

# A Code for Public Prosecutors in the Nigerian Criminal Justice System: A necessity or a Nuisance ?

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## Abstract

The general supervisory power and control over criminal prosecution is vested in the Attorney- General of a State under section 211 and in the Attorney - General of the Federation under section 174 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) however the Nigerian Police Act and other entities such as the anti-graft agencies have powers of prosecution subject, however, to the power of the Attorney General. Though there is an operational Code of Conduct for Prosecutors its universal reach in the country and efficiency of supervision and sanction of errant prosecutors has been a major concern for stakeholders in the administration of justice. This paper examined the preserve of the prosecutors in criminal trials and analysed the Code of Conduct for Prosecutors (CCP) in Nigeria drawing from the provisions the Prosecutors? Code of selected jurisdictions.

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*Index terms*— prosecutor, code of conduct, police, attorney- general, criminal justice system, fair trial, accused.

## 1 Criminal Proceedings

not only prosecute but also engage the services of private legal practitioners who prosecute on their behalf. In all of this, one major concern should be the standard required of a prosecutor.

Criminal trials under the Nigerian criminal justice system is modeled after the common law system and is basically accusatorial in nature. ?? Once the Police conclude investigation and a case is deemed established, the justice process gets underway. It should be mentioned that an accused person is presumed innocent until proven guilty, ?? and the burden of proof in criminal trials rests on the prosecution. It is to prove all the elements of the offence charged as defined by law and the case must fail if it cannot do so. ?? This rule is fundamental for a system where conduct is only criminal when so defined in a written law and punishment thereby prescribed. The standard of proof for a criminal trial is that the prosecution must prove the guilt of the accused person beyond reasonable doubt. ?? The Nigerian criminal law recognizes the rights of an accused 9 and therefore treats accused persons as suspects, the gravity of the offence notwithstanding. In order to understand the obligations of a prosecutor in any given situation or at any particular stage of the trial process, it is necessary to define the role of the prosecutor. The exercise has been attempted on numerous occasions by various commentators. There are many and varied definitions of a prosecutor, nevertheless, they have one central focus and purpose; that is one of conducting prosecution against alleged criminals. A prosecutor is defined as a legal officer who represents the state or federal government in criminal proceedings ??1 .The American Bar Association (ABA) defines a prosecutor as an administrator of justice, an advocate, and an officer of the court 12 .The role is usually expressed in terms such as "a minister of justice" or "an officer of the court". It may be more easily understood in terms of what it is not. It is not about winning or losing where convictions are wins and acquittals are losses. A conviction obtained on insufficient or doubtful evidence should be regarded as a loss just as much as a failure to obtain a conviction on a strong credible prosecution case. ??3 (per Rand J in *Boucher v R*).

Again it is a matter of striking a balance. Some quotations from commentators may assist in defining the role of the prosecutor: "It cannot be over emphasised that the purpose [cf expectation] of a criminal prosecution is

not to obtain a conviction: it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented; it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing: 'His function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.'<sup>14</sup> 'Finally there is or has been a tendency for Counsel for the prosecution not to prosecute firmly enough. The last half century has seen a welcome transition in the role of a prosecuting counsel from a

The great jurist, Lord Devlin also stated thus: the human person-section 34(1)1999 Constitution. s. 35 (12) of the 1999 Constitution(as amended).

prosecutions\_policy\_guidelines\_south Australia. Last accessed 23rd February 2017 <sup>15</sup> Boucher v R (1954) 110 CCC 263 at 270) persecuting advocate into a minister of justice, but in some places the pendulum has swung so far and the ministry has moved so close to the opposition that the prosecution's case is not adequately presented and Counsel, frightened of being accused of excessive fervour tend to do little except talk of reasonable doubt and leave the final speech on the facts to the Judge. The result of the deficiency is that the duty of seeing that the prosecution's case is effectively put to the jury is sometimes transferred to the Judge and thus balance of the trial is upset." (Lord Devlin) <sup>16</sup> "It is the duty of prosecuting counsel to prosecute, and he need not rise to his feet and apologise for so doing. It is not unfair to prosecute.

But in the end it may come back to the words of Christmas Humphreys QC: 16 And again, "Always the principle holds that Crown counsel is concerned with justice first, justice second and conviction a very bad third". <sup>17</sup> Going by these definitions, it becomes quite obvious that a prosecutor is usually a public officer empowered to institute and prosecute criminal cases against persons alleged to have offended the law. Such a person is therefore expected to exercise sound discretion in the performance of his or her functions. A prosecutor should not be a persecutor. <sup>18</sup> It must be stated and clearly too, that aside from the prosecutor, others also have a role to play in ensuring fair trial, probity and justice in criminal trial. The Trial Judge who presides is important. The sole duty of any judge in any country which upholds the rule of law is the attainment of Justice in every given case <sup>19</sup> St. Augustine once said '...remove justice and what are kingdoms but a gang of criminals on large scale'. <sup>20</sup> The Supreme Court adopted the Latin maxim "fiat justiciaeruatcaelum" "meaning let justice be done though the heavens may fall' <sup>21</sup> .The defense counsel also plays a critical role in defense of his client. A defense counsel should pursue his client's case with utmost diligence. To this end, the Nigerian Bar Association has rules guiding conduct of counsel both in criminal, civil trial and even solicitors practice. <sup>22</sup> 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 due enforcement of all laws and regulation with which they are directly charged; and shall perform such military duties within or without Nigeria as may be required of them by or under the authority of, this or any other Act' <sup>23</sup> An overview of the functions of the police reveals clearly that primarily, the police force is an institution established to maintain law and order. This includes apprehension and investigation of crime. Thus, it has been argued and we strongly align our views with this that allowing the Nigeria police to conduct criminal prosecution in court is detrimental to the criminal justice system . <sup>24</sup> a. Not being lawyers, the police are oftentimes outwitted by experienced legal practitioners. The Nigeria police force is trained specifically to maintain law and order via apprehension and investigation of crime, thus, they are skilled in their area of specialisation and not in prosecution.

. The power of the police to prosecute is beset with the following challenges which in our view is inimical to the cause of justice: b. In the Magistrate courts, over 90 % of criminal cases are prosecuted by the police and may not be handled with the expertise required making easy for the police prosecutor to be outwitted by legal practitioners representing the defence. The submission made here is that it is imprudent to expect that a police officer without legal training in the nuances of the legal profession cannot withstand a legal practitioner in the prosecution of cases before the court. The procedure adopted in the lower courts is that of summary trial devoid of technicalities and easily understood by a layman unlike prosecution in the high courts, as such the police prosecutor cannot grapple with the technicalities involved in prosecution, and delivery of justice suffers. c. Incessant transfer of police officers often leads to stagnation of prosecution of criminal cases. The law prescribes that the prosecutor like the defence counsel must be in court throughout the trial. Thus, where police officers are frequently transferred, prosecution of criminal cases suffer serious setback in the administration of criminal justice. d. There is an inherent conflict of interest when any agency assumes the position of investigator and prosecutor as the Nigerian Police Force finds itself <sup>25</sup> e. The dangers of conflict of interest often manifest which lead to poor prosecution meant to frustrate a criminal action. Fundamentally, the police officers who prosecute criminal casesare performing dual functions, one as police officers and two as prosecutors.

## 2 31

The police and other investigators are responsible for conducting enquiries into any alleged crime and for deciding how to deploy their resources. This includes decisions to start or continue an investigation and on the scope of the investigation. Prosecutors often advise the police and other investigators about possible lines of inquiry and evidential requirements, and assist with pre-charge procedures. In large scale investigations the prosecutor

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107 may be asked to advise on the overall investigation strategy, including decisions to refine or narrow the scope  
108 of the criminal conduct and the number of suspects under investigation. This is to assist the police and other  
109 investigators to complete the investigation within a reasonable period of time and to build the most The proper  
110 understanding of the nature of the working relationship between the police and the prosecutor may best be stated  
111 thus:

### 112 **3 b) The Police Prosecutor**

113 The Nigeria Police Force is empowered to prosecute criminal cases under the nation's justice system. 23. These  
114 legislations were affirmed by the decision in *Olusemo v CO 24* that the police could prosecute criminal cases in  
115 the High Court of the Federal Capital Territory and this was further confirmed by the Supreme Court in *Osahon*  
116 *v FRN* 225 and extended to all courts in Nigeria. Learned author, Onoriode had posited that the power of the  
117 police to prosecute criminal cases in courts in Nigeria was informed by the paucity of trained legal practitioners  
118 at the time of the enactment of the Police Act in 1943 and this is buttressed by the fact that even lay magistrates  
119 sat over criminal proceedings. 226 This exercise of the power of the Force to prosecute was traditionally limited  
120 to criminal cases in the lower courts until the decision in *Osahon* 27 .The duties of the Nigerian Police Force are  
121 as follows:

122 effective prosecution case. However, prosecutors cannot direct the police or other investigators. 222 (a) law  
123 officer, disciplinary measures under the Public Service Rules shall apply:

124 From the foregoing, the police play a fundamental role of conducting inquiries into alleged crimes and deciding  
125 how best to deploy their resources. The prosecutor also advises the police on evidential requirements to enable  
126 prosecution succeed. In other jurisdictions, such as Britain, USA, Canada, Germany and South Africa the duty of  
127 the police is similar. In these other jurisdictions, such as Britain, USA, Canada, Germany and South Africa the  
128 duty of the police is similar. In these jurisdictions, the police force is established merely to investigate crime and  
129 not to otherwise prosecute criminal cases. Thus, the duty of the police to assist the criminal justice system by  
130 apprehending alleged offenders as well as investigate crime produces well defined functions for the police distinct  
131 from that of the prosecutors.

132 When the functions of the police and the public prosecutor are specific and well defined, that prosecution of  
133 criminal cases becomes increasingly easier and more effective. What this translates into is that the police will  
134 be confined to carrying out what can be referred to as the substructure of the criminal justice system while the  
135 prosecutors build on the substructure to achieve the superstructure of the criminal justice system.

136 It is the humble submission of the writers that a more effective criminal justice system will emerge in Nigeria  
137 where the work of investigating crime is disconnected from that of prosecuting. Let us assume without conceding  
138 to the fact that the police may prosecute criminal cases in courts; to which standards then should the police  
139 prosecutor subscribe and be held accountable to in the event of a breach? As prosecutors, should they be  
140 subjected to demands of prosecutorial code of conduct? It is arguable whether the police prosecutor is currently  
141 operating under the dictates of the prosecutorial code. The title of the prosecutorial code is: 'Code of Conduct  
142 for Prosecutors'. This is a blanket title which can be argued covers all. Furthermore, section 7, Part B of the  
143 CCP states that in the event of a breach of the provisions of the Code, disciplinary measures would be taken  
144 against erring prosecutors thus: section 7(1) The prosecutor who breaches any of the provisions in this Code  
145 maybe proceeded against by the Officer of the Attorney General for misconduct and where the prosecutor is a:  
146 32 Paragraph 3.2 of the England Code.

147 (b) private legal practitioner, in addition to a withdrawal of any Fiat or authority to prosecute conferred by  
148 the Attorney General, the matter shall be referred to the Legal Practitioners Disciplinary Committee; or (c)  
149 non-legal practitioner, disciplinary proceedings by his organization. Thus, it is submitted that section 7(1)(c)  
150 has taken cognizance of the class of police prosecutors.

### 151 **4 State Prosecutors**

152 There exists in the Ministry of Justice at state level and Federal level the department of Public prosecutions. As  
153 the name implies, the department of public prosecution handles criminal prosecutions, renders legal advice and  
154 deals with extraditions and matters relating to mutual legal assistance 223 . Prosecutors are located in this  
155 department and are constitutionally mandated to act on behalf of the AG as may be instructed 33

### 156 **5 c) Director of Public Prosecutions (DPP)**

157 . The department is headed by a Director of Public Prosecutions (DPP). It is important that on a state level,  
158 there should be coordination of the prosecutorial policies like in other jurisdictions. In the USA, there exists a  
159 requirement for coordination of local prosecution offices on a state level in order to improve the administration of  
160 justice and to guarantee maximum practicable uniformity in the enforcement of the criminal law throughout the  
161 state. Furthermore, the ABA stipulates that a State Association of Prosecutors should be established in every  
162 state. No such body exists presently.

163 The office of the Director of Public Prosecutions exists in other jurisdictions as well especially with the common  
164 law background. Under the Nigerian justice system, there has been a gradual erosion of the place and importance  
165 of the office of the DPP with attendant negative effect in the coordination of prosecutorial capacity of the Ministry.

## 9 A) CODE OF CONDUCT FOR PROSECUTORS (CCP)

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166 The office of the DPP was established in the 1963 constitution and was located in the department of government  
167 for which responsibility was assigned to the Attorney General of the Federation 34 .It also provided that the  
168 powers of the HAGF in sub section ( ?? Volume XIX Issue V Version I

### 169 6 ( H )

170 At best, it states that the powers conferred on him may be exercised by him in person or through officers of his  
171 department 37 effectively silencing the voice &office of the DPP to just another position in the Ministry. Similar  
172 provisions exist for the AG of a state ??8 The same provisions were imported into the 1999 constitution .

### 173 7 39

174 . It should be stated that the office of the Attorney General is political and thus there have been loud calls for  
175 separation of the office of Attorney General who will objectively superintend prosecutions without fear or favor  
176 of the ruling party or its cronies and the office of the Minister of Justice at the federal level or the Commissioner  
177 of Justice at the state level. The positions are fused together presently. In England and Wales, the principal  
178 public prosecution agency is the Crown Prosecution Service 40 (e) In exercising his powers under this section,  
179 the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the  
180 need to prevent abuse of legal process. The body of Attorneys-General of the States hold regular meetings along  
181 with the Attorney General of the Federation and Minister of Justice usually in attendance even though it is not  
182 a statutory body. It is this body that has drawn up a Code of Conduct for Prosecutors (CCP) to regulate the  
183 conduct of prosecutors in criminal prosecutions. The enactment of the CCP is to ensure that the prosecution of  
184 criminal cases is not undermined. Thus, prosecution of criminal cases by the prosecutor should be conscientiously  
185 conducted; with unswerving support for justice void of indictment sentiments.

### 186 8 e) Private Legal Practitioners as Prosecutors

187 There exists several specialised agencies in the nation's criminal justice system which engage in prosecutorial  
188 functions. These agencies include the EFCC, ICPC, NAPTIP and NDLEA, to mention but a few. Quite a  
189 number of these agencies engage the services of private legal practitioners in the prosecution of alleged criminal  
190 suspects especially for corruption cases involving high profile persons. The reasons adduced for the engagement of  
191 private legal practitioners are usually inadequate legal officers to prosecute criminal cases and lack of experience  
192 in prosecution by in -house legal officers.Under the ABA code, it is categorically stated that whenever feasible, the  
193 offices of chief prosecutor and staff should be fulltime occupation ??1 .Private prosecutors are on part time unlike  
194 state counsels or in-house counsel of the agencies who are on full time. In the light of this, the practice of engaging  
195 private legal practitioners to handle criminal briefs on behalf of government exposes them to possibility of conflict  
196 of interest or divided loyalty. From the examination of CCP's 42 III. Code of Conduct for Prosecutors title and  
197 section 7, subsection (b) of Part B which lists sanctions to be applied to erring prosecutors thus: (b)private legal  
198 practitioner, in addition to a withdrawal of any Fiat or authority to prosecute conferred by the Attorney General,  
199 the matter shall be referred to the Legal Practitioners Disciplinary Committee; Also the preamble which goes  
200 thus: ethical standards, hereby issues this Code for the guidance of all prosecutors in Nigeria to ensure:??? It  
201 can be safely concluded that the CCP is binding on this class of prosecutors.

### 202 9 a) Code of Conduct for Prosecutors (CCP)

203 Tuyo & Ibikunle have submitted that the nation's justice system is overdue for a Prosecutorial Code of Conduct  
204 43 . An instance to support this assertion was the report of the Corruption And Financial Crimes Cases Trial  
205 Monitoring Committee (COTRIMCO. ??4 'The prosecution is responsible for the delays in many ways, including  
206 lack of requisite experience and competence, reliance on irrelevant documentary evidence, multiplicity of charges,  
207 collusion of prosecutors with defense lawyers, non-adherence to court rules and procedures, it also identified poor  
208 prosecution, absence of counsel for parties in court and amendment of charges after commencement of trial'

209 ) The Chief Justice of Nigeria, Justice On nonoghen his capacity as the chairman of the National Judicial  
210 Council (NJC) inaugurated the Justice Suleiman Galadima CFR Led CORRUPTION AND FINANCIAL  
211 CRIMES CASES TRIAL MONITORING COMMITTEE (COTRIMCO) on Nov 1 st 2017 mandating it to among  
212 others identify the causes of delays in corruption and financial crimes proceedings and recommend solutions. As  
213 at Nov 26 th , 2017 COTRIMCO had received details of 2,306 cases which fell under the committee's mandate.  
214 The committee detailed the report based on discussions with Heads of courts and observations made from the  
215 surprise visits of members to courts handling corruption and financial crimes cases in parts of the country. The  
216 report stated: According to COTRIMCO, poor prosecution is when 'offenders are charged to court before proper  
217 investigations of the charges are done, and afterwards, expecting the court to detain such alleged offenders till  
218 conclusion of their investigations, inadequate prosecuting personnel at the prosecuting agencies, lack of requisite  
219 experience to prosecute corruption cases which invariably lead to poor handling of such cases. It also identified  
220 lack of commitment on the part of some prosecutors.

221 Prosecutors code have been issued in several other jurisdictions. This has been done in jurisdictions like  
222 England 46 , USA 47 and Northern Australia. ??8 The ABA defined the Prosecutors Code as a guide to  
223 professional conduct and performance 49 .They are not intended to be used as criteria for the judicial evaluation

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224 of alleged misconduct of the prosecutor to determine the validity of a conviction although they may be relevant in  
225 such judicial evaluation, depending on all the circumstances. They argued that its many benefits would include  
226 providing not just a guide for prosecutors but an objective standard of assessment of the ethics and skill deployed.  
227 In South Africa, there is a Code of Conduct for the members of the National Prosecuting Authority of South  
228 Africa 50 . In its preamble, the Code acknowledges the crucial role of prosecutors in the administration of  
229 criminal justice and emphasizes the essential need for prosecutors to be fair and just and to act without fear  
230 or favour ??1 . It is to ensure that justice is done that a code of conduct is imperative and needful. In South  
231 Australia, the Prosecution Policy was first issued upon the establishment of the Office in 1992 and since that  
232 time has been reviewed regularly ??2 . Further guidance is provided to staff in the form of guidelines for their  
233 important decision making processes and to maintain the highest ethical standards. In Ghana, there exists a  
234 code for prosecutors, first published in 2001 ??3 . Aside from this, is the Guidelines for Prosecutors published in  
235 2001 and it works along with the code ??4 The aim & objectives of the Code though not so stated explicitly is  
236 stated to be for the guidance of all prosecutors. It states thus .

## 237 10 55

238 : ??7 The American Bar Association(ABA) House of Delegates approved In February 1992, the "black letter"  
239 standards later known as the ABA (2008) 13 NWLR (Pt. 1105) 524 at 538, the court held that justice is a double  
240 carriage way in a judicial process and that traffic must flow both ways. Thus one party should not put obstacles  
241 on the part of the other. Consequently, the prosecutor should never be seen to put A Code for Public Prosecutors  
242 in the Nigerian Criminal Justice system: A necessity or A Nuisance i. Public confidence in the integrity of the  
243 criminal justice system; ii. That all prosecutors play a crucial role in the administration of criminal justice;  
244 iii. That the degree of involvement, if any, of prosecutors at the investigative stage varies from one case to  
245 another; iv. That the responsibility entailed in the exercise of prosecutorial discretion is consistent with personal  
246 rights, sensitive to the need not to re-victimize victims and should be conducted in an objective and impartial  
247 manner; and v. Observance of applicable professional codes/rules governing the conduct of lawyers and public  
248 servants. These goals are commendable especially subparagraph iv.

## 249 11 b) Functions of A Prosecutor

250 The functions of a prosecutor are quite crucial. These functions are imperative for the reinforcement of the  
251 administration of criminal justice. However, where these functions are trifled with, justice is trampled upon and  
252 thus denied. These functions include:

## 253 12 c) The Duty to Seek Justice

254 The CCP in its preamble categorically stated that a prosecutor plays a crucial role in the administration of  
255 criminal justice. ??6 The principal function of the prosecutor is to seek justice and not merely to seek conviction.  
256 It is far from the intention of the law to punish anybody who is alleged to have committed an offence but rather  
257 to ensure the conviction of only those who are guilty of any offence. To seek justice transcends mere speculations;  
258 however, in the face of seeking justice, justice must be done to all the parties involved in a criminal trial ??7 .  
259 Part of the duty to seek justice to all concerned, i.e. the victim, state and accused is the burden on the prosecutor  
260 to respect the defendant's right to a fair trial, and in particular ensure that evidence favour able to the defendant  
261 is disclosed in accordance with law 58 IV. Furthermore, a Prosecutor is to .This is critical as prosecutors are to  
262 put forward all evidence relevant in a trial whether or not it is prejudicial to the state interests or exculpating of  
263 the accused person.

264 (7)In accordance with laws or the principles of fair trial, seek to ensure that all necessary and reasonable  
265 enquires are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect  
266 or defendant; obstacle on the part of the defence no matter the gravity of the alleged offence. ??6 See *Usen*  
267 *v State* (2015) LPELR, 40247. ??7 Part A, Article3, sub-section (8) CCP. ??8 Part A, Article 1, sub-section  
268 6, CCP (8)Always search for truth and assist the court to arrive at the truth and to do justice between the  
269 State, the victim and the offender according to law and the dictates of fairness ??9 Similarly, section 2.4 of  
270 the England and WalesCode states that prosecutors must always act in the interest of justice and not solely  
271 for the purpose of obtaining a conviction. This point was stated as far back as the early nineteenth century  
272 in the decision of the Supreme Court of the United States of America in *Berger United States* . thus: 'The  
273 [prosecutor] is the representative not of the ordinary party to a controversy but of a sovereignty whose obligation  
274 to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal  
275 prosecution is not that it should win a case, but that justice should be done. As such, he is in a peculiar and very  
276 definite sense the servant of the law, the twofold aim of which is that the guilty shall not escape or the innocent  
277 suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard  
278 blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated  
279 to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.'

280 Nothing can be truer than theabove scholarly exposition of the function of the prosecutor to seek justice.The  
281 cornerstone of this function is that those entrusted to seek justice must conscientiously seek it at all cost by

282 ensuring that no injustice is occasioned. At this point, it is proper to state that a call to duty for prosecutor is a  
283 call to seek justice. As a matter of fact, seeking justice is the bedrock of the administration of criminal justice.

284 When inadequacies or injustices in the substantive 61 or procedural law 62 59 sub-sections 6 & 7, section3,  
285 CCP 60 Berger v United States, 295 U. S. 78 (1935). ??1 When constitutional provisions for human rights  
286 of citizens are abused in the guise of prosecuting alleged offenders, it is the duty of the prosecutor to ensure  
287 protection of the rights. See Suleman v COP (2008) 8 NWLR (Pt. 1089) 299 as an instance of inordinate amount  
288 of time for the detention of accused persons without charging them to court. ??2 In Onu v State (1981) 2 NCLR  
289 420 at 422, it was emphasised that the reason for grant of bail is to allow those who might be wrongly accused  
290 to escape punishment which any period of imprisonment would inflict. Where the procedure for the grant of bail  
291 is cumbersome resulting in denial of bail, the prosecutor is expected to be proactive in such instances. come to  
292 the notice of the prosecutor, concerted efforts towards aremedial action are expedient. Article 4 of the CCP is  
293 instructive thus:

294 V.

### 295 13 Role Incriminal Proceedings

296 1. The prosecutor shall perform his duties in accordance with the law and prosecutorial policy and guidelines.  
297 2. The prosecutor shall perform an active role in criminal proceedings as follows:

298 (a) Where authorized by law or practice to participate in the investigation of crime, or to exercise supervision  
299 over the police or other investigators he shall do so objectively, impartially and professionally; (b) While  
300 supervising the investigation of crime, he shall ensure that the investigator respects legal precepts and fundamental  
301 human rights; (c) The prosecutor shall when giving advice, do so impartially and objectively; (d) In the institution  
302 of criminal proceedings, the prosecutor shall proceed only where there is prima facie evidence and shall not  
303 continue with the prosecution in the absence of such evidence; (e) Throughout the course of the proceedings,  
304 the case shall be firmly and fairly prosecuted and not beyond what is indicated by the evidence; (f) Where the  
305 prosecutor exercises a supervisory function in relation to the execution of a court decision or performs other  
306 non-prosecutorial functions, he shall act in the public interest and in the interest of justice.

307 i. Duty of Fairness Additionally, another fundamental duty of the prosecutor is fairness 63 . Fairness in this  
308 context includes the duty to bring to the knowledge of the court all material facts or pieces of evidence that  
309 may even be adverse to the prosecutor's case 64 .The Rules of Professional Conduct for Legal Practitioners 2007  
310 (RPC) place a high standard of fairness on parties in the conduct of criminal cases brought before the courts ??5  
311 The prosecutor is not a persecutor .

### 312 14 66

313 .He is required to place before the court all evidence submitted by the Police. He is not on a mission to convict  
314 but to help impartially in the administration of justice 67 63 See Ogudo v State (2011) 18 NWLR (Pt 1278) 1 at  
315 52-53. ??4 The point is succinctly stated in Part A (Ethical Obligation) in the CCP thus: The prosecutor shall  
316 respect the defendant's right to a fair trial and in particular ensure that evidence favourable to the defendant  
317 is disclosed in accordance with law. ??5 .Thus, it is unprofessional to suppress facts or secret a witness capable  
318 of establishing the innocence of the accused person ??8 . In order to ensure the fairness and effectiveness of  
319 prosecution, the prosecutor shall 69 1) Co-operate with the police, the courts, defence counsel, public defenders  
320 and other agencies, whether nationally or internationally; and :

321 2) Render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the  
322 law and in the spirit of mutual co-operation within defined limits as maybe set-out by the Attorney General of  
323 the Federation.

324 Therefore, the CCP has widened the ambit of fairness requirement to include the prosecutor's interaction with  
325 other agencies relevant to the proper execution of the job. While seeking to ensure that guilty does not escape  
326 and the innocent suffer 70 , it is imperative that a prosecutor should disclose all material evidence at his disposal  
327 71 Duty To Desist From Indiscriminate Prosecution . At no time should the prosecutor conceal any unfavourable  
328 facts or evidence from the defence or the court. Adegoke submits that the prosecution is required to make all  
329 legitimate disclosure to the defence. Any misleading deception stands criticised. In all trial cases, to do justice  
330 is the focal point of all concerned, hence the objective must be to ascertain the truth. Hence, the prosecutor is  
331 expected to properly pursue and conscientiously prosecute his case whilst ensuring fairness irrespective of the  
332 final verdict.

333 The prosecutor is also under obligation to desist from indiscriminate prosecution. In the determination on  
334 whether or not to prosecute a criminal case, it is incumbent on the prosecutor to scrutinise the facts constituting  
335 the offence. It is not sufficient that a suspect is alleged to have committed an offence.

336 Napley stated that the successful outcome of a case must never be achieved by the chicanery of the advocate  
337 on whose integrity and assistance the court must at all times feel able to depend ??2 , the Supreme Court noted  
338 with regret that where the prosecution merely parades to court the word murder, it was insufficient for detention  
339 of the accused person without properly charging them to court. The crucial question is whether the facts reveal  
340 a prima facie case against the defendant or the facts constituting the alleged offence are supported by law. The  
341 prosecutor is a minister of justice par excellence and adjudged a faithful servant of the Ministry of Justice, a

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342 ministry constituted and established to promote, protect and preserve justice. The constitutional mandate is that  
343 prior to the trial of an alleged offender, the offence must be written and penalty duly prescribed by the law 74  
344 . The decision to prosecute must be without bias and prejudice and not in any way influenced by public opinion.  
345 Worrey opined ??5 The prosecutor has discretion to prosecute. The decision to prosecute is a weighty exercise  
346 to be carried out with utmost circumspection. It has been said that the primary determinant is the pursuit of  
347 justice and the avoidance of the abuse of criminal process 'The decision whether or not to prosecute a suspected  
348 person is not one that is lightly or casually made. It ought not to be a whimsical or arbitrary decision or one  
349 made without due and careful study of the facts or tied to the personal prejudices or mood of the appropriate  
350 officer. Nor should it be the result of a cowardly capitulation to public opinion.' 76 . A prosecutor should  
351 eschew being stampeded by public pressure. Public sentiment should not override timeless judicial precedents  
352 and clear requirements of relevant statutes 77 . It should be noted that the law exists to serve the common good  
353 of society and not the other way around ??8 In England and Wales, the decision to prosecute is mandatorily  
354 based on whether the facts of the case pass the evidential test followed by the public interest test . Political  
355 considerations also weigh heavily on the mind of prosecutors. Arthur-Worrey submits that criminal prosecution  
356 should be directed at acts of evil which threaten the foundations of society rather than acts which amount to no  
357 more than a strong difference of opinion with constituted authority. Where criminal prosecution is based on a  
358 political perspective or a class difference rather than the need to seek justice, the basis of prosecution is defeated.  
359 Where criminal prosecution is based on a political perspective or a class difference rather than the need to seek  
360 justice, the basis of prosecution is defeated. Article 3, sub-section 3 of the CCP requires a prosecutor to remain  
361 unaffected by individual or sectional interests and public or media pressures; and to have regard only to the law  
362 and public interest. . The prosecutor must be satisfied that there is sufficient evidence to provide a realistic  
363 prospect of conviction against each suspect on each charge. They must consider what the defence case may be,  
364 and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must  
365 not proceed, no matter how grievous or sensitive it may be. The finding that there is a realistic prospect of  
366 conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence  
367 and any other information that the suspect has put forward or on which he or she might rely ??0 . In every  
368 case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether or  
369 not a prosecution is required in the public interest. In other words, a prosecutor should be independent and  
370 be independent minded to take decisions to prosecute. The CCP provides for independence of the prosecutor  
371 ??1 In some cases however, the prosecutor may be satisfied that the public interest can be properly served by  
372 offering the offender the opportunity to have the matter decided by an out-of-court disposal rather than bringing  
373 a prosecution . It states that in exercising prosecutorial discretion, the prosecutor shall act independently without  
374 bias and be free from any form of interference. It has never been the rule that prosecution will automatically  
375 take place once the evidential requirement is met. A prosecution usually takes place only after the prosecutor is  
376 satisfied that there are public interest factors tending towards prosecution.

## 377 15 82

378 Duty To Know and Be Properly Guided By the Standards Of Professional Conduct.

379 . It is the duty of the prosecutor to know and be properly guided by the standards of professional conduct  
380 as defined by applicable professional ethics, ethical codes, and law in the prosecutor's jurisdiction. Clearly, the  
381 CCP 83 1. Maintenance of honour and dignity of the profession;

382 provides for the ethical obligations of a prosecutor to include: 2. Conducting himself professionally, in  
383 accordance with the law, rules and ethics of the profession; 3. Exercising the highest standards of integrity;  
384 4. Keeping himself well-informed and abreast of relevant legal developments; 5. Striving to be and to be seen to  
385 be consistent, independent and impartial; iii.

386 6. Respect the defendant's right to a fair trial, and in particular ensure that evidence favourable to the  
387 defendant is disclosed in accordance with law; 7. Serve public interest, respect, protect and uphold universal  
388 concept of human dignity and human rights, and decisions in the course of prosecution are.

389 To buttress this point, transparency, consistency with law and in accordance with the policy and guideline for  
390 prosecutors are key ethical considerations. One of the constraints of prosecutors in the State or Federal Ministries  
391 of Justice and specialised agencies in Nigeria however is the paucity of supporting facilities which has undermined  
392 the effective performance of their duties. This constraint has negative impact on the course of justice. Therefore,  
393 the prosecutor in Nigeria is compelled to rely on the police exclusively for evidence and intelligence to prosecute.  
394 More often than not, this does not meet the end of justice as all that is required to secure a non-conviction is  
395 poor investigation and evidence in a matter. On selection of Charges, Prosecutors are obliged to select charges  
396 which firstly reflect the gravity of the offence supported by the evidence. Secondly, the charges should give the  
397 court adequate powers to sentence and to impose appropriate post-conviction orders and thirdly, enable the case  
398 to be presented in a clear and simple manner. This means that prosecutors may not always choose or proceed  
399 with the most serious charge where there is a choice. Prosecutors should never go ahead with more charges than  
400 are necessary just to encourage a defendant to plead guilty to a few. In the same vein, they should never go  
401 ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

402 **16 v. Duty To Avoid Conflict of Interest**

403 In accordance with the ABA code for prosecutors, as a prosecutor, every appearance of conflict of interest with  
404 respect to official duties should be avoided 84 .This is imperative as it borders on the most fundamental and  
405 overriding duty of a prosecutor to the administration of criminal justice in particular and the state in general  
406 to which his or her loyalty lies at all times. Article 3 of the CCP enjoins the prosecutor to be impartial in the  
407 conduct of his functions 85 VI.

408 **17 Impartiality**

409 . More particularly, it states that:

410 The prosecutor shall perform his duties without fear, favour or prejudice. In particular he shall: Carry out his  
411 functions impartially; a) Not engage in conduct that would give rise to a reasonable inference that the prosecutor's  
412 The above disciplinary measures are without prejudice to instituting an action or prosecution where the conduct  
413 of the prosecutor amounts to a civil wrong or criminal offence.

414 These provisos are adequate as a sanction because it is not exhaustive. Secondly, it is flexible in that it hands  
415 back to the organization with power to discipline such prosecutor.

416 **18 VIII.**

417 **19 Recommendations a) Nigeria Police Force**

418 It is our submission that the Nigerian Police Force should be divested of prosecutorial functions. In other words,  
419 the role of the police in criminal cases should be confined strictly to investigation only. This is in line with  
420 international best practices. In a jurisdiction whereby there is gross under policing resulting from shortage of  
421 personnel, inadequate facilities and undertraining as is the case of Nigeria, it stretches resources too thin to deploy  
422 officers to prosecution even if they are qualified legal practitioners. The situation is dire as the nation grapples  
423 with rising security challenges 86 police officer who is also a legal practitioner should act in advisory capacity with  
424 respect to crime investigations. It is imperative that a central pool of supporting resource personnel, including  
425 crime scene units, investigators, forensic accountants and other experts relevant to police investigation be put in  
426 place. A budgetary allocation for such expenditure should be maintained. Without any doubt, prosecution is  
427 made increasingly easier in the nation's criminal justice system by the direct input of the police, therefore they  
428 should be given due recognition and fittingly remunerated. It is worthy of note that while there are lapses in the  
429 police as far as prosecution is concerned and public and private prosecutors are not exactly above board, some  
430 police officers have distinguished themselves in the discharge of their prosecutorial duties.As stated earlier, even  
431 though, there is no code of conduct for police prosecutors, distinct from the CCP, it is submitted that as there  
432 is a CCP, police prosecutors are bound to abide by it. This applies to private prosecutors as well.

433 **20 b) Federal/State Counsels**

434 It is important that on a state level, there should be coordination of the prosecutorial policies as obtains in other  
435 jurisdictions. In the USA, there exists a requirement for coordination of local prosecution offices on a state  
436 level in order to improve the administration of justice and to guarantee maximum practicable uniformity in the  
437 enforcement of the criminal law throughout a state. Furthermore, the ABA stipulates that a State Association  
438 of Prosecutors should be established in every state. This is desirable. In Nigeria, there exists presently a body of  
439 all State Attorneys General and the Federal Attorney General who meet regularly which may be said to play this  
440 role. However, actual prosecution is done by officers in the DPP and other specialized agencies of government.  
441 Thus, for effective networking and improvement of prosecuting skills, it is advised such a body be set up as  
442 an informal network distinct of meetings of Attorneys General. The CCP stipulates that a prosecutor should  
443 keep himself well-informed and abreast of relevant legal developments 87 .Pprofessional competence rather than  
444 regular administrative posting within the ministries of justice should be the basis for selection and prosecutorial  
445 posting as AB Acode stipulate 88 . This expectedly affects the morale of legal officers in the office of the DPP.  
446 Under the American jurisdiction, in order to accomplish the objective of professionalism and to encourage the  
447 aspiration of competent lawyers to such offices, compensation for prosecutors and their staff is commensurate  
448 with the magnitude of responsibility and comparable to what is accruable to their colleagues in the private sector  
449 89 d) CCP . While this may not be feasible in Nigeria nevertheless, it is submitted that enhanced or special  
450 allowances attached to those in the office of the DPP be pursued. This will serve as a booster and also hopefully  
451 distract them from corruption. Sometimes, the public may not be in support of this, but some form of incentive  
452 for a prosecutor especially in corruption cases is needful.

453 The Prosecutors Code in its current format is rather sparse though it endeavors to cover basic issues. However,  
454 it should be made more detailed or a separate document detailing procedural steps to be taken by a state attorney  
455 in response to trial issues like response to writ of Habeas Corpus, Request For Bail etc be developed to go alongside  
456 the Code. An example is the Ghana Code of Conduct for prosecutors drafted in 2010 by the then Attorney-  
457 General 90 .In addition, a Standard Operating Procedure guidelines was rolled out to be used together with the  
458 Code 91

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459 The Code is silent on duty of the state to protect prosecutors and their families where personal safety is  
460 required . The guidelines provide for detailed procedure in a step by step manner to guide state attorney on  
461 specific matters. This is a noteworthy example.

## 462 21 Conclusion

463 . This is critical especially in drug related, corruption, trafficking etc trials. Furthermore, violations of the Code  
464 must be met with stiff sanctions. This way, the essence of the creation of the code for public prosecutors in the  
465 proper administration of criminal justice rather than constitute a nuisance, will indeed and truly be a necessity.  
466 'It is not sufficient to have laws. We need to also have reform centered minds to make progress. The bar must  
therefore change its conventional approach to criminal justice, one of which is the attitude of the <sup>1</sup>

(CPS). The CPS is headed  
by the Director of Public Prosecutions who operates  
independently, under the superintendence of the  
Attorney General who is responsible to Parliament for  
the department.

d) The Attorney-General

174.(1) The Attorney-General of the Federation shall  
have power -

(a) to institute and undertake criminal proceedings  
against any person before any court of law in  
Nigeria, other than a 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 judgement is  
delivered any such criminal proceedings instituted  
or undertaken by him or any other authority or  
person.

(d) The powers conferred upon the Attorney-General of  
the Federation under subsection (1) of this section  
may be exercised by him in person or through  
officers of his department.

*[Note: 37 s.138, sub-section 2. He must be at least of ten years standing at the bar. 38 s. 176, subsection (2) 39  
s. 174(1) & (2) 40 s. 174 for AGF and section 211 for A-G of a state under the 1999 constitution as amended.]*

Figure 1:

467

49 Standard 3-1.1 "The Function of the Standards", GENERAL STANDARDS PART 1, <http://www.abanet.org>. Last accessed April 2015.

50 Code of Conduct for SA prosecutors, <http://constitutionallyspeaking.co.za/code-of-conduct-for-sa-prosecutors>. Last accessed 20 th February 2015.

51 section 22(6) of the National Prosecuting Authority Act, 1998. .

52 [www.prosecutions\\_policy\\_guidelines\\_south Australia](http://www.prosecutions_policy_guidelines_south_Australia). Last accessed 23 rd October, 2017

53 <https://www.modernghana.com/news/273353/code-of-conduct-for-prosecutors.html>. Accessed 28 th May 2018.

54 [http://www.dppireland/?/Guidelines\\_For\\_P](http://www.dppireland/?/Guidelines_For_P)  
 \_October 2007. Accessed 27 th April 2018.

[Note: 55 Preamble to the Code of Conduct for Prosecutors, 2016. In *Ochor v Ojo*]

Figure 2:

.In *Suleman v*  
 COP 73  
 68 Rules 37(6) Rules of Professional Conduct(RPC). See also *Odofin Bello v State* (1967)  
 (NMLR) 9  
 69 Article 5, titled 'Co-operation', CCP  
 70 In a plethora of cases particularly *Aikhadueki v State* (2014) 15  
 NWLR (

[Note: 73 *Suleman v COP*,]

Figure 3:

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80 ABA Code op cit Standard 3 -2. 2 (d).

81 Article 2 titled 'Independence', CCP.

82 Paragraph 6.1-6. 3. See also s. 14(2) of the EFCC Act where the Commission is empowered to compound any offence punishable under the Act and accept such money as it deems fit without charging such offender to court.

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*[Note: 83 Part A, Article 1(sub -section1-7), CCP, titled 'Ethical Obligations.A']*

Figure 4:

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Figure 5:



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468 prosecutors who regard themselves as purely advocates of the rights of the state, which they represent, and  
469 thus seek to make the criminal law as effective a weapon as possible in securing convictions of persons whom they  
470 adjudge to be guilty of a crime 93'. The above comment by the honorable Chief Judge strikes at the heart of the  
471 matter. Criminal justice is a complex system, administered at all levels of government and shaped by a range of  
472 actors. As such, other tiers and arms of government must be ready to play their part by providing the necessary  
473 funding and making adequate provisions for manpower especially in agencies that are charged with investigations  
474 and prosecution ??4 .Indeed, total commitment to ensuring justice delivery must be the avowed responsibility  
475 of all prosecutors. Furthermore, the function of public prosecution requires highly developed professional skills.  
476 This objective can best be achieved by promoting continuity of service and broad experience in all phases of  
477 the prosecution function ??5 . The preamble in the latter resolution further stated that the essential role of the  
478 public prosecutor also ensures security and liberty of thought of European society, no doubt a lofty ideal. This  
479 is equally applicable to the nascent democracy in Nigeria. Thus, to accomplish this in the Nigerian criminal  
480 justice system, the Code for Public Prosecutors should be a guide to assist in ensuring probity, sterling character  
481 and moral rectitude with highest standard of professional To this end, the enactment of the CCP is a welcome  
482 development and a necessity to an orderly development of the Nigerian criminal justice system.