR pt. 1193, 344 at 403
[16] Osamor, B. op. cit, p. 152
[17] (1988) 5 SCNJ 79.or (1988) 2 NWLR. pt. 78. at 524
[18] Sections 174(2) and 211(2) of the 1999 CFRN (as amended).
[19] *Ibrahim v. The State (1991) 1 NWLR (pt. 18) 650.*

Where the Attorney-General had delegated his powers to prosecute a case to the Director of Public Prosecution (DPP) alone, it would be wrong for the latter to sub-delegate same to his subordinates.[20] The maxim *delgatus non potest delegare* would apply. The maxim means that a delegate cannot sub-delegate unless he is authorised to do so. The reason for this is the fact that the delegation involves a matter of personal trust between the grantor and the delegate.[21] Where, however, the Attorney-General makes an open delegation without naming a specific officer to whom the powers is delegated to, any officer of his department can exercise such powers without naming the Attorney-General as the ultimate authority.[22]

It must be stressed that Sections 174 and 211 of the 1999 Constitution do not require that the officers can only exercise the powers to institute criminal proceedings if the Attorney-General expressly donated the powers to them. The provisions of the Sections presume that any Officer in any department of the Attorney-General's office is empowered to initiate criminal proceedings unless it is proved otherwise.[23]

In practice, however, the prosecutorial powers of the Attorney-General are exercised by the Director of Public Prosecutions (DPP) and his staff. Under the 1963 Constitution, the office of the Director of Public Prosecutions (DPP) was specifically provided for.[24] However, this notable provision is omitted in subsequent Constitutions. Notwithstanding this omission, the Director of Public Prosecutions (DPP) still plays very relevant and crucial roles in the administration of criminal justice in Nigeria. But the Attorney-General maintains formal control, including the power to initiate and terminate public prosecution and takeover private prosecutions.

It must be pointed out that in exercising his powers, the Attorney-General should have regard to public interest, the interest of justice and the need to prevent the abuse of legal process.[25] This provision seems to limit the powers of the Attorney-General. However, can the Attorney-General be challenged for failure to comply with this provision? In *State v. Ilori*[26] the question was can a Court inquire as to whether the Attorney-General has failed to have regard for those safeguards in exercising his powers? The Supreme Court held that the Attorney-General is a law unto himself in taking decisions on matters under

[20] *Ibid.*
[21] *Ndukauba v. Kolomo (2001) 12 NWLR (pt. 726) 117.*
[22] *Unipetrol Nig. Ltd. v. E.S.B.R. (2006) All FWLR (pt. 317) 413 at 426.*
[23] *FRN v. Adewunmi (2007) All FWLR (pt. 368) 978 at 994.*
[24] See Section 104 of the 1963 Constitution of the Federal Republic of Nigeria.
[25] Sections 174(3) and 211(3) of the 1999 CFRN (as amended).
[26] (1983) 2 SC 155.

Sections 174 and 211 of the Constitution. It held further that the provisions of the subsections were mere restatement of the law.

In the learned Justices view, the requirement that the Attorney – General shall have regard to public interest, the interest of justice and the need to prevent the abuse of legal process in exercising his powers under the Constitution adds nothing to the position at common law. The discretion of the Attorney – General remained absolute. In fact, Kayode Eso JSC (as he then was) while giving the leading judgment had this to say:

> It is one thing to point out the dangers of an Attorney – General in arriving at a decision without taking into Consideration what he is expected to have regard to. However, to my mind, it would be completely wrong to regard this as a pre – condition to the exercise of his powers under the Constitution (sic). The exercise of these powers by the Attorney–General, that is, the institution and discontinuance of criminal proceedings cannot be questioned and subject to the reserved right of his appointer to remove or even reassign him without giving any reason whatsoever for so doing, neither that appointer nor any other person for that matter can question such exercise of his powers.

It is humbly submitted that with this formidable foundation and authority, the first quality an Attorney – General should possess are integrity, and independence. This is because once appointed, an Attorney – General becomes an independent officer of the State.

There could be situations where the position of the Attorney-General is vacant. Does the office come to a close in those situations? In *A. G. Kaduna State v. Hassan*[27] the Supreme Court held that where there is no incumbent Attorney-General, no Officer of his department, even the Solicitor-General can validly exercise his powers. The Court held further that there must be an incumbent to act as donor and an appropriate Officer to act as donee.

The Attorney General is the head of the Bar and has precedence over all Senior Advocates. Although he is the State's number one Counsel, he is also seen as the leading defender of the Rule of Law and fundamental rights. His primary responsibility should be towards the public and when the need arises, he should protect the citizens and institutions of State from executive violations of the Constitution, human rights and lawlessness.

[27] (1985) 2 NWLR 483.

1.4 Delegation of Power to Private Legal Practitioner

In instituting criminal proceedings, the Attorney-General can brief a private Legal Practitioner to prosecute the case. In *FRN v. Adewunmi,*[28] the Supreme Court held that a private Legal Practitioner can validly sign a charge provided he has the fiat of the Attorney-General to prosecute the case.

The term "fiat" literally means "let it be done." It denotes an order or decree, especially on arbitrary one.[29] A private Legal Practitioner can, therefore, not proceed on his own decision without the authorisation of the Attorney-General. He has an onerous duty to first of all apply for and obtain the fiat of the Attorney-General before he can commence the private prosecution of an accused person on behalf of the State. Thus, where he proceeded on his own volition without the Attorney-General's fiat, such a proceeding will be declared null and void *ab initio* by the Court.[30]

However, the Attorney-General cannot also take over such proceedings instituted by a private Legal Practitioner without his authorisation as there will be nothing to take over by the Attorney-General. The defect is beyond mere irregularity which can be cured by the act of Attorney-General's taking over, as it goes to the root of the charge itself. Thus in *Ikpongette v. C.O.P.,*[31] the private Legal Practitioner who held a watching brief for the Complainant at the trial filed an appeal against the decision of the trial Court on behalf of the Complainant. The Court of Appeal held that the notice of appeal filed was *null and void,* and consequently there was no appeal for the Attorney-General to take over.

Apart from Private Legal Practitioners, the Attorney-General can also delegate his powers to other authorities or bodies established by law. In the case of *Amadi v. FRN,*[32] the Supreme Court held that the Economic and Financial Crimes Commission (EFCC) is a common agency for the Federal and States and as such it qualifies as any other authority to institute criminal proceedings and to which the Attorney-General may delegate his power under Sections 174 and 211 of the Constitution. The Court further held that any staff of EFCC can exercise the powers delegated to the Commission.

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[28] (2007) All FWLR (pt. 368) 978.
[29] *C.O.P. v. Tobin (2009) All FWLR (pt. 483) 1302.*
[30] Adebayo, A. M., *Op.cit*, p.119.
[31] (2009) All FWLR (pt. 471) 996.
[32] (2009) All FWLR (pt. 462) 1103.

1.5 Discontinuance of Criminal Proceedings *(Nolle Prosequi)*

The Attorney-General, under Sections 174(1) (c) and 211(1) (c) of the 1999 Constitution, has power to discontinue at any stage before judgment, any criminal proceeding against any person. This is generally referred to as the power of *Nolle Prosequi*.[33] Undoubtedly, this is the most controversial power of the Attorneys-General. This power is exercisable by the Attorney-General in person, upon informing the Court of his intention to discontinue the proceedings, or by an officer of his department, armed with a written Authority of the Attorney-General.[34]

The power of the Attorney-General to enter into a *nolle prosequi* must be distinguished from the ordinary power conferred on the prosecutor under Section 75 of the Criminal Procedure Act[35] to withdraw from criminal trial before a Magistrate Court. Thus, in *Clarke v. The A.G. of Lagos State*,[36] it was held that under Section 75 of the Criminal Procedure Act, the Court not only has to consent to the withdrawal, the prosecutor is enjoined to adduce reasons, however frivolous.

In exercising the power of *nolle prosequi*, the Attorney-General may be influenced by whatever reason, however frivolous. He cannot be questioned for his decision nor can his decision be reviewed by the Court in this respect.[37] Thus the authority of the Attorney-General to enter a *nolle prosequi* after the signing of an indictment is not also subject to the control of or reviews by the Court.[38] The nature of the power is such that once the *nolle prosequi* is entered, the Court does not question the reasons for exercising such power.

The remedy for abuse of power by the Attorney-General lies in a separate proceeding against him by the person adversely affected and not in judicial review of the same. Another remedy for the Attorney-General's disregard for the provisions of the Constitution is reaction of his appointer or adverse criticism by the public which may force him to resign.[39]

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[33] See Section 107 of the *Administration of Criminal Justice Act*, 2015, Section 71 of the Administration of Criminal Justice Law. 2011 of Lagos State. See also Section 73(1) of the *Criminal Procedure Act*, Cap. C41, LFN 2004 and Section 253(1) of the *Criminal Procedure Code*, Cap. C42, LFN 2004.
[34] *The State v. Ilori (supra).*
[35] Cap. C41. LFN 2004.
[36] (1986) 1 QLRN. 119.
[37] *The State v. Ilori (supra).*
[38] Adebayo. A. M.. *Op.cit.* p.125.
[39] *Ibid.*

The effect of *nolle prosequi* when effectively entered is a discharge of the accused person and not an acquittal.[40] The accused person may, therefore, be subsequently prosecuted for the same offence.[41] The implication of this is that an accused person who is discharged upon the entry of a *nolle prosequi* cannot claim the defence of *autre fois acquit.*

It is the view of these writers that the power of the Attorney-General in this regard is too wide. In Nigeria, the office of the Attorney-General is always combined with the office of the Minister of Justice at the Federal level or Commissioner of Justice at State level. This automatically makes the Attorney-General, whether of the Federation or of a State, a member of the Executive Council, and by extension, a member of the ruling party. This is very dangerous to the administration of criminal justice. The reason for this is that since the Attorney-General is a member of the Executive Council, he is subject to the control of the Executive arm of government. Consequently, it will be very difficult for the Attorney-General to go against the will of his appointer in matters that the appointer has interest.

Ostensibly, criminal cases involving members of the ruling parties may be compromised by the Attorney-General by invoking his power of *nolle prosequi* under the Constitution thereby truncating the course of justice. As Adebayo[42] rightly observed, since the exercise of powers of the Attorney-General cannot be challenged or reviewed by the Court or any other authority, cases involving offenders who are loyal to the ruling party may be compromised.

A good example of the misuse of the Attorney-General's power in favour of an accused person loyal to the ruling party took place in Nigeria in 2009 when the then Attorney-General in the person of Michael Aondoakaa entered a *nolle prosequi* in favour of Chief James Ibori, the former Governor of Delta State, who was standing trial for money laundering. Fortunately, James Ibori was later found guilty of the same offence by a British Court.[43] In the same vein, the power of the Attorney-General may also be invoked by the Executive Council to silence oppositions of Government by bringing unnecessary and frivolous criminal charges against them.

One of the cardinal principles of separation of powers is checks and balances of each of the organs of government by the others. Hence, no organ of government should be allowed to exercise absolute power without any form of

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[40] Sections 73 and 74 of the *Criminal Procedure Act*, Cap. C41, LFN 2004 and Section 253 of the *Criminal Procedure Code*, Cap. C42, LFN 2004.

[41] *The State v. Ilori (supra)*. See also *Clarke v. A. G. Lagos State (supra)*.

[42] Adebayo. A. M., *Op.cit*, p.126.

[43] See the *Punch Newspaper* of February 27th, 2010.

check and balance from the other organs. Allowing that is seriously against the spirit of rule of law and democracy. In essence, the exercise of absolute power by any of the organs of government may lead to lawlessness and anarchy if left unchecked.

In view of the above, these writers are of the opinion that the provisions of Section 174 and 211 of the 1999 Constitution of the Federal Republic of Nigeria be amended to confer on the Court the power to review the exercise of the power of the Attorney-General where it is found to have been grossly abused, or where the exercise of such power will cause injustice to any member of the public.

1.6 The Attorney-General's Power to Give Legal Advice

The Attorney-General has an absolute discretion in deciding who to prosecute and for what offence(s), where several people committed the same offence(s). He needs not give reasons for his decision.[44] In practice, the Attorney-General's decisions in criminal cases are usually conveyed through legal advice which is issued in respect of any matter whether charged to Court or otherwise.

The Attorney- General legal advice is a statement issued from the office of the Attorney-General conveying the legal opinion of the Attorney-General on a criminal matter and stating whether the suspect or accused person is liable to be charged for an offence or otherwise.[45] A legal opinion is a well-researched and reasoned opinion incorporating the facts with the law. It may be in favour or against the person accused of committing a crime.

Curiously, the 1999 Constitution, the Criminal Procedure Act,[46] and the Criminal Procedure Code[47] do not make provisions for the issuance of legal advice by the Attorney-General to the Police. Until recently, the adoption and acceptability of the Attorney-General's to give legal advice in the administration of criminal justice in Nigeria is premised on the unlimited powers given to the Attorney – General by the Constitution. This *lacuna* which existed in the law on administration of criminal justice has been filled in Lagos State by the Administration of Criminal Justice Law, 2011[48] which provides as follows:

(1) The Commissioner of Police shall forward all duplicate case files with respect to offences triable on information to the Office of the Attorney – General for the purpose of issuance of legal advice;

[44] Adebayo, A. M., *Op.cit*, p.120.
[45] *Ibid.*
[46] Cap. C41, LFN 2004.
[47] Cap. C42, LFN 2004.
[48] Section 74(1)-(5), Administration of Criminal Justice Law of Lagos State, 2011.

(2) The legal advice issued by the Office of the Attorney – General with respect to offences triable on information on any person shall be conclusive.

(3) Notwithstanding the provisions of subsections (1) and (2) of this Section, the Attorney – General may request for duplicate files relating to any offence for the purpose of issuance of legal advice;

(4) Where the facts in a Police case file forwarded to the Office of the Attorney –General in any proceeding with respect to any offence triable on information

against a law of the State indicating a *prima facie* case against a person, the Attorney – General shall inform the Magistrate in writing by way of legal advice through any of the Officers in his Chambers or the prosecuting Police Officer;

(5) The Office of the Attorney – General shall ensure service of the copy of the legal advice upon a person in respect of whom legal advice is preferred through the Prison authority if the person is remanded in custody and through the appropriate Courts if the person is on bail.

In the same vein, the Administration of Criminal Justice Act, 2015[49] provides that the Attorney-General of the Federation may issue a legal advice or such other directive to the Police or any other law enforcement agency in respect of an offence created by an Act of the National Assembly.

Likewise, the Administration of Criminal Justice Law of Kaduna State empowers the Attorney – General to issue legal advice or such other directives to the Police or any other law enforcement Agency in respect of any offence created by a law of the State House of Assembly.[50]

The law further provides that where any proceeding is pending in respect of an offence for which legal advice or other direction is given, a copy of the legal advice or direction shall be forwarded by the Attorney – General or Director of Public Prosecutions (DPP) to the Court before whom the proceeding is pending.[51] The Attorney – General may also request from the Police or any other Agency for the case file in any matter and the Police or other Agency shall immediately send the case file as requested.

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[49] Section 105(1) of the *Administration of Criminal Justice Act*, 2015.
[50] Section 118 (1) of Kaduna State Administration of Criminal Justice Law, 2017
[51] Ibid, Subsection (2)

The Attorney-General's legal advice is normally issued after a vivid consideration of the facts contained in the Police case diary or file. If the facts contained in the Police case file disclose a *prima facie* case against the suspect or an accused person, the Attorney-General may recommend charges against him and proceed to prosecute him or ask the Police to prosecute.

The Attorney-General may, however, in his legal advice refuse to recommend any charge against the suspect or the accused person. Thus, in *Idiok v. The State,*[52] the Supreme Court held that the Attorney-General is under no legal duty to charge all suspects to Court. He has an unfettered discretion in the decision to prosecute. The Attorney-General cannot be questioned for his decision nor can his decision be reviewed.

The above decision, as sound as it may look, is, however, subject to abuse. It may be used by the Attorney-General for political reasons. This is in view of the fact that the office of the Attorney-General is political in nature. He is appointable by the President or a State Governor, as the case may be, subject to confirmation by the Senate or a State House of Assembly respectively. He may, therefore, use his office for the benefit of his boss, i.e. the President or the Governor as the case may be. There is, therefore, the need for checks and balances in the discharge of the Attorney-General's duties. It is the view of this writer that the office of the Attorney-General should cease to be political. It is humbly submitted that if this is done the Attorney-General may be independent from the control of the President or the Governor as the case may be.

The Attorney-General is an authority unto himself in taking decisions under Sections 174 and 211 of the 1999 Constitution. The power of the Attorney-General is absolute and cannot be questioned or be reviewed. His discretion in exercising his powers is absolute.[53] In *Amaefule v. The State,*[54] the Attorney-General directed the Magistrate to forward the record of proceedings before him to his office and the Attorney-General subsequently filed information in the High Court in respect thereof against the accused. The exercise of the power by the Attorney-General was held to be valid.

The Attorney-General may also issue a Certificate legally conclusive of certain facts (e.g. that the revelation of certain matters in Court proceedings might constitute a risk to national security). The facts stated in such Certificate must be accepted by the Courts and cannot legally be disputed by any of the parties.[55]

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[52] (2008) All FWLR (pt. 421) 797.
[53] *The State v. Ilori (supra).*
[54] (1988) 2 NWLR (pt. 75) 156.
[55] Adebayo. A. M.. *Op.cit.* p.123.

Be that as it may, one of the identified problems bedeviling the administration of criminal justice in Nigeria is the delay in the issuance of legal advice by the Attorney-General to the Police. Most cases in Magistrates Courts spent years on the ground that they were waiting for the Attorney-General's advice. Thus, most of the reports of the Police Prosecutors in the Magistrate Courts when cases are called are similar: "case file awaiting the Attorney-General's advice."

In most cases, however, the Police case file will still be waiting for duplication at the Police Station while the Police prosecutor may have informed the Court that the case is awaiting the Attorney-General's legal advice. This trend should be adequately addressed by providing enough resources to the Police to assist them in carrying out their constitutional duties effectively and efficiently.

1.7 Conclusion

It is clear from the analysis above that the powers of the Attorney – General, whether of the Federation or of the State are four folded. The first is the institution of criminal proceedings. The second is the taking over and continuing of criminal proceedings instituted by any other person or Agency. The third is discontinuance of criminal proceedings, at any stage before judgment is given, against any person before any Court in Nigeria except Court – Martial.[56] The fourth, which is the main thrust of this paper, is issuance of legal advice or such other directions to the Police or any other law enforcement Agency in respect of any offence created by either an Act of the National Assembly or a law of the State House of Assembly.[57] In either case, the power to give legal advice by the Attorney – General should be exercised judicially and judiciously.

This paper therefore finds as follows:

1. Delay in the issuance of Attorney – General legal advice constitutes one of the problems militating against speedy dispensation of criminal justice in Nigeria as the power to give legal advice is not time bound.
2. The delay in the issuance of legal advice ultimately results in Prison congestion as many suspects whose cases are pending before the Courts and waiting for the Attorney – General legal advice are often remanded in Prison custody.

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[56] Osamor. B. op. cit. p. 153
[57] Adebayo. A.M. op. cit. p. 121

The power to give legal advice by the Attorney – General are at times exercised mala fide (in bad faith) as he has an unfettered power not to recommend any charge against any person and this cannot be challenged or reviewed by any court in Nigeria.

ed on the above findings this paper proffers the following recommendations:

The Administration of Criminal Justice Act 2015 and the Administration of Criminal Justice Laws of the various States should be amended to give time frame within which the Attorney – General should give legal advice in respect of criminal proceedings pending before the Court.

Magistrates should be proactive in enforcing the law relating to detention time limit. If after the expiration of the detention time limit the Attorney – General fails to issue legal advice, the Magistrate should admit the suspect to bail. This will ultimately help in decongesting the Prison.

The office of the Attorney – General should cease to be political in nature. This will ultimately give the Attorney – General some independence and freedom from the control of the Executive. The Courts should also be given powers to question or review the decisions of the Attorney – General that has not been exercised judicially and judiciously.