AN APPRAISAL OF LEGAL PLURARISM IN THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA

BY

Dalhat Alhaji IDRIS

PhD/LAW/4955/2010-2011

MARCH, 2018

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MARCH, 2018

DECLARATION

I hereby declare that this thesis has been written by me and that it is a record of my own research work. No part of it has been presented or published anywhere at any time by anybody, institution or organization for the award of any academic degree.

_____

Dalhat Alhaji IDRIS

DEDICATION

This PhD Thesis is dedicated to my mother, Hajiya Fatima Salihu Gambo, my wife, Amina Habibu, and my Children, Fatima (Ihsan), Mahmud and Habib (Sajad),

CERTIFICATION

This Thesis titled "**An Appraisal of Legal Pluralism in the Administration of Criminal Justice in Nigeria**" meets the regulations governing the award of the degree of Doctor of Philosophy in law - PhD of Ahmadu Bello University, Zaria, Nigeria and is approved for its contribution to knowledge and literary presentation.

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ABSTRACT

It is trite beyound any equivocation that the Nigerian society is made up of people with diverse cultures, behaviours and ways of life. When the British came as colonial masters, they understood this and before they departed in October 1960, they devised ways of accommodating the inherent differences in the cultures of the North and South by ultimately creating two distinct Criminal Justice Systems, the Penal and Criminal Procedure Codes System for the North and the Criminal Code/Criminal Procedure Act System for the South. This was based on the premise that there was the need to respect the people's diverse cultures, religions and ways of life. When the Country returned to civilian rule in 1999, some States decided to re-introduce the Islamic Criminal Justice System by enacting the *Shari'a* Penal Codes and the *Shari'a* Criminal Procedure Codes. Consequently, Nigeria became a federation with plural criminal justice systems. Although the three different systems of criminal justice administration have been complementing one another, the problem, however, is that their parallel existence in the administration of Nigeria's criminal justice has largely been characterized by conflicts and inconsistencies. This research, therefore, appraises legal pluralism in the administration of criminal justice in Nigeria. In so doing, the research work adopts doctrinal as well as empirical methods of research. The sources of information relied upon include relevant Textbooks, Statutes, Articles in Journals, Case Law, Internet Materials as well as Data retrieved from Questionnaires issued to respondents on legal pluralism in the administration of criminal justice in Nigeria. The research work finds that multiplicity of substantive and adjectival criminal laws, procedural differences, nature of punishments and differences of enforcement mechanisms has largely been the challenges of legal pluralism in the administration of criminal justice in Nigeria. The research work concludes by recommending that the General Criminal Justice System (English - Styled Criminal Laws) comprising of the Penal/Criminal Procedure Codes and the Criminal Code/Criminal procedure Act should be unified while the Islamic Criminal Justice System should be harmonised and applied separately to only Muslims, thus enhancing limited legal pluralism. It also recommends that the Administration of Criminal Justice Act 2015 should be adopted and domesticated as the procedural law by the States in Nigeria, with modification to suit their respective peculiarities, with respect to the general criminal justice system (English - Styled Criminal Laws).

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

The vast majority of people seem to believe that nation – states came into existence by mutual consent rather than by force.[1] The Preamble to the Nigerian Constitution[2] lends credence to this fact by its statement that the people of Nigeria have firmly and solemnly resolved "to live in unity and harmony as an indivisible and indissoluble sovereign Nation under God…"[3] This may, however, not be entirely correct as most Countries of the world, Nigeria inclusive, do not readily conform to such expectations. Even the so called great democracies manifest only a minimum sharing of common values. For a large part, the great majority of nations are maintained more by force than by mutual consent. This is particularly true of the colonized countries of Africa, Asia and Latin America where the principal unifying force has largely been colonial rule, which brought with it political and legal domination, and also economic integration.[4]

These emerging states are peculiarly heterogeneous in nature. Historical accidents, social and legal constituents distinguish them as pluralities of varying complexity and form. Each is internally divided into relatively distinctive ethnic groups which exhibit a remarkable array of distinct legal institutions, languages, religions, traditions, political organizations and historical experiences. Culturally and structurally, each is internally characterized by some fundamental

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[1] Yusuf, A.B. (1982) *Nigerian Legal System: Pluralism and Conflict of Laws in Northern States*, National Publishing House, New – Delhi, India, p. 1
[2] The Constitution of the Federal Republic of Nigeria 1999 (as amended)
[3] Ibid
[4] Yusuf, A.B. *Op. Cit.*, p.1

differences and cleavages which are often sharp and persistent enough to threaten internal stability.[5]

It is, therefore, hardly surprising that the building of a single national community has been the guiding policy objective of the Nigeria's founding fathers. They had to face the crucial task of National development as a universal trend. They also had to commit themselves to wielding together their *mélange* of ethnic collectivities into a new and larger homogenous identity.[6] For these nationalist leaders committed to the task of unity and common identity, the transformation of these plural segments and their disparate institutions was no simple job.[7] Nevertheless, the task was both desirable and essential.

Prior to colonial era, most of these nation-states existed as independent political entities. After the amalgamation by Lord Lugard in 1914, Nigeria became a country and administrative entity until federalism was introduced in 1954, through the creation of the regions along the lines of the three geographical entities, namely, the Northern Region, the Southern Region and the Eastern Region.[8] In 1967, the regional arrangement was transformed by the creation of twelve States.[9] After a series of States creations, the Federal Republic of Nigeria now consists of 36 (thirty-six) States and a Federal Capital Territory (Abuja).[10]

Nigeria as a country is presently comprised of over 250 (two hundred and fifty) nation-states embracing various ethnic and linguistic groups.[11] These ethnic groups spread across the six main geo-political zones in the Country, namely, the North-West, the North-East, North-Central,

[5] Ibid, p.2
[6] Ibid.
[7] Ibid.
[8] Oba, A.A. (2002) Islamic Law as a Customary Law: The Changing Perspective in Nigeria, *Journal of International and Comparative Law Quarterly*, U.K, P.2
[9] Ibid
[10] Part 1 of first schedule of the 1999 CFRN (as amended)
[11] Oluyede, P. (1992) *Constitutional Law in Nigeria*, Evans, Lagos, P.21

the South-West, the South-East and the South-South. This has been held to make Nigeria one of the world's most populous and ethnically diverse Countries.[12]

Again, Nigeria is a Federation with three tiers of government namely, the Federal, the State and the Local governments, having or sharing legislative competence over different aspects of substantive and procedural laws.[13] Similarly, each of the three defunct regions had distinct and similar laws, though in many aspects, they exhibit important differences especially in matters pertaining to the administration of criminal justice. This is of significance in the Nigerian legal system. The creation of States has not completely obliterated the significance of the three original regions in Nigeria.[14] The laws applicable in the states grew out of the laws of the former regions.

By and large, legal pluralism has been the feature of law in Nigeria's Criminal Justice Administration. Apart from Islamic Criminal law which has been in the Country since the 11th Century, there is the English - styled criminal law otherwise known as the general criminal law, comprising of the Penal Code System and the Criminal Code System. These three types of laws correspond broadly, though not exactly, to the three religious groupings, namely, Islam, Christianity and traditional religion.[15] These have not co-existed in harmony and the experience has been one of tensions and conflicts. As Ladan rightly observed "the introduction of British Laws in Nigeria to co-exist with Islamic Law and the indigenous system of customary law has produced a tripartite system of law and that it is this type of multiple system of law that is often referred to as legal pluralism."[16]

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[12] Ladan, M.T. (2010) *Introduction to Jurisprudence: Classical and Islamic;* Malthouse Press Limited, Lagos, P.291
[13] Ibid,
[14] Oba, A.A. Op. cit, p.2
[15] Ostein, P. (2007) *Shari'a Implementation in Northern Nigeria, 1999-2006, a source Book*, Vol. IV, Spectrum Books Limited, Ibadan, P.3
[16] Ladan, M.T. Op. cit., p.292

It is clear from the above that, Nigeria is a Country facing conflict of law problems in its justice system which has been described as "International, inter-state, inter-local and inter-temporal."[17] This may be as a result of the existence of general and Islamic criminal justice system in the Country.[18] The Islamic Criminal Justice System, which was hitherto in existence before its abolishment with the coming into force of the Penal Code in 1960,[19] was re-introduced by some States in 1999 when Nigeria returned to civilian rule. As rightly observed by a scholar, "the eventual re-introduction of Islamic Criminal Justice System in Nigeria by some States might be akin to an attempt by a *bonafide* owner to re-claim a property which he had lost to an enemy following an encounter in the battle field."[20]

It must be noted that the sources of laws of any nation may be informed by its historical, cultural, social, religious, political, economic, or even ideological factors or a combination of them to the extent that these factors are often reflected in the form, substance, or application of such laws. For instance, while the laws of the United States of America (USA) safeguards the capitalist tendencies of the American people, the laws of the former Soviet Union espoused the promotion, propagation and defence of the communist ideology. In most cases, these factors are generated by internal phenomenon which the laws are designed to redress or in some instances they are product of external influences which makes the search for the source of national law beyound the national frontiers inevitable. This, without doubt, breeds legal pluralism. The Nigerian criminal justice system may be regarded as a child of combination of these factors, so

[17] Agbede, I.O (1991) *Legal Pluralism,* Odu'a Printing Company, Ibadan, pp.9-10

[18] General Law in this context refers to the received English Law, Penal/Criminal Procedure Codes and Criminal Code/Criminal Procedure Act.

[19] Cap 89, Laws of Northern Nigeria, 1963

[20] Sa'id, M. I, (2003) *Shari'a and the Constitution: Legal Issues in Perspective*; in Zakariyau, I.O (ed), *Digest on Islamic Law and Jurisprudence in Nigeria,* Legal Essays in Honour of Justice Umar Faruk Abdullahi, PCA (as he then was), Darun – Nur, Auchi, Nigeria, p.189

much so that its sources can be adequately classified into the general criminal law and the Islamic criminal law.

In the Nigerian criminal justice system, three interacting systems of laws are identified, namely, the Islamic Criminal Justice System (applying mainly to the Muslim population), the Penal Code/Criminal Procedure Code system applicable to the States in the North, and the Criminal Code/Criminal Procedure Act system applicable to the States in the South. Thus, ethnic heterogeneity, the introduction of Islamic law and the British colonial rule are largely held to be the principal sources of legal pluralism in Nigeria's criminal justice system. Although the three different bodies of law have also been complementing one another, their parallel existence in Nigeria generally, and more especially in Northern States,[21] has largely been characterized by conflicts and inconsistencies.

Recently, the Nigerian Government and indeed some States have seriously begun attacking the disruptive influences of legal pluralism in the administration of criminal justice in the Country. Lagos State, for instance, has been emphasizing unity in legal fields by harmonizing its criminal laws and legal institutions.[22] More recently, the Federal government of Nigeria has been paying particular attention to legal unity and legal development by calling for harmonisation of the criminal laws (both substantive and procedural) in the Country. Consequently, it enacted the Administration of Criminal Justice Act, 2015.[23] The aim of the Act is to abolish the dichotomy that presently exists between the Criminal Procedure Code[24] (applicable to the States in Northern Nigeria) and the Criminal Procedure Act[25] (applicable to the

[21] For example the *Shari'a* crises in Kaduna in the year 2000 is very instructive here.
[22] Lagos State has enacted the Administration Criminal Justice (Repeal and Re – engagement) Law No. 10 of 2011
[23] The Administration of Criminal Justice Act, 2015 became operational on 13th of March, 2015 when it was assented to by the then President of the Federal Republic of Nigeria, Dr, Goodluck Ebele Jonathan.
[24] Cap C42, Laws of the Federation of Nigeria (LFN), 2004.
[25] Cap C41, LFN, 2004.

States in Southern Nigeria) by repealing both Acts. But this is with respect to federal offences and offences committed in the Federal Capital Territory, Abuja.

Such legal changes will certainly lead to the development of a criminal justice suitable for the changing aspect of Nigerian State. The alterations will also serve to control the cleavages and conflicts inherent in the presence of numerous systems of legal traditions. Above all, the unity that is to be realized in the legal sphere will no doubt constitute a solid base for political unity which is so essential to the viable consolidation and continuity of Nigeria as a nation – State.

It must be stressed, at this juncture that, legal scholars have been paying limited attention to legal pluralism in the administration of Nigeria's criminal justice system. In the few works where this problem is broached,[26] however, the issue of internal conflicts of laws in criminal justice system and other related issues have largely been underscored. This research work is, therefore, partly conceived to fill this gap in our legal literature.

It may, therefore, not be out of place to assert that a plural society with persistent legal and institutional cleavages such as Nigeria will benefit more from judicial unity in diversity.

1.2 Statement of Research Problem

This research is conceived out of the fact that this area of law, just like every other, is not without some problems.

Nigeria is a Country with a multifarious legal pluralism in the administration of criminal justice, consisting of the Penal/Criminal Procedure Codes System, the Criminal Code/Criminal Procedure Act System and the Islamic Criminal Justice System, operating against the

[26] E.g. the works of Adebayo, A.M, Osamor, B, Agbede, T.O, Oba A.A, *et al.*

background of a three tier Federal system.[27] Although the three different systems have been complementing one another, their parallel existence have largely been characterised by conflicts and inconsistencies, as each system has its own peculiar Court structures and procedures.

The Federal system operating in Nigeria is another problem in the administration of criminal justice as the system makes it difficult for the enforcement of Islamic Criminal Justice. The Police and Prisons belong to Federal Government and states government don't have control over them. Thus, the facilities available in the Prisons may not be the same with those specified for the enforcement of some *Shari'a* based penalties. For instance, in *C.O.P v Sani Yakubu Rodi*,[28] when the accused was convicted for culpable homicide punishable with death the only facility available in the prison was that of death by hanging.

Again, another problem associated with Nigeria's criminal justice system has to do with conflict of jurisdiction between *Shari'a* Courts and general Courts in criminal trials. For instance, the enlargement of the jurisdiction of the *Shari'a* Court of Appeal to hear and determine criminal appeals from Upper *Shari'a* Courts, which hitherto went to High Courts, has generated some conflicts between the jurisdiction of the State's High Courts and the States *Shari'a* Courts of Appeal.

Based on the above problems, the following research question are formulated:

(1) How does legal pluralism operate currently in the Nigeria's criminal justice administration?

(2) Are there challenges under the current legal pluralism in the administration of criminal justice in Nigeria?

[27] Oba, A.A (2004) The *Shari'a* Court of Appeal in Northern Nigeria: The Continuing Crises of Jurisdiction. *The American Journal of Comparative Law.* Vol. 52, No. 4, p.859.
[28] Unreported SHC/KT/225/2001

(3) Whether it is possible to develop a modified uniform criminal justice administration which can accommodate the different systems that exist in Nigeria?

1.3 Aim and Objectives of the Research

In view of the above research questions, the aim of this research is to appraise the legal pluralism that currently operates in the criminal justice administration in Nigeria. The work, therefore, intends to achieve the following objectives:

(1) To identify the challenges or inadequacies generated by the interaction of the different legal and institutional frameworks in the administration of the criminal justice in Nigeria; and

(2) To appraise the possibility of evolving a less conflictual system for the administration of criminal justice that can accommodate the plural systems that exist in Nigeria. Such option for the future is between a modified uniform system and a parallel system wherein the management of the different systems will flourish as a semi-autonomous systems in the criminal justice administration in Nigeria.

1.4 Justification of the Research

The parallel existence of relatively disparate judicial units in Nigeria's criminal justice system suggests a simultaneous presence of conflict and complementation in the processes. This may have significant consequences for legal development generally as well as for related institutions, individuals and groups, and social change within the multi-cultural system at large.

Therefore, this research work is justified as it will certainly assist in developing a legal system suitable for the changing aspect of our plural society. It will also assist in controlling the cleavages and conflicts inherent in the presence of numerous systems of indigenous and extraneous legal traditions in our criminal justice system.

The research work will equally contribute to the body of literature on legal pluralism in the administration of criminal justice in Nigeria.

1.5 Scope of the Research

The scope of this research is limited to legal pluralism in the administration of criminal justice in Nigeria. Accordingly, the research is restricted to appraising the plural systems of law existing in Nigeria's criminal justice administration, namely, the Islamic Criminal Justice System, the general criminal justice system (Penal and Criminal Codes Systems) and other legal and institutional frameworks operating in the Nigeria's criminal justice administration.

1.6 Research Methodology

The methodology adopted in this research work is both doctrinal (i.e. library based) and empirical (i.e. field oriented research). Reliance was placed on textbooks, articles, journals, case law and materials sourced from the internet. Questionnaires were also administered to Respondents. Information gathered are analyzed for bringing forth recommendations and reforms.

Empirical method of research is a step by step procedure by means of which research data are collected, collated and analysed in order to test the hypothesis proposed for the study. Therefore, this research work focuses on the research design, sample and sampling procedure of the research, sources and method of data collection, validity and reliability of the research and method of data analysis. These are briefly discussed below:

1.6.1 Research Design

This study includes survey research and as such survey design becomes the best method used in conducting the research work. Survey research refers to the process or means of collecting information from a representative sample with a view to describing the true situation

as they unfold.[29] Therefore, this research work on "Appraisal of Legal Pluralism in the Administration of Criminal Justice in Nigeria" is a typical example of a survey research that uses survey design as a useful tool for appraising the problem in question by means of empirical evidence.

1.6.2 Sample and Sampling Procedure of the Research

No Concept is as fundamental to the conduct of research as that of Sample and Sampling procedure. This holds true as it is always difficult or almost impossible to study the whole population under consideration.[30] Accordingly, the study started by dividing the Country into two; namely the Northern and the Southern parts. Within each part, two geo-political zones were purposely selected as the representative of the whole. North-West and North-Central were selected to represent the North while South-West and South-East represents the Southern part of the Country.

Given the fact that the population of the survey from all the selected geo-political zones consists of 1925 respondents comprising of Law Enforcement Agents, Judges, Lawyers, Law Lecturers etc, multi-stage sampling technique has been utilized to select a sample of 10% of the respondents which stands at a total of 193 respectively.[31] Multi-stage sampling technique is a method of determining acceptable sample size which is usually set at 10% of the total population.[32]

1.6.3 Instrument of Data Collection

Both primary and secondary sources were utilized to generate data for this research work. The primary data were collected using questionnaires as the instrument of data collection.

[29] Olawepo, R. A. *et al* (2014) Data Collection Strategies in Social Sciences, in Jimoh, A. (ed), *Research Method in Social Sciences,* College Press, Ibadan, p. 74
[30] Ibid, p. 79
[31] Ibid, P. 81
[32] Ibid.

Questionnaire is one of the most important instrument of eliciting information from a large representative sample within a relatively short period of time.[33]

The questionnaire used consists of three major parts. The first part collected the socio-demographic data of the respondents. The second part obtained information on the respondents' general experience on legal pluralism in the administration of criminal justice in Nigeria, while the last part, in which *Likert* scale was used collected data on the respondent's perceptions of the problem of legal pluralism in the administration of criminal justice in Nigeria.

On the other hand, secondary data were sought from Textbooks, Journals, records of various judicial proceedings which were obtained from Law Reports and internet materials, among others.

1.6.4 Validity and Reliability of the Research Instrument

The validity or otherwise of an instrument of research is seen from the way it fulfils or fails to achieve the functions for which it is meant.[34] Therefore, validity deals with the degree of accuracy of the instrument of research in relation to what it measures. Reliability of research findings is highly dependent on the question of validity of the instrument used.[35] With respect to this research, therefore, the content validity was ensured by presenting the questionnaire to the Thesis Supervisors in the Faculty of Law with a view to ascertaining the measurability or otherwise of the variables therein. Items believed to be irrelevant to the study were discarded in favour of the relevant ones that were included.

1.6.5 Method of Data Analysis

The method of data analysis consists of both descriptive and inferential statistics. Frequency count and percentages were used as the descriptive statistics to achieve objectives one

[33] Ibid, p.78
[34] Ibid, p.77
[35] Ibid.

and two, while the data obtained via *Likert* scale were used to appraise/assess the perceptions of the respondents. On this basis, the researcher made inference on the actual situation surrounding the question of legal pluralism in the administration of criminal justice in Nigeria.

1.7 Literature Review

The subject matter of this research has attracted the attention of writers and scholars both local and foreign. The research work will, therefore, review some earlier works on the area. The literature includes, but not limited to, textbooks and articles in journals.

Chukkol, K.S[36] in his book titled "The Law of Crimes in Nigeria" aptly discussed burning issues bothering on the plural nature of criminal law in Nigeria. For instance, he extensively discussed the general principles and inchoate offences, general defences to criminal liability, offences affecting human body, offences affecting property and offences against public order as contained in the Penal Code, the Criminal Code and the newly introduced *Shari'a* Penal Codes.[37] He, thereupon, gave the differences among the three legal traditions in terms of substance, and concluded that the introduction of *Shari'a* Penal Codes by some State in Northern Nigeria has, no doubt, brought some changes on the concept of crimes in Nigeria.[38]

The discussion in the author's book directly touches on the topic of this Thesis. However, the limitation of the author's work is the fact that it omitted to discuss a very important aspect of legal pluralism in criminal justice system, namely, the procedural criminal laws. This may be as a result of the fact that the author's work was based on substantive criminal laws. The Institutional framework in the administration of criminal justice such as the Police, the Courts and the Prison were also not treated by the author.

[36] Chukkol, K.S, op. cit. pp. 1-570
[37] Ibid, Chapters 1- 6
[38] Ibid, P.494. He cited Hudud, Qisas offences as the new concepts

Yusuf, A.B,[39] in his book titled "Nigerian Legal System: Pluralism and Conflict of Laws in the Northern States" presented an overview of legal pluralism along with a detailed description of the sources, structure and application of Islamic law in Northern Nigeria.[40] He also examined substantive and procedural laws of crime in three indigenous societies, and submitted that ethnic legal traditions, in general, seem to play a remarkable commonality in a number of fundamental respects.[41] He thereupon discussed the structure and historical development of General Law, with particular reference to some internal judicial reforms which are yet to eliminate entirely the inadequacies of the plural legal system in Nigeria.[42]

The discussion on the work of the author is, no doubt, useful and serves as a guide in the preparation of this research work. However, the work was done at a time when the re-introduction and codification of Islamic Criminal Law in Nigeria has not been contemplated. Therefore, many developments in our plural legal system have occurred after the work has long been concluded.

Adebayo, A.M,[43] in his book titled "Administration of Criminal Justice System in Nigeria" aptly appraises the plural legal and institutional framework for the administration of criminal justice system in Nigeria. Accordingly, the author discusses the law enforcement agencies such as the Police and the Prison.[44] He equally discusses the hierarchy and jurisdiction of the criminal Courts in Nigeria[45] and office of the Attorney-General (both Federal and States).[46]

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[39] Yusuf, A.B, op. cit pp.1-242
[40] Ibid, pp.18 - 53
[41] Ibid, pp.55 - 85
[42] Ibid, pp. 88 - 126
[43] Adebayo, A.M. (2012) *Administration of Criminal Justice System in Nigeria,* Princeton Publishing Co., Lagos pp. 1-541
[44] Ibid, Chapters 2-4 and 15
[45] Ibid, Chapters 10-12.
[46] Ibid, Chapter 7.

There is no doubt that the book is very useful in the preparation of this Thesis. However, the author only discussed the provisions of the Criminal Code, the Criminal Procedure Act and the Administration of Criminal Justice Law of Lagos State, 2011, thereby ignoring the provisions of the Penal Code and the Criminal Procedure Code notwithstanding that these Codes are operational in Nigeria. The author also ignored the provisions of the *Shari'a* Penal Codes and the *Shari'a* Criminal Procedure Codes of some States that re-introduced Islamic Criminal Justice System in Nigeria. These Codes are parts and parcels of legal pluralism in the administration of criminal justice in Nigeria. This research work intends to fill this gap.

Osamor, B.[47] in his book titled "Criminal Procedure Laws and Litigation Practices" extensively analyses the procedure of criminal litigation in the Nigerian justice system. The author discussed exhaustively the general criminal justice system and the differences adopted by the Criminal Procedure Code and the criminal procedure Act.[48] Interestingly, the Islamic Criminal Justice System was ignored by the author even though the system has been re-introduced in Nigeria. The Islamic Criminal Justice System forms part of legal pluralism in criminal justice administration in Nigeria.

In a book titled "Islamic Criminal Law and Practice in Nigeria", Sa'id, M.I.[49] extensively appraises the Islamic Criminal Justice System in Nigeria by analysing the *Shari'a* Penal Codes and *Shari'a* Criminal Procedure Codes of Sokoto and Zamfara States , together with the *Shari'a* Courts and their criminal jurisdiction.[50] The author also examines the Islamic Concept of Justice

[47] Osamor, B. (2012) *Criminal Procedure Laws and Litigation Practices*, Dee-Sage Printers, Manchester-UK, pp. 1-541.
[48] Ibid.
[4949] Sa'id, M.I. (2011) *Islamic Criminal Law and Practice in Nigeria*, Usman Danfodio University Printing Press, Sokoto, pp. 1-247.
[50] Ibid, pp. 135-181.

in a manner consistent with the principles of human rights, fair hearing and equality before the law.[51]

However, the author's work was generally limited to the Islamic Criminal Justice System as applied in Sokoto and Zamfara States respectively, thereby ignoring other States who have re-introduced the system, such as Kano, Katsina and Kaduna States, etc.

Agbede, I. O[52] in his book titled "legal pluralism" extensively discussed the problems posed by diversity of laws not only in Nigeria but in English speaking Africa South of Sahara. The author attempted to reveal the defects of the existing choice of law and suggested alternative rules and offer proposal for ultimate unification of the diverse systems of law in Nigeria.[53] He has also taken the opportunity to discuss the rules limiting the application of Customary/Islamic Laws.[54] He equally called on the need to improve on the existing choice of law and choice of Court rules and also advocated the unification of the diverse systems of law.[55]

This also makes the work of the author very relevant and useful in the preparation of this Thesis. However, the work laid more emphasis on pluralism in civil law than in criminal law. Beside this, the work has been concluded long before the reintroduction and eventual codification of Islamic criminal law by some States in Northern Nigeria.

Ostein P.[56] in his book traced the history of legal pluralism in Northern Nigeria, during the colonial era. He identified Islamic Criminal Law, the Criminal Code (corresponding in general terms to English Criminal Law), and the native law of the many ethnic groups as being

[51] Ibid, pp. 77-129.
[52] Agbede, I.O, Op. cit pp.1-300
[53] Ibid, Chapters 6,7,8 and 9
[54] Ibid, Chapter 4
[55] Ibid, Chapter 13
[56] Ostein P. (2007) *Shari'a Implementation in Northern Nigeria 1999-2006*, A Source Book, Vol. I-V, Spectrum Books Limited, Ibadan, Nigeria.

applied in Northern Nigeria during the colonial era.[57] He also traced the history of the re-introduction and codification of *Shari'a* Criminal Law by some States in Northern Nigeria, and the reintroduction of Customary Courts in Kaduna State.[58]

The brief mention of the work is enough to show that the work is both relevant and of great help in understanding the nature of legal pluralism in Northern Nigeria. However, the work has laid more emphasis on the implementation of *Shari'a* thereby neglecting the general law, consisting of the Penal and Criminal Codes Systems with their corresponding procedural laws.

Ladan, M.T,[59] extensively discussed the nature, problems and challenge of legal pluralism in Nigeria. He observed that the introduction of British Laws in Nigeria to co-exist with Islamic laws and the indigenous systems of customary law has produced a tripartite system of law,[60] and that the resultant legal pluralism has created uncertainty and lack of uniformity in the administration as well as teaching of the law, more especially Islamic and Customary Laws.[61] He thereupon called for the integration of the multiple systems of law and the unification of the diverse systems of Court.[62] He finally analyzed the development and application of *Shari'a* in Northern Nigeria; issues, challenges and the impediments to the application of *Shari'a*.

There is no doubt that the work of the author, as it relates to the topic of this Thesis, is a good source of instruction. However, the author fails to discuss legal pluralism in the administration of general criminal justice system (Penal and Criminal Codes System).

Obilade, A.O,[63] in his book titled "The Nigerian Legal System" aptly discussed the plurality of the Nigerian legal system. He identified complexity as one of the characteristic

[57] Ibid, Vol. IV, p.3
[58] Ibid, Vol. I, p.25
[59] Ladan M.T, Op. cit, Chapter 17, pp.291-334
[60] Ibid, p.292
[61] Ibid, p.294
[62] Ibid, pp.295-296
[63] Obilade, A.O (2005) *The Nigerian Legal System,* Spectrum Books Limited, Ibadan, part 1 and 3

feature of Nigerian Legal system and observed that the country consists of a Capital Territory and 36 States, each of which has a legal system. In addition, there is a general federal legal system applicable throughout the Country. The complexity of the legal system is further revealed by the application of local custom as law in each State. For instance, a small town in a state may have a system of customary law (both criminal and civil) different in some respect from the customary law system of a neighboring town even if all the indigenous inhabitants of both towns belong to the same tribal group.[64] Thus, within the legal system of a State, there may be a multiplicity of legal systems. In other words, there are several legal systems within the complex legal system of Nigeria.

However, the limitation of the author's work lies in the fact that, it is too general in nature. The author tries to present legal pluralism in Nigeria's justice system in a general form which is, legally speaking, inexhaustive of the subtle and divergent approaches of scholars on the subject matter.

Asein, J.O[65] in his book traced the origin of legal pluralism in the Nigerian legal system to external influence. He observed that Nigerian law has borrowed heavily from diverse external sources beginning with the influence of Islamic Law in Northern Nigeria as a bye-product of the nineteenth-century Fulani Jihad. Consequently, Islamic law has today supplanted the indigenous customary laws of many communities in that part of the Country following the acceptance of the Islamic faith.[66] English law also remains a major source of Nigerian law following the colonization of Nigeria by the British. For instance, while the Criminal Code[67] is modeled after

[64] Ibid, p.4
[65] Asein, J.O (2005) *Introduction to Nigerian Legal System*, 2nd Edition, Ababa Press Limited, Lagos pp.1-325
[66] Ibid, p.5
[67] Cap.C38 LFN 2004

that of Queensland in Australia, the Penal Code,[68] applicable in the North, is fashioned after the Sudanese Penal Code.

The limitation of the work, however, is the fact that conflict of law situation in the administration of criminal justice has been largely ignored.

Malemi, E.[69] in his book titled "The Nigerian legal system: Text and Cases" observed that Nigeria operates an integrated legal system, which is made up of plurality of laws, or different systems of laws, such as Islamic law, Customary law, English law and Statute law.[70] The author submitted that Nigeria is a multi-ethnic, multi-lingual and multi-cultural Country, with each of these groups having customs which may be similar, but are not exactly the same.[71] This makes pluralism in the administration of justice in Nigeria inevitable.

Though the author, in a simple, flowing and informative manner, presents the Nigerian legal system by looking at the laws, Courts and administration of justice, nonetheless he did not discuss the Islamic Criminal Justice System as part of pluralism in Nigerian legal system.

Tobi, N.[72] in his book titled "Sources of Nigerian Law" identified conflict of law situation in Nigerian legal system. He observed that the Country is a multi-lingual, with diverse, varied and various ethnic groups, culture and traditions.[73] The sociology of the Country is not only complex, but highly diversified and heterogeneous. The author submitted that this type of society certainly gives rise to conflict in its laws, particularly when the legal system in the highly diversified society operates a plurality of laws.[74] However, the lacunae apparent in the book is

[68] Now Cap. 110, Laws of Kaduna state, 1991
[69] Malemi E. (2009) *The Nigerian Legal System; Text and Cases,* Princeton Publishing Company, Lagos, pp.1-484
[70] Ibid, p.93
[71] Ibid, p.92
[72] Tobi, N. (1996) *Sources of Nigerian Law,* MIJ Professional Publisher Ltd, Lagos, pp.1-189
[73] Ibid, p.153
[74] Ibid

that it was published shortly before the occurrence of some legal changes owing to the return of civilian rule in the Country, more, especially in Northern Nigeria.

Park, A.E[75] in his book titled "Sources of Nigerian Law" aptly discussed the sources of Nigerian law and observed that they (sources) fall under three categories, namely:

1. English law which consists of the general law of England that was introduced or "received" into Nigeria;
2. The products of the local institutions established originally by the British authorities, and which consists local legislation and Nigerian case law; and
3. Customary law, otherwise referred as the native law and custom.[76]

The author also analyzed in detail the internal conflict of laws between the three legal traditions existing in the Country, namely, the English law and the customary law (which the author erroneously thought includes Islamic law).[77]

However, the defect in the author's book is that the importance of Islamic law as one of the plural source in the Nigerian legal system has largely been underscored. This may be due to the fact that the book was concluded long before the reintroduction of Islamic Penal System in the Country.

Ocheme, P[78] in his book titled "The Nigerian Criminal Law" discussed pluralism in the Nigerian Penal System. The author noted that the bodies of criminal laws in Nigeria have assumed the dimensions of separated and disjointed legislation variously enacted by the Federal

[75] Park, A.E (1986) *Sources of Nigerian Law,* Tenth Edition, African Universities Press Limited, Lagos, pp.1-154
[76] Ibid, pp.1-97
[77] Ibid, pp.98-131
[78] Ocheme, P. (2006) "*The Nigerian Criminal Law,* Liberty Publications Ltd, Kaduna, Pp.1-378

and State governments.[79] He identified three (3) principal sources of what constitute the major operational Codes of crime in Nigeria viz:

1. The Criminal Code, (as may be amended) applicable in all the 17 States of the Southern part of Nigeria, with the exception of Lagos State;
2. The Penal Code (as may be amended) applicable in the Federal Capital Territory and the 19 States of the Northern part of Nigeria; and
3. The *Shari'a* Penal Codes, for those States where Islamic Penal System has been reintroduced.[80]

However, the book did not analyze any of the *Shari'a* Penal Codes notwithstanding that they have been codified years before the author concluded his work.

Oba, A.A.[81] in a Paper titled "The *Shari'a* Court of Appeal in Northern Nigeria: The Continuing Crises of Jurisdiction" critically looked at legal pluralism from the point of view of jurisdiction of the *Shari'a* Court of Appeal in terms of subject matter, persons, laws and location. The author also analyzed the controversy surrounding the jurisdiction of the Court from the religious perspectives of both Christians and Muslims, as this divide formed the bedrock of the controversies relating to the Court.[82] He finally proffered some possible solutions to the jurisdictional crises of the Court. However, the author ignored the other two legal traditions operating in the Country, namely, the customary Courts and the general Courts.

Woodman, G.R[83] in an article title "Legal Pluralism and the Search for Justice" extensively discussed the search for justice in Africa in relation to legal pluralism. To him, a core

[79] Ibid, p.15
[80] Ibid
[81] Oba, A.A. op. cit. pp. 859-900
[82] Ibid, p.867
[83] Woodman, G.R. (1996) Legal Pluralism and the Search for Justice, *Journal of African Law*, Vol. 40, No. 2 Cambridge University Press, U.K, pp.152-167

difficulty in the search for justice was the coexistence of different social normative systems, with different ideologies.[84] The author identified indirect rule as an institutional device involving a form of legal pluralism. However, the author's work is too general in nature.

The above discussion on the literature is, by no means, exhaustive. However, the area covered by the topic, just like all other areas of the law, enjoys dynamism. Therefore, notwithstanding the contributions of the various authors on the topic, this research will improve upon the literature by appraising it in a much wider perspective. To this end, available materials both local and foreign, which are relevant to the topic, will be used for analysis and also for bringing forth suggestions and recommendations.

1.7 Organisational Layout

The research work has been broken down into seven chapters as follows:

Chapter One focuses on the preliminary matters upon which the research work is based. This is in order to ensure proper understanding of the work. Accordingly, the chapter discusses the general introduction, statement of the problem, aim and objectives of the research, justification of the research, scope of the research, research methodology, literature review and organisational layout.

Chapter Two deals with conceptual analysis of some key terms that are vital to this research work. It, therefore, discusses terms such as legal pluralism, administration of justice, Criminal Justice System, the Islamic Criminal Justice System and the *Shari'a* Penal Code, among others.

Chapter Three appraises the General Criminal Justice System in Nigeria. It, therefore, discusses the Penal/Criminal Procedure Codes and Criminal Code/Criminal Procedure Act, their history and characteristics. The chapter also discusses the harmonization or unification of Penal

[84] Ibid, p.152

and Criminal Codes in Nigeria and also appraises the Administration of Criminal Justice Act, 2015.

Chapter Four analyses the Islamic Criminal Justice System in Nigeria, its history, and the *Shari'a* Penal Codes of some States and their characteristics. The chapter also discusses challenges in the implementation of Islamic Criminal Justice System in Nigeria and the prospects of its full application.

Chapter Five analysis the plural Institutional frameworks in the administration of Criminal Justice System in Nigeria. The chapter, therefore, discusses the Courts with criminal jurisdiction in Nigeria, the Nigerian Police Force, the Prison and the *Hisbah* Corps, among others.

Chapter Six consists of data presentation and analysis. Accordingly, it analyses the socio-demographic characteristics of the respondents, general knowledge among the respondents on legal pluralism and the respondents' responses on legal pluralism in the administration of criminal justice in Nigeria.

Chapter Seven concludes the research work and consists of a summary of what have been discussed in the previous Chapters. It brings out the major findings and proffers some recommendations.

CHAPTER TWO

CONCEPTUAL ANALYSIS OF SOME KEY TERMS

2.1 Introduction

This chapter seeks to conceptually analyse some relevant key terms that are germane to this research work. Such terms include Legal Pluralism, Administration of Justice, Criminal Justice System, Islamic Criminal Justice System and the *Shari'a* Penal Code, among others.

2.2 Legal Pluralism

The idea of "legal pluralism" emerged in the early 1970s as a counterbalance to the dominant notion of "Legal centralism". Legal centralism denotes that law is and should be the law of the State, uniform for all persons, exclusive of all other law, and administered by a single set of State institutions.[1] In lieu of such State-centric and monolithic conceptions of law, advocates of legal pluralism claimed that law is not a single system necessarily linked to the state as a unified entity, but rather a complex of overlapping systems or normative orders.[2]

Legal pluralism, therefore, may be defined as the differential retention of some relatively distinctive legal institutions by individual groups and organizations within a single society.[3] In other words, a legal system is pluralistic if there exists two or more interacting judicial sovereignties within a given community, region, State or political entity.

The above definition presupposes that legal pluralism can be a feature of both simple and complex societies, identifiable in any given social environment which manifest some form of hierarchical politico-social structure.

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[1] Griffiths, J. (1986) *What is legal pluralism?* Journal of Legal pluralism, vol. 24, p.3.
[2] Cotterral, R. (2006) *Law, Culture and society: Legal Idea in the Mirror of Social Theory*, Ashgate, p. 36.
[3] Yusuf, A.B. (1982) *Nigerian Legal System: Pluralism and Conflict of Laws in the Northern States*, National Publishing House, New Delhi, India, p.13.

A complex society, often termed as plural society is generally viewed as one characterized by cultural diversity and social multiplicity or heterogeneity, arising largely from the contact and admixture of different ethnic groups.[4] This view has been equated with a "conflict model" of pluralism and differs from an "equilibrium model" which focuses on the dispersion of power between groups that are consensually bound together by cross-cutting loyalties and by common values, or by a competitive balance of power.[5]

Most plural nations of the world seem to possess elements of these two models in varying degrees. The Nigerian State is quite representative of the "conflict model" of plural society, although elements of mutually adaptive or consensual relationship between different sections of its population and institutions are also present.

Scholars, such as Kuper, Smith *et al*, have made attempts to distinguish legal, cultural, social, religious and structural pluralism.[6] In essence, all these and other forms of pluralism are not totally independent of one other. Analytically, they refer to various levels of pluralism which differ in their forms, properties, intensity and range. The fact that they are interrelated and interlaced with one another, means that each is necessarily implicated in the other(s).

Recently, the idea of "multiplicity of legal systems" within a geographically delimited society, and the relationship of the encapsulating society's law to the legal systems of sub-units or associations was formulated.[7] It is argued that within individual sub-groups some radically different bodies of law may be found.[8] This implies that, even within the most homogeneous society, several legal systems may be operating, "complementing, supplementing, or conflicting" with each other.

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[4] Ibid
[5] Ibid
[6] Ibid
[7] See Obilade, A.O. (2005). *The Nigerian Legal System*, Spectrum Books Limited, Ibadan, p. 4.
[8] Yusuf, A.B, op cit. p. 14.

The legal system of any given group may thus serve to complement or supplement the legal organization of other sub-groups within the large political framework. In most cases, however, the jural structures, rules, and sanctions of sub-groups are almost always in conflict (or complementation) with one another and with the dominant (or national) legal system.

Early scholars of legal pluralism focused, in their research, on one specific type of legal pluralism that is typical of colonial and post-colonial settlings. This type of legal pluralism exists when a sovereign commands different bodies of law for different groups of the geographical location.[9] As demonstrated by Hooker, B. *et al*, the allocation of different bodies of law to different groups of the population usually involves the incorporation of local or indigenous bodies of law within the colonial legal system.[10] Such incorporation, in turn, produces a variegated and polycentric legal system and creates a situation of "State Legal Pluralism,[11]" that is, legal pluralism that exists within the parameters of the State apparatus.

The significance of this type of legal pluralism was, however, challenged by John Griffiths who argued that this type of legal pluralism should be considered a "weak" type, lacking any real social significance.[12] It is weak because the different bodies of law are all administered and controlled by one overriding legal system, namely, State law. Thus, scholars who describe such situation as legal pluralism embrace a normative or doctrinal point of view, but not an empirical one.[13] In contrast, "strong" and "social-scientific" legal pluralism is visible when two or more legal orders exist within a single social field, and these legal orders are

[9] Sartori, p. and Shahar, I. (2012) *Legal Pluralism in Muslim Majority Colonies: Mapping the Terrain*, Journal of Economic and Social History of the Orient, p. 638.
[10] Ibid.
[11] Woodman, G.R. (1998) *Ideological Combat and Social observation: Recent debate about legal Pluralism;* Journal of Legal Pluralism, vol. 42, pp.21-59.
[12] Sartori, p. and Shahar, I. op cit. p. 638.
[13] Ibid.

unrecognized and uncontrolled by the State.[14] For instance, legal pluralism in the strong sense occurs when "private legal systems" developed by corporations or by semi-autonomous social fields; exist along state law.

Interestingly, many scholars of legal pluralism have chosen to shift their focus from the study of plurality within State legal systems to the study of the relations between State law and non-State law. This move sparked a heated debate, which focused on definitional and conceptual issues such as whether it is theoretically and analytically admissible to speak of non-State law? If so, what distinguishes law from normative orders that are not legal? Can legal pluralism within a legal system be equated with legal pluralism between legal systems?[15]

This debate on the conceptualization and definition of legal pluralism eventually receded without leading to definitive conclusion. Nonetheless, socio-legal scholars have continued to endorse legal pluralism, especially as it relates to criminal justice system, as a key analytical construct and to conduct investigation into it. Consequently, the literature on legal pluralism is plagued with different, yet often partly overlapping, concepts, terms and typologies. Among the partially overlapping conceptualization is the legal pluralism in the strong/week sense.

The last two decades have witnessed further extension of the concept, which is currently used to discuss and analyse Pluralism stemming from globalization and trans-nationalism.[16] Thus legal pluralism has evolved into a rich and diverse field of study.

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[14] Galanter, M. (1983) *Justice in many Rooms: Courts, Private ordering and indigenous Law;* Journal of Legal Pluralism, vol. 19, pp.1-47.

[15] Tamanaha, B.Z. (1993). *The folly of the 'Social Scientific' Concept of Legal Pluralism;* Journal of Law and Society, vol. 20 pp. 192-217. See also Woodman , G.R. (2002) *Who is Afraid of Legal Pluralism*, Journal of Legal Pluralism and Unofficial Law, Vol. 47, pp.37-82.

[16] Tamanaha, B.Z (2007) *Understanding Legal Pluralism: Past to Present, Local to Global*, Sydney Law Review, Vol.30, pp. 375-411.

2.3 The Administration of Justice

To maintain internal peace and defend against external aggression are the two main functions of a State in the modern sense.[17] Internal peace requires the rights guaranteed by law are fully protected. If there is any violation there must be an arrangement where the complainant may go and seek his/her remedy. To provide justice to its citizens is the basic responsibility of the State.[18] To achieve this practically, each state is to establish institutions to run its affairs, and one such institution is the judiciary. It is established to administer justice among the people.

Administration of justice, therefore, means management of the judicial system.[19] Its main objective is to guarantee the freedom of individuals and to give protection to their rights. A person dejected from all sides knocks at the door of justice. Hence, the acquisition of justice is the natural desire of a human being.

In another perspective, administration of justice is defined to mean the process and structure which allows conflicts between parties to be settled by a body dedicated to that purpose.[20] Advancement and progress of every society depends upon the good administration of justice. Thus, where administration of justice is destroyed the society also perishes. Administration of justice, therefore, entails the maintenance of rights within a political community by means of the physical force of the State.[21]

With particular reference to criminal law, administration of justice has been described as a compendious term that stands for all complexes of activities that operate to bring the substantive law of crime to bear, or to keep it from coming to bear, on persons who are suspected

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[17] Mughal, M.A. (2012) Comparative Study of Administration of Justice in the West and Islam; available at SSRN: http://ssm.com/abstract; Accessed on 7/9/2015 at 9:18pm.
[18] Ibid.
[19] Ibid.
[20] www.wikiquote.org/wiki/administrationofjustice; Accessed on 7/9/2015 at 9:30 pm
[21] Garner, B.A. (2009) *Black's Law Dictionary;* Ninth Edition, West Publishing Co. p. 50.

of having committed crimes. It refers to the rules of law that govern the detection, investigation, apprehension, interviewing and trial of persons suspected of crime and those persons whose responsibility it is to work within these rules.[22] It is, therefore, not confined to the courts. It encompasses officers of the law and others whose duties are necessary to ensure that the courts function effectively. The concern of the administration of justice is, largely, the fair, just and impartial upholding of rights, and punishment of wrongs according to the rule of law.

2.4 The Criminal Justice System

The theory of systems consist of an arrangement of components designed to accomplish particular objectives according to plan.[23] These components comprise of the people and institutions involved in achieving a desired goal or objective. A system, as noted by a scholar, is an organized or complex whole, an assembly or combination of things or parts forming a complex or unitary whole.[24] It is a set of interrelated elements.

A major operating characteristic of a system is that, what affects the function of one part can potentially affect other parts, as well as the entire system.[25] The criminal justice system is a legal entity. It is the inter-relationship of criminal justice elements comprising the Police, Courts and the Prisons, otherwise referred to as the correctional facilities.[26] It is a loose federation of agencies, each separately budgeted, each drawing its manpower from separate wells, and each a professional unto itself.

Criminal justice therefore, is a system of institutions and practices of government whose main focus is to mitigate and deter crime, uphold social control and sanction individuals who

[22] Per Borins, J. in *R. vs Sampson* (1982) 37 O.R, 237.
[23] Ojukwu, E, et al. op.cit. p.4.
[24] Schoderbak, P.P. (1986) *Management Systems,* New York, Wiley, p. 113.
[25] Dambazau, A.B. (2007) *Criminology and Criminal Justice*, Spectrum Books Limited, Ibadan, p. 173.
[26] Ibid.

violate the set laws of a specific State with rehabilitation and criminal penalties.[27] Criminal justice organization and administration involve a set of defined laws that assist in the smooth running of the State. The system ensures that citizens adhere to the set laws while providing various penalties that should be meted on the law breakers.[28] One major role of the criminal justice system is to ensure that all people are treated equally and eliminate oppression of the poor by the few elites in the society.

Generally, criminal justice can be described as a system used by government to maintain social control, prevent crime, enforce laws, and administer justice.[29] The law enforcement agencies such as the Police, the Courts and the correction Centres or Prisons, are primarily charged with these responsibilities. In another perspective, criminal justice system is defined as the collective institutions through which an accused offender passes until the accusations have been disposed of or the assessed punishment concluded.[30] In a broader sense, criminal justice connotes the machinery, procedures, personnel, and purposes which have to do with the content of the criminal law.[31] It covers the arrest, trial, conviction and disposition of offenders.

It is interesting to note that criminal justice can be understood as either a legal process or as an academic discipline. As demonstrated by Dambazau,[32] when viewed as a legal process, it involves the procedure of processing the person accused of committing a crime from arrest to the final disposal of the case. As an academic discipline, criminal justice studies provide a thorough understanding of the criminal justice system in relation to the society.[33]

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[27] Adebayo, A.M. (2012) *Administration of Criminal Justices System in Nigeria,* Princeton Publishing Co. Lagos, p.2.
[28] Ibid.
[29] Nwako, P.O. (2010) *Criminal Justice in the Pre-Colonial, Colonial, and Post-Colonial Eras,* University Press of America, Lanham, Maryland, p.5.
[30] Garner, B.A; op.cit p. 431
[31] Rush, G. (1977) *Dictionary of Criminal Justice,* Holbrook Press Inc. p. 36.
[32] Dambazau, A.B, op. cit. p. 174.
[33] Ibid.

Whether viewed as a legal process or as an academic discipline, the fact remains that the success of the criminal justice system depends on the level of efficient performance of responsibility imposed on the agencies involved in its delivery. Some of the problems confronting the administration of criminal justice in Nigeria are traceable to the failure by criminal justice agencies to perform their legal responsibilities properly as they ought to have done. A lot must, therefore, be done to enhance the efficiency of these agencies to enhance their criminal justice delivery.

It must be stressed that when processing the accused through the criminal justice system, governments must operate within the framework of laws that protect individual rights. This is because the pursuit of criminal justice, like all forms of justice, is predicated on fairness and due process which is essentially the pursuit of an ideal.

It must also be pointed out that the administration of criminal justice has always been with mankind from time immemorial. This is because crime is as old as the existence of man on earth. For instance, prior to the advent of the British, the geographical entity now known as Nigeria was made up of several settlements. Each of the settlements had its own method of administering criminal justice to its citizens.[34] At that time, customary criminal law applied in the settlements now constituting most part of southern Nigeria. In the North, the Islamic criminal law of the Maliki School applied.[35]

When the British came, however, they introduced their own system of criminal justice which, in most cases, abolished the indigenous system of laws. The customary criminal law which hitherto existed in southern settlements was abolished in phases in each of the

[34] Adebayo, A.M. op. cit. p.3.
[35] Idris, D.A. (2010) *An Analysis of the Law of Homicide in Islamic Law and Its Application in Nigeria; U*npublished LL.M Thesis, Faculty of Law, Ahmadu Bello University, Zaria, P. 1.

settlements.[36] This was made possible because, except in the North where Islamic criminal law as enshrined in the Holy *Qur'an* and *Sunnah* as well as other subsidiary sources was applicable, customary law was largely unwritten, changes from time to time and varies from one settlement to the other.

The successive Nigerian constitutions, from 1960 independence Constitution to date, provides that crimes and punishment must be specified in a written law.[37] The Court of Appeal, in re-emphasizing this provision in the case of *Ifeagwu v. Federal Republic of Nigeria and others,*[38] held that it is sacrosanct that no person shall be liable to be tried or punished in any Court in Nigeria except under the clear and unambiguous provisions of a written law.[39] Islamic criminal law, though initially abolished, is now codified and applicable in Nigeria.

It may well be asserted that the British system of criminal justice introduced into Nigeria, though well organized and effective compared to the largely unwritten customary criminal justice system which it replaced, is nonetheless complex and difficult. The indigenous criminal justice system, comprising of Islamic criminal law and customary criminal law, is simple, direct and easy to enforce.

Suffice it to say that Nigeria now has a plural criminal justice system comprising the general criminal law (Penal and Criminal Codes with their corresponding Criminal Procedure Code and Criminal Procedure Act) and the Islamic criminal law comprising the *Shari'a* Penal Codes and the *Shari'a* Criminal Procedure Codes. This however, cannot be said to be devoid of problems, difficulties and setbacks, despite the well-defined structure of the criminal justice system.

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[36] Adebayo, A.M. op.cit. p.4.
[37] See Section 22(1) of the CFRN 1963 and Section 36(12) of the CFRN 1999, for example.
[38] (2001) WRN 86 at 105.
[39] Per Aderemi, J.C.A (as he then was).

2.5 The Islamic Criminal Justice System

The Islamic Criminal Justice System is defined to mean the methods by which the society is guided by what Allah (S.W.T) commanded in dealing with those who are accused of committing crimes.[40] The system is mainly concerned with law enforcement such as the Police, the judicial process such as the Court, and the corrections such as the Prison, among others. In the same vein, Islamic criminal laws signify the body of laws made by Allah (S.W.T), His Prophet (S.A.W) and those in authority in accordance with the *Qur'an* and *Sunnah*, defining offences, regulating how suspects are investigated, charged, tried and punished if convicted.[41]

It must be pointed out that the ultimate test of efficacy of criminal justice administration under any legal system is the quality of security its subjects enjoy.[42] The quality of this security can be measured by the means of the sustenance of the subjects' rights to life, respect for the dignity of his person, personal liberty, private and family, to freedom of thought, conscience and religion, and to freedom from discrimination.[43] Therefore, the extent that criminality and other impediments are curbed so as not to destroy or impoverish that quality is also another quality to its credibility.

The subject of law in Islamic criminal justice system is man, to whom the Heavens and Earth, and all that is between them are subjected for his utility. The ingrained passion in man makes him intrude upon other's rights.[44] He thus endangers public security and interest. It is therefore, necessary to have a deterring means, which can restrain him from any transgression or oppression. Islamic criminal justice system serves this purpose in a way that a divine justice is

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[40] Muhammad, M.A. (2007) *Overview of the Administration of Shari'a Penal System in Nigeria*, Ahmadu Bello University Journal of Islamic Law, Vol. iv-v, p.169.
[41] Ibid.
[42] Zubair, A. (2014) *The process of Islamic Criminal Justice p*. 34, available at www.illorin.edu.ng/publications; Accessed on 6/2/2015 at 8.35 pm.
[43] Ibid.
[44] Ibid, p.35.

aimed for both the accused person and the victim.[45] Thus, under Islamic criminal process the circumstances must be such that justice is meted out to the right person.

2.6 The *Shari'a* Penal Code

The *Shari'a* Penal Code is described as a compilation of criminal laws as decreed by Allah (S.W.T) and His Apostle (S.A.W) in both the *Qur'an* and *Sunnah*, usually defining and categorizing offenses and setting forth their respective punishment.[46] It is a Penal Code that has incorporated offenses and their respective punishment as revealed by Allah (S.W.T) via the process of modern legislation, through which the States Houses of Assembly enact the Codes as State laws.[47] The essence is to comply with the requirement of the 1999 Nigeria Constitution[48] which commands that crimes and punishments must be in written form. Written law has been defined to mean an Act of the National Assembly, law of a State or any subsidiary legislation or instrument under the provision of a law.[49]

This Chapter has so far provided conceptual analysis of some key terms that are relevant to this research work. These terms, however, are by no means exhaustive. Other terms such as the Penal and the Criminal Codes, the Criminal Procedure Code and the Criminal Procedure Act etc. may frequently be mentioned in this research work wherever necessary.

[45] Zubair, A. (1994) *Islamic Law; Between Severity and Deterrence,* KWLR Vol. 3 pp. 3-4
[46] Muhammad, M.A. op. cit. p. 169.
[47] Ibid.
[48] Section 36(12) of the 1999 CFRN (as amended).
[49] Ibid.

CHAPTER THREE

AN APPRAISAL OF THE GENERAL CRIMINAL JUSTICE SYSTEM IN NIGERIA (PENAL AND CRIMINAL CODES SYSTEMS)

3.1 Introduction

The Nigerian society is made up of people with diverse cultures, behaviours and ways of life. In the pre-colonial Nigeria, there were in existence some plural criminal justice systems which regulated the standard of behaviour of the people. In the North, for instance, the predominantly Muslim community had a highly developed criminal justice system with different Schools, the most prominent being the Maliki school of jurisprudence.[1] In the South, there were in existence, in each of the settlements, some customary criminal laws which were generally unwritten.[2] With the coming of the British, the English Common law system was introduced in the Lagos colony.[3] In 1904, Lord Lugard, then the Governor General, introduced the Queensland Criminal Code in the North which incidentally was made applicable to the whole of Nigeria in 1916, after amalgamation of the Northern and Southern Protectorates in 1914.[4]

However, the wholesome imposition of the English Criminal Laws without due consideration for the cultural differences of the local people made the Code unsuitable for the Country. To ensure peaceful co-existence, the colonialists, devised ways of accommodating the inherent differences in the cultures of the North and South by ultimately creating two distinct legal systems, the Penal Code System[5] (for the North) and the Criminal Code system[6] (for the South). The Criminal Procedure Code and the Criminal Procedure Act were also introduced. The

[1] Karibi-Whyte, A. G. (2005). *History and Sources of Nigerian Criminal Law*; Spectrum Books Limited, Ibadan, p.124
[2] Adebayo, A. M. (2012). *Administration of Criminal Justice System in Nigeria,* Princeton Publishing Company, Lagos, pp.3-4
[3] This was made possible by Ordinance No.3 of 1863
[4] Chukkol, K S. (2010). *The Law of Crimes in Nigeria,* Ahmadu Bello University Press Ltd., Zaria, p.14
[5] Now Cap. P3 LFN 2004
[6] Now Cap. C38 LFN 2004

Colonialists believed that there was the need to respect and retain the people's diverse culture, religions and ways of life.

All these sets of legislation (i.e. the Penal and the Criminal Codes, the Criminal Procedure Code (CPC) and the Criminal Procedure Act (CPA), which constitute the general criminal justice system in Nigeria, have all gone through several changes and modifications. There are, however, disparities in the Codes, from the method of commencement to procedural nature and the various punishments prescribed.

Interestingly, a careful perusal of these pieces of legislation would reveal that despite the differences inherent in them due to cultural backgrounds and beliefs, the offences have similarities in definitions, ingredients and sometimes even the punishments. Recently, the Federal Government of Nigeria enacted the Administration of Criminal Justice Act, 2015 to regulate procedure in criminal proceedings for Federal offences and offences committed in the Federal Capital Territory, Abuja, the purpose of which is to promote efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of suspects, the defendants, and the victims of crime.[7]

This chapter, therefore, appraises the general criminal justice system in Nigeria by discussing the Penal and Criminal Codes respectively. It also discusses the prospect of harmonization of the two Codes, analyses some of the provisions of the Codes that may be harmonized and highlights some of the provisions that may not be harmonized due to the specific nature of the offences contained therein. The chapter equally appraises the Administration of Criminal Justice Act, 2015.

[7] Sections 1 and 2 of the Administration of Criminal Justice Act, 2015.

3.2 Brief History of the Penal and Criminal Codes, Criminal Procedure Code and Criminal Procedure Act

Towards the end of the 20th Century up to the beginning of the new millennium, the body of criminal laws in Nigeria assumed the nature of separated and disjointed legislation, variously enacted by the Federal and State governments, most of which appeared to be duplicated and overlapping in structure and context.[8] By 1899, the colony of Lagos and the Southern provinces of Nigeria made effort to enact a Criminal Code which culminated in the Criminal Code Bill of 1899. The content of the Bill, which was seen to be verbose coupled with the foreign language, gathered opposition against it. Essentially, the Criminal Code, which was first introduced into the Northern Protectorate in 1904, became of general application to all parts of amalgamated Nigeria in 1916.[9] It continued its comprehensive application until the 30th day of September, 1960 when the Penal Code law was passed into law by the Northern Regional Assembly, thus giving force to the application of the Penal Code, and its corresponding procedural law, the Criminal Procedure Code, in the Northern Region.[10]

It must be pointed out that the criminal Procedure Ordinance, now known as the Criminal Procedure Act, was enacted as Ordinance No. 42 of 1945. It was to govern the law of Criminal Procedure for the whole Country. However, because of the heterogeneous nature of the Country, complications were discovered in the Northern Region which necessitated a comprehensive review.[11] The late Premier of Northern Region, Sir Ahmadu Bello, set up a high powered panel of jurists with the following terms of reference:

[8] Ocheme, P. (2006). *The Nigerian Criminal Law,* Liberty Publications Ltd, Kaduna, p.15
[9] *Ibid*., p.16
[10] Ibid.
[11] Olakanmi, O. (2004). *Cases and Materials on Criminal Procedure Code,* Lawlords Publications, Abuja, p.8

(a) To consider the system of law at present in force in the Northern Region, that is English law as modified by Nigerian legislation, Islamic law and Customary law, and the organization of the Courts and judiciary enforcing the system; and

(b) Whether it is possible, and how far it is desirable, to avoid any conflicts which exist between the present systems of law, and to make recommendations as to the means by which this object may be accomplished as regards the re-organization of the Courts and the judiciary in so far as this may be desirable.[12]

Consequently, the Penal and Criminal Procedure Codes were passed into law in July, 1960 and became effective on the 1st October, 1960.

Generally, the Penal Code, which is considered to be a hybrid of Islamic and English Common Law, was modeled after the Sudanese Penal Code, a Country whose ethnic and religious complexities are in many respects similar to that of Northern Nigeria.[13] Like the Sudan, the dominant religion in Northern Nigeria is Islam. It was also meant to make local modifications to reflect the peculiarities of the Northern Region and to make provision for the strong but numerically inferior non-Muslim groups, whose influence was equally entrenched.[14] The Code was\, perhaps, meant to be a compromise between the traditionalists and the reformers. The Code has been in operation since its introduction in 1960. As noted earlier, conflicts arose between the Islamic and the customary laws and the imported procedure rules. In response to this and in order to facilitate the application of the provisions of the Penal Code effectively, a new Criminal Procedure Code, also based on the Sudanese Penal Code Procedure, was enacted in 1960.[15] The

[12] *Ibid.*
[13] Karibi Whyte, A. G. *Op.cit.,* p.193
[14] *Ibid.*
[15] *Ibid.,* p.195

two new Codes were to be applied *mutatis mutandis* by Courts which hitherto were familiar only with Islamic Criminal Jurisprudence and Islamic Criminal Procedure.

The Southern Nigeria adopted the Criminal Code (inspired by the English Common Law and legal practice) because of its early exposure to the English legal System. They also adopted the Criminal Procedure Act.[16]

It is a paradox that by 1904, a Criminal Code built on the Queensland model of 1899 was enacted for the Northern Province. Following the amalgamation of both Northern and Southern Provinces in 1914, the Criminal Code which was enacted for only the Northern Province became operative throughout Nigeria. It is still a paradox that while the Northern States, the original users of the Code, had long discarded it alongside with the procedure, the Southern States still use the 1899 enactment with all its deficiencies. Although the Code has been variously amended by the Southern States, it is indeed a paradox that it is still applicable by these States.

It is interesting to note that, both the former Northern and Southern Regions have now been split into various States. Yet, they continue to observe and apply the provisions of the Penal and Criminal Codes, as amended variously by each State legislature.[17] This perhaps, explains why Abuja which was carved out of the territories of the Northern States as a new Federal Capital Territory, was conferred with the jurisdiction of the Penal Code. Before the shift of the current Federal Capital to Abuja, it was the Criminal Code that was applicable to Lagos.

3.3 Agitation for Harmonisation of the Penal and Criminal Codes

The idea of a unified criminal justice system in Nigeria has been raised and mooted in several fora owing to the many challenges that arose from an attempt to carry out such exercise. The most glaring challenge of harmonizing the Penal and Criminal Codes, for instance, arose

[16] Cap. C41 LFN 2004
[17] Ocheme, P. *Op.cit.* p.16

from the fact that all States in the Federation are constitutionally empowered to enact applicable criminal laws.[18] Although States have not departed significantly from the two Codes, a careful perusal of the laws reveals that some States are more advanced and proactive in the review of their criminal laws and punishment.[19] It is respectfully submitted that a dedicated attempt by the States to review their criminal laws regularly may just be the solution to eradicating the disparity in the development of criminal laws in Nigeria as a whole.

Another major challenge for unification that follows closely is the difference in some accepted values such as at what age does a child become an adult or should intoxication in all ramifications be regarded as a crime? Better still, should adultery be regarded as a crime in both jurisdictions?

Another challenge has to do with some issues which such exercise may generate. One of such issues is its ability to challenge the nation's Federal Status. It is submitted that a cardinal characteristic of federalism lies in the existence of diversity. A unified criminal justice system will, perhaps, challenge the people's existing belief system and life style.[20]

Notwithstanding these challenges, it has become imperative that the general criminal justice system comprising the two Codes (Penal and Criminal Codes) as well as the two procedural laws (Criminal Procedure Code and Criminal Procedure Act) should be harmonise. It was argued that their harmonization will help the government foster national unity because the continuous application of the two Codes dealing with criminal matters has been one of the mechanisms that has perpetuated the concepts of North and South dichotomy in critical national

[18] See Residuary Legislative List, Part II, Second Schedule of The 1999 CFRN (as amended).
[19] See for example the provisions of the criminal laws of Lagos State of 2011.
[20] Adebisi, O. et al (2014). *Should the Criminal Law* be Merged? The nation Newspaper; retrieved from www.thenationonlineng.net/news on 10/5/2015 at 11:17 am.

issues.[21] It would aid in pushing, to the fore, the ideas and ideals that Nigeria as a nation holds dear while relegating to the background cultural differences which even though remain significant but nevertheless should not be the focal point.

It is respectfully submitted that the harmonization of the Penal and Criminal Codes would, no doubt, be a welcome development to lawyers and even members of the general public. It would not only enhance the ease with which the legal profession is practiced but also provide a platform for members of the general public to be well aware of offences that are applicable in all jurisdictions in Nigeria. As noted by the former Attorney-General of the Federation and Minister for Justice, (Mohammed Bello Adoke (SAN)), the unification of the two sets of law would help the government foster national unity since a crime in Kano would also be seen as a crime in Lagos.[22] In addition to the need to address this issue through a bold attempt at harmonization, there is an equal imperative to review both Codes, modernize them and keep them relevant to the yearnings and aspirations of the Nigerian society.

3.4 Consideration of Some Provisions of the Penal and Criminal Codes that can be Harmonized

This segment aims at highlighting certain areas of both the Penal and Criminal Codes that can possibly be harmonized. It does not serve as an exhaustive discussion of the defences and offences under both Codes. The segment starts with defences negating criminal intent such as mistake, accident, compulsion, necessity, intoxication and insanity, among others. It also discusses offences against person such as Assault, Homicide and manslaughter. It equally discusses offences against property such as theft/stealing, robbery, forgery and cheating, and offences against the State such as unlawful assembly and breach of peace, among others.

[21] *Ibid.*
[22] *Ibid.*

3.4.1 Defences Negating Criminal Intent

It is trite that the Nigerian criminal justice system operates on the foundation that there is no criminal liability unless there is criminal intent. Thus, except in cases of strict liability where the accused's criminal intent is not material, the guilty mind or criminal intent must exist at the time the offence is alleged to have been committed.

However, both the Penal and Criminal Codes contain certain provisions which, if relied upon by an accused, can negate criminal intent and reduce criminal liability.[23] The defences that negate criminal intent under both Codes include mistake, accident, compulsion, necessity, immaturity, intoxication, insanity and provocation, among others.

A brief analysis of each of the above is provided below.

3.4.1.1 The Defence of Mistake of Fact

Even though ignorance of the law is not an excuse to criminal liability,[24] mistake of fact may be an exception to this general rule. The defence of mistake of fact which is provided under both the Penal and Criminal Codes[25] is based on the premise that there is no liability without fault. It is available to an accused who can show that he committed the offence without the necessary guilty intent. There seems to be unanimity among scholars that the defence lays down a subjective test.[26]

The general ingredients of this defence under both Codes are that, first, the accused must show that even though he committed the offence, he lacked the requisite guilty intent as a result of a mistaken belief in a set of facts; and second, the facts must, at the same time, have been held

[23] This may be based on the fact that at the time of the commission of the offence, the accused lacked the necessary criminal mind.
[24] Section 45 of the Penal Code, and Section 22 of the Criminal Code
[25] *Ibid.*
[26] Chukkol, K S. *Op.cit.,* pp.88-89. See also Ocheme, P. *Op.cit.,* pp.106-107.

in good faith by the accused. The phrase "good faith", according to Section 37 of the Penal Code, means an act done with "due care and attention".

It is submitted that the definition of mistake of fact under the Criminal Code should be adopted as it accords with the true concept of criminal responsibility, i.e. what the accused knows and not what he is presumed to know.

3.4.1.2 The Defence of Accident

The defence of accident is also recognized under both the Penal and Criminal Codes.[27] An accident is something which happens outside the ordinary course of events. An effect may therefore be regarded as accidental when the act by which it is caused is not done with the intention of causing it and when its occurrence is so unexpected that a person of ordinary prudence would not be expected to take reasonable precautions against such occurrence.[28]

For the defence of accident to avail an accused person the act which would have amounted to an offence must have been done by accident or results from an accident.

The Penal Code, unlike the Criminal Code, provides further requirement to the effect that the act leading to the accident must have occurred in the course of a lawful purpose and carried out in a lawful manner. Thus in the case of *Abdulbaki v. Katsina Native Authority,*[29] a person was killed while engaged in an unlawful fight. The High Court held on appeal that the defence of accident was not open to the appellant unless he could show that he acted in the lawful exercise of his right of private defence.

The Penal Code also requires that the act from which the harm arises must be one in which the accused had exercised due care and caution. In other words, the act leading to the accident must have been done in good faith.

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[27] See Section 48 of the Penal Code and Section 24 of the Criminal Code respectively.
[28] Richardson, S.5 (1987) *Notes on the Penal Code Law,* Ahmadu Bello University Press, Zaria , p.48
[29] (1961) N.N.C.N, p.12

Conversely, Section 24 of the Criminal Code provides unequivocally that motive is immaterial in the application of this defence. Thus, in *Richard Igago v. The State*[30] it was held that for an event to qualify as an accident under Section 24 of the Criminal Code, it must be a surprise to the ordinary man of prudence, and that is a surprise to all sober and reasonable people.

It is the view of this researcher that the provisions of the Penal Code on what amounts to an accident is to be preferred because it requires the accident to have resulted from doing "a lawful act in a lawful manner." This enables the defence to be available only to persons who carried out legitimate acts.

3.4.1.3 The Defence of Compulsion

The defence of compulsion, as provided under both the Penal and Criminal Codes,[31] is one which negatives criminal intent. The reason is that the accused has no intent of committing the offence but for the act or influence of another party in the form of threat or injury to the person of the accused.

For the defence of compulsion to succeed, the accused must establish that although he committed the offence, he did so in order to save himself from threat of instant death. The Criminal Code, unlike the Penal Code, recognizes the threat of grievous harm.[32] Again, the threat of death or grievous harm, as the case may be, must come from some person actually present.[33] Likewise, the person issuing the threat must be capable of executing it and the accused must

[30] 28 (1999) 14 NWLR (pt 637) 1 at 24
[31] See Section 57 of the Penal Code and Section 32(3) of the Criminal Code respectively
[32] *Ibid.*
[33] *Ibid.*

reasonably believe that should he fail to do the desired act, the harm threatened would befall him.[34]

One important thing to note is that all other forms of threat, aside from death or grievous harm are not covered under this defence. The other forms of threat can be adequately covered under the defence of necessity as provided for in Sections 49 of the Penal Code and 33 of the Criminal Code. Equally important is that the threat which compels the accused to commit the offence must be directed at him and not to a third party. Thus where the accused commits the offence as a result of a threat to his wife or child the defence would not avail him.

The above position seems somewhat unfair, considering the value which the Nigerian society places on family relationships. It is submitted that the defence should be made to extend to offences committed to save members of the accused's immediate family[35] and in the opinion of this researcher, it should be extended to even cover offences committed in order to save strangers.[36]

It is interesting to note that the defence of compulsion is not available if the offence which the accused is threatened to commit is homicide (murder) or grievous harm.[37] Similarly, the defence is not available where the accused deliberately puts himself in a situation where he will be subjected to threats.[38]

It is submitted that the exclusion of the threat of grievous harm to the offender by the Penal Code is somewhat surprising, considering that threat of grievous harm can in reality be

[34] *Ibid.*
[35] See *the proposed Unification of Criminal Laws of Nigeria,* retrieved from www.nials.org, on 10/5/2016 at 9:47 pm.
[36] Under Islamic Law, the Defence of Compulsion is extended to situations where an offence is committed in order to save even strangers.
[37] Section 32 of the Criminal Code.
[38] Section 57 of the Penal Code.

considered as potent as a threat to death.[39] It is, therefore, submitted by this researcher that the provision of the Criminal Code in this regard is sounder and in tune with spirit and letter of the law.

It is further submitted that the provisions of both Codes which prevent reliance on the defence in cases where the threat is to a third party (i.e. close relations to the accused such as his mother, father, wife or even his children) should be reconsidered.[40] This is in view of the fact that threat to loved ones can, in most cases, be even more compelling than a threat to the accused himself.

3.4.1.4 The Defence of Necessity

The defence of necessity has been recognized in the Nigerian criminal justice system.[41] To rely on the defence, the accused must show that the act done was to prevent further harm or injury to his person or other persons, or property. Similarly, the accused must show that the course of action embarked upon by him was reasonable and that he acted in good faith.[42] The action of the accused is thus measured against the reaction of an ordinary person in the same circumstances. In other words, the test adopted by the Codes is an objective one.

For instance, where a passenger train travelling at a high speed is approaching a stationary passenger train on the same line of rails, a railway employee may switch the moving train into a siding, provided this is the only means of preventing a collision which would probably involves the lives of many passengers.[43] Here, the railway employee is not guilty of an offence if in all the circumstances his act was reasonable, although a fatal but less serious accident would probably result.

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[39] Chukkol, K S. *Op.cit.,* p.255
[40] *Ibid.,* pp.253-254
[41] Section 49 of the Penal Code and Section 26 of the Criminal Code
[42] Chukkol, K.S. *Op.cit.,* p.265
[43] Richardson, S.S, Op. Cit., p. 42

Similarly, a person who, in a great fire, pulls down houses in order to prevent the conflagration from spreading will not be guilty of an offence if he does this with the intention in good faith of saving human lives and property.[44] Here, it must be shown that the accused person's act was reasonable.

Likewise, a Surgeon who knows that a particular operation is likely to cause the death of his patient who suffers from a painful ailment is not guilty of an offence if the patient dies as a result of the operation provided he performs the operation in good faith and for the benefit of the patient, without intention of causing death.[45] It must, however, be shown that the operation is one which in all the circumstances was reasonable for the Surgeon to perform and it is performed with reasonable care and skill. If, however, through drunkenness, the operation is performed unskillfully, the Surgeon is not protected by the defence of necessity.[46] Whether the patient or some competent person on his behalf has consented to the operation or not is a factor to be considered in determining whether it was reasonable, in the circumstance, to perform the operation.

Again, where a person is seized by a Crocodile and the accused, in good faith, fires at the Crocodile for the benefit of the seized person and without intention of causing the death of the victim but the bullet, in fact, hits the victim who dies in consequence thereof, the accused has committed no offence.[47] However, it must be shown that the act of the accused was reasonable in the circumstance.

Interestingly, the Penal Code provides explicitly that where the action requires care and skill, the accused must have exercised the required care and skill. This, in the opinion of this

[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Ibid.

researcher, appears to be unnecessary, in view of the fact that the preceding provision makes "reasonableness in carrying out the act" a factor.

Again, whereas under the Penal Code the defence of necessity can only be pleaded where the offence is not punishable with death, under the Criminal Code the defence covers both capital and lesser offences. It is respectfully submitted by this researcher that the provisions of both Codes as regards the defence of necessity is somewhat vague and not properly defined, In providing for harmonization of this defence, it is suggested that the provisions of both Codes need to be more definite.

3.4.1.5 The Defence of Intoxication

The defence of intoxication is designed to negate the existence of criminal intent on the part of the accused, on the grounds that as a result of the intoxication, the requisite criminal mind for the offence was absent. Under both the Penal and Criminal Codes, intoxication as a general rule is not regarded as a defence to a criminal liability, except under the circumstances specifically provided for.[48] As Richardson[49] rightly noted, this provision is intended to make clear that voluntary intoxication is no excuse for the commission of a crime. Thus, it is a specie of madness for which the person is himself to blame. This accords with the maxim that *"let him who sins in drink be punished when sober."*[50] Both Codes, however, recognize involuntary intoxication as a defence to a criminal charge.[51]

For the defence of intoxication to succeed, the person charged must not know that what he was doing was wrong or contrary to law, and that the state of intoxication was caused without his consent by the malicious or negligent act of another. Interestingly, the Criminal Code further

[48] Section 44 of the Penal Code and Section 29 of the Criminal Code
[49] Richardson, S.S., Op Cit., p. 40.
[50] Ibid. See also *Tonara Bakuri v. The State* (1965) NMLR, 163.
[51] See for instance Section 52 of the Penal Code.

provides for a situation where the accused himself causes the intoxication but mistakenly, and that he became temporarily insane by reason of the intoxication. Where the accused fails to establish the loss of his capacities under the Criminal Code, the defence of intoxication will fail.

Ostensibly, the Penal Code provides that a person who voluntarily became intoxicated is presumed to have the same knowledge as he would have had if he had not been intoxicated. This provision, which is irrebutable, appears to negate the possibility of the accused to rely on the defences of mistake. It is respectfully submitted by this researcher that the provision of the Criminal Code is to be preferred in this regard.

3.4.1.6 The Defence of Insanity

A plea of insanity under both the Penal and Criminal Codes is relevant as a defence at a time the offence was committed.[52] Generally, there is a presumption of sanity in favour of every person unless the contrary is proved.

To raise the plea of insanity under the Penal Code, the accused must show that at the time of committing the offence he was suffering from unsoundness of the mind rendering him incapable of knowing the nature and quality of his act, or that his act was wrong or contrary to law. The Court must determine whether or not the accused was conscious at the time of doing the act and that the act complained of was one which he ought not to do or which was contrary to law.[53] The meaning of the words "the nature of the act" is not restricted to the purely physical nature of the act. For instance, where the accused owing to temporary insanity believes that a determined attack is being made on his life by armed men kills a defenceless man by stabbing

[52] Section 51, Penal Code. and Sec. 28, Criminal Code.
[53] Richardson, S.S. Op. Cit., p. 44

him in the stomach, he will be regarded as someone who did not appreciate the nature of his act although he may have appreciated that he was killing a man.[54]

It must be stressed that the provision of the Penal Code brings out the distinction between medical and legal insanity. Thus, a person may be considered medically insane but yet know the nature of his act and that the act is either morally wrong or contrary to law.[55] It follows, therefore, that a medical certificate to the effect that a person is insane need not invoke automatically the protection of Section 51 of the Penal Code.

Again, the insanity pleaded can be temporary or permanent. It can take the form of an insane delusion. Similarly, a plea of insanity at the time of the trial, under the Penal Code, gives rise to a different issue to be dealt with in accordance with the special procedure provided in Section 320 of the Criminal Procedure Code.

Under the Criminal Code, the accused must show, in order to successfully raise the plea of insanity, that at the time of doing the act he was suffering from a mental disease or natural mental infirmity which deprived him of the capacity to understand what he was doing or that he lacked the capacity to control his actions or to know that he ought not to have done the act or make the omission.

It must be pointed out that once the prosecution has been put on notice that a defence of insanity is to be raised in a trial, it has a positive duty to assist in the investigation of the case for the benefit of both sides by inquiring into any evidence relating to such a defence and by arranging for the observation of the accused by a Doctor or Psychiatrist with a view to reporting on his or her mental condition.[56] It would be unjust for the prosecution to leave it to an accused

[54] Ibid.
[55] Ibid.
[56] *Suleiman v. The State* (1981) 1 ALL NR , 363

person from an unsophisticated rural community to produce expert evidence of insanity simply because the burden of proof lay on the defence.

It is submitted that the provision of the Penal Code as regards the defence of insanity is wider than the provision of the Criminal Code. This is because unlike the Criminal Code, it covers such circumstances like obsession, frustration, depression, nervous breakdown etc.[57] It is, therefore, suggested that the provision of the Penal Code as regards the defence of insanity is to be preferred.

3.4.1.7 The Defence of Provocation

Man has a natural instinct to react to situations which may annoy or anger him. Hence, the defence of provocation is recognised in almost all jurisdictions. The defence is associated with the laws of passion and of human weakness, in circumstances where an offence is committed due to loss of self-control.[58] The defence of provocation is significantly relevant in the consideration of offences against person. In Nigeria, the defence is provided for under various Sections in both the Penal and Criminal Codes.[59]

Unlike the Penal Code[60] which fails to define the meaning of provocation but merely states consequences of a successful plea, the Criminal Code provides for a comprehensive definition.[61] Under the Criminal Code, provocation is an absolute defence to the offence of assault[62] and reduces the offence of murder to manslaughter.[63] The Penal Code does not recognize provocation as an absolute defence to assault[64] although, like the Criminal Code, it

[57] Ocheme, P. *Op.cit.*, p.115
[58] *Ibid.*, p.130
[59] Sections 283, 284, 285 and 318 of the Criminal Code. See also Sections 222(1) and 266 of the Penal Code.
[60] Section 222(1) of the Penal Code
[61] Section 283 of the Criminal Code
[62] *Ibid.*, Section 284
[63] *Ibid*., Section 318
[64] Section 266 of the Penal Code

reduces culpable homicide punishable with death (murder) to culpable homicide not punishable with death (manslaughter).[65]

From the various Sections of the Codes, in order to rely on the defence of provocation, the accused must show the following cumulative ingredients:

a. The victim offered a wrongful act or insult to the accused or any person in a special relationship with the accused, which must be grave and sudden. Whether or not the provocation offered was grave and sudden to warrant the reduction of murder to manslaughter is a question of fact to be determined by the surrounding circumstance of each case;[66]
b. The wrongful act or insult to the accused is one capable of making a reasonable man to lose the power of self-control;
c. The accused, in fact, lost his self-control;
d. The accused must have acted suddenly and before his passion cooled; and
e. The retaliation must be proportionate to the wrongful act or insult. Thus were the force used by the accused is disproportionate to the provocation offered, the defence will fail as decided in the case of *Shande v. The State.*[67]

It is respectfully submitted that the element of proportionality contradicts the essence of the defence as regards a person who has lost his self-control. This is because the degree of response to wrongful acts varies from person to person. In this researcher's view, less prominence should be given to this ingredient by expunging it from the law.

[65] *Ibid.,* Section 222(1)
[66] Richardson, S.S., Op. Cit., p. 177
[67] (2005) 6 SCNJ 124, pp.131-132. See also *Obaji v. The State* (1985) 1 ALL NLR 269

It is, therefore, opined that the provision of the Criminal Code on provocation is to be preferred. This is because apart from the fact that the Criminal Code provides for a definition of provocation, the elements of the defence also closely follow the Section defining the defence.

3.4.1.8 The Defence of Consent

Consent as a defence occurs where the victim permits the doing to him of the act subsequently complained of. The Penal Code provides copiously for the defence in sections 53 and 55 in contrast to the marginal provision in relation to the defence in the Criminal Code regarding some specific offences such as rape in Section 258, sexual assault in Section 261 and cases of assisted death in Section 203. Thus, the Criminal Code does not contain elaborate provisions on this defence.

To rely on the defence, the accused must show that the act, injury or hurt to the victim occurred after the victim had voluntarily given consent to the act. The consent may be express or implied.[68] The Penal Code makes it very clear that the defence does not avail the accused in relation to acts likely to cause death or grievous harm or other injuries that occur independent of that which the victim consented to.[69] Section 54 of the Penal Code, like Section 203 of the Criminal Code, prohibits reliance on the defence in cases of euthanasia.

It must be stressed that the consent, under the Penal Code, is only valid when it is not given under fear of injury, misconception, intoxication or unsoundness of mind on the part of the person consenting.[70] In other words, the consent must be freely given. The Penal Code further provides that a person under fourteen years of age cannot validly give consent.[71]

[68] Section 53(1) of the Penal Code
[69] *Ibid.*, Section 53(2)
[70] *Ibid*., Section 39
[71] *Ibid.*

The Penal Code goes further to imply consent as a defence in cases not (amounting to grievous hurt) where a parent or guardian corrects a child or ward under the age of eighteen; a school teacher corrects a pupil under the age of eighteen; a master corrects an apprentice under the age of eighteen and a husband who corrects his wife where such husband and wife are subject to any native law and custom in which such correction is recognized as lawful.[72]

It is, therefore, opined by this researcher that the provisions of the Penal Code which provides specifically for the defence should be adopted. However, it is suggested that the age of consent under Section 39 of the Penal Code should be increased to eighteen so as to accommodate the issue of consent of persons above the age of fourteen but less than eighteen.

3.4.1.9 Act of Public Officers

It is trite that acts done by Public Officers in the course of their duty and in good faith are not normally questioned in a Court of law. Both the Penal and Criminal Codes provide for protection of Public Officers such as the Police and Judicial Officers in the exercise of their lawful duty.[73]

The provision of Section 46 of the Penal Code specifically protects the Police, a Magistrate, a Judge and Justices of the superior Court of records and other Judicial Officers when acting judicially. These Officers are entitled to the protection of this Section for their judicial acts whether in Court or in Chambers. Thus, the phrase "judicial acts" may extend beyond the administration of justice in the Court.[74] They include the discharge of any duties by a Judge when he is required to direct his mind to determine what is fair and just in the matter before him.

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[72] *Ibid.*, Section 55(1)(a)-(d)
[73] *Ibid.*, Section 46. See also Section 31 of the Criminal Code.
[74] Richardson, S.S., Op. Cit., p. 41

The main distinction between the provisions of the Penal Code and the Criminal Code in providing for justification or excuse for Officers carrying out their function is the requirement under the Penal Code that the exercise may be with the belief in good faith that he has such a power. This aids the protection of officers who in an attempt to genuinely carry out their functions fall foul of the law.

It is, therefore, opined by this researcher that this requirement be included in the Criminal Code in all Sections relating to Public Officers.

3.4.2 Offences against Person

The criminal justice system in Nigeria provides for the general classification of offences against persons. These offences refer to those acts which cause injury to persons or even death. The offences include, assault, homicide (murder) and manslaughter, among others.

3.4.2.1 Assault

An assault is any intentional act carried out by the offender which causes the complainant to believe violence against his person.[75] The essential ingredient of the offence of assault is the act which causes apprehension such as pointing a gun or raising a stick and the use of menacing words which indicate that the accused intends to attack the complainant.

Whereas the Penal Code distinguishes between assault and battery,[76] the Criminal Code does not expressly distinguish assault and battery. The approach of the Criminal Code in the general definition of assault is to be preferred. This is because assault is usually followed by battery and the term is used commonly to cover both assault and battery. It is suggested that the distinction between "assault" and "battery "should be reflected in the punishment as contained in the Criminal Code.

[75] Chukkol, K.S. *Op.cit.,* p.315
[76] See Section 262 and 264 of the Penal Code respectively

Both the Penal and Criminal Codes contain various categories of assault which, in the opinion of this researcher, should be maintained. Of particular interest is the provision of the Penal Code on assault or criminal force to prevent public servants from discharging their duties. Whereas the provision of the Penal Code refers to public servants, the Criminal Code refers to serious-assault to protect persons from the execution of their lawful duties.[77] Apparently, the provision of the Criminal Code, in this respect, is wider as it seeks to protect persons in the course of their lawful duties, whether they are public servants or not. An amendment of the Penal Code to include such persons who are not Public Servants is to be preferred to the rather overelaborated provisions of the Criminal Code.

3.4.2.2 Homicide (Murder)

Homicide is the unlawful killing of one person by another.[78] It consists of murder or manslaughter, according to the circumstances of the case.[79]

In all jurisdictions, the offence of murder is regarded as a very serious offence[80]. In Nigeria, both the Penal and Criminal Codes provide copiously for this offence, although it is referred to as "culpable homicide punishable with death" under the Penal Code.

The Criminal Code provides for an elaborate definition of the offence, as opposed to the rather straight forward and less confusing definition under the Penal Code.[81] The major ingredients of the offence of murder under Criminal Code is causing death with the intention to cause death, or causing death with the intention to cause grievous bodily harm to the deceased.[82]

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[77] See section 172 of the Criminal Code law of Lagos State, 2011.
[78] Garner, B. H. (2009) *Black's Law Dictionary,* Ninth edition, west Publishing Company, p.802
[79] *Ibid.*
[80] Owoade, M. A. (1985) *Law of Homicide in Nigeria,* O.A.U Press Ltd, Ife, p.11
[81] See Section 22 of the Penal Code.
[82] Section 316(a) and (b) of the Criminal Code

It is respectfully submitted that the provision of the Penal Code appears to be more apt in providing for the offence of culpable homicide punishable with death, as the ingredients of the offence are better presented. Under the Penal Code,[83] culpable homicide is committed if the doer of the act knows or has reason to know that death would be the probable and not a likely consequence of his act. Both the words "probable" and "likely" represent degrees of chances, with "probable" having a higher chance of occurring than "likely".[84] It is submitted that the words adopted by the Penal Code are more appropriate and should be preferred.

The Criminal Code provides for the offence of conspiracy to commit murder which is not provided for under the Penal Code. It is therefore, suggested that this offence be included in the Penal Code.

3.4.2.3 Manslaughter (Culpable Homicide not Punishable with death)

Manslaughter is the unlawful killing of a human being without malice aforethought.[85] The offence can be conveniently classified into voluntary and involuntary manslaughter.

Voluntary manslaughter occurs when the accused though has the requisite mental and physical act to be convicted for the offence of murder, but for the fact that his conduct is excused by law in particular circumstances.[86] For instance, killing as a result of grave and sudden provocation is regarded as voluntary manslaughter.[87] Similarly, killing as a result of the use of excessive force in private defence is voluntary manslaughter.[88] The same thing applies to the killing of a consenting victim.[89]

[83] Section 221 of the Penal Code
[84] Chukkol, K S. *Op.cit.*, p.300
[85] Garner, B. A. *Op.cit.*, p.1049
[86] See proposed unification of Nigerian Criminal Laws, *Op.cit.*, n.34
[87] See Section 222 (1) of the Penal Code and Section 223 of Lagos State Criminal Code Law of 2011
[88] Section 222(2) of the Penal Code and Section 225 of the Lagos State Criminal Code, Law, Op.cit
[89] Section 222 (5) of the Penal Code and Section 224 of Lagos State Criminal Code Law

It is submitted by this researcher that the Penal Code has provided a more simplistic definition of the offence of voluntary manslaughter by provocation than that provided for in the Criminal Code. It is, therefore, suggested that the provision of the Penal Code should be adopted in this regard.

Involuntary manslaughter, on the other hand, occurs where the accused causes death in circumstances where he did not foresee death as a probable consequence of his act, but due to some blame worthiness on his part, death of the victim ensues. It could be termed killing as a result of negligent or rash act.[90]

The ingredients of the offence of involuntary manslaughter consist of an unlawful act which creates the risk of physical harm and gross negligence or recklessness as to the risk of such harm.

The Penal Code[91] provides for the offence of infanticide which is the intentional killing by a woman of her own child under the age of twelve months due to disturbance of the mind resulting from child birth. But for this provision the unlawful killing would have amounted to culpable homicide punishable with death.

The Criminal Code[92] also provides for the offence of manslaughter under diminished responsibility. This has been submitted to adequately cover the offence of infanticide. It is suggested that the provision of the Criminal Code should be adopted in this respect.

3.4.3 Offences against Property

Property can be described as anything that is of value to man. It is, perhaps, the most important possession, apart from the life of a man in this world.[93] It is, therefore, not surprising

[90] Ocheme P., *Op.cit.*, p.210
[91] Section 222(6) of the Penal Code
[92] Section 226 of Lagos State Criminal Code Law
[93] Chukkol, K S. *Op.cit.*, p.336

that criminal interference with either possession or ownership of property is often declared punishable in almost all legal systems in the world.

The undue interference with property belonging to another is declared punishable under both penal and Criminal Codes. Such undue interference with property under both codes includes, but not limited to, theft/stealing, forgery and cheating among others. A brief analysis of these offences is provided below.

3.4.3.1 Theft/Stealing

The offences of theft and stealing, which are similar in nature are provided for under both the Penal and Criminal Codes.[94] While the Penal Code uses the word "dishonestly", the Criminal Code employs the use of the word "fraudulently".

The main ingredient of the offence of theft under the Penal Code is the intention to dishonestly take or move the property of another without his consent.

The general ingredients of the offence of stealing under the Criminal Code are, first the fraudulent taking of another's property which is capable of being stolen, and second, the fraudulent conversion for use of another's property capable of being stolen. In all these, there must be the existence of an intention to permanently deprive the owner of the property stolen.

It is submitted that the Criminal Code is not only more elaborate but differs from the Penal Code in one respect. Under the Criminal Code the fraudulent intent must be to deprive the owner permanently. Paradoxically, even a temporary deprivation of the owner will amount to theft under the Penal Code.[95] It is, therefore suggested that the provision of the Criminal Code should be adopted. This is because, in this researcher's view, the phrase "intention to

[94] Section 286 of the Penal Code and Section 383 of the Criminal Code.
[95] Chukkol, K S. *Op.cit.,* p.345

permanently deprive the owner of the property" adopted by the Criminal Code, should be the important element of the offence of theft/stealing.

3.4.3.2 Forgery

The offence of forgery is provided for under both penal and Criminal Codes.[96] The offence relates to the fraudulent making, sealing or execution of a document, with the intention of causing it to be believed that the document was legitimately created, sealed or executed by the appropriate authority.

It should be noted that the offence of forgery is closely related to the offence of cheating. As one scholar rightly observed,[97] both offences contain oral and written deception, caused or intended to be caused by false representations.

The ingredients of the offence of forgery under Section 363 of the Penal Code consist of making a false document or a part of document with any of the following intents:

a. To cause damage or injury to the public or to any person;
b. To support any claim of title;
c. To cause any person to part with property or enter into any express or implied contract; and
d. To commit fraud or that fraud may be committed.

It is also interesting to note that under the Penal Code a person's signature of his own name may amount to forgery.[98] Thus, where a person signs his own name to a bill of exchange intending that it may be believed that the bill was drawn by another person of the same name, he may be liable for forgery.

[96] See Section 363 of the Penal Code and Section 465 of the Criminal Code
[97] Chukkol, K S. *Op.cit.*, p. 345
[98] Richardson, S.S., Op. Cit., p. 278

Similarly, making of a false document in the name of a fictitious person intending it to be believed that the document was made by a real person or in the name of a deceased person intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.[99] For instance, where a person draws a bill of exchange upon a fictitious person and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it, he may be liable for forgery.

Unlike the Penal Code, the ingredients of the offence under Section 465 of the Criminal Code consist of making of a false document through its contents, counterfeit seal, mark, or representation on a document, knowing such to be counterfeit. The doing of any of the above must be with the intention to cause the thing so made to be used in any way or acted upon as genuine.

It is view of this researcher the provisions of the Penal Code with respect to the offence of forgery is more comprehensive and, therefore, should be adopted.

3.4.3.3 Cheating

Cheating is the fraudulent obtaining of another's property by means of a false symbol or token, or by other illegal practices.[100] The offence of cheating is provided for under both Penal and Criminal Codes.[101] Whereas the Penal Code appears to be more elaborate on the offence of cheating and other related species, the Criminal Code provides for both definition and punishment of the offence of cheating.[102]

Under both Codes, the ingredients of the offence of cheating include fraudulent or dishonest representation by words, writing, or conduct. The person making the representation

[99] Ibid
[100] Garner, B. A. *Op.cit.*, p.268
[101] Section 320 of the Penal Code and Section 421 of the Criminal Code
[102] *Ibid.*

must know that such words, writing or conduct are not true. In addition, the representation must induce a person to deliver or give consent to retain any property to another person or pay a higher price for property than he would have paid but for the representation.

A careful perusal of the provisions of the Codes would reveal that the Penal Code provides for an additional ingredient which is inducement that causes a person to do or omit to act in such a way he wouldn't have acted had he not been deceived. Such act or omission must cause or is likely to cause damage to that person in mind, body, reputation or property.

It is submitted by this researcher that the definition of the offence of cheating under the Penal Code is to be preferred. This is because it covers not only the offence as it relates to obtaining goods but acts or omissions generally.

3.4.4 Offences against Public Order/Peace

To maintain peace and order in Government, respect for constituted authority is fundamental. The offences against public order/peace are of two types, namely:

1. Offences under the Penal and Criminal Codes which are under the legislative competence of the States such as unlawful assembly and riot; and
2. Other offences against public order such as treason, treasonable felonies and sedition which are matters within the exclusive competence of the federal government.[103]

Further discussions will be limited to offences against public order/peace as provided by the Penal and Criminal Codes of the States.

3.4.4.1 Unlawful Assemblies and Breach of Peace

An Unlawful Assembly is a gathering of people who conduct themselves in such a manner as to cause persons in the neighbourhood to fear that the persons so gathered will

[103] See exclusive legislative list of the CFRN, 1999

turbulently disturb the peace.[104] Such persons must be at least five or more according to the Penal Code,[105] or three or more persons according to the Criminal Code[106].

It is submitted that the Penal Code provision on the offence of Unlawful Assembly is more elaborate than its corresponding provision of the Criminal Code.

The provisions of both Codes as regards the general offence of riot can easily be harmonized as they are practically the same. However, the Penal Code provides for specific offences relating to riots such as rioting armed with deadly weapon[107] and joining an unlawful assembly that has been asked to disperse[108] which are not provided for under the Criminal Code

3.5 Offences that cannot be Harmonized

Certain property offences under both the Penal and Criminal Codes cannot be harmonized. This is as a result of the absence of similar provisions in both Codes or the specific nature of such offences. A brief appraisal of these offences are provided below.

3.5.1 Offences that are provided for in the Penal Code but are not contained in the Criminal Code

Offences provided for in the Penal Code but which are not found in the Criminal Code include the following:

3.5.1.1 Brigandage

Brigandage is provided for in the Penal Code[109] as an offence of robbery or attempted robbery committed by five or more persons. The Criminal Code does not provide for this offence. The reason is that, under the Criminal Code, whoever commits, aids, counsels or

[104] Chukkol, K S. *Op.cit.,* p.409
[105] Section 100 of the Penal Code
[106] Section 69 of the Criminal Code
[107] Section 107 of the Penal Code
[108] *Ibid*., Section 110
[109] *Ibid*., Section 297

procures the commission of an offence is treated as the principal offender.[110] It is humbly submitted by this researcher that the existence of the offence of brigandage under the Penal Code can be justified for the purposes of severity of punishment.

3.5.1.2 Criminal Trespass

The classification of offences relating to criminal trespass under offences against property by the Penal Code[111] is questioned. This is in view of the fact that, traditionally, trespass is a tort and is only criminalised if it involves breach of peace.

3.5.1.3 Adultery

Adultery is provided for as an offence under the Penal Code. Under the Code, whoever being a man or woman subject to any native law or custom in which extra-marital sexual intercourse is recognised as a criminal offence, has sexual intercourse with a person who is not and whom he/she knows or has reason to believe is not his/her husband or wife is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to two years or with fine or with both.[112] Thus, in *Ahaji Ibrahim Faranshi v. Sheru Yakubu*,[113] it was held that adultery is a crime only if committed by a person subject to a local law and custom under which it is a crime.

These provisions of the Penal Code mark a reasonable departure from the Criminal Code under which adultery is not a criminal offence.

3.5.1.4 Drinking Alcohol

The Penal Code also provides that any Muslim who drinks anything containing alcohol other than for a medicinal purpose shall be punished with imprisonment for a term which may

[110] Section 342 of the Criminal Code
[111] Section 342 of the Penal Code
[112] Sections 387 and 388 of the Penal Code Cap89 Laws of Northern Nigeria, 1963
[113] (1970) NNLR, 17

extend to one month or with fine which may extend to five Pounds or with both.[114] This provision punishes mere consumption of alcohol by a Muslim and it is an attempt to codify Islamic law which prohibits drinking alcohol. The Criminal Code has no similar provision.

3.5.2 Offences provided for in the Criminal Code which are not provided for in the Penal Code

The following are some of the offences provided for in the Criminal Code which are not found in the Penal Code. The list is by no means exhaustive.

1. Impersonation;[115]
2. Fraudulent debtors;[116]
3. Electronic data offences;[117]
4. Offences relating to ferries and jetties.[118]

From the foregoing, it is clear that legal pluralism in the administration of criminal justice in Nigeria owes its origin to the indigenous system of administration of justice prior to the period of colonization. In the North, for instance, the Islamic criminal law of the Maliki School applied. In the South, however, the customary criminal laws of the various communities applied.

When the British came, the colonial government understood the differences in the lives of the people of Northern and Southern Nigeria. To ensure peaceful co-existence, the colonialists devised ways of accommodating these inherent differences. The colonialists created two distinct criminal legal systems - the Penal Code System (for the North) and the Criminal Code System (for the South). They believed that there was the need to respect and retain the people's diverse cultures, religions and belief systems.

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[114] Section 403 of the Penal Code.
[115] Section 378-383 of the Criminal Code
[116] *Ibid*., Section 384
[117] *Ibid*., Sections 385-389
[118] *Ibid*., Sections 397-400

Undoubtedly, both the Penal and Criminal Codes bear some similarities and differences which have been identified and clarified in this chapter. For instance the Criminal Code usually employs a mode of classification of offences which is unrelated to the degree of punishment attached to the offences. The same cannot be said of the Penal Code which leaves the severity of the offence to be determined by the punishment attached to it.

3.6 The Administration of Criminal Justice Act, 2015

Another twist of legal pluralism in the administration of criminal justice in Nigeria is the coming into force of the Administration of Criminal Justice Act, 2015. The Administration of Criminal Justice Act, 2015 (hereinafter referred to as the ACJ Act) became operational on the 14th of May, 2015 when it was assented to by the then President of the Federal Republic of Nigeria, Goodluck Ebele Jonathan. The Act seeks to, *inter alia*, address the problem of delay in criminal trials.

The ACJ Act has come to strengthen criminal justice administration in Nigeria by addressing most of the challenges bedeviling the justice system especially in investigation and prosecution of criminal cases, and the long period of remand in prison custody without trial. The Act has modernized the *modus operandi* on investigations, arraignment and prosecution of criminal cases.[119]

The ACJ Act has repealed the Criminal Procedure Act,[120] the Criminal Procedure Code[121] and the Administration of Justice Commission Act[122] respectively. The aim of the Act is to abolish the dichotomy that presently exists between the Criminal Procedure Code (applicable to

[119] See for instance parts 2 and 30 of the ACJ Act, *2015*
[120] Cap. C41 LFN, 2004
[121] Cap. C42 LFN, 2004
[122] Cap. A3 LFN, 2004

the States in the Northern part of Nigeria) and the Criminal Procedure Act (applicable to the States in the Southern part of Nigeria) by repealing both Acts.

3.7 Application of the Administration of Criminal Justice Act 2015

Section 2 (1) of the ACJ Act provides that its provisions shall apply only to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. The Act, therefore, does not apply to offences created by the laws of the States in the Federation. The Act also does not apply to Court Martial.[123] It is, therefore, surprising that, despite the innovations intended by the ACJ Act, it still excludes its application to Court martial as if the persons subject to military laws are not part and parcel of the Nigerian Federation. The rationale for the exclusion may not be unconnected with the provision of Section 174 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which prevents the Attorney- General of the Federation from initiating and undertaking proceedings in a Court Martial. One cannot fathom the basis for limiting the powers of the Chief Law Officer of the Federation and the application of a Federal law in a constitutional democracy.

The ACJ Act was enacted to make provisions for the administration of criminal justice and other related matters in the Courts of the Federal Capital Territory and other Federal Courts in Nigeria. The interpretation of the provisions of Section 2 of the ACJ Act has in recent times led to pronouncements by the Court of Appeal and the Supreme Court. Thus, in the case of *Dr. Bukola Saraki v. FRN*,[124]the Court of Appeal was called upon to determine the applicability or otherwise of the ACJ Act to Code of Conduct Tribunal. The pertinent question that was raised at the Court of Appeal for determination was whether the Code of Conduct Tribunal forms part of

[123] Section 2(2) of the Administration of Criminal Justice Act, 2015.
[124] Appeal No. CA/ABJ/551C/2015;See also SC.852/2015 (Unreported).

the Federal Courts listed in the Constitution so as to determine whether the ACJ Act was applicable to the Code of Conduct Tribunal. The Court of Appeal held that ACJ Act is applicable to the Code of Conduct Tribunal. Dissatisfied, the Appellant appealed to the Supreme Court of Nigeria which dismissed the appeal on 5th January, 2016 and directed that the Appellant, Dr Saraki should face his trial at the Code of Conduct Tribunal thereby affirming the decision of the Court of Appeal to the effect that the ACJ Act governs all Federal Courts including the Code of Conduct Tribunal.

3.8 Examination of Some Provisions of the Administration of Criminal Justice Act, 2015

The ACJ Act was enacted to cure the problems of delay that were experienced under the CPC and the CPA regimes. The purpose of the Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the right and interest of the suspect, the defendant and the victim.[125] Some of the provisions of the ACJ Act are examined below.

3.8.1 Arrest, Notification of Cause of Arrest and Rights of the Suspect

A suspect or defendant alleged to have committed an offence under the Act shall be arrested, investigated, inquired into and dealt with according to the provisions of the Act.[126] In making such an arrest, no unnecessary restraint shall be carried out unless there is reasonable apprehension of violence or an attempt to escape has been made or by an order of the Court.[127] At the point of arrest, the suspect must be informed of his rights to remain silent, the right to a

[125] Section 1 of the ACJA, 2015
[126] *Ibid.,* Section 3
[127] *Ibid.,* Section 5

Legal Practitioner or free representation by the Legal Aid Council of Nigeria where the suspect cannot afford legal representation.[128]

The immediate construction of these provisions is that they are mandatory duties imposed on any person, even the private illiterate or non-legally trained person, who makes a valid arrest or the Police Officer who himself is distressed in making an arrest or receiving an arrested person in the Station. Thus, the arresting persons or Police Officers should be so civilised as to inform the person arrested of these rights otherwise they will be held to have made an unlawful arrest. Meanwhile, the constitutional requirements in such circumstance is that "any person who is arrested or detained shall be informed in writing within 24 hours (and in a language that he understands) of the facts and grounds for his arrest or detention."[129]

It is submitted that this may amount to a congregational member (the ACJ Act) being more Catholic than the Pope (the Constitution). It is further submitted that the cure for such legal rebellion is the provision of Section 1(3) of the 1999 Constitution which provides that if any law is inconsistent with its provision, the Constitution shall prevail and the other law shall, to the extent of its inconsistency, be void.

Although it is believed that ignorance of law is not an excuse, but in this situation, the arrested person stands to benefit from the ignorance of the law on the part of those who arrested him for failing to inform him of his ACJ Act (yet not Constitutional) rights to avail the services of the Legal Aid Council of Nigeria. How is it possible that, for the purpose of an effective arrest, all these must happen?

[128] *Ibid.,* Section 6
[129] Section 35(3) of the CFRN 1999 (as amended).

The Act restates the suspect's constitutional rights to be accorded humane treatment, not to be subjected to torture or degrading treatment.[130] The Act makes it compulsory that the Police Officer making the arrest or to whom a private person hands over the suspect to record information about the arrested suspect and an inventory of all items or property recovered from the suspect within 48 hours.[131] This inventory shall be duly signed by the Police Officer and the arrested suspect. The Act provides that where the arrested suspect does not sign the inventory, it does not invalidate the inventory.

3.8.2 Abolition of Arrest in Lieu

The ACJ Act expressly prohibits the arrest of a person in place of a suspect.[132] Thus, a Police Officer has no power to arrest a person who has not committed an offence in lieu of another.

It is common phenomenon among Police Officers in Nigeria to arrest relatives of a suspect in lieu of the suspect where it becomes difficult to arrest the suspect.[133] At times, the Police Officer making an arrest will apprehend every person seen with the suspect or in the house of the suspect, particularly where the suspect is at large.

However, this provision of the ACJ Act prohibiting the arrest of a person in lieu of a suspect may, at the surface level, appear plausibly humane and a respect for the dignity of all citizens before the law. Yet in practical reality, it presents a very difficult roadblock for the Police to the effective investigation of criminal activities in Nigeria, given the tendency by many families to protect and screen members who are offenders in their folds.

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[130] *Ibid.,* Section 8.
[131] *Ibid.,* Section 10.
[132] *Ibid.,* Section 7.
[133] Adebayo, A.M. (2012) *Administration of Criminal Justice System in Nigeria,* Princeton Publishing Co. Lagos, p.21

By this provision, the house wife who knowingly ate of the husband's loot cannot be arrested during investigation by the Police and search for her absconding husband. The wisdom for the effective investigating Police Officer is to invite such a wife to the Station who must not neglect to aid in arresting her suspected husband.[134]

3.8.3 Video Recording of Confessional Statement of an Arrested Suspect

Under the ACJ Act, the police has been mandated to record every confessional statement given by a suspect on video,[135] as opposed to the use of torture to compel suspects to confess to crimes which perhaps they did not commit. For gallantry, Section 15(4) of the Act provides:

> Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the Police Officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means.

It is clear from the above that the ACJ Act is intended to address the issue of torture in Police custody and has reviewed the mode of obtaining the confessional statement of a suspect. Thus, every confessional statement is to be recorded on video and no suspect, therefore, can be forced to make a confessional statement by the use of torture.

It is respectfully submitted that the above provision, as sound as it may be, is still problematic. This is because aside the economic cost and practicability problems associated with this onerous responsibility foisted on the Police, the provision is unclear as to whether or not the arrested person must first of all be brought to the Police Station before he confesses.

Interestingly, the provision of Section 15 (4) of the ACJ Act 2015 which requires the recording of confessional statement of a suspect on Video is in *pari materia* with the provision of Section 9 (3) of the Administration of Criminal Justice Law 2011 of Lagos State except that the

[134] See Section 201 of the Criminal Code.
[135] Section 15(4) of the ACJ Act

ACJ Law of Lagos State went further to add that if the confessional statement of a suspect is not recorded on Video it must be made in the presence of a Legal Practitioner who must also endorsed same.

The above addition made by the ACJ Law 2011 of Lagos State is also problematic because it is not clear as to whether the Legal Practitioner must be the one representing the arrested suspect or any Legal Practitioner. It is equally inconclusive what the law intends to do with the presence of a Legal Practitioner at the writing of the confessional statement, since his mere presence would not alter the validity or otherwise of its voluntariness. Does the presence of a Legal Practitioner at the scene of an event translate to its genuineness or truthfulness any more than the presence of another person at the event? Is the Legal Practitioner to be believed any more than the Police in a trial within trial for the challenge of such confessional statement?

It is humbly submitted that the answers to the above questions may be in the negative, especially with the current decline of integrity of Legal Practitioners in the Country. A case in point is that of Ricky Tarfa (SAN) who was accused of bribing Justice Yunusa of the Federal High Court Lagos to the tune of Two Hundred and Twenty Five Thousand Naira Only.[136]

In a separate case of *FRN v. Ricky Tarfa,*[137] the Accused, a Senior Advocate of Nigeria was arraigned before a Lagos High Court sitting in Igbosere by the Economic and Financial Crimes Commission (EFCC) on the allegation of obstruction of justice and attempt to pervert the course of justice. The charge alleged that on February 5th 2016 the Accused hid two suspects, Nazaire Sorou Gnanhoure and Modesti Finagnon, both citizens of Benin Republic in his Mercedes Benz Sport Utility Car thereby shielding them from being arrested and unlawfully perverting the course of justice. The case is ongoing.

[136] "Shocking: Rickey Tarfa Bribed Justice Yunusa with N225,000; habitually manipulates Judges – EFCC." Retrieved from www.premiumtimesng.com February 18, 2016 at 9:56 pm at 5:26 pm
[137] Unreported Charge No. LD/2417C/2016

It is respectfully submitted that a Legal Practitioner who unlawfully perverted the course of justice may be capable of undermining a confessional statement obtained during investigation where it does not favour his client. Happily, the ACJ Act 2015 has done away with the requirement of making a confessional statement in the presence of a Legal Practitioner where such statement cannot be recorded on Video.

Again, the provision of the ACJ requiring the recording of confessional statement of a suspect on Video has impliedly jettisoned the Common Law "Judges Rule" with its attendant tests for measuring the civility on the part of the Police and the voluntariness on the part of the suspect in the taking and making of confessional statements respectively. This practice apparently adopted by the Evidence Act,[138] was commended by the Court of Appeal in the case of *Okeke v. The State*[139]when it held, *inter alia,*that:

> ….the requirement that caution must be administered to one suspected of committing a crime before his statement is made to or recorded by one who is accredited to do is a procedural device in aid of administration of justice as part of administrative directions to the Police and Kindred Organisations that are vested with the powers to investigate crime.

3.8.4 Establishment of Central Criminal Registry

As a solution to the unavailability of up-to-date and accurate records, the Act seeks to establish a Central Criminal Records Registry at the Police Headquarters.[140] The Central Criminal Records Registry System will obviously serve as a veritable database of all offenders in the Country. Admittedly, the Central Criminal Registry System will provide a hint to the Courts and prosecutors as regards whether an accused person is already on the data base of the Registry, thus aiding in the administration of criminal justice.

[138] See Sections 28 and 31 of the *Evidence Act* Cap. E4, LFN 2004 (as amended in 2011).
[139] (2000) FWLR (pt. 29) 2453.
[140] Section 16 of the ACJ Act.

3.8.5 Quarterly Report of Arrest to the Attorney-General

In a clear demonstration of show of control by the office of the Attorney-General over the Police, the ACJ Act directs that:

> "The Inspector-General of Police and the head of every agency authorised by law to make arrests shall remit quarterly to the Attorney-General of the Federation a record of all arrests made with or without warrant in relation to Federal offences within Nigeria'"[141]

The above was followed by yet another legislative directive that:

> The Commissioner of Police in a State and the head of every agency authorised by law to make arrests within a State shall remit quarterly to the Attorney-General of that State a record of all arrests made with or without warrant in relation to State offences or arrest within the State.[142]

Despite subjugating the State Commissioner of Police to a supposed superior wisdom of the Attorney-General of a State on issues of criminal justice administration, it appears that the above provisions rob away the powers, functions and command structure of the Police Force as prescribed under the Constitution[143] and the Police Act.[144]

While not doubting the Constitutional powers of the Attorney-General of the State as contained in Section 211 of the 1999 Constitution, it is respectfully submitted that such powers do not extend to pre-trial administrative and command directives or decisions of the Nigeria Police Force in respect of suspects held in their custody within the Constitutional limits.

[141] *Ibid.,* Section 29(1).
[142] *Ibid.,* Section 29(3).
[143] See the combine effect of Sections 214(2) and 318 of the 1999 CFRN (as amended).
[144] Sections 24 and 25 of the *Police Act*, Cap. P19 LFN 2004.

3.8.6 Duty of the Police to Report All Cases of Arrest and Remit Files to the Nearest Magistrate

In a bold breath, which places a Magistrate (no matter the grade) in superior position to the Divisional Police Officer (no matter the rank), the *ACJ Act* requires that:

> An Officer in charge of a Police Station or an official in charge of any agency authorised to make arrest shall report to the nearest Magistrate the cases of all suspects arrested without warrant within the limits of their respective Stations or agency whether the suspects have been admitted to bail or not.[145]

Without holding brief for who should rank higher in the Civil Service scheme between the Magistrate and the Officer in charge of a Police Station, the above statutory provision apparently portends many administrative problems in the command structure of criminal justice dispensation in the States. By law and by administrative structure, the Police, though physically carrying out civil duties in the States, do not come under the command and administration of the State's governments.

Be that as it may, the ACJ Act directs that the Magistrate should forward the reports of all suspects arrested to the Criminal Justice Monitoring Committee (CJMC) which has the responsibility to analyse the reports and advise the Attorney-General of the Federation as to the trends of arrests.[146] Likewise, the Act mandates the Chief Magistrate or any Magistrate designated by the Chief Judge for that purpose, to conduct an inspection of Police Stations or other places of detention within his territorial jurisdiction other than the Prison.[147]

During the visit, the Magistrate may call for, and inspect the records of arrests, and may direct the arraignment of the suspects. Where bail is refused by the Police, the Magistrate may grant bail to any suspect where appropriate if the offence for which the suspect is held is within

[145] Section 33(1) of the *ACJ Act*, 2015.
[146] *Ibid.,* Section 33(3).
[147] *Ibid.,* Section 34(1).

the jurisdiction of the Magistrate.[148] Similarly, an Officer in charge of Police Station shall make available to the visiting Magistrate or designated Magistrate the full records of arrest and bail. He shall also make available the applications and decisions on bail made within the period.[149] All these are required for the purpose of decongesting Police Cells.

3.8.7 Detention Time Limit

The ACJ Act limits the time spent for the remand of suspects in custody without arraignment to a maximum of 14 days before a review of case by a Magistrate. This provision also limits the number of times that the detention order of 14 days can be obtained. Thus, where on the third occasion, the detaining authority cannot show why the suspect should be detained without cause, then the suspect may be released with or without application from the suspect or his Counsel.[150]

The above initiative will address a common situation where the Police gets a remand order from the Magistrate's Court against a suspect it does not have any or sufficient evidence to prosecute. Thus, when a Magistrate grants a remand order, it is time bound.[151] Consequently, a situation where suspects stay in detention for months without trial is now over.

It is humbly submitted that this is a welcome development. This is because if a suspect is taken to a Magistrate's Court, the Magistrate can, even though he has no jurisdiction, consider the bail application and admit the suspect to bail. Therefore, if the ACJ Act is properly applied, a Court before which a suspect is brought cannot make an order of remand indefinitely, but for two weeks, and the suspect must be brought before the Court for a review. If after further review,

[148] *Ibid.,* Section 34(2)
[149] *Ibid.,* Section 34(3).
[150] *Ibid.,* Section 293-299
[151] Ibid.

there is no seriousness on the part of the Prosecution, the Magistrate will have the power to discharge the suspect.

3.8.8 Criminal Trials and Inquiries

The ACJ Act again reinforces the right of a person to make a complaint against any person alleged to have committed or to be committing an offence. A Police Officer may go ahead to make a complaint even when the party aggrieved declines to make a complaint.[152] This form of complaint needs not be in writing unless it is required to be so by the law and where it is not in writing the Court or Registrar shall reduce it into writing.[153] The limitation period, where no time is specifically stated, for making any complaint and if made when not in an official capacity, shall be made within six years from the time the complaint arose. A criminal charge shall be filed and tried in the Division where the alleged offence was committed unless it can be shown that it is convenient to do otherwise for security reasons.

The Act empowers Chief Judge of a High Court to transfer any case from one Court to another where it appears to him that such would promote the end of justice, or public peace. However, this power shall not be exercised where the Prosecution has called witnesses. Where the Chief Judge is to exercise this power in response to petition, the petition shall be investigated by an independent body of not more than three (3) reputable legal practitioners within one week of such petition and a report shall be made within two (2) weeks except otherwise specified. Again, this demonstrates the need for immediate dispensation of justice by the Act.

[152] *Ibid.,* Section 88
[153] *Ibid.,* Section 89

3.8.9 Institution of Proceedings/Provisions on Process

The ACJ Act provides that a charge sheet filed by the prosecution must be served on the defendant within seven (7) days of its being filed or such time as the Court may allow.[154] The Act makes it compulsory for trial to commence not later than thirty (30) days from the date of filing the charge and trial must be completed within reasonable time. The failure of this to happen allows the Court to forward to the Chief Judge the particulars of the charge and reasons for failure to commence or complete trial within a reasonable time.[155]

The Act provides that where a Defendant is before a Court, voluntarily or on summons, the trial of the Defendant may be held notwithstanding any irregularity, defect or error in the summons or warrant or for want of complaint on oath or any irregularity in the arrest or custody of the Defendant.[156] Irregularities that can vitiate proceedings include situations where the Court or Justice of Peace are not empowered by law to attach and sell property under Section 80 of the Act, demands security to keep the peace, demand security for good behaviour, discharges a person lawfully bound to be of good behaviour, cancels a bond to keep the peace, decides an appeal.[157]

3.8.**10 Introduction of Plea Bargain and Sentence Agreements**

In yet another controversial provision,[158] which may possibly have been dictated by considerations in the guise of human rights, the ACJ Act overtook all laws on the highways it constructed for both the Prosecutor and the Offender to, figuratively speaking, negotiate their cuts from the loot. A peep into one of such high way reveals that, the prosecution may enter into plea bargain with the Defendant, with the consent of the victim or his representative during or

[154] *Ibid.,* Section 110(2)
[155] *Ibid.,* Section 110(3)
[156] *Ibid.,* Section 136
[157] *Ibid.,* Section 137
[158] *Ibid., S*ection 270(1).

after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence.[159]

A Plea bargain may be allowed if the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;[160] and where the Defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or where the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.[161]

The above provision which allows a plea bargain to be resorted to, where the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt is still problematic. A fundamental question worth nothing is that whether plea bargain is a moral option for the arrested suspect to release himself of guilty conscience even though he knows that the prosecution does not have sufficient evidence to prove the offence beyond reasonable doubt to which he is entitled to be discharged and acquitted? It is respectfully submitted that the drafters of the Act failed to avail themselves with the fact that the arrested person must be discharged and acquitted where the prosecution fails to prove the case against him beyond reasonable doubt.

There is yet another complimentary approach by the ACJ Act to enable the Prosecutor negotiate a plea and arrange a sentence agreement with the defendant. This was made possible by the following procedure:

> The Prosecutor and the defendant or his Legal Practitioner may before the plea to the charge, enter into an agreement in respect of:
>
> (a) The term of the plea bargain which may include the sentence recommended within the appropriate range of punishment

[159] *Ibid.,* Section 270(2)
[160] *Ibid.*
[161] *Ibid.*

stipulated for the offence or a plea of guilty by the defendant to the offence(s) charged or a lesser offence of which he may be convicted on the charge; and

(b) An appropriate sentence to be imposed by the Court where the defendant is convicted of the offence to which he intends to plead guilty.[162]

In this instance, the Prosecutor shall, if he finds it reasonably feasible, afford the Complainant or his representative the opportunity to make representations to the Prosecutor regarding the contents of the agreement or the inclusion of a compensation or restitution order in the agreement.[163] The judicial procedure to be followed, after the agreement has been made, are sequentially laid out by the law,[164] and do not deserve any further comment.

3.8.11 Presentation of Case by Prosecution and Defence

After a plea of not guilty has been taken or no plea has been made, the Prosecutor is required to open the case against the defendant stating briefly by what evidence he intends to prove the guilt of the defendant.[165] The Prosecutor is also required to examine his witnesses who may equally be cross-examined by the defendant or his Legal Practitioner and thereafter re-examined by the Prosecutor where necessary.[166] After the case of the Prosecution is concluded, the defendant or his Legal Practitioner, if any, is entitled to address the Court to present his case and to adduce evidence where so required.[167]

Where the defendant or his Legal Practitioner makes a no case submission in accordance with the provisions of the Act, the Court is required by law to call on the Prosecutor to reply.[168]

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[162] *Ibid.,* Section 270(4)
[163] *Ibid.,* Section 270 (6)
[164] *Ibid.,* Sub-Sections (7)-(18).
[165] Section 300 (1) of the *ACJ Act,* 2015
[166] *Ibid.,* Section 300 (2).
[167] *Ibid.,* Section 301.
[168] *Ibid.,* Section 303 (1).

The defendant or his Legal Practitioner has the right to reply to any new point of law raised by the Prosecutor, after which, the Court shall give its ruling[169].

3.8.12 Reference to the Court of Appeal

Where a question arises as to the interpretation of the Constitution of the Federal Republic of Nigeria in the course of a trial and is referred to the Court of Appeal, the Court before which the question arose may adjourn the trial until the question is considered and decided, conclude the trial and postpone the verdict until such time the question has been considered and decided, or conclude the trial and pass sentence but suspend the execution until the question is considered and decided. After the question has been decided, the Court will continue with its proceedings where it stopped.[170] The Act also makes it clear that an application of stay of proceedings in respect of criminal matters before the Court shall not be entertained.[171]

3.8.13 Returns by Comptroller General of Prisons

The ACJ Act has a great potential to substantially reduce the number of persons in custody while awaiting trial. One of the many innovative provisions of the Act requires the Comptroller-General of Prisons to provide quarterly reports to the Chief Justice and the Attorney-General of the Federation on all persons awaiting trial that have been held in custody for more than 180 days.[172] In addition to reducing the incessant cases of jailbreaks in the Country, the ACJ Act has abolished torture of suspects and put an end to the concept of holding charge which has been abused by the Police.[173] A suspect arrested for a criminal offence must now be charged before a Court of competent jurisdiction.

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[169] *Ibid.,* Section 303 (2).
[170] *Ibid.,* Section 305.
[171] *Ibid.,* Section 306
[172] *Ibid.,* Section 111
[173] *Ibid.,* Section 15

3.8.14 Trials

Trials shall be held in the High Court on information filed by the Attorney-General of the Federation or by the Attorney-General of the State or a Law officer in the ministry of justice; a Public Officer acting in his official capacity; by a Private Legal Officer of any prosecuting agency; by a Private Prosecutor; or summarily.[174] Trials shall be held in the Magistrate Court or any other Court or tribunal exercising criminal jurisdiction in accordance with the provisions of the Act relating to summary trials.

Where a Defendant charged before the Court is not represented by a Legal Practitioner, the Court shall inform him/her of their rights to a Legal Practitioner of his/her choice; and or a Legal Practitioner engaged for him by way of Legal Aid. To ensure speedy trial, objections shall not be taken or entertained during proceedings or trial on the ground of an imperfect or erroneous charge. After the plea has been taken, any objection against the charge raised by the defendant shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment.

Upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial. Where day-to-day trial is impracticable after arraignment, no party shall be entitled to more than five adjournments from arraignment to final judgment provided that the interval between each adjournment shall not exceed 14 working days. Where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days inclusive of weekends. In all circumstances, the Court may award reasonable costs in order to discourage frivolous adjournments. No party is allowed to amend processes for more than five times during trial. The elevation of a High Court Judge to the Court of Appeal will no longer delay criminal

[174] *Ibid.,* Section 381

trial as the Judge shall have dispensation to continue to sit in the lower Court only for the purpose of concluding any part-heard criminal matter pending before him/her at the time of the elevation and shall conclude the same within a reasonable time.

3.8.15 Professional Surety and Absentee Witness

Another innovation the ACJ Act introduces is the provision relating to professional surety.[175] By this innovation, the ACJ Act seeks to ease access to justice by persons who may be lawfully restrained and incapacitated by insufficient surety/bond facilities. Thus, the restrained person could enter into contractual arrangement with the corporate bond's person for his release and subsequent payment in cash or kind as may be agreed.

The ACJ Act also makes an absentee witness without reasonable excuse liable to imprisonment for a term not exceeding two months or to a fine not exceeding Ten Thousand Naira.[176] Thus, the era of witnesses deliberately absenting themselves in order to frustrate the case of the Prosecution or the defence is now over.

3.8.16 Suspended Sentence

Where a defendant is charged before a Court and the charge is proved, the Court may decide not to convict the defendant having regard to the character, antecedents, age, health, or mental condition of the defendant; the trivial nature of the offence, or the extenuating circumstances under which the offence was committed. In the circumstance, the Court may dismiss the charge or discharge the defendant conditionally on his entering into a recognizance to be of good behaviour and to appear at any time within three years as may be specified in the order.[177] The Court may, in addition, make order for the defendant to pay damages for injury or

[175] *Ibid.,* Section 187.
[176] *Ibid.,* Section 246(1).
[177] *Ibid.,* Section 460.

compensation to the victim of the crime and such costs of the proceedings as the Court thinks reasonable.

3.8.17 Community Service/Parole

Notwithstanding the provision of any law creating an offence, where the Court sees reason, the Court may order that the sentence it imposed on the convict be, with or without conditions, suspended, in which case, the convict shall not be required to serve the sentence in accordance with the conditions of the suspension. The Court may, with or without conditions, sentence the convict to perform specified service in his/her community or such community or place as the Court may direct. A convict shall not be sentenced to community service or suspended sentence for an offence involving the use of arms, offensive weapons, sexual offences or for an offence which the punishment exceeds imprisonment for a term of three years.[178]

Where the Comptroller-General of Prisons recommends to the Court that a Prisoner convicted and serving sentence in Prison is of good behaviour, and has served at least one-third of the Prison term of at least 15 years or life imprisonment, the Court may, after hearing the prosecution and the prisoner or legal representative, order that the remaining term of the imprisonment be suspended, with or without conditions, as the Court considers fit, and the Prisoner shall be released from Prison on the order.[179] A Prisoner who is so released shall undergo a rehabilitation programme in a government facility or any other appropriate facility to enable him to be properly reintegrated to the society. This is the body of the Act that encourages restorative justice.

[178] *Ibid.*
[179] *Ibid.,* Section 468

3.8.18 Administration of Criminal Justice Monitoring Committee

The Act established the Administration of Criminal Justice Monitoring Committee which is charged with the supreme responsibility of ensuring effective and efficient application of this Act by the relevant agencies.[180] This Committee shall ensure that criminal matters are speedily dealt with; congestion of criminal cases in Courts is drastically reduced; congestion in Prisons is reduced to the barest minimum; persons awaiting trial are, as far as possible, not detained in Prison custody; the relationship between the organs charged with the responsibility for all aspects of the administration of justice cordial and there exists maximum co-operation amongst the organs in the administration of justice in Nigeria; submit quarterly report to the Chief Justice of Nigeria to keep abreast of developments towards improved criminal justice delivery and for necessary actions to be taken; and carry out such other activities as are necessary for the effective and efficient administration of criminal justice.[181]

3.9 Challenges of the Administration of Criminal Justice Act, 2015

The problems bedeviling the administration of criminal justice system in Nigeria are far from over, notwithstanding the coming into force of the ACJA, 2015. First, the Act does not apply to State offences. It obviously applies only to federal offences and offences committed in the Federal Capital Territory (FCT) Abuja. In a bold breathe, the Act provides that its provisions shall apply to criminal trials for offences created by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja.[182] The bulk of offences are created by state laws, and it is clear that the Act is not applicable to offences created by the State House of Assemblies. This is a challenge to harmonisation of the laws.

[180] *Ibid.*, Section 469
[181] *Ibid.*
[182] *Ibid.*, Section 2(1)

Secondly, the provisions of the Criminal Procedure Code and Criminal Procedure Act are still applicable in the State Courts even though the ACJ Act purports to repeal them. This is because crime and punishment are under the residuary list of the 1999 Constitution of the Federal Republic of Nigeria, in respect of which States are competent to make laws. This still perpetuates legal pluralism in the administration of the criminal justice in Nigeria. Unless the States within the Federation adopt the ACJ Act by passing it into law in their respective domain, the problem will still linger on.

Thirdly, some of the provisions of the ACJ Act are inconsistent with the provisions of the Constitution and some other laws. For instance, the ACJ Act makes it mandatory for Police Officers effecting an arrest to inform the suspect of his right to silence, his right to a Legal Practitioner, and his right to free legal representation by the Legal Aid Council of Nigeria. Meanwhile, the Constitutional[183] requirement in such Circumstance is that the person arrested shall be informed in writing within 24 hours (in the language he understands) of the facts and grounds of his arrest or detention. Again, the Act seeks to oust the powers of lay Police Officers from prosecuting cases even in the Magistrate Courts.[184] Interestingly, no measure has been put in place to post lawyers to Police Stations or to de-centralise the Ministry of Justice so that these lawyers will take over the job being done by the lay Police Officers.

Fourthly, it is not clear whether the ACJ Act applies to the Federal High Court, because there is no amendment of the Federal High Court Act which states that the provisions of the Criminal Procedure Act shall apply to the Court.[185] Does this mean an implicit amendment of the Federal High Court Act? It is respectfully submitted that it would have been neater for the ACJ Act to have specifically stated this so that it will be known which law is applicable.

[183] See Section 35 (3) of the 1999 CFRN (as amended).
[184] Section 106(a), (b) and (c) of the *ACJ Act*, 2015
[185] Section 33 of the *Federal High Court Act*, Cap. F12, LFN 2004.

It is thought provoking to further note that the ACJ Act is a wholesale copying of the Administration of Criminal Justice Law of Lagos State,[186] with little modifications. With the emergence of the Administration of Criminal Justice Law, Lagos State has broken the jinx by modernizing its criminal justice system to meet international standards.

This chapter has been able to appraise the general criminal justice system in Nigeria by appraising its components. The components include the Penal Code (as may be variously amended by Northern States), the Criminal Code (as may be variously amended by Southern States), the Criminal Procedure Code, the Criminal Procedure Act, and the Administration of Criminal Justice Act, 2015.

The chapter notes that the ACJ Act is not without some flaws. Thus, some of its provisions are clearly in conflict with the provisions of some other laws, prominent among which is the Police Act, Cap P19, Laws of The Federation of Nigeria, 2004.

There is, therefore, the need to fill these identified gaps in the Administration of Criminal Justice Act, 2015. There is equally the need for further training of lawyers to understand the changes introduced by the ACJ Act so as to achieve the aims and objectives for which the Act was enacted.

[186]See Administration of Criminal Justice (Repeal and Re-Engagement) Law, 2011

CHAPTER FOUR

AN APPRAISAL OF THE ISLAMIC CRIMINAL JUSTICE SYSTEM IN NIGERIA

4.1 Introduction

The decision by some States to re-introduce the Islamic Criminal Justice System in Nigeria marked the beginning of a new era in the legal and constitutional history of the nation. It may be asserted, without any shred of doubt that Islamic Criminal Justice System has been in application in most parts of Northern Nigeria before the coming of the British.[1] Generally speaking, facts are available to prove that Northern Nigeria had a well organised system of administration of criminal justice in all its ramifications.[2] This was made possible by the presence of Islam in the region as far back as the 11th Century, before the arrival and further consolidation of the system by Sheikh Uthman Ibn Fodio, the 19th Century revivalist.[3]

However, with the coming of the British colonial masters, the Islamic Criminal Justice System which was firmly established in Northern Nigeria was systematically abolished for being "harsh, uncivilised and inhuman."[4] The case of *Tsoho Gubba vs Gwandu N. A.*[5] is the *locus classicus* which has confirmed this assertion. It was a case of homicide tried by an Islamic Court which found the accused guilty under Islamic law. The accused was subsequently convicted. On appeal to the then West African Court of Appeal (WACA), the judgment was modified based on the then introduced English Panel Justice System.

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[1] Ajomo, M. A. *et al* (1991). *Human Rights and Administration of Criminal Justice in Nigeia*, Intec Printers Ltd., Ibadan, p.24.
[2] Sa'id, M. I. (2003). 'Shari'a and the Constitution: Legal Issues in Perspective' in Zakariyau, I. O. (ed) *Digest on Islamic Law and Jurisprudence in Nigeria*, Legal Essays in Honour of Justice Umar Faruk Abdullahi PCA (as he then was), Darun-Nur, Auchi, Nigeria, p.189.
[3] *Ibid.*
[4] Uthman, M. B. *et al* (2007). An Overview of the Shari'a Penal Codes and the Shari'a Criminal Procedure Codes, *Ahmadu Bello University Journal of Islamic Law (ABUJIL)*, Vol. IV-V, p.215.
[5] (1947) 2 WACA 147.

It must be stressed that many issues and challenges have emerged after the re-introduction of the Islamic Criminal Justice System in Nigeria. Such challenges include the question of whether or not the re-introduction of Islamic Criminal Justice System in the Country is constitutional, whether or not such action amounts to violation of fundamental human rights of the citizens; and whether or not reforms brought about in the State's judiciary ensure effective administration of criminal justice.

This chapter, therefore, discusses the application of Islamic Criminal Justice System in Nigeria by analysing the general characteristics of the *Shari'a* Penal Codes, the *Shari'a* Criminal Procedure Codes and the problems and challenges in the implementation of the Islamic Criminal Justice System in Nigeria.

4.2 Brief History of Islamic Criminal Justice System in Nigeria

It is imperative to state, from the outset, that the application of the Islamic Criminal Justice System in Nigeria pre-dates the Sokoto *Jihad* era. This is because available evidence shows that in Kanem-Borno Empire, Hausa land and some parts of Yoruba land, *Shari'a* was administered by the state especially under devout Muslim rulers.[6] In Kanem-Borno particularly, *Shari'a* in all its facets was fully applied as early as the 11th century under the Sayfawa dynasty.[7] In most of the Hausa land, *Shari'a*, in all its ramifications, was the law of the land and supplanted whatever native custom that existed as early as the14th century.[8] In pre-colonial Yoruba cities of Ilorin, Ibadan, Ede, etc; *Shari'a* was applied under practising Muslim Obas.[9]

[6] Imam, Y. O. (2003). 'Application of Shari'a in Nigeria's Fourth Republic: Problems and Prospects' in Zakariyau, I. O. (ed), *Op.cit.*, p. 138.
[7] Kurawa, I. A. (2000). *Shari'a and the Press in Nigeria*, Kurawa Hodings Ltd., Kano, p.278.
[8] Kumo, S. (1998). 'Application of Islamic Law in Northern Nigeria: Problems and Prospects' in Rashid, S. K. (ed), *Islamic Law in Nigeia: Application and Teachings*, Islamic Publication Bureau, Lagos, p.75
[9] Okunola, M. (1993). 'The Relevance of Shari'a in Nigeria' in Alkali, M. N. (ed), *Islam in Africa*, Spectrum Books Ltd., Ibadan, pp.24-29.

The *jihad*, led by Sheikh Uthman Ibn Fodio, in the early 19th Century, resulted in the revival of *Shari'a* as the governing law in all aspects of life throughout the Sokoto Caliphate, which covered substantial part of what is now known as Northern Nigeria.[10] As rightly noted by Uthman and Gurin, the Islamic Criminal Justice System was polished and perfected after the *jihad* of Sheikh Uthman Ibn Fodio.[11] This assertion is quite instructive because even early writers, such as Sir Hugh Clapperton, were stunned at the high level of security prevalent in Sokoto Caliphate in the 19th Century.[12] Clapperton was reported to have said:

> The laws of the Qur'an were... so strictly put in force... that the whole Country when not in the state of war, was so well regulated that it is a common saying that a woman might travel with a casket of gold upon her head from one end of the *Fellata* dominions to the other.[13]

According to Suleiman, Islamic criminal justice system has a long history in Nigeria, dating back to about one thousand years ago when Borno Empire became Islamic and *Shari'a* became its supreme law. Again, about two hundred years ago, an Islamic revolution took place in what is now known as the Northern Nigeria, creating a State and civilisation based entirely on the *Shari'a*,[14] called the Sokoto Caliphate.

The above clearly shows that the Islamic Criminal Justice System has been in application in Northern Nigeria prior to the *jihad* of Sheikh Uthman Ibn Fodio. The *jihad* only revived the declining adherence to the principles of *Shari'a* in all its facets.

It must be pointed out that, the advent of the colonialism in Nigeria heralded the gradual and dwindling application of *Shari'a* in the Country. Thus, when the British conquered the Northern part of Nigeria, they did not abolish the application of Islamic Criminal Justice at a go

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[10] Bello, M. (2000). *'Shari'a* and Constitution' in *The Shari;a Issue*, Working Paper for a Dialogue, Published by a Committee of Concerned Citizens, Arewa House, Kaduna, p.6.
[11] Uthman, M. B. *et al, Op.cit.*, p.215
[12] *Ibid.*
[13] Suleiman, I. (1986). *A Revolution in History*, Mansel, London & New York, pp.169-170
[14] Suleiman, I. (2000). The Application of Islamic Law in Multi-Religious Society: The Case of Nigeria, *Ahmadu Bello University Journal of Islamic and Comparative Law (ABUJICL)*, Vol. 22, p.25.

but rather took a gradual and systematic method of transformation.[15] This was, perhaps, due to the realisation of the fact that it was a system so entrenched in the life of the majority of the populace at that time. It was also due to serious resistance put up by Muslim religious and political leaders against the replacement of the Islamic Criminal Justice System with the English Criminal Justice system.

A number of Statutes were enacted by the British to curtail the application of Islamic Criminal Justice in Nigeria.[16] The provisions of these Statutes are summarised as follows:

(a) Allowing the Native Courts to administer the law in both criminal and civil matters;

(b) The practice and procedure of the Courts were to be governed by native law and custom (including Islamic law) subject to rules that might be made by the High Commissioner;
(c) The Resident could review the findings of a court and order a retrial or modify the sentence of the court; and
(d) The application of the native law and custom, including Islamic law, should not be repugnant to natural justice, equity and good conscience or incompatible either directly or by necessary implication with any written law for the time being in force.[17]

It is clear that the above measures taken by the British were meant to tamper with the application of Islamic Criminal Justice System. As noted by Bello and others,[18] when the British conquered the Northern part of Nigeria, they found that the region had a well-organised and efficient judicial system and administration of justice under the sovereignty of each Emir. *Shari'a* was the prevailing law in both criminal and civil matters administered by the emir's Court. *Dogarai* performed the functions of the Police.[19] The British did not interfere with Islamic civil law at all. However, with respect to criminal law which comprises *Hudud* (offences with fixed punishment in the *Qur'an* and *Sunnah*), *Qisas* (Retaliation) and *Ta'azir* (offences with discretionary punishment), they substituted *Qisas* (retaliation) with death by hanging for the

[15] Muhammad, A. M. (2007). An Overview of the Administration of *Shari'a* Penal Justice System in Nigeria, *Ahmadu Bello University Journal of Islamic Law (ABUJIL)*, Vol. IV-V, p.163
[16] Examples of such statutes were the Native Court Proclamation of 1900 and 1906, The Protectorate Court Ordinance of 1933 and the Native Court Ordinance of 1943, among others.
[17] See Kumo, S. *Op.cit.*, p.6.
[18] Bello, M. *Op.cit.*, p.6.
[19] *Ibid.*

offence of homicide, imprisonment as the punishment for the offence of theft instead of the amputation of hand, and payment of *Diyah* (compensation) in lieu of capital punishment was abolished.[20]

It must be noted that before the colonialists departed in October 1960, they perfected their scheme of ensuring that the Islamic Criminal Justice System shall not be operational.[21] The legacy bequeathed to the independent Nigeria by way of confining the application of *Shari'a* to personal matters in the North and its non-application in the South has been sustained by successive Nigerian governments despite stiff opposition to it by Muslims. Notwithstanding fervent calls for total implementation of the Islamic Criminal Justice System after independence, little success was achieved.

Admittedly, the Islamic Criminal Justice System has suffered further setback in the hands of Nigerians both Muslims and non-Muslims under the pretext of Constitution making. This group inherited from the colonial masters the smuggling in of the term "Islamic Personal Law" into the realm of the *Shari'a* and ensured that judges learned in Islamic law adjudicated only on the minute and narrow aspect of the *Shari'a*.[22] Thus the remaining vast area of the *Shari'a* Criminal Justice System was adjudicated upon in accordance with the common law which was bequeathed by the British.[23]

The demand for the return to *status quo* ante of full application of Islamic Criminal Justice System in Nigeria was renewed in the late 1970s when Muslim members of the 1978 Constituent Assembly insisted on giving *Shari'a* Courts with full criminal jurisdiction and finally

[20] *Ibid.,* p.7.
[21] See Section 3(2) of the Penal Code Law, Cap 89 Laws of Northern Nigeria 1963.
[22] Abdulqadir, I. A. (2003). Constitutional Impediments to the Total Enthronement of *Shari'a* in Nigeria, in Zakariyau, I. O. (ed), *Op.cit.,* p.164.
[23] *Ibid.*

had to stage a "walkout" to press home their demand.[24] The unfortunate compromise decision was taken behind their back. The same feat was repeated in the making of the aborted 1989 Constitution.[25] That is why all post-independent Constitutions have provisions for the *Shari'a*, but confining its jurisdiction only to "Islamic personal law."

It may well be asserted that it was these series of agitations that culminated in the enactment of the *Shari'a* Courts (Administration of Justice and Certain Consequential Changes) Law No. 5 of 1999, and the *Shari'a* Penal Code Law No. 10 of 2000 by Zamfara State House of Assembly. These laws departed significantly from the old Penal Code by creating and providing punishment for offences like Homicide (*al-qatl*), Theft (*al-sariqah*) and Adultery/Fornication (*Zina*), among others as they are provided in the Holy *Qur'an,* the *Sunna* and other sources of Islamic law.[26] They also created more *Shari'a* Courts and expanded the jurisdiction of the existing *Shari'a* Court of Appeal in the State.[27] Many States in Northern Nigeria have since followed suit.[28] By this action, legal pluralism in the administration of criminal justice system in Nigeria became more entrenched.

It is, however, interesting to note that the *Shari'a* Penal Codes of the States that re-introduced Islamic Criminal Justice System are structured to include, among others, four major chapters, namely the preliminary parts, *Hudud* and *Hudud* related offences, *Qisas* and *Qisas* related offences, and *Ta'azir* offences. The Codes also contain some general concepts of criminal liability and other inchoate matters.[29] It appears that the approach of the Codes is virtually the same though there are disparities both in form and substance, and this led to calls for

[24] *Ibid.*
[25] *Ibid.*
[26] See for example Sections 199, 144 and 126 of Zamfara State *Shari'a* Penal Code, 2000.
[27] Abdulqadir, I. A., *Op.cit.*, p.164.
[28] The States include Kano, Katsina, Kaduna, Sokoto, Jigawa, among others.
[29] Uthman, M. B. et al, *Op.cit.*, p.219.

harmonisation. The harmonisation was eventually carried out by the Centre for Islamic Legal Studies (CILS), Ahmadu Bello University, Zaria.[30] To the best knowledge of this researcher, only Zamfara State has adopted the harmonised version of the *Shari'a* Penal Code.

It seems that all the Codes are from one source, that is to say the Zamfara State *Shari'a* Penal Code, which was the first. It however, contained some *lacunae* which were eventually filled by the other Codes. In the opinion of this researcher, the harmonised version of the Code is the best because it is an improvement on the other Codes. For instance, the harmonised version of the *Shari'a* Penal Code, while defining the offence of intentional homicide, replaces the words *"in a state of anger"* and the phrase *"with a light stick, a whip or any other thing of that nature which is not intrinsically likely or probable to cause death"* with the words *"in a state of fight, combat, strife or aggression using means which are not likely or probable to cause death"*.[31] The aim of the harmonised version of the Code is to ensure uniformity and avoid pluralism in the *Shari'a* Criminal Justice System in the Country.

4.3 The General Characteristics of the *Shari'a* Penal Codes

It is interesting to note that most States that have re-introduced Islamic Criminal Justice System and enacted the *Shari'a* Penal Codes tended to follow the Zamfara State's model with little modifications.[32] It is, therefore, appropriate to discuss the characteristics of the Codes and their differences, if any.

[30] Idris, D. A. (2014). Analytical Survey of the Application of Islamic Law of Homicide in Nigeria, *Ahmadu Bello University Journal of Private and Comparative Law (ABUJPCL)*, Vol. 6 and 7, p.253.
[31] Section 199 of the harmonised version of the Shari'a Penal Code, adopted by Zamfara State.
[32] Uthman, M. B. et al, *Op.cit.*, p.221.

4.3.1 The Zamfara State Model:

The Zamfara State model, as noted earlier, is widely adopted and applied. It has four major parts, namely the preliminary parts, the *Hudud* and *Hudud* related offences part, the *Qisas* and *Qisas* related offences part, and the *Ta'azir* offences part.[33]

The preliminaries part deals with general explanations and definitions. It equally deals with the general defences to criminal liability, such as the right to private defence among others. Included therein also are the general concept of criminal liability, punishments, joints acts, criminal conspiracy and unlawful society.[34]

The *Hudud* and *Hudud* related offences (i.e. offences with fixed punishment in the *Qur'an* and *Sunna*) part deals with offences such as *Zina* (Adultery/Fornication, punishable by stoning to death in case of married convicts, and 100 lashes for unmarried offenders) and theft (*Sariqa*, which is punishable by the amputation of hand if the property reaches the fixed value, i.e *Nisab*). It also consists of offences such as rape, sodomy, lesbianism, bestiality, gross indecency, robbery (*Hirabah*) and extortion, criminal breach of trust, criminal misappropriation, cheating, and criminal trespass, among others.[35] All these offences were properly defined in accordance with the classical works of the Maliki School except in the case of robbery. The ingredients of the offences were provided and the mitigating factors were clearly spelt out.

The *Qisas* and *Qisas* related part (i.e. offences against life and limb) consists of offences such as homicide, causing miscarriage, hurt, grievous hurt, assault, kidnapping, abduction and forced labour, among others.[36] Unlike the Penal Code law, the *Shari'a* Penal Code grants the relatives of the victim of intentional homicide the right to demand retaliation (*Qisas*). The

[33] *Ibid.*, p.219. See also Muhammad, A. M., *Op.cit.*, p.171.
[34] *Ibid.*, see also Sections 1-125 of Zamfara State *Shari'a* Penal Code Law.
[35] *Ibid.*, Sections 126 and 127.
[36] *Ibid.*, Sections 199 & 200, among others.

relations of the victims can also forego retaliation and demand compensation totally or partially and can equally pardon the offender.[37]

The *Ta'azir* offences Section (offences whose punishment are not provided for in the primary sources but left are to the discretion of the judge) contains all other offences that are not included in the two earlier parts. It includes offences such as criminal intimidation, wrongful restraint, forgery, offences against public peace, offences relating to public servants, giving false evidence, public nuisance, vagabonds, cruelty to animals, and fraudulent dealings with property, among others.[38]

4.3.2 The Kano State Model

Like in Zamfara State, the implementation of the Islamic Criminal Justice System in Kano State, from the legal perspective, had more to do with making the *Shari'a* Penal law a written one,[39] and conferring Courts with jurisdiction to try the offences contained therein pursuant to the provisions of the Constitution.[40] The rationale is to satisfy the constitutional requirements that crimes and punishment must be in written form.[41]

Not long after the declaration of *Shari'a* in Kano State, the then Governor signed into law the *Shari'a* Penal Code Bill on 28th of November, 2000.[42] The Code was made applicable before the *Shari'a* Courts established under the law and to persons who profess the Islamic faith or every other person who voluntarily consents to the jurisdiction of the *Shari'a* Courts.[43] Thus, the Code merely, *inter alia*, formalised the traditional Islamic Penal laws contained principally in the *Qur'an* and *Sunnah*, the two principal sources of the *Shari'a*.

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[37] *Ibid.*, Sections 200(a), (b) and (c).
[38] *Ibid.*, Chapter X, Sections 240-409.
[39] Yusufari, M. L. (2015). *Shari'a* Implementation in Kano State. Retrieved from www.gamji.com/article, p.2 on March 3, 2015 at 9.15pm.
[40] See Sections 4(7), 6(5)(k), 277 and 278 of the 1999 CFRN (as amended).
[41] *Ibid.*, Section 36(12)
[42] Yusufari, M. L., *Op.cit.*, p.2.
[43] See Section 3 of the *Shari'a* Courts Law, 2000 of Kano State.

Just like the Zamfara Code, Chapter VIII of the Kano model defines and provides punishment for *Hudud* and *Hudud* related offences such as *Zina* (Adultery/Fornication), rape, sodomy (*Liwat*), false accusation of adultery (*Qadhaf*), theft (*Sariqa*), drinking alcohol, and robbery (*Hirabah*).[44] For instance, *Zina*, under the Code, is punishable with either stoning to death for the married or previously married convicts, or caning of 100 lashes plus one year's imprisonment for the yet to marry convicts.[45] False accusation of adultery (*Qadhaf*) carries caning of 80 lashes,[46] while theft (*Sariqa*) for the first time offender attracts amputation of the right hand from the wrist joint.[47] Drinking alcohol or any other intoxicant voluntarily is punished with caning of 80 lashes.[48]

Qisas and *Qisas* related offences, otherwise known as retaliatory offences are dealt with in Chapter IX of the Kano State *Shari'a* Penal Code. Such offences include homicide and other bodily injuries attracting both punishment and compensation.[49]

Ta'azir (offences with discretionary punishments) such as criminal force and assault, kidnapping, abduction and forced labour, lesbianism, among others, have also been accommodated in Chapter X of the Kano Code. Worthy of note is the fact that the Upper *Shari'a* Courts in Kano State are given jurisdiction to try offences under the Code, and the *Shari'a* Courts are to try all offences except homicide, adultery and robbery. This is contained in the first schedule, part 1 of the *Shari'a* Courts Law of Kano State.

The types of decisions handed down in criminal cases under the Kano Code really epitomised the dawn of a new era. Thus in *C.O.P vs Danladi Dahiru*,[50] decided by Upper *Shari'a*

[44] Yusufari, M. L., *Op.cit.*, p.2.
[45] Section 125 of the *Shari'a* Penal Code, 2000 of Kano State.
[46] *Ibid.*, Section 131
[47] *Ibid.*, Section 133.
[48] *Ibid.*, Section 136.
[49] *Ibid.*, see generally Chapter IX.
[50] (Unreported) Case No. CR/171/2001.

Court Dambatta, is a case in point. The accused person, a Muslim, aged 22, was charged with the offence of theft contrary to Section 133 of Kano State *Shari'a* Penal Code, 2000. He was alleged to have stolen two sewing machines (Hyco and Butterfly brands) and some textile materials all valued at N23,400.00 (Twenty Three Thousand, Four Hundred Naira only) from a shop in Dambatta market on 25th of August, 2001. Three witnesses (two of whom were the victims) testified for the prosecution and the accused person, defenceless, confessed to the commission of the crime in the presence of three other witnesses. The Court was of the opinion that the conditions for conviction was satisfied and found the accused guilty for the offence. The Court in its judgment delivered on the 29th of August 2001 ordered the accused's right hand to be amputated in accordance with Section 134(i) of Kano State *Shari'a* Penal Code, 2000.

Whether or not the prosecution can be said to have proved its case beyond reasonable doubt, in view of the witnesses adduced and the purported confession of the accused person, is something entirely beyond the scope of this research work. Suffice it to say that this case is one of those in which the *Shari'a* Penal Code of Kano State was tested.

4.3.3 The Kaduna State Model

Generally, the Kaduna State *Shari'a* Penal Code, 2002 followed Zamfara State model with little modification. It however, differs with Zamfara model on *Ta'azir* offences and their punishments. The Kaduna State *Shari'a* Penal Code did not prescribe punishments for all the offences tagged *Ta'azir*. Rather, the punishment was left to the discretion of the *Shari'a* Courts Judges. For instance, the Code makes inciting disturbance an offence punishable by *Ta'azir*.[51] It provides "whoever does any act with intent to cause or which is likely to cause a breach of the peace or to disturb the public peace shall be liable to *Ta'azir* punishment."[52]

[51] Section 280 of Kaduna State *Shari'a* Penal Code, 2002.
[52] *Ibid.*

It is clear from the above that the Kaduna State *Shari'a* Penal Code did not state what amounts to *Ta'azir* punishment. What this means is that "all *Ta'azir* offences are to be punished with *Ta'azir*." This clearly violates the constitutional requirement[53] that crimes and their punishment should be in a written form.

4.3.4 The Niger State Model

In Niger State, the government did not replace the existing Penal Code Law of the State with a new *Shari'a* Penal Code.[54] What it did was simply an amendment of the Penal Code Law Cap. 94 Laws of Niger State, by bringing it into conformity with the *Hudud* and *Qisas* offences as decreed by Almighty Allah in the Holy *Qur'an* and *Sunnah* of the Holy Prophet (SAW). For instance, the Penal Code (Amendment) Law, 2000 of Niger State, added an additional Section 68A, summarising the punishments for *Hudud* and *Qisas* offences in accordance with the divine law of Allah (SWT).[55]

4.3.5 The Bauchi State Model

In Bauchi State, the government amended the existing Penal Code Law by enacting the Penal Code (Amendment) Law, 2001, prohibiting possession and dealing with alcohol in the State by inserting a new Section 403.[56] The State government went further to revoke all Licenses, Permits, Certificates or any similar Instrument granting or conferring any right to any person to deal in alcohol or alcoholic drinks issued pursuant to any local government byelaws or laws of the State.[57]

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[53] Section 36(12) of the 1999 CFRN (as amended).
[54] Muhammad, A. M., *Op.cit.*, p.172.
[55] Ruud, P. (2003). *Islamic Criminal Law in Nigeria*, Spectrum Books Ltd., Ibadan, Nigeria, p.13.
[56] Muhammad, A. M., *Op.cit.*, p.172.
[57] See generally the Bauchi State Liquor (Repeal) Law, 2001, which repealed the liquor law, Cap 85 Laws of Bauchi State, 2001.

4.3.6 The Katsina State Model

The Katsina State *Shari'a* Penal Code of 2001 followed the pattern of Zamfara State model but with slight modifications. For instance, the offence of homicide is found in Chapter IX of the Code and is equally classified into two, namely, intentional homicide *(amd)* and unintentional homicide (*khata)*.

Under the Code, intentional homicide is defined as the causing of death of a human being by a *Mukallaf*[58] either:-

(a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or

(b) by doing a rash and negligent act.[59]

It is crystal clear from the above that the Code departed from the Zamfara model by omitting the words "*in a state of anger*" and by substituting the words "*with a light stick or whip or any other thing of that nature which is not intrinsically likely or probable to cause death*" with the words "*by doing a rash and negligent act*."

The punishment of intentional homicide as enshrined in Katsina Code is death penalty, payment of *diyah* or imprisonment for a term not exceeding ten years.[60] However, intentional homicide committed by way of *gheelah* and *hirabah* is punishable with death penalty only under the Code.[61]

It can be seen from the above that the Code does not recognize caning as an alternate punishment of intentional homicide where *qisas* (retaliation) is remitted. Unlike the Zamfara

[58] A *Mukallaf* is a person who can be held responsible for all his deeds by virtue of his age and state of mind.
[59] Section 142 of Katsina State *Shari'a* Penal Code, 2001.
[60] Ibid, Section 143.
[61] Ibid, Sections 144 and 145.

Code, the term of imprisonment also may be up to ten years under the Katsina Code if *qisas* (retaliation), for any reason under the law, is remitted.

Unintentional homicide *(khata)* is also defined under the Code as the causing of death of a human being by mistake or accident and its punishment is the payment of *diyah* (compensation).[62] An attempt to commit intentional homicide is punishable under the Katsina Code with imprisonment for a term which may extend to one year and caning of one hundred lashes.[63]

To the best of the knowledge of this researcher, only one homicide case was tried under the Katsina State *Shari'a* penal Code, and that is the case of *Commissioner of Police vs. Sani Yakubu Rodi*.[64] The accused was charged before the Shari'a court in Katsina for intentionally causing the death of a housewife, her three (3) year old son and her three (3) months baby girl contrary to section 143 of the Katsina State *Shari'a* Penal Code, 2001. The case of the prosecution was that on the fateful day the accused person entered the house of the deceased persons and locked the gate. He thereupon brought out a knife and stabbed the deceased persons to death. The accused denied the charge against him and accordingly the prosecution called (8) eight witnesses who testified against the accused person. At the end of the trial, the Court found out that the evidence of the witnesses, though not sufficient to prove the case, nevertheless constituted a form of lauth.[65] Accordingly, the court ordered for qasamah (oath taking) procedure and two male heirs of the deceased person's sweared fifty (50) times that it was the

[62] Ibid.
[63] Section 148 of Katsina Sate Shari'a Penal Code, 2001.
[64] Unreported SHC/KT/225/2001.
[65] Lauth is a case where full legal proof is lacking but circumstantial evidence points to the fact that the accused might have committed the homicide.

accused person who killed the deceased to fulfill the requirement of the law. The accused was eventually convicted and sentenced to death. He was hanged on 3rd January, 2002.

4.3.7 The Sokoto State Model

The *Shari'a* Penal Code of Sokoto State provides for the substantive criminal laws that are applicable throughout the State in cases of persons who profess Islamic Faith or every other person who voluntarily consents to the exercise of the jurisdiction of *Shari'a* Court in the State.[66] The *Shari'a* Penal Code of Sokoto State is broadly divided into four sections.

Section one deals with preliminary provisions such as general explanations and definitions, criminal responsibility, right of private defence, punishments and compensation, joint acts, abetment attempt to commit criminal offence, and criminal conspiracy.[67] All these are covered under Chapters I – vii. Section Two deals with Hudud and Hudud related offences.[68] It covers offences such as adultery/fornication, rape, sodomy/lesbianism, false accusation of adultery, theft, robbery, drinking alcohol, etc. These are also covered under Chapters viii – ix.

Section Three deals with *Qisas* and *Qisas* related offences. It covers offences such as homicide, criminal force and assault, kidnapping, abduction and force labour.[69] All these are covered under Chapter x. Furthermore, section Four provides for offences falling under *Ta'azir* (discretionary punishments). The offences provided under this section include criminal

[66] Section 3 of *Shari'a* Penal Code of Sokoto State.
[67] Ibid, Sections 1 – 127.
[68] Ibid, Sections 128 – 200.
[69] Ibid, Sections 201 – 241.

intimidation, forgery, and criminal breach of contract of services, contempt of lawful authority, cruelty to animals, false evidence etc.[70] Again, these offences fall under Chapter xi of the Code.

4.4 Distinctive Features of the *Shari'a* Penal Codes

It was noted earlier that most States in Northern Nigeria that re-introduced Islamic Criminal Justice System and enacted *Shari'a* Penal Codes followed the Zamfara model with little modifications. It is, therefore, pertinent to bring to limelight a few departures from the Zamfara Code. This is fundamental because the departures, to some extent, led to pluralism within the Islamic Criminal Justice System in Nigeria.

(a) One striking feature of the Kaduna State *Shari'a* Penal Code of 2002 is its refusal to allocate specific penalties for *Ta'azir* offences. In essence, all *Ta'azir* offences are punishable by *Ta'zir*.[71] Therefore, the punishments for all *Ta'azir* offences are entirely left to the discretion of the *Shari'a* Courts Judges. This has been submitted to overstep the boundaries of the Constitution,[72] which prescribed that crimes and their punishments must be specified in a written law. There is, therefore, the need for amendment of the Code by the State's legislature so as to meet this Constitutional requirement.

(b) The Kano State *Shari'a* Penal Code, unlike others, clearly overstepped the boundaries of the *Shari'a* by stipulating amputation of the hand as punishment against public officers that misappropriate public funds.[73] As noted by a scholar,[74] this was based on the analogy that since a common thief who steals lesser is liable to the penalty of amputation of the hand, a public officer who takes much more should be given the same penalty, if not more. This has been held to be a

[70] Ibid, sections 242 – 413.
[71] See for instance section 280 of Kaduna State *Shari'a* Penal Code, 2002.
[72] Section 36(12) of the 1999 CFRN (as amended).
[73] Section 134(b) of Kano State *Shari'a* Penal Code, 2000.
[74] Uthman, M. B. et al, *Op.cit.*, p.222.

layman's analogy as the law of theft is quite different from the law of breach of trust.[75] Whereas a thief is liable to amputation of the hand as punishment for theft, a public official who breaches his trust only deserves the penalty of *Ta'azir*, befitting his time and circumstances.

(c) Another feature of Kano State *Shari'a* Penal Code is its excessive award of fines as penalty. For instance, the offence of cheating under the Code[76] carries a fine of N20,000.00 (Twenty Thousand Naira only), while falsification of accounts[77] attracts a fine of N50,000.00 (Fifty Thousand Naira only). It is respectfully submitted that this amounts to overstepping the boundaries of the *Shari'a* as the Code has gone to the extreme in its overusing the penalty of fines.[78] This position contrasts sharply with the Zamfara model which allowed fines only under extreme circumstances.[79]

4.5 The *Shari'a* Criminal Procedure Code

Having brought the substantive Islamic criminal law into conformity with the Constitution, it then became necessary to make provision for Islamic Criminal Procedure Law. This is important because the *Shari'a* Criminal Procedure Code, just like the *Shari'a* Penal Codes, is very material to the effective implementation of the Islamic Criminal Justice System. Whereas the *Shari'a* Penal Codes provide for the substantive Islamic Criminal Law, the *Shari'a* Criminal Procedure Codes serve as the procedural laws for the conduct of criminal proceedings before *Shari'a* Courts.

In Kano State, for instance, Chapter XXXIII (covering Sections 385-396) of the Criminal Procedure Code,[80] dealing with trials by the Courts, was repealed and substituted with a new

[75] *Ibid.*
[76] Section 210, Kano State *Shari'a* Penal Code, 2000.
[77] *Ibid.*, Section 247.
[78] Uthman, M. B. et al, *Op.cit.*, p.223.
[79] Ibid.
[80] Cap 87 Laws of Kano State, 1991.

chapter which is in conformity with Islamic Procedural Laws.[81] Both Zamfara and Kaduna States have equally enacted the *Shari'a* Criminal Procedure Codes for their respective States,[82] to provide for the rules of procedure to be applied by the *Shari'a* Courts.

In addition to satisfying the yearnings, agitations and aspirations of the Muslims for full application of the Islamic Criminal Justice System on them, both the *Shari'a* Penal Codes and *Shari'a* Criminal Procedure Codes were also enacted to meet the constitutional requirements that a person shall not be convicted of a criminal offence, unless that offence has been defined and the penalty thereof prescribed in a written form or law.[83]

Cumulatively, it can be said that the *Shari'a* Criminal Procedure Codes, and other pieces of legislation, represent the legal steps taken by some States in Northern Nigeria to re-introduce the Islamic Criminal Justice System. However, many issues and challenges came up for determination on how these *Shari'a* based legislation are implemented in the context of Nigerian democratic governance. These issues and challenges are analysed hereunder.

4.6 Problems and Challenges in the Application of Islamic Criminal Justice System in Nigeria

Many problems and challenges have emerged since the re-introduction of Islamic Criminal Justice System by some States in Northern Nigeria. Some of them could be identified as follows:

(a) The question of whether or not the re-introduction of the Islamic Criminal Justice System is constitutional and the question of violation of human rights;

[81] This was achieved through the Criminal Procedure Code (Amendment Law) 2000.
[82] See for instance Kaduna State *Shari'a* Criminal procedure Code, 2002.
[83] Section 36(12) of the 1999 CFRN (as amended).

(b) Whether or not the changes and reforms brought about in the State's judiciary including Courts and their jurisdiction, the Judges, among others, ensure effective administration of Islamic Criminal Justice; and

(c) How are the *Shari'a* States enforcing the *Shari'a* penal laws and executing judgments of the *Shari'a* Courts?

This is fundamental because the most important law enforcement agencies such as the Police and the Prisons belong to the federal government. With the establishment of *Hisbah* Corps and other Commissions in relation to the administration of Islamic Criminal Justice by some States, the issue of legal pluralism becomes inevitable. Analyses of these problems are provided below.

4.6.1. The Constitutionality or otherwise of the Islamic Criminal Justice System in Nigeria

The question whether or not the Islamic Criminal Justice System as re-introduced by some States in Northern Nigeria is constitutional has generated a heated debate among Nigerians. Opponents of the *Shari'a* Penal System assert that the system is unconstitutional and contrary to human rights principles for the following reasons:

(A) That by imposing on persons of Islamic faith punishments more severe than those imposed on other persons who committed similar offences; or by criminalising conduct, which when committed by persons other than those of the Islamic faith are not regarded as crimes; the system has the effect of discriminating against persons of Islamic faith and it is, therefore, a flagrant breach of Constitutional provisions.[84]

Section 42(1) of the 1999 Constitution provides as follows:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person:

[84] *Ibid.*, Section 42(1).

(i) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, place of origin, religion or political opinions are not made subject, or

(ii) Be accorded either by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic group, and place of origin, sex, religion or political opinion.

The above provision has been part of the Nigeria's Constitution since independence.[85] It was Section 28(1) of the 1963 Constitution when the Supreme Court had the opportunity to construe it in relation to Section 387 of the Penal Code.[86] The Section provides:

> Whoever, being a man subject to any native law or custom in which extra marital intercourse is recognised as a criminal offence, has sexual intercourse with any woman whom he has reason to believe is not his wife, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

In *Andrew Obeya vs I.A.R. Soluade & 2 Ors*,[87] the applicant had applied in the Jos High Court for an order of prohibition to prohibit the 1st respondent from taking cognisance of and making enquiry into an offence of adultery, contrary to Section 387 of the Penal Code. Because a substantial question of law involving the interpretation of Section 28(1) of the 1963 Constitution (which is in *pari materia* with Section 42(1) of the 1999 CFRN as amended) arose, a case was stated pursuant to Section 115 of the 1963 Constitution,[88] for the consideration of the Supreme Court. The then Attorney-General of the Federation, Dr. T. O. Elias was invited as *amicus curiae.*

[85] See for instance Section 28(1) of the 1963 Constitution, Section 39(1) of the 1979 CFRN, Section 41(1) of the 1989 aborted CRFN.
[86] Cap 89 Laws of Northern Nigeria, 1963,
[87] (1970) NNLR, 25.
[88] Now Section 295(2) & (3) of the 1999 CFRN (as amended).

In his submission, the applicant's Counsel, argued that in the practical application of Section 387 of the Penal Code, the only persons who could be prosecuted under its provision are those men who are subject to "any native law or custom in which extra marital sexual intercourse is recognised" as a wrong. Such persons need not be Nigerian citizens but when they are, the Section is discriminatory against them and for that reason violates Section 28(1)(a) and (b) of the 1963 Constitution.

In his submission, the Solicitor-General of the then Benue-Plateau State contended that Section 387 of the Penal Code is not discriminatory, but merely makes provision for a community whose native law or custom recognises extra marital sexual intercourse as criminal offence.

On his part, the then Attorney-General of the Federation, Dr. T. O. Elias, submitted that Section 387 of the Penal Code does not contravene the provisions of Section 28(1) of the 1963 Constitution[89] because it is not based solely on religious considerations, but it is intended to preserve the personal law for every community whose native law and custom regards extra marital sexual intercourse as an offence. He further submitted that once it is admitted that parts of Nigeria's criminal law deal with residual matters, it is not for the Federal Government to say whether the government of Northern Nigeria (as it then was) was entitled to enact the provisions of Section 387 of the Penal Code which, on the face of it, are clearly within its legislative competence.

After comparing the provisions of Nigeria's Constitution with identical Constitutions of some other Countries,[90] Fatayi Williams J. S. C. (as he then was) who delivered the judgment of the Supreme Court held that:

[89] This is in *pari materia* with section 42(1) of the CFRN (as amended).
[90] *Supra*, p.29

> The word "only" used in Section 28(1) of the Constitution to our mind, makes it abundantly clear that the disabilities or restrictions which are forbidden in the law in force in Nigeria are those based on the ground that a person to which the law applies belongs to a particular community, tribe, place of origin, religion, or political opinion and no other ground, additional or otherwise. In our view, any legislation containing disabilities or restrictions based on one or more of these grounds and/or also on other grounds will not offend against the provisions of Section 28(1) of the Constitution. For any law in force in Nigeria to be regarded as repugnant to the provisions of Section 28(1), it must be restrictive by reason only that the citizens of Nigeria to which the law applies belong to a particular community, tribe, place of origin, religion or political opinion.[91]

In the light of the above interpretation, the Supreme Court found that, Section 387 of the Penal Code was not inconsistent with the Constitution because in its practical application, the Section affects persons charged thereunder not only because they belong to a particular community or religion, but also:

i. Because the native law or customs of that community to which they belong and to which they are subject recognises extra-marital sexual intercourse as a criminal offence; and
ii. Because of the desirability or need to protect and sustain public morality among the members of the community in the area where the law is applicable.[92]

It is clear that what the Supreme Court decided in Andrew Obeya's case[93] was that Section 28(1) of the 1963 Constitution (and by implication Section 42(1) of the 1999 Constitution as amended) is not necessarily violated when a State law creates "Status Crime"[94] (also called Personal Criminal Law), to apply to a Section of its residents who belong to a class or group defined either by ethnicity, religion, area or other form of classification or

[91] *Ibid.*, p. 31.
[92] *Ibid.*, p.32.
[93] *Supra.*
[94] The word status is defined as "a condition of belonging to a class in Society to which the law ascribes peculiar rights and duties, capabilities and in capacities."

differentiation. To the best knowledge of this researcher, the Supreme Court has not overruled itself, changing the decision in Andrew Obeya's case.

Therefore, the assertion of the opponents of the re-introduction of Islamic Criminal Justice System that the system is discriminatory to the Muslims and, therefore, unconstitutional cannot stand in view of the decision of the Supreme Court in Andrew Obeya's case.

It is also submitted that while it is proper to examine what has been done by some Northern States governments to satisfy the yearnings, aspirations and agitations of their natives in the light of the Constitution, it is also absurd or incongruous to dismiss a *Shari'a* Penal Code made by a State as unconstitutional on the mere fact that it accords recognition to sentiments, be it religious, cultural or otherwise of the natives or people of the State.[95]

Thus the *Shari'a* Penal Codes, notwithstanding their apparent discrimination between Muslim and non-Muslim residents of the *Shari'a* States, are not repugnant to Section 42(1) of the 1999 Constitution, going by the decision of the Supreme Court in Andrew Obeya's case.

As noted by Olaniyan,[96] such laws are to be regarded as legislation creating "Status Crime", and should be tolerated by non-members or the class which they affect in the interest of justice.

(B) That the Constitution prohibits any State in the federation from adopting any religion as a State religion.[97] According to these critics,[98] Nigeria should be regarded as a Secular State where religion has no relevance in the public sphere or governance. Therefore, to allow Islamic Criminal Justice System to operate in the States amounts to adoption of Islam as a State religion contrary to the constitutional provisions.

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[95] Olaniyan, H. A. (2005). 'Status Crime and Section 42 of the 1999 Constitution of Nigeria' in Chukkol, K. S. (ed), *Contemporary Issues in Nigerian Law, Faith Pointers International*, Zaria, p.34.
[96] *Ibid.*, p.35
[97] Section 10 of the 1999 CFRN (as amended).
[98] These critics include Prof. B. O. Nwabueze, Prof. I. O. Agbede and Justice Kayode Esq J.S.C. (as he then was), among others.

Section 10 of the 1999 Constitution provides that the Government of the Federation or of a State shall not adopt any religion as a State religion. Putting reliance on this Section, Agbede declares:

> "In a Country that is professed to be Secular, the Islamic law as a distinct third system is hardly compatible with express provisions of the Constitution which prohibits any law that discriminates on grounds, *inter alia*, of religion."[99]

Nwabueze in his interpretation of Section 10 of the 1999 Constitution as declaring Nigeria a secular State places reliance on the interpretation of the provisions of the American Constitution by her Supreme Court enjoining the States "to make no law respecting the establishment of religion."[100] The learned professor, while quoting the Court as saying that the provision has "a Secular reach far more penetrating in the conduct of government than merely to forbid an 'established Church'" asserted that the provision under the Nigerian Constitution is more precise.[101]

With due respect to Nwabueze, this position is dicey and perplexed. Could the precision in the Nigerian Constitution be in favour of secularism? Certainly no. This is because there wouldn't have been constitutional recognition for observing work-free Sundays in accordance with Christian injunction, observing religious public holidays such as *Eid* and Christmas. In this researcher's view, the Nigerian Constitution did not in any place declare Nigeria to be Secular.

Assuming, without conceding, that the context of Section 10 of the Constitution is to declare Nigeria a Secular State, "whose version of secularism do we adopt?" Yadudu queried that is it the English version where Anglican Church is the official religion that must be

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[99] Agbede, I. O. (1989). "Legal Pluralism: The Symbiosis of Customary and Religious Laws: Problems and Prospects", in Ajomo, A. N., (ed), *The Fundamentals of Nigerian Law*, p.238.
[100] Nwabueze, B. O. (2000). "Constitutional Problems of *Shari'a*", in the *Shari'a* Issue: Working Papers for Dialogue, Committee of Concerned Citizens, Published by Arewa House, Kaduna, p.17.
[101] *Ibid.*

professed by the Crown? Or the Indian, where *Hindu* is all but the official religion? Or the American version where judicial attitude is confused between maintaining a clear separation of the Church from the State or a non-discriminatory treatment of all religions?[102]

Nigeria, as a nation, is a federation with a pluralistic, multi-religious and multi-legal system comprising the English styled law, Islamic law and customary law. The Country is described as one of the most religious societies in a recent survey.[103] It is, therefore, glaring that the Nigerian society is not a Secular one. Moreso, the Preamble to the Constitution declared Nigeria as an "indissoluble sovereign nation under God."[104]

The concept of secularism is the separation of the State from religion and isolating religious practices from public life/governance.[105] Legislating *Shari'a* penal laws by willing States in Nigeria does not, therefore, amount to a violation or breach of Section 10 of the Constitution. This is because it does not constitute the adoption of Islam as a State religion in the absence of any imposition whatsoever of the religion on non-Muslims as a State policy with attendant sanctions. To the best knowledge of this researcher, there is no empirical evidence in this regard.

Therefore, the re-introduction of Islamic Criminal Justice System by some States cannot in any way be equated with adoption of a State religion. Moreso, even Islam abhors compulsion in matters of religion. The Holy *Qur'an* clearly provides:

> "Let there be no compulsion in religion. Truth stands out clear from error..."[106]

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[102] Yadudu, A. H. (2000). The *Shari'a* Debate in Nigeria: Time for Reflections, in The Shari'a Issue: Working Papers for Dialogue, *Op.cit.*, p.39.
[103] Oredola, M. A. (2013). Criminal Jurisdiction of *Shari'a* Courts and the Problems of Appeals; *Nigeria Islamic Law Journal (NILJ)*, Vol. 1, p.37.
[104] See preamble to the 1999 CFRN (as amended).
[105] Oredola, M. A. *Op.cit.*, p.37.
[106] Holy Qur'an, Chapter 2, Verse 256.

Justice Niki Tobi J. S. C. (as he then was) seemed to have earlier put to rest the argument on secularism of the Nigerian State, when he opined that Section 11 of the 1989 Constitution (which is equivalent to Section 10 of the 1999 Constitution) does not make Nigeria a Secular nation. This is because secularism means the belief that all affairs of the State should be independent of religion. He added that the Section merely prohibits the adoption of either Christianity or Islam as a State religion and that is quite distinct from secularism.[107] And so far, in the opinion of this researcher, that has not been done anywhere in Nigeria.

It is clear from what has, so far, been discussed above that the continuous description of Nigeria as a Secular nation is untrue and misleading. The nation's support for Christianity and Islam morally and financially berates this thought. The declaration of public holidays for both Muslims and Christian festivals is another proof for the nation's religious plurality and multi-religiosity. Further proof against the avowed secularity is the overt and sometimes covert balance in the appointment of political office holders. In addition, the faith in God and allowance of religious freedom alluded to in the nation's Constitutions, past and present, is another proof against secularity.[108] With these and other proofs that have been adduced this researchers stand that the declaration of Nigeria as Secular nation is untrue and misleading could be sustained.

(C) That torture or cruel, degrading or inhuman treatments are contrary to the constitutional provisions and, therefore, amount to violation of fundamental rights.[109] It was contended by the opponents of the *Shari'a* Penal System that certain *Hudud* and *Qisas* punishments such as death

[107] Tobi, N. (1995). "Law, Religion and Justice"; in Owaboye, W. (ed), Fundamental Legal Issues in Nigeria; Essays in Honour of Andrew Obaseki J.S.C. (Rtd), p.139.
[108] See for instance the preamble and sections 38(1) of the 1999 CFRN (as amended).
[109] *Ibid.*, section 34(1).

penalty, amputation for theft, among others are in conflict with the Constitution and the principles of human rights.[110]

It is true that Sections 33 and 34 of the Constitution protect right to life and right to dignity of the human person respectively. It is submitted, however, that the combined effect of the Sections will be nugatory if they are interpreted to restrict the rights of Muslims or any other person to be governed by the religious law of his choice especially where such law satisfied every constitutional requirement of legislation.[111]

An evaluation of the Sections (i.e. Sections 33 and 34 of the Constitution) would reveal that their combined effect seeks to guarantee rights to life and dignity of human person. However, the Constitution does not define what amounts to inhuman and degrading treatment but gives room for possibility of different interpretations in the light of the provisions of the Constitution.

It is submitted that to interpret Sections 33 and 34 of the Constitution in total disregard of the religious, cultural and historical background of particular people, will not only be absurd but also prejudicial to the fundamental rights of these people as guaranteed by the Constitution.[112] This argument can equally be supported by the Supreme Court's decision in *Kalu vs The State*[113] where it held that death penalty is not inhuman and degrading treatment and, therefore, constitutional.

On the other hand, supporters of the re-introduction of Islamic Criminal Justice System assert, and rightly too, that it is constitutional for the following reasons:

[110] Muahmmad, A. M., *Op.cit.*, p.177.
[111] Sa'id, M. I. *Op.cit.*, p.195.
[112] *Ibid.*, p.196.
[113] (1998) 12 SCNJ, 1 at 18-19.

(a) That the Muslim's freedom of religion has been guaranteed in the Constitution[114] and, therefore, they have the right to practise their religion, which means to live in accordance with the *Shari'a*.

(b) That offences and their prescribed punishments as contained in the *Shari'a* Penal Codes satisfy the constitutional requirement which demands that crimes and punishments must be prescribed in a written law.[115] Written law has been defined by the Constitution to mean an Act of the National Assembly, or a law enacted by a State House of Assembly, or any subsidiary legislation or instrument under the provisions of a law.[116]

(c) That the *Shari'a* Penal Codes of the States which re-introduced Islamic Criminal Justice System in Nigeria were enacted by the competent legislative organs of the respective States (the States House of Assembly) and, therefore, can be regarded as State laws within the meaning of the Constitution.

(d) That the provision of Section 4 of the 1999 Constitution divides legislative powers between the Federal and State Governments. Matters relating to crimes and punishments were not listed on the Exclusive Legislative List.[117] Therefore, the State Governments can effectively legislate laws rendering an act or omission an offence within the States. This explains one of the essential features of the federal system of government in favour of Islamic Criminal Justice administration.

4.6.2 The Relevancy and Efficacy of the Reforms Introduced in the *Shari'a* States' Judiciaries

As a result of the various legislation enacted by States which re-introduced the Islamic Criminal Justice System, some reforms were introduced in the States judiciaries. *Shari'a* Courts

[114] Section 38(1) of the CFRN 1999 (as amended).
[115] *Ibid.*, Section 36(12).
[116] *Ibid.*
[117] *Ibid.*, Second Schedule.

of different grades were established and vested with criminal jurisdiction and authorised to apply the provisions of the *Shari'a* Penal Codes of the various States.[118] Similarly, the territorial jurisdiction of such *Shari'a* Courts were specified and that of the Upper *Shari'a* Courts made unlimited.[119] Generally, the *Shari'a* Courts have jurisdiction over Muslims but may also exercise jurisdiction over non-Muslims who voluntarily and in writing consent to the jurisdiction of the Courts.[120]

4.6.3 The Appellate Criminal Jurisdiction of the *Shari'a* Court of Appeal

Equally important is the fact that the jurisdiction of the *Shari'a* Court of Appeal was enlarged to entertain appeals from the decisions of the Upper *Shari'a* Courts in all matters including criminal appeals.[121] This purported expansion of the jurisdiction of the *Shari'a* Court of Appeal has generated some conflict between the jurisdiction of the State High Court and that of the *Shari'a* Court of Appeal on criminal appeals from Upper *Shari'a* Courts.

The question that begs for answers is whether it is constitutional to enlarge the jurisdiction of the *Sharia'* Court of Appeal to include criminal matters? The answers rest squarely on the interpretation of the provisions of the Constitution.[122]

It is interesting to note that the right of appeal constitutes a foremost factor in the administration of criminal justice in almost all legal systems. In Islamic law, the words "*Tamyeez*", "*Irtifa'at*" and "*Istinaf*",[123] amongst others, have been used to denote the process of appeal or power to review a judgment of a lower Court by an appellate authority in order to

[118] In Kano State, for instance, the *Shari'a* Court's Law, 2000 (Repealed) the Area Court Edict of 1967, and in place of Area Courts and Upper Area Courts, the *Shari'a* Courts and Upper *Shari'a* Courts were established.
[119] See, for example, Section 9 of the *Shari'a* Courts Law, 2000 of Kano State.
[120] *Ibid.*, Section 3. See also Section 20(1)(a) and (b) of the Kaduna State *Shari'a* Court Law, No. 11 of 2001.
[121] See, for instance Section 9)f) of the Kaduna State *Shari'a* Courts of Appeal (Amendment Law, 2001).
[122] Section 277(1) of the 1999 CFRN (as amended) which provides that the *Shari'a* Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred on it by the Law of a State, exercise such appellate and supervisory jurisdiction in the civil proceedings involving questions of Islamic Personal Law which the Court is competent to decide in accordance with the provisions of Subsection (2) of the Section.
[123] Oredola, M. A. *Op.cit.*, p.39.

ensure that judgment appealed or under review has been delivered in conformity with Islamic principles, practice and procedure.

The right of appeal has always been a permanent and visible feature in Islamic Law adjudicatory process. The Prophet (SAW) heard and determined appeals in respect of decisions given by his appointed Judges for or against. On one occasion, Ali Ibn Abu Talib (RA) as the appointed Judge in Yemen, delivered his judgment in a matter. He duly informed the parties of their rights of appeal to the Prophet (SAW), if either of the parties is aggrieved and *suo moto*, further stayed the execution of the said judgment. One of the parties appealed and after giving due hearing to both parties, the Prophet (SAW) dismissed the appeal and confirmed the decision earlier pronounced by Ali Ibn Abu Talib.[124] It was also reported that Caliph Umar (RA) prohibited his governors from executing Capital punishment without his express approval.[125]

Embedded and instructive in the above precedent is the power of review and automatic right of appeal in cases involving capital punishment. Thus removal of errors which perpetuates injustice or occasion miscarriage of justice is one of the fundamental concepts and precepts of Islam and a basic function in the administration of criminal justice. For the realistic attainment of justice, it is imperative that erroneous decisions must be capable of being appealed against, reviewed and reversed on appeal upon due hearing.

In so far as the construction of Section 277(1) and (2) of the 1999 Constitution is concerned, *vis-a-vis* the jurisdictional scope and limitation of the *Shari'a* Court of Appeal, there are three views being expressed in this regard. They are:

[124] Idris, K. A. (1982). *The excellence of Shari'a*, Gaskiya Corporation, Zaria, p.34. See also Ghulam, M. A. (1994), *Judicial System of Islam* (np), pp.112-113.
[125] Ibn Farhun (nd). *Tabsiratul Hukkam*, Vol. 1, Darul Fikr, Lebanon, p.17.

(1) The Views of Legal Scholars

The first view, which represents the opinion of legal scholars on the matter, is to the effect that the *Shari'a* Court of Appeal, as established by the Constitution, has jurisdiction to hear and determine criminal appeals from Upper *Shari'a* Courts.[126] This is because according to the proponents of this view, the law creating such Courts and the Constitution permit the *Shari'a* Court of Appeal to entertain such appeals.

According to Suleiman Kumo, the provisions of the 1999 Constitution on *Shari'a* Court of Appeal are identical with those of the 1979 Constitution. They provide for State *Shari'a* Court of Appeal with an unduly restrictive jurisdiction covering only matters of Muslim personal law.[127] He submitted that since the appropriate Section 277(1) empowers a State House of Assembly to enlarge this jurisdiction, the matter is remediable. In his view, what is important is the fact that the whole issue is really, in constitutional terms, a "residual" matter, which, therefore belongs to the State.[128] This means that under the 1999 Constitution, the desired results of *Shari'a* implementation could be achieved if the States were willing to take necessary steps.

Another Scholar, Sani Idris, made a lengthy argument in support of the expansion of the jurisdiction of the *Shari'a* Court of Appeal. He submitted that by the combined effect of Sections 4(7)(c) and 277(1) of the 1999 Constitution, the *Shari'a* Court of Appeal has been clearly and unambiguously empowered to hear and determine criminal appeals. According to him, by the wordings of Section 277(1) the jurisdiction conferred on the *Shari'a* Court of Appeal as itemised under subsection (2) on "Islamic Personal Law" was intended to be secondary.[129] Thus, the

[126] Prominent among these scholars are Dr. Suleman Kumo (of blessed memory), Prof. Sani Idris, and Prof. M. I. Sa'eed and Dr. A.A. Oba, among others.
[127] Kumo, S. (nd). *"Shari'a* and the Nigerian Constitution: Issues and Perspectives", in Yakubu, A. M. et al (ed) *Understanding Shari'a in Nigeria*, Spectrum Books Ltd., Ibadan, p.173.
[128] *Ibid.*
[129] Idris, S. (2005). The Constitutional Validity of the Appellate Jurisdiction of *Shari'a* Court of Appeal in Criminal Matters as Conferred by some States' Laws, in Chukkol, K. S. et al, *Op.cit.*, p.115

jurisdiction that is to be conferred by the State as contemplated by subsection (1) of Section 277 is the primary jurisdiction of the *Shari'a* Court of Appeal. His reasoning is premised on the wordings of the Section, which clearly makes the jurisdiction conferred in subsection (2) of the same Section to operate "in addition" to the jurisdiction conferred on the Court by the State.[130]

The above presupposes the existence of some jurisdiction to which the ones listed under subsection (2) are to operate in addition to. By inference, it was intended that the jurisdiction under subsection (2) are to be subordinate to the jurisdiction to be conferred by the State or at most to operate as an appendage to them.

According to the learned scholar, whatever jurisdiction, the State legislature chooses to confer on the *Shari'a* Court of Appeal will be perfectly valid so long it is in conformity with the provisions of Section 4(7) and does not encroach on the exclusive jurisdiction of the Federal High Court as conferred by Section 251 of the 1999 Constitution.[131]

Another potent argument advanced by Sani Idris in support of the criminal jurisdiction of the *Shari'a* Court of Appeal is the fact that when the Constitution wanted to preserve certain subjects to be under the exclusive jurisdiction of the Federal High Court it did not leave anybody in doubt by the combined effect of the provisions of Sections 251 and 272. However, when it comes to Section 277, no such step was taken to safeguard and limit the areas of the jurisdiction, either to Islamic Personal Law or to be subject to the provisions of Section 272.[132] In the light of this submission, therefore, one would be correct to assert that the Constitution did not really intend to limit the jurisdiction of the *Shari'a* Court of Appeal to only Islamic Personal Law.

Furthermore, the learned scholar submitted that from the point of view of expediency, the *Shari'a* Court of Appeal is a Court whose personnel are expectedly learned in Islamic Law and

[130] *Ibid.*, p.116.
[131] *Ibid.*
[132] *Ibid.*

appointed only when they meet the conditions set out in Section 276(3)(a) and (b) of the Constitution. It is, therefore, expedient for the Court to be conferred with jurisdiction to hear and determine criminal appeals on Islamic criminal matters emanating from Upper *Shari'a* Courts.[133]

Similarly, it may be conveniently argued, according to him, that the wordings of Subsection (1) of Section 277 of the Constitution are plain and clear enough and, therefore, any attempt to import restrictions in its scope will be untenable.[134]

On his part, Oba, A.A. opined that, the *Shari'a* Court of Appeal started as a State Court and that its inclusion in the Constitution is still as a State Court. Its jurisdiction, as expressly stated in Subsection (2) of Section 277 of the 1999 Constitution is only in addition to such other jurisdiction as may be conferred upon it by the law of a State.[135] According to the learned Scholar, this constitutional provision has tremendous potential. It means that the actual jurisdiction of the *Shari'a* Court of Appeal of each State will depend upon the particular State. Any State can, therefore, give the *Shari'a* Court of Appeal original jurisdiction on any matter. The Court can also be granted exclusive appellate jurisdiction in all Islamic Law matters emanating from Upper Area/*Shari'a* Court.

One problem that is likely to arise, as observed by Oba, in relation to any jurisdiction conferred on the *Shari'a* Court of Appeal by the law of a State is the issue of the "unlimited jurisdiction" conferred on the High Court by the Constitution.[136] This, as submitted by Oba, has been solved as it is possible for the *Shari'a* Court of Appeal and the High Court to have concurrent jurisdiction in such matters. He submitted that Ayoola JSC (as he then was) appeared to have supported this contention, having said orbiter:

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[133] *Ibid.*
[134] *Ibid.*
[135] Oba, A.A. (2004) The *Shari'a* Court of Appeal in Northern Nigeria: the Continuing Crises of Jurisdiction, *The American Journal of Comparative Law,* Vol. 52, No. 4, p. 876.
[136] Section 272 (1) of the 1999 CFRN (as amended).

"Merely vesting jurisdiction not described as exclusive in another
Court and which may be exercised concurrently with the High Court
Of a State would not in my view limit the jurisdiction of such High Court"

On the argument advanced against the criminal jurisdiction of the *Shari'a* Court of Appeal that, since appeals from the Court to the Court of Appeal are limited by the Constitution to only matters of Islamic Personal Law, which indicates that the Constitution does not contemplate any other jurisdiction beyond this for the Court, it is submitted that there is nothing stopping the *Shari'a* Court of Appeal from being a final Court on any matter under Islamic Law. In fact, this was the case before the enactment of the 1979 Constitution when it was a final Court in all matters within its jurisdiction except those relating to fundamental rights and interpretation of the Constitution.[137]

The 1999 Constitution must be construed to have intended this, as it failed to provide, as did the 1963 Constitution, for the States to allow appeals to the Court of Appeal from the *Shari'a* Court of Appeal, although it permitted the States to expand the jurisdiction of the *Shari'a* Court of Appeal.[138] In other words, the *Shari'a* Court of Appeal should be made the final Court to determine criminal appeals from Upper *Shari'a* Courts.

Additionally, it may be argued that since the jurisdiction of the *Shari'a* Court of Appeal as itemised under Section 277(2) of the 1999 Constitution is only "in addition" to such other jurisdiction as may be conferred on the Court by the States, it follows that such additional jurisdiction to be conferred by the States must necessarily be outside Islamic Personal Law. In this researcher's view, it will be illogical to assume that the additional jurisdiction must be within Islamic Personal Law since Subsection (2) of Section 277 of the 1999 Constitution has exhaustively itemised what amounts to Islamic Personal Law.

[137] Section 119 of the 1963 CFRN
[138] Oba, A.A. Op. Cit. p. 888

(2) The Views of Some States High Courts

The second view represents the decisions of State High Courts on the matter. The constitutionality or validity of the exercise of appellate criminal jurisdiction by the *Shari'a* Court of Appeal has been raised and argued in some States. It appears that there are conflicting decisions thereon. In *Alhaji Ya'u Marrabar Kankara vs Da'awah Committee*,[139] the Appellant was convicted and sentenced to one month imprisonment by the *Shari'a* Court, Malumfashi, Katsina State. He was charged with the offence of threatening members of the *Da'awah* Committee with horn (charm) and that he used abusive words on them, when they confronted one woman who employed young girls to sell food in front of the Appellant's house.

During the hearing of the appeal before the High Court in the exercise of its appellate jurisdiction, the issue was *suo motu* raised by the High Court and it was duly addressed thereon by the learned Counsel for the Appellant. The condensed issue was:

> Whether in the light of the provisions of Sections 32, 33 and 34 of the *Shari'a* Courts Law No. 5 of Katsina State on one hand and Section 272 of the 1999 Constitution of the Federal Republic of Nigeria, the Katsina State High Court has the jurisdiction to hear an appeal from the decision of a *Shari'a* Court established under the said *Shari'a* Court Law.

The High Court observed that Sections 33 and 34 of *Shari'a* Courts Law No. 5 of Katsina State specifically conferred jurisdiction on the *Shari'a* Court of Appeal of the State to hear and determine appeals from the Upper *Shari'a* Courts in all civil or criminal proceedings. The High Court, placing reliance on some Supreme Court decisions, notably *Adisa vs Oyinwola*[140] and *Shodehinde vs The Registered Trustees of Ahmadiyya Movement*,[141] was of the considered opinion that, there is nowhere in the said *Shari'a* Courts Law No. 5 of Katsina State where the

[139] (Unreported) Case No. KTH/MF/6CA/2001, judgment delivered on 13th December, 2001.
[140] (2000) 6 SCNJ 290 at 315.
[141] (1980) 1-2 SC 225 at 229

jurisdiction of the High Court was expressly ousted. Thus, the said provisions could not have ousted the jurisdiction of the High Court, conferred by Section 272(1) and (2) of the 1999 Constitution.

As regards the enhanced jurisdiction of the Katsina State *Shari'a* Court of Appeal, the High Court was of the view that:

> "Section 34 of the *Shari'a* Courts Law No. 5 of Katsina State… has validly conferred additional jurisdiction on the State *Shari'a* Court of Appeal by virtue of it being allowed by Section 6(5)(k) of the 1999 Constitution."

The High Court finally held that appeals from the Upper *Shari'a* Court lie either to the State High Court or the State *Shari'a* Court of Appeal depending on the discretion of the Appellant.

Conversely, in *Garba Maitangaran vs Abdullahi Mai Taxi*,[142] the appeal filed before the Borno State High Court in the exercise of its appellate jurisdiction was against the decision of the Maiduguri Upper *Shari'a* Court No. 2 in a claim seeking to set aside the sale of a house situate in Maiduguri. Again, the High Court *suo motu* raised the issue of jurisdiction and invited both learned Counsel for the parties to address it. In its considered ruling, the High Court held that it has jurisdiction, in view of the subject matter in dispute before the trial Court, notwithstanding the futile and void attempt made by Section 8(3) of the Borno State *Shari'a* (Administration of Justice) Law, 2000, to vary or take away the jurisdiction already conferred on it by the combined effect of Sections 6(5) and 272 of the 1999 Constitution.

Furthermore, the High Court held that the jurisdiction of the *Shari'a* Court of Appeal which is basically an appellate Court is limited to civil appeals on questions of Islamic Personal Law as spelt under Section 277(2) of the 1999 Constitution. It further held that Section 8(3) of

[142] (Unreported) Case No. BOM/5A/2002, judgment delivered on 28th June, 2002.

Borno State *Shari'a* (Administration of Justice) Law, 2000 is in conflict with the provisions of Sections 272 and 277 of the 1999 Constitution and, therefore, null and void.

The High Court also observed that the phrase "in addition" stated in Section 277(1) of the 1999 Constitution does not give blanket or blank cheque to the State House of Assembly to confer appellate criminal jurisdiction on the *Shari'a* Court of Appeal and that even in civil cases, the *Shari'a* Court of Appeal cannot exceed the limits spelt out under Section 277(2)(a)-(e) of the 1999 Constitution.

It is clear that the above decision of the Borno State High Court is somewhat different from the decision of the Katsina State High Court on the matter.

(3) The Decisions of the Supreme Court and Court of Appeal

The third view is to the effect that the *Shari'a* Court of Appeal has no jurisdiction to hear and determine appeals from Upper *Shari'a* Courts on criminal matters. This is the current position of the law as plethora of decisions of both the Supreme Court and the Court of Appeal has settled the matter. Thus, in *Magaji vs Matari*,[143] *Osahon vs F.R.N.*,[144] and *Inajoku & Ors vs Adeleke & Ors*,[145] the Supreme Court consistently held, *inter alia* that, it is well settled as a rule of interpretation of the Constitution or Statutes that, where a general provision, as contained in Subsection (1) of Section 277 of the 1999 Constitution, precedes a specific one as found in Subsection (2) of the same, the latter, that is the specific provision prevails and governs. Thus, the jurisdiction of the *Shari'a* Court of Appeal cannot be expanded by a State law beyond issues of Islamic Personal Law to include criminal matters. Matters outside the confines of the ones listed in Subsection (2) of Section 277 of the Constitution are beyond the jurisdiction of the *Shari'a* Court of Appeal.

[143] (2000) 5 SCNJ 140 at 151.
[144] (2003) 16 NWLR pt. 845 at 89.
[145] (2007) 4 NWLR, pt. 1025 at 427.

In *Abuja vs Bizi*,[146] the Court of Appeal, while construing Section 242(2) of the 1979 Constitution (which is in *pari materia* with Section 277(2) of the 1999 Constitution) held that the *Shari'a* Court of Appeal has no jurisdiction to determine any matter which is not an issue of Islamic Personal Law, regardless of the fact that the parties are Muslims.

Similarly, in *Bashir Gidan Kanawa vs Alhaji Sani Mai Kaset*,[147] it was an appeal against the decision of the *Shari'a* Court of Appeal Sokoto, in a case which principally involved the purchase of a house. The appeal was heard by the full bench of the Court headed by Hon. Justice Umaru Abdullahi P.C.A. (as he then was). Before the *Shari'a* Court of Appeal, the appellant raised the issue of jurisdiction and was overruled. The argument of the learned Counsel for the Appellant pertains, *inter alia,* to the issue of jurisdiction of the *Shari'a* Court of Appeal over the matter on constitutional ground. In resolving the issue, the Court of Appeal, *inter alia*, considered the provisions of Section 17(3) of the Sokoto State *Shari'a* Courts Law, 2000 which provides:

> "An appeal shall lie as of right in both civil causes and matters and in criminal cases from the decisions of the Upper *Shari'a* Courts to the *Shari'a* Court of Appeal."

Justice Umaru Abdullahi P.C.A. (as then was) observed thus:

> "Certainly, there is a problem here when consideration is given to Sections 1(1) and (3) and 277 of the Constitution."[148]

The Court of Appeal further held that it is crystal clear that Section 17(3) of the Sokoto State *Shari'a* Courts Law, 2000 is inconsistent with the provisions of Section 277(1) and (2) of the 1999 Constitution. Consequently, Section 17(3) is, therefore, null and void to the extent of its inconsistency.

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[146] (1989) 1 NWLR pt. 119 at 120.
[147] (2007) 10 NWLR pt. 1042 at 283.
[148] *Ibid.*, at p.294.

Likewise, in *Abubakar Faransi vs Habsatu Noma*,[149] the same fate befell Section 14 of the Kebbi State *Shari'a* (Administration of Justice) Law, 2000 which provides:

> "An appeal shall lie from the decision of the Upper *Shari'a* Court in civil or criminal cause or matter to the *Shari'a* Court of Appeal."

The above provision was rendered and pronounced null and void to the extent of its inconsistency with the provisions of Sections 1(1) and (3) and 277 of the 1999 Constitution.

It must be stressed that, the Court of Appeal, undisputedly, is a Court established for the Federation.[150] It is not by any means a State Court. Indeed, at a certain time, until 1986, it was known as the Federal Court of Appeal.[151] Sections 240 and 244 of the 1999 Constitution provide for the general and special jurisdiction of the Court of Appeal as they relate to the *Shari'a* Court of Appeal. It is obvious from the specific provisions contained in Section 244(1) of the Constitution, appeals that can lie from decisions of the *Shari'a* Court of Appeal are with respect to civil proceedings before it, involving questions of Islamic Personal Law which it is competent to decide.

Additionally, Section 247(1) of the 1999 Constitution provides in clear and lucid terms that for the purpose of exercising its appellate jurisdiction in respect of appeals from *Shari'a* Court of Appeal, the Court of Appeal must "consist of not less than three justices of the Court of Appeal learned in Islamic Personal Law." It does not provide for such Justices to be learned in Islamic Criminal Law.

It is clear from the above that the jurisdiction of the *Shari'a* Court of Appeal, for any State that requires it, under the combined effect of Sections 275 and 277 of the 1999 Constitution, coupled with the futuristic conferment of additional jurisdiction by the law of the

[149] (2007) 10 NWLR pt. 1041 at 202.
[150] Sections 6(5)(b) and 237(1) of the 1999 CFRN (as amended).
[151] Oredola, M. A. *Op.cit.*, p.43.

State has been circumscribed by the restrictive provision, that it should be in accordance with Subsection (2) of Section 277 thereof.

As Oredola put it,[152] and rightly too, the control, limitation and restriction was further driven or hammered home with the opener in the said subsection (2) to the effect that competence for the purpose of achieving, attaining or exercising the jurisdiction conferred or to be conferred by Subsection (1), is circumscribed or confined to the matters listed thereunder. They contain questions or issues described as Islamic Personal Law, which are purely civil.

Again, Section 277(2) of the 1999 Constitution, having been made for the "purpose of Subsection (1)" of the same Section, simply means that the jurisdiction conferred by the latter is conditional, confined and circumscribed by the former. In other words, the latter is only activated, actualised or realised through the ambit and circumference of the former. The latter in view of the former is not a general provision, having been placed in a straightjacket of a sort or hemmed in by the former.

4.6.4 Confusion, Problems and Conflict of the State of the Law on the Appellate Criminal Jurisdiction of the *Shari'a* Court of Appeal

Right of appeal in cases involving conviction after prosecution in criminal proceedings can be rightly regarded as a fundamental and crucial right.[153] This is more so, when exercise of the right relates to appeals against death penalty, which are difficult and bedeviled with diverse complexities. Lives are in the balance at stake. There is thus the dire need to explore all avenues in a bid to ensure that the entrenched right of fair hearing is adequately protected in the likely event of imposition of capital punishment on convicts.

The Islamic Criminal Justice System, more than any other legal system, knows no other burden than the protection of legal rights of those whom the society, through the Court system,

[152] *Ibid.*, p.41.
[153] See generally Section 36(1)-(12) of the 1999 CFRN (as amended).

have condemned to death.[154] We now have situation where, despite the decision of the apex Court in the Country on the appellate criminal jurisdiction of the *Shari'a* Court of Appeal, there is no specific Court for the conclusive completion of criminal proceedings, fair or otherwise, in view of the uncertainty generated by the relevant Statutes. This is moreso, because a criminal case involving death sentence is not deemed conclusively concluded, in the absence or deprivation of a well charted legal process of appeal, exercisable by the convict to its uppermost limit, and invariably in Nigeria's context, to the Supreme Court.

An examination of some decided criminal cases will help to uncover the confusion caused by the state of the laws both Statutory and Case law. In *Amina Lawal vs The State,*[155] the accused was charged with the offence of adultery (*Zina*) and was convicted in March 2002 by the *Sharia* Court Bakori, Katsina State. She was sentenced to death by *Rajm* (stoning to death). Her appeal against conviction and sentence was dismissed by the Upper *Shari'a* Court, Funtua in August, 2002. She further appealed to the *Shari'a* Court of Appeal, Katsina. Her appeal was allowed and she was discharged and acquitted on 25th September, 2003 by a majority of four to one.

It is both interesting and thought provoking to note that learned Counsel to the accused in the above case, Hauwa Ibrahim Esq, pointed out that she and her colleague took the accused's appeal to the *Shari'a* Court of Appeal, even though they knew that, under the 1999 Nigerian Constitution, the said Court lacks jurisdiction over criminal matters. She added that they had no option as it was a matter of life or death and they chose life.[156] What a lifesaving and wise choice!

[154] Oredola, M. A., *Op.cit.*, p.44.
[155] (2003) NNLR 488.
[156] Oredola, M. A., *Op.cit.*, p.45.

In *Saffiyatu Hussain T/Tudu vs Attorney-General of Sokoto State,*[157] the appellant was found guilty and convicted for the offence of adultery (*Zina*) contrary to Sections 128 and 129 of the *Shari'a* Penal Code, 2000 of Sokoto State by the Upper *Shari'a* Court, Gwadabawa, Sokoto. She was sentenced to the *Hadd* punishment of *Rajm* (stoning to death). The *Shari'a* Court of Appeal, Sokoto State allowed the appeal, set aside the conviction by the lower Court and discharged the appellant.

It can be seen from the above cases that the *Shari'a* Court of Appeal assumed jurisdiction even though it ought not to because constitutionally it lacked the jurisdiction to do so. Assuming the prosecution decides to appeal against the judgement of the Court to the Court of Appeal can the Court of Appeal assume jurisdiction to entertain same? Certainly not. This is because Section 244 (1) of the 1999 Constitution provides in clear and lucid terms that the jurisdiction of the Court of Appeal to entertain appeals from the decisions of the *Shari'a* Court of Appeal is limited only to questions of Islamic Personal Law. Does this mean that the *Shari'a* Court of Appeal is the final Court in this respect? The answer again is certainly no. It is respectfully submitted by this researcher that the only solution to this confusion is constitutional amendment that will confer on the *Shari'a* Court of Appeal appellate criminal jurisdiction and also confer on the Court of Appeal the jurisdiction to entertain criminal appeals from the decisions of the *Shari'a* Court of Appeal.

Another criminal case that seems to have captured the helpless and hopeless dilemma that appellants have found themselves despite having appealed against their conviction and sentence within the time stipulated by law is *C.O.P. vs Mallam Kasimu Muhammad & 122 Ors*.[158] The convicts were charged with criminal conspiracy, unlawful assembly, and possession of

[157] (2003) NNLR 439.
[158] (Unreported) No. USC/1/SK/CR/FI/77/08.

dangerous weapons and disturbance of public peace, among others, before the Upper *Shari'a* Court 1, Sokoto. They were tried, convicted and each convict was sentenced to 11 years imprisonment for the first offence and various terms of imprisonment for the second to eight offences. The sentences were to run consecutively. The judgment was delivered on 27th May, 2008.

On 9th June, 2008, the convicts filed their joint appeal before the High Court, Sokoto. On 6th October, 2008 the State as respondent filed its notice of preliminary objection to the hearing and determination of the appeal by the High Court. The main ground was that the appeal should have been heard and determined by the *Shari'a* Court of Appeal, Sokoto because the High Court lacks jurisdiction to hear it. On 10th October, 2008 the High Court gave its ruling and referred the matter to the Court of Appeal for "guidance" in the following words:

> This matter is being stated to the Court of Appeal so as to avoid a misapplication of the decision in *Kanawa vs Mai Kasset*, case cited above which was an appeal relating to the *Shari'a* Court Law, 2000 of Sokoto State but which we observe relates to a civil matter and not a criminal matter as is the case in the appeal now before this Court.

The matter was not heard before the Kaduna Division of the Court of Appeal and it was remitted among other appeal case files to be decided by the recently established Sokoto Division of the Court of Appeal. The Court declined to treat the matter administratively and sent it back to the High Court for its considered ruling for or against the preliminary objection raised therein by the respondent. Meanwhile, the convicts have continued to languish in Prison custody for the past six and a half years after conviction, with no hope in sight of their appeals being heard in the immediate future.

From the above, it is clear that there is a fog and indeed a lot of uncertainty regarding appeals in criminal cases decided by *Shari'a* Courts. This is rather unfortunate. Certainty and

predictability is surely an essential component of the law. The Constitution guarantees the right to fair hearing by law.[159] Right to fair hearing by necessary implication should include guaranteed right to appeal. Depriving, disallowing or disentitling a prospective appellant of his right of appeal is but a form of failure, denial and miscarriage of justice.

After all, the ideal concept of justice entails giving each his dues according to the given circumstances. What we have before us, is not a case of *lacuna* that requires mere filling. It is one of a constitutional logjam that must be speedily removed, *inter alia*, by exigent and requisite constitutional amendments.

For the sake of the conscience of this nation and the need to manifestly see that justice is being meted out to all and sundry, there is the dire need for amendment of the 1999 Constitution in order to pave the way and confer jurisdiction to the *Shari'a* Court of Appeal, the Court of Appeal and the Supreme Court to entertain and determine criminal appeals from the exercise of appellate jurisdiction to such matters by the *Shari'a* Court of Appeal.

If recourse to a seemingly non-existent right of appeal had not been had in the cases of *Amina Lawal Kurmi* and *Saffiyatu Hussain T/Tudu*,[160] only God knows what would have been their respective fate today. The convicted and the condemned should not be discarded, regarded and treated as such, until their right of appeal is duly and fully exercised. There must be a way out. After all, problems are meant to be solved. There must be a stress free, non-tension soaked medium of doing this. This will engender perfect mutual understanding, harmony and ensure religious peace.

It is obvious that there are attendant problems with the issue of appeals with regard to the criminal jurisdiction of the *Shari'a* Court of Appeal. The 1999 Constitution, for all intents and

[159] Section 36(1) of the 1999 CFRN (as amended).
[160] *Supra.*

purposes, is a Nigerian Constitution meant, first and foremost, for all Nigerians and none other. It operates in Nigeria and it is readily capable of being amended to meet the aspirations, expectations and yearnings, and suit the susceptibilities of all segments of the Nigerian social norms.

Amendment of laws forms part of the functions of the legislature. Although Lord Denning (of blessed memory) observed that "Parliament does it too late. It may take years and years before a Statute can be passed to amend a bad law,"[161] it is respectfully submitted that it is never too late. After all, it is better late than never.

If Nigeria wants a resolute respect for the law and the attainment of manifest dispensation of justice, thereby ensuring good governance in a democratic Nigeria, then there should be no going back on the implementation of full application of the Islamic Criminal Justice System on Muslims and only Muslims, through the requisite Courts to the ultimate Court in all cases and in accordance with the *Shari'a*.

4.6.5 Enforcement and Execution of Judgments of *Shari'a* Courts Based on *Shari'a* Penal Codes

Enforcement of laws and execution of judgments are crucial to the success of all justice systems the world over. This is so because without them the administration of justice, particularly the criminal aspect thereof, will be rendered nugatory. This perhaps informed the decision by some States to put the *Shari'a* Courts under the control and supervision of the office of the Grand *Khadi,* not the office of the State's Chief Judge as was the case during the Area Courts regime. However, the prosecution of cases, like in the old regime, is mostly done by the Police and in capital offences by the office of the Attorney-General. Private individuals can also

[161] Powell, P. (2005). *The Legal Companion*, p.29, quoted by Oredola, M. A. *Op.cit.*, p.55.

prosecute cases by lodging a direct criminal complaint.[162] Similarly, Lawyers are given audience to prosecute cases and also defend accused persons.

However, some of the major problems confronting the administration of the Islamic Criminal Justice System comprise the institutional conflict over management and enforcement of *Shari'a* based legislation, the role of the Police and *Hisba* Corps in the prevention and control of crimes, and the execution of *Shari'a* Courts' judgments.

The question that begs for answers is that between the Police and *Hisbah* who is the appropriate authority to enforce *Shari'a* penal laws and to execute judgments of the *Shari'a* Courts? Undoubtedly, the Police are required, under the Police Act,[163] to ensure that people obey laws and order made in any State, and to execute the judgments of all competent Courts. But the Police are under the control of the Federal Government which has been in constant opposition to the application of the *Shari'a* by the States. Thus, where the Police are not keen on enforcing the provisions of the *Shari'a* Penal Codes, can the *Hisbah* Corps, as established by some States, enforce such penal laws? It is doubtful, in this researcher's view, if they can effectively do so harmoniously with the Police, which belong to the Federal Government that does not respect the sanctity of *Shari'a* based legislation. Moreso, there were some reports of rift between the *Hisbah* Corps and the Police as a result of duplication of responsibilities.[164]

It is interesting to note, however, that where the Police refuses to enforce the provisions of the *Shari'a* Penal Codes or execute judgment of the *Shari'a* Courts, an order of *Mandamus* may lie on it.[165] Even at that, there may still be a problem for it is one thing to get an order but a

[162] Muhammad, M. A., *Op.cit.* p.179.
[163] See sections 23-30 of the Police Act, Cap P19, LFN, 2004.
[164] Uthman, M. B. et al, *Op.cit.* p.227.
[165] Mandmus is an order commanding an official to perform an act that the law recognises as an absolute duty and not a matter for the official's discretion.

different thing all together to enforce it, especially on an institution like the Police in the Nigerian context.

The Federal system of government operating in Nigeria is another problem in the administration of Islamic Criminal Justice System, which may render execution of *Shari'a* Court judgments difficult. Both the *Shari'a* Penal Code and *Shari'a* Criminal Procedure Code are State laws enacted to serve the interests of the people in the State. However, Prisons belong to the Federal Government which as noted earlier, has been in constant opposition to *Shari'a* reforms.[166] Thus, when in Katsina a penalty by way of *Qisas* (retaliation) was to be carried out, the only facility available at the Prison was the process of hanging by the neck.[167]

The above may constitute a bottle neck in the execution of the judgment of *Shari'a* Courts, more especially where it relates to *Qisas* (retaliation) in cases of intentional homicide (*At-qatl-al-amd*), and *hadd* punishments such as stoning to death and crucifixion. It is trite law that under the *Maliki* and *Shafi'i* Schools of jurisprudence, the convict, in the case of intentional homicide, should be put to death in exactly the same way and manner in which he killed the deceased.[168] Thus, where the convict kills the deceased with a sword, he should be put to death with a sword, not by hanging, as happened in *Sani Yakubu Rodi's* case. Similarly, if the convict causes death by burning, drowning, stoning, starving or throwing the deceased from a height, he should be put to death in a similar manner. These jurists relied on the provision of the Holy *Qur'an* which provides:

> "... Then whoever transgresses... against you, you transgress likewise against him and fear Allah, and know that Allah is with the pious."[169]

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[166] Uthman, M. B. et al, *Op.cit.* p.277.
[167] See *State vs Sani Yakubu Rodi*, (unreported) No. SHC/KT/225/2001. The convict was hanged to death at the Federal Prison Kaduna on 3rd January, 2002.
[168] Audah, A. (2001). *Altashri'ul Jina'i Al-Islam*, 14th ed. Vol. II, Resalah Publishers, Lebanon, p.151. See also ibn Rushd (2006), *Bidayat al-mujtahid*, Translated by Prof. I. A. Khan, Garnet Publisher Ltd., p.489.
[169] Holy Qur'an, Chapter 2, Verse 94.

It should, however, be noted that the *Maliki* School provides some exceptions to this general rule as follows:

(a) Where the convict uses methods particularly repugnant to *Shari'a* such as witchcraft, or methods by which death is long protracted, like pricks from a needle, then *Qisas* (retaliation) must be inflicted by the sword;

(b) In all cases of homicide proved by *Qasamah* procedure (oath-taking), *Qisas* (retaliation) must be carried out by the sword; and

(c) Where the convict first cuts off the deceased's hands and then his head, the deceased heirs in this case are restricted to the latter, unless the convict intended to torture the deceased before killing him, in which case they can resort to both the former and the latter respectively.[170]

There is, moreover, hesitation among the Malikis as regards death caused by the use of poison. Some prescribed the sword as the method of execution while others opted for poison to be administered in a dose to be fixed at the discretion of the Court.[171]

Conversely, the *Hanafi* and *Hambali* Schools are of the view that the convict should be put to death by the sword and this is irrespective of whether or not he killed the deceased with the sword.[172] According to these Schools if the deceased's heir inflicted *Qisas* (retaliation) with some weapon other than the sword, he will be liable to *Ta'azir* (discretionary punishment) for resorting to a method not approved by the *Shari'a*.[173]

Where the offender killed his victim by an unlawful act such as sodomy or intoxication, some *Maliki* jurists hold that *Qisas* (retaliation) should be inflicted in the same manner. However, a stick should be used instead of genital, and water, instead of alcohol, to such a

[170] Al-Dasuq (nd). *Hashiyat al-Dasuqi*, Vol. 4, Darul Kutub, Lebanon, pp.299-300.
[171] *Ibid.*
[172] Audah, A. *Op.cit.*, p.152.
[173] Al-Kasani (1980). *Bada'i al-Sana'i*, Vol. 7, Sa'eed Publishing Co. Karachi, p.243.

degree that can kill the convict.[174] Other *Hanafi* and *Hambali* jurists hold the view that retaliation should be effected by the sword in this case. Where the offender does not give up the ghost by one strike, then he should be struck again and again till he dies.[175]

Whatever method one adopts, the fact remains that *Sani Rodi's* case contravened the methods of execution approved by the *Shari'a*, for none of the two juristic views mentions death by hanging as the method of execution of *Qisas* (retaliation) in cases of intentional homicide.

It is also essential to note that mercy is enjoined for execution of offenders except in *qisas* cases. Certainly, hanging is not a merciful way of killing, neither is it a similar means of retaliation as the offender in *Sani Rodi's* case did not strangulate or suffocate the victims.

Another cumbersome area for execution of the judgment of *Shari'a* Court is the payment of *Diyah* (compensation) for causing loss of life or limb, if the act was committed by mistake. In the Islamic Criminal Justice System, all the jurists are unanimous that payment of *Diyah* (compensation) in cases of mistaken homicide is to be made by the *Aqila* (clan) of the offender.[176]

The method was effective in the classical times of Islamic civilisation because of the strong reliance of the clan system.[177] In Nigeria today, however, the clan system is not available and many will not have the benefit of the clan to support them pay compensation for mistaken bodily offences.[178] This has created a vacuum in the whole area of payment of *Diyah* (compensation).

[174] Audah, A. *Op.cit.*, p.152.
[175] *Ibid.*
[176] *Ibid.*, p.201. See also Al-Jaza'iri, A. J. (1992), *Minhajul Muslim*, Darul Fikr, Beirut, Lebanon, p.505.
[177] Uthman, M. B. et al, *Op.cit.*, p.277.
[178] *Ibid.*

4.7 Prospects of the Application of Islamic Criminal Justice System in Nigeria.

The application of Islamic Criminal Justice System in Nigeria has, to a large extent, achieved some successes despite the challenges facing it. For one, the Nigeria's Muslims, more than ever before, are uncompromisingly united in their quest for full application of *Shari'a* in all its facets. Secondly, it sets an agenda for the transformation of the Muslim society which, as noted by a scholar, has given Muslims clear focus and hope.[179]

Consequently, the Islamic Criminal Justice System has been accepted by Nigerians, both Muslims and non-Muslims, as a legitimate part of Nigerian law, since there is no judicial pronouncement to the contrary. By the codification of *Shari'a*, the Islamic Criminal Justice System has become entrenched in Nigeria's legal system.[180] This has not been the case prior to 1999. The only applicable laws then were the Penal Code Law,[181] the Criminal Procedure Code,[182] and the Evidence Act.[183]

Besides the laws that have been enacted, institutions have also been put in place such as the setting up of various grades of *Shari'a* Courts that are solely charged with hearing matters relating to Islamic law. The jurisdiction of the *Shari'a* Court of Appeal, though controversial, was equally enlarged to include criminal matters by various States in Northern Nigeria.[184]

Again, several States have set up commissions which are charged with the responsibility of overseeing the implementation of the Islamic Criminal Justice System, together with the goal

[179] Aliyu, I. A. (2007). "*Shari'a* Implementation in Nigeria 1999-2005: A Review of its Legal, Institutional and Social Establishment", *Ahmadu Bello University Journal of Islamic Law (ABUJIL)*, Vol. IV-V, p.161
[180] Uthman, M. B. et al, *Op.cit.*, p.224.
[181] Cap 89, Laws of Northern Nigeria, 1963.
[182] Cap 30, Laws of Northern Nigeria, 1963.
[183] Cap 114, Laws of the Federation of Nigeria, 1990.
[184] The states include, but not limited to Zamfara, Kano, Sokoto, Kaduna, among others.

of revitalising socio-economic programmes that will supplement the purely legal provisions of the law.[185]

Equally important is the fact that the *Shari'a* Penal Code, as noted by a scholar, has proved to be a revolution within the humanised Nigerian society.[186] This is in view of the fact that the Code has been able to retain the most important components of the *Shari'a* in their pure form even in the so called secularised Nigeria. This is an unparalleled development and it is hoped that the trend will continue.

This chapter has so far appraised the application of Islamic Criminal Justice System in Nigeria. It has been able to establish that the system was fully operational in different parts of Nigeria in the pre-colonial period. The colonialists, however, systematically reduced the jurisdiction of *Shari'a* in Nigerian Statutes. It is observed that the Muslims have continuously resisted this act, with their age long resistance yielding dividend only in the present democratic dispensation.

Although the *Shari'a* States have enacted the *Shari'a* Penal Codes and other relevant laws to satisfy the constitutional requirements in re-introducing Islamic Criminal Justice System, there are disparities in the Codes. Notwithstanding the fact that the harmonised version of the Code has been completed by the Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria. To the best of knowledge of this researcher, only Zamfara State has adopted the harmonised version of the *Shari'a* Penal Code. This situation has created legal pluralism in the administration of Islamic Criminal Justice System in Nigeria.

Despite numerous decisions of the Supreme Court and the Court of Appeal to the effect that the *Shari'a* Court of Appeal lacks appellate criminal jurisdiction, appellants (who are well

[185] For instance, *Shari'a* Commission, Anti-Corruption Commission, *Zakat* and *Waqf* Board, all of Zamfara State.
[186] Uthman, M. B. *Op.cit.* p.226.

represented by Counsel) still file their criminal appeals in the Court and the latter has never, to best knowledge of this researcher, declined to assume jurisdiction.

Conclusively, the Islamic Criminal Justice System being applied in Nigeria today is disabled and incomplete, more especially when the States have no Police and Prisons of their own, but rather rely on the federal agencies which are under the control of the Federal Government.

CHAPTER FIVE

AN APPRAISAL OF THE LEGAL INSTITUTIONS FOR THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA

5.1 Introduction

One of the most important tools available to a society for the control of anti-social behaviour is the criminal justice system. It is one of the indices for measuring the success of every government and to be accorded that self-reliant status that developing nations, like Nigeria, desperately seek to achieve. The system envisages, at least, these plural legal institutions, namely, the Police, the Courts, the Prisons and the office of the Attorney-General,[1] among others. The process has largely been characterised by multiple or plural legal institutions which, at times, conflict with one another.

This chapter, therefore, appraises the legal institutions for the administration of the criminal justice in Nigeria. Such legal institutions include the Nigerian Police Force, the Courts, the Nigerian Prison Services and the office of the Attorney-General, and the Institution of *Hisbah*.

5.2 The Nigeria Police

The Nigerian Police is responsible for the prevention and detection of crimes, the apprehension of offenders, the preservation of law and order, the protection of lives and property and the enforcement of all laws and regulations made by the Federal and State Governments as well as byelaws made by the Local Government authorities.[2] In addition, the Police support other services such as the Prison Services, Immigration and the Custom Services. The Police Force is

[1] Ojukwu, E. *et al* (2012) *Handbook on Prison Pre-Trial Detainee*, Law Clinic, NULAI, Abuja, p.3.
[2] Akande, I. O. (2000) *Introduction to the Constitution of the Federal Republic of Nigeria 1999*, MIT Professional Publishers Ltd, Lagos, p.326.

also liable to perform such military duties within and outside Nigeria as may be required of it by the Federal Government.[3]

Historically, the Nigerian Police began with a thirty-member Consular guard formed in Lagos colony in 1861. In 1871, a 1,200 member armed paramilitary Hausa Constabulary was formed. In 1896, the Lagos Police was established.[4] A similar Force, the Niger Coast Constabulary, was formed in Calabar in 1894 under the newly proclaimed Niger Coast Protectorate. In the North, the Royal Niger Company set up the Royal Niger Constabulary in 1888 with headquarters at Lokoja.[5] When the Protectorates of Northern and Southern Nigeria were proclaimed in the early 1900's, part of the Royal Niger Company Constabulary became the Northern Nigeria Police and part of the Niger Coast Constabulary became the Southern Nigeria Police.[6]

The Northern and Southern Nigeria were amalgamated in 1914, but their Police Forces were not merged until 1930, forming the Nigeria Police Force (NPF) with headquarters in Lagos. During the colonial period, most Police were associated with local governments (Native Authorities). In the 1960's, under the First Republic, these forces were first recognised and then nationalised.[7]

5.3 General Duties and Role of the Nigeria Police in the Administration of the Criminal Justice in Nigeria.

The role of the Police in the administration of criminal justice is multifaceted. The Police through the machinery of arrest and detention ensure that offenders are taken into custody. They carry out investigations and obtain evidence for trial purposes. In order to facilitate this, the

[3] *Ibid.*
[4] Elias, T. O. (1964) *The British Commonwealth: The Development of its Laws and Constitutions*, Sweet and Maxwell, London, p.63.
[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.*

Police are empowered by Statutes to search persons and enter premises for the purposes of conducting searches whenever necessary.[8] It is also within the powers of the Police to grant bail to suspects in circumstances where the law permits them so to do.[9] The Police also institutes and prosecutes criminal trials in Courts.[10] These various duties are examined below.

5.3.1 Detection and Prevention of Crime

All over the world, one of the challenges hampering the effective administration of the criminal justice system is the detection, prevention and investigation of crime and criminals.[11] This problem is more pronounced in the developing Countries like Nigeria where technological advancement is still at the lowest ebb.[12] Criminals are becoming sophisticated leaving almost no trace or clue after the commission of crime.

The power to detect, prevent and to investigate crimes is statutorily vested in the Nigeria Police.[13] Although, there are other government agencies saddled with the responsibility of crimes detection and investigation in specific cases such as the Economic and Financial Crimes Commission (EFCC),[14] Department of State Security (DSS), Independent Corrupt Practices Commission (ICPC),[15] among others, none of them is conferred with such enormous and wide powers as the Nigeria Police.

The first role of the Police is to detect and prevent the commission of crime. Prevention, they say, is better than cure. It is the first responsibility of the Police to detect that a crime is about to be committed and quickly nip it in the bud before the act is actually carried out. This

[8] Odeku, K. O. (2006) *Police and the Rule of Law in Nigeria*, Princeton Publishing Ltd., Lagos, p.2.
[9] *Ibid.*
[10] *Ibid.*
[11] Adebayo, A. M. (2012) *Administration of Criminal Justice System in Nigeria*, Princeton Publishing Co., Lagos, p.8.
[12] *Ibid.*
[13] Section 4 of the *Police Act*, Cap P19, LFN 2004.
[14] Economic and Financial Crimes Commission Act No. 1, 2004.
[15] Independent Corrupt Practices Commission Act, 2000.

power is derived from Section 4 of the Police Act.[16] The Administration of Criminal Justice Law of Lagos State[17] also provides that every Police Officer may intervene for the purpose of preventing, and shall to the best of his ability prevent, the commission of any offence. Thus, a Police Officer, knowing of a design to commit an offence may arrest, without a warrant, the person so designing if it appears to such Officer that the commission of the offence cannot otherwise be prevented.

Prevention of crime if holistically pursued is the most effective method of administering criminal justice all over the world.[18] This is because it makes it possible for the suspect to be arrested before he carries out his criminal acts. It also reduces the cost and time spent on investigation, detention, prosecution and imprisonment of criminals.

However, prevention of crimes before they are committed involves a lot of information gathering which has to do with intelligence work. The havoc and the security embarrassment which *Boko Haram* and other terrorist groups have inflicted on Nigeria in recent times would have been avoided or reduced to the barest minimum if intelligence networks were effective. There is, therefore, an urgent need to overhaul the intelligence units of Nigeria's security agencies for effective information gathering.

The role of members of the public in providing information to the security agents cannot also be overemphasised. The security agents are not angels, they need information from members of the public. One of the identified reasons why most Nigerians are reluctant in supplying information about criminals to the security agents is lack of trust.[19] It is generally

[16] Cap P19, LFN 2004.
[17] Section 52 of the Administration of Criminal Justice (Repeal and Re-Engagement) Law 2011 of Lagos State. See also Section 50(1) of the *Administration of Criminal Justice Act*, 2015.
[18] Adebayo, A. M. *Op.cit*, p.10.
[19] *Ibid.*

believed that security agents in Nigeria cannot be trusted with information as one may either become the criminal or the information is leaked to the criminals.

There is, therefore, the need for the plural security agencies in Nigeria to facilitate a cordial relationship between their agents and members of the public. Promotion of cooperation between the security agencies and members of the public is no doubt a key weapon in the war against crime.

Similarly, there is an urgent need to breach the gap which exists among the plural security agencies in Nigeria to facilitate exchange of information. The situation where each of the security agency keeps information to itself is detrimental. They should liaise with one another in intelligence gathering. Likewise, the security agencies should be equipped with modern equipment to facilitate information gathering. Information technology gadgets should be provided for Nigeria's security agents.

5.3.2 Investigation of Crime

The power of the Police to investigate crimes is derived from Section 4 of the Police Act.[20] Investigatory power is the authority conferred on a government agency to inspect and compel disclosure of facts germane to an investigation.[21] Investigation connotes inquiring into a matter systematically or to make a suspect the subject of a criminal inquiry.[22]

When a crime is alleged to have been committed, it is the primary responsibility of the Police to discover whether or not a crime has been actually committed and by whom the crime was committed. Thus, the discoveries of whether, who, how, where and when a crime was committed is called investigation. The functions of the Police and other law enforcement

[20] Cap P19, LFN 2004. The Power of the Police investigate Crime is also Recognised by Section 2 of the Administration of Criminal Justice Act, 2015.
[21] Adebayo, A. M., *Op.cit.*, p.11.
[22] *Yakubu v FRN (2009) All FWLR (pt. 498) 387 at 401.*

agencies are to carry out investigation into any act or omission that is contrary to law. These can be summarised into three categories, namely:

i. The discovery that a crime has been committed;

ii. The identification of the person/persons suspected of committing the crime; and

iii. The collection of sufficient evidence to prosecute the suspect before the Court.[23]

In carrying out this duty of investigation, the Police have the power to question anybody, search any premises and seize any property which may provide useful information on the investigation.[24] In the case of *Joshua v. The State,*[25] the Court of Appeal held per Denton-West JCA (as he then was) thus:

> When a Police Officer is trying to discover whether or by whom an offence has been committed, he is entitled to question any person whether suspected or not from whom he thinks, that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.

However, this does not give the Police the power to be brutal and disobey the law in the course of investigation of a crime. Thus, in the case of *Ahamba v. The State,*[26] the Appellant was charged, tried and convicted for the offence of murder at the Abakaliki High Court. The Court of Appeal commenting on the method adopted by the Police in the investigation of the case said:

> It should be observed that now the investigation of this case was a clear departure from the established Police methods generally known and practiced in this Country and other Countries in which accusatorial as opposed to inquisitorial process is consistently followed in criminal trials...Before this report was investigated, the Police on their own claim to be acting on an undisclosed information, the particulars of which were equally top secret, started investigation at Ohuhu outside Umuahia township. As a result of the independent course of action they (the Police) arrested the Appellant along with his parents. They were brutally mistreated. While in moving Police

[23] Adebayo, A. M., *Op.cit.* p.12.
[24] Section 12(1) and (2) of the *Administration of Criminal Justice Act*, 2015.
[25] (2009) 5 NWLR (pt. 475) 1626 at 1651.
[26] (1992) 5 NWLR (pt. 242) 450.

> vehicle and scantily dressed, the former shot the Appellant on the head and took him to Queen Elizabeth Hospital for treatment. On admission for the injury inflicted on him the day of the arrest, the Police demanded a statement from him and while on sick bed, bleeding in pain with a bullet stuck on his head...

The above aptly captured the manners of Police investigation in Nigeria. Poor and shoddy investigation of cases constitutes one of the greatest challenges militating against effective administration of criminal justice in Nigeria. Many criminal cases are lost due to improper and poor investigation. Thus, in the case of *Oforlette v. The State*[27] the Appellant was convicted of manslaughter by the trial Court which decision was affirmed by the Court of Appeal. The facts which the trial Court relied upon in convicting the Appellant were that the Appellant hit the deceased person on the head with a kitchen bench. After two or three months, the deceased was taken to the hospital and he eventually died about four months after the incident. On appeal to the Supreme Court, it was observed by Ayoola JSC (as he then was) that:

> "The truth of the matter is that the whole case was improperly investigated and poorly prosecuted. Proper investigation should have revealed some degree of continuity between the blow to the deceased's head, resulting in a swelling on the head and eventual resort to medical treatment three months later."[28]

In a more recent case of *Dele v. The State*,[29] the Court of Appeal, per Omoleye JCA, also observed thus:

> In concluding this judgement, I must condemn in very strong words, the shoddy trick employed by the Police in the investigation of the circumstances surrounding the gruesome murder of the deceased, in broad daylight and nearly in the full glare of onlookers. It is heart-rending to observe how some Police Officers have consistently remained out of step with practices which smack of upholding the cause of justice. In the instant matter, it is obvious that the investigating Police Officers did not merely look the other way, they

[27] (2000) FWLR (pt. 12) 2081 at 2102.
[28] *Ibid.*
[29] (2011) 1 NWLR (pt. 1229) 508 at 541.

> practically charted the course for the escape of those who were probably the real culprits in the murder of the deceased.[30]

Indiscriminate arrest of innocent citizens, torture of suspects, bribery, corruption, incompetence, inadequate facility to mention but a few are some of the acts of the Police, which pose great challenges to the administration of criminal justice in Nigeria.

This, however, does not mean that the Police do not have discretion in the exercise of their power to investigate a crime. The Police are professionals and as such are expected to display a high level of professionalism in carrying out their duties. In the case of *Fawehinmi v. IGP,*[31] the Appellant sought an order of mandamus to compel the respondent to investigate criminal allegations made against the then Governor of Lagos State, Bola Ahmed Tinubu. The respondent objected on the ground of *locus standi* and immunity of the governor under the Constitution. The trial Court upheld the objection and dismissed the application. The Appellant's appeal to the Court of Appeal was equally dismissed. He further appealed to the Supreme Court. It was observed, per Uwaifo JSC (as he then was) thus:

> I am unable to accept that the Police duty can be adequately defined as ministerial... Indeed, the Police are the outward civil authority of the power and might of a civilised Country. The generality of the public is potentially affected one way or another by their action or inaction. I think it will be a denigration of the aura of authority they represent and a disservice to society to suggest that they can exercise no discretion in their duty of the maintenance of law and order, or to be specific, in their investigation of any particular allegation of crime even if it were to be an obvious wild goose chase. I am satisfied that in the performance of their duty to maintain law and order, to investigate allegation of crime and to arrest, the Police have and can exercise some measure of discretion. It all depends on the circumstances of every occasion, the best of their capability, the image of the Police and overall interest of the society.[32]

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[30] *Ibid.*
[31] (2000) FWLR (pt. 108) 1335 or (2000) 5 SC (pt. 1) 63.
[32] *Ibid.*

5.3.3 Reception of Complaint

The Police have a duty to receive complaints from members of the public. Generally, any person may make a report to a Police Officer that an offence has been, is being or is likely to be committed.[33] Both the Criminal Procedure Code (CPC) and the Criminal Procedure Act (CPA) are, however, silent on the method of making a complaint or report to a Police Officer when a crime is alleged to have been committed or is being or likely to be committed. In practice, a complaint may either be made orally to a Police Officer at the counter at the Police Station or by a petition written by a person usually addressed to the Head of the Police Unit or Division.

However, a clue may be taken from Regulation 333(iv)-(v) of the Nigerian Police Regulations[34] which provides that every information or complaint relating to the commission of a crime is to be reduced into writing and entered into the Station Crime and Incidents Diary if given orally to the Officer in charge of a Police Station.

This happens when a person comes to the Police Station and makes a report of any incident. In legal parlance, this report is referred to as the complaint and its significance is that it is usually made very early after the occurrence of a crime. Thus, the likelihood of fabrication and distortion of facts is reduced because the memory of the informant is still very fresh. This will form the basis of the case and the Police will swing into action.

Usually, every such report shall, when entered in the Station's Crime and Incident Diary, include details such as the date and hour when the report was given and the signature of the person making the report. A copy of this report is then given to the Police officer whose task is to investigate. He is called Investigating Police Officer (IPO). Once a complaint or report is received by the Police, the officer in charge of the Station assigns the case to an Investigating

[33] Section 57, Administration of Criminal Justice (Repeal and Re-Engagement) law of Lagos State, 2011.
[34] Made pursuant to Section 46 of the *Police Act*, Cap P19, LFN 2004.

Police Officer for thorough and discreet investigation and such Officer will normally immediately carryout the investigation. The investigation activities to be carried out by the Investigating Police Officer include, *inter alia*, the making of inquiries on the spot and the visit of the crime scene.

5.3.4 Power to Arrest Suspects

Arrest consists of "a seizure or forcible restraint."[35] It is the taking or keeping of a person in custody by legal authority, especially in response to a criminal charge, like the apprehension of someone for the purpose of securing the administration of the law, especially of bringing that person before a Court.[36] Arrest, therefore, means the placing of a person under lawful detention against his will for the purpose of law enforcement.[37] In making an arrest, the Police is an agent or servant of the State and not of the Complainant.[38]

Arrest is an abridgement of the right of personal liberty guaranteed to everyone by Section 35(1) of the 1999 Constitution of the Federal Republic of Nigeria. The Section provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in accordance with a procedure permitted by law. The Constitution, however, recognises situations when arrest could be made. Arrest could be made of a person under the Constitution for the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.[39] The Police Act also stipulates that an officer can lawfully arrest any person whom he reasonably suspects to have

[35] Garner, B. A. (2009) *Black's Law Dictionary,* 9th Edition, West Publishing Company, p.125.
[36] *Ibid.*
[37] Okoro, B. C. (2013) *The Police, Law and Your Rights*, Princeton Publishing Co., Lagos, p. 28.
[38] Ibid.
[39] Section 35(1)(a) and (c) of the 1999 CFRN (as amended).

committed an offence.[40] Thus, in the course of investigating a crime, a Police Officer is empowered to arrest any person suspected to have committed an offence. When a complaint or a report is received by the Police, the offender has to be traced and arrested.

Generally, there are five categories of persons who may affect arrest under the law. They are: the Police Officer,[41] a Judge,[42] a Magistrate,[43] a Private Person,[44] and the owners of property.[45]

5.3.5 Arrest without Warrant

Generally, a Police Officer is empowered to arrest without warrant, any person who commits any offence in his presence notwithstanding any provision to the contrary.[46] This provision is effective even where the offence in respect of which such person is arrested stipulates that the offender cannot be arrested without warrant.[47] A Police Officer can also arrest without warrant where he reasonably suspects a person to have committed an indictable offence.[48] He may equally arrest anyone known to be designing to commit an offence if there is no other way of preventing its commission.[49]

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[40] Section 24 and 25 of the *Police Act*, Cap P19, LFN 2004.
[41] *Ibid*. See also Section 26 of the *Criminal Procedure Code*, Cap C42 LFN 2004 and Section 55 of the *Criminal Procedure Act*, Cap C41, LFN 2004.
[42] Section 29(1) of the *Criminal Procedure Code*, Cap C42, LFN 2004 and Section 15 of the *Criminal Procedure Act*, Cap C41, LFN 2004.
[43] Section 30(1) of the *Criminal Procedure Code*, Cap C42, LFN 2004 and Section 16 of the *Criminal Procedure Act* Cap C41, LFN 2004.
[44] Section 28 of the *Criminal Procedure Code* and Section 12 of the *Criminal Procedure Act*.
[45] Section 21 of the *Administration of Criminal Justice Act*, 2015. See also Section 13 of the Administration of Criminal Justice (Repeal and Re-Engagement) Law 2011 of Lagos State.
[46] Section 26 of the *Criminal Procedure Code*, Cap C42, LFN 2004 and Section 10(1)(b) of the *Criminal Procedure Act*, Cap C41, LFN 2004. See also Section 18(1)(b) of the *Administration of Criminal Justice Act*, 2015.
[47] Section 10(2) of the *Criminal Procedure Act*, Cap C41, LFN 2004.
[48] He may arrest for example, where an offender refuses to give his name and address or where he gives a fake one.
[49] Section 26(e) of the *Criminal Procedure Code*, Cap C42, LFN 2004 and Section 55 of the *Criminal Procedure Act*, Cap C41, LFN 2004.

In effecting an arrest, the law allows the physical touching or confining the body of the suspect unless there is a submission to the custody by words or by conduct.[50] A person arrested shall not, however, be handcuffed or otherwise bound or be subjected to unnecessary restraint except by order of the Court or there is reasonable apprehension of violence or of an attempt to escape or if the restraint is necessary for the safety of the person arrested.[51] Where this is the case, such force as may be reasonably necessary to overcome the violence or attempted escape or such reasonable restraint for his safety may be used.

It is, therefore, not acceptable for a Police Officer to beat, torture, handcuff or kill a suspect in the course of affecting an arrest except such a suspect attempts to escape. Such acts are unlawful and criminal. In the case of *Agbo v. The State*[52] the Appellant, a Police constable, escorted the driver of a Magistrate he was attached to as an orderly. On their way, he had an argument with a taxi driver who allegedly blocked the road. In the process, he shot the taxi driver dead with his pistol. The Appellant was charged and convicted for murder. He appealed to the Court of Appeal which affirmed the conviction. He further appealed to the Supreme Court. The Supreme Court in affirming his conviction observed, per Mukhtar JSC (as she then was) thus:

> Situations like this whereby policemen rashly bring out guns (albeit to merely threaten or frighten citizens) is rapidly becoming rampant. They are mandated to use guns to protect and safeguard the lives of the citizenry, but the reverse is the case. A policeman will not hesitate to pull the trigger of his gun at the slightest provocation and would indeed do that with relish and reckless abandon, not caring whether the consequence of his act will be fatal. The incident in the instant case is a *locus classicus*... I believe such rash acts must be stopped to prevent innocent human lives from being wasted...[53]

[50] Section 3 of the *Criminal Procedure Act* Cap C41, LFN 2004.
[51] *Ibid.,* section 4. See also Sections 31 and 37 of the *Criminal Procedure Code*, Cap C42, LFN 2004.
[52] (2006) All FWLR (pt. 309) 1380 at 1418.
[53] *Ibid.,* pp.1418-1419. See also *Maiyaki v. The State (2008) 15 NWLR (pt. 1109) 216* and *Oludamilola v. The State (2010) All FWLR (pt. 127) 599 at 607.*

Notwithstanding the above, a Police Officer is not expected to fold his hands while being attacked by a suspect. Certainly, no criminal wants to be arrested. There is a high tendency that a criminal will ordinarily resist arrest and escape from justice. Arrest of a suspect is one of the most dangerous duties of Police Officer especially where the offence involves a notorious criminal.

A Police Officer affecting an arrest must always envisage some form of resistance from the suspect especially where the offence alleged to have been committed is a serious one. Therefore, a Police Officer is entitled to use such force as may be reasonably necessary in the circumstance to overcome any violence that may be used in resisting an arrest by a suspect.[54]

Where death occurs as a result of the use of such reasonable force to overcome a suspect such as death of armed robbery suspect who engages the Police Officer in gun duel or a passer-by who dies from a stray bullet, the Police Officer will not be criminally liable provided that the force used in the circumstances was reasonable. Thus under Section 4 (10) of the Robbery and Firearms (special provisions) Act,[55] an armed patrol of Police or the Army is empowered to use such force including the use of firearms, as may be reasonably necessary to effect the arrest of a person reasonably suspected of having committed or who is about to commit an offence under the Act or to prevent the escape of such a person.

Furthermore, where a suspect takes to flight in order to avoid arrest, it is lawful for a Police Officer to use such force as may be reasonably necessary to prevent the escape of the suspect and, if the offence is such that the offender may be punished with death or with

[54] Section 182 of the Criminal Laws of Lagos State 2011.
[55] Cap R11, LFN 2004.

imprisonment for seven years or more, the officer may kill him if he cannot by any means otherwise be arrested.[56]

The above position is further reaffirmed by the provisions of the 1999 Constitution which provides:

> A person shall not be regarded as having been deprived of his life in contravention of this Section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary:
> (a) For the defence of any person from unlawful violence or for the defence of property;
> (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
> (c) For the purpose of suppressing a riot, insurrection or mutiny.[57]

It must be stressed that it is unlawful for a Police Officer to arrest a person in place of a suspect.[58] Thus, a Police Officer has no power to arrest a person who has not committed an offence in lieu of another. It is a common phenomenon among Police Officers in Nigeria to arrest relatives of a suspect in place of the suspect where it becomes difficult to arrest the suspect.[59] Sometimes, the Police Officer making an arrest will apprehend every person seen with a suspect or in the house of the suspect. In most cases, the Police Officers go on arresting everybody connected with the suspect or seen at the scene of crime despite the fact that the suspect is known and has already been arrested. As Adebayo rightly noted, this is done mainly to increase the number of people that will be granted bail.[60] Hence, the motivation is corruption.

The Criminal Procedure Code and the Criminal Procedure Act of the various States of the Federation have no similar provisions prohibiting arresting a person in place of a suspect.

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[56] Section 271 of the Criminal Code Law of Ogun State, 2006. See also Section 182 of the Criminal Law of Lagos State, 2011.
[57] Section 33(2) of the 1999 CFRN (as amended).
[58] Section 7 of the *Administration of Criminal Justice Act*, 2015. See also Section 4 of the Administration of Criminal Justice (Repeal and Re-Engagement) Law, 2011 of Lagos State.
[59] Adebayo, A. M., *Op.cit.* p.21.
[60] *Ibid.*

Generally, unlawful arrest, detention of suspects and the lack of adequate data regarding the number of suspects detained in Police custody are some of the significant flaws that exist in the administration of criminal justice in Nigeria.[61] One of the measures that has been put in place in Lagos State to check these menaces is provided for in Section 20 of the Administration of Criminal Justice Law of Lagos State. By this Section, all officers in charge of Police Stations are obliged to report to the nearest magistrate Court, the cases of all persons arrested without warrant within the geographical limits of their respective Stations. The Chief Magistrate shall notify the Chief Registrar of the High Court of such report who shall forward a report to the Director of Public Prosecutions for necessary action. This position was equally provided for by Section 33 of the Administration of Criminal Justice Act, 2015.

5.3.6 Rights of the Person Arrested

Where a person has been arrested by a Police Officer, he shall be informed of the cause of his arrest except he is in the actual course of committing a crime or is pursed immediately after committing a crime or escaping from lawful custody.[62] The right to be informed of the cause of arrest is a constitutionally guaranteed right, for Section 35(3) of the 1999 Constitution provides:

> "Any person who is arrested shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention."

The law is silent on the consequence of the failure of the Police to inform the person arrested of the cause of his arrest. However, being a Constitutional requirement, a suspect who is denied the opportunity of knowing the reason of his arrest within twenty-four hours may apply to

[61] *Ibid.* p.22.
[62] Section 38 of the *Criminal Procedure Code*, Cap C42, LFN 2004 and section 5 of the *Criminal Procedure Act*, Cap C41, LFN , 2004. See also Section 6 of the Administration of Criminal Justice, Act, 2015.

the Court to seek redress against the Officer who denied him his right.[63] In other words, failure of a Police Officer to promptly inform a suspect of the cause of his arrest may make the Police Officer liable in damages if the suspect chooses to enforce his rights against him. This is because Regulation 341 of the Nigeria Police Regulation[64] provides that in the individual exercise of his power as a Police Officer, every Police Officer shall be personally liable for any misuse of his powers.

It is pertinent to note that the provision of Section 35(3) of the 1999 Nigerian Constitution is further strengthened by the provision of Section 36(6)(a) thereof which requires that an accused person shall be informed promptly in the language that he understands and in detail of the nature of the offence. Thus the Supreme Court in the case of *Rufa'i v. The State,*[65] held that a trial may be voided where it is not shown that an accused person was informed of the nature of the offence in a language that he understood. There should be a written evidence of his having been so informed especially where the language the accused person speaks differs from that of the Court.

It is also important to note that while section 35(3) of the 1999 Nigerian Constitution applies to a suspect who is yet to be arraigned in Court, Section 36(6)(a) of the same Constitution is designed to apply not only to an accused person who has been arraigned before a Court but also to a suspect who has just been arrested by the Police. Thus, Section 36(6)(a) of the 1999 Constitution is wider than its counterpart (Section 35(3)).

[63] Adebayo, A. M., *Op.cit.* p.24.
[64] Made pursuant to Section 46 of the *Police Act*, Cap P19, LFN 2004.
[65] (2001) 7 SCNJ 122.

The Supreme Court of Nigeria shed more light on the intendment and application of Section 36(6)(a) of the Nigerian Constitution in the case of *Ndukwe v. LPDC,*[66] when it held thus:

> It is principally in that light that one can properly appreciate the provisions of Section 36(6)(a) of the 1999 Constitution which is designed to apply not only to formal Courts exercising criminal jurisdiction but also to Police Officers effecting arrest of a suspect, administrative tribunal or bodies or generally speaking judicial or quasi-judicial bodies... when viewed in that light it becomes very clear, and i hereby hold that the word "charged" as contained in the said Section 36(6)(a) of the 1999 Constitution is not limited to a formal charge as recognised in the Criminal Code and the Criminal Procedure Act and applied by Courts of competent jurisdiction, but extends to complaint or information as to the offence with which a person is accused delivered to the person so accused or charged in a language that he understands with sufficient details of the alleged offence.
> The information may not necessarily be in writing as when a Police Officer, in the course of his duties, arrests a person for an offence. He is duty bound to inform him of the "charge" for which he stands arrested in a language that he understands and the detail of the nature of the offence. You may call it a caution if you wish. It is usually on that basis that the suspect is cautioned before he volunteers a statement in answer to the "charge" or allegation against him...[67]

5.3.7 Power to Search and Seize Property

The object of search is to obtain evidence that may be used in the prosecution of a criminal trial. It is, therefore, one of the preliminary steps necessary for such a trial. A search can be on the person arrested or on premises. A brief analysis of each is provided below.

(a) Search of Persons

A Police Officer making a lawful arrest has the power to search the body of the person arrested.[68] He may equally use such force as may be reasonably necessary for that purpose, and place in safe custody all articles other than necessary wearing apparel found on the arrested

[66] (2007) 5 NWLR (pt. 1026) 1 at 31.
[67] *Ibid.*, per Onnoghen, JSC (as he then was).
[68] Section 4 of the *Criminal Procedure Code*, Cap C42, LFN 2004 and Section 6(1) of the *Criminal Procedure Act*, Cap C41, LFN 2004. See also Section 9(1) of the *Administration of Criminal Justice Act*, 2015.

person.[69] The Police Act[70] also empowers a Police Officer to detain and search a person whom he reasonably suspects of having in his possession some stolen property.

Where the suspect is a woman, the search must be conducted by another woman.[71] The search is, however, restricted to the body of the person and not the things appurtenant to the person. Both the Criminal Procedure Code and the Criminal Procedure Act are, however, silent on whether or not a woman Police Officer can search a male suspect. But a clue can be taken from the provisions of both the Administration of Criminal Justice Act, 2015 and the Administration of Criminal Justice Law 2011 of Lagos State. Both laws[72] provide that whenever it is necessary to search a person, he shall be searched by a person of the same sex with a sense of decency. To this researcher's view, this provides a better method of searching a person arrested for the commission of a crime.

(b) Search of Premises

Generally, for premises to be searched, a search warrant must be obtained by the Police. It is unlawful to do so without a search warrant. However, where a person to be arrested under a warrant of arrest is suspected of being within a premises, the premises may be searched to effect the arrest without a search warrant.[73] Furthermore, in order to have access to the premises where ingress is not allowed, the Police Officer may break into and also may break out of the premises after executing the search.[74]

A search warrant is an order in writing issued by a Judge or a Magistrate in the name of the State directed to a Police Officer authorising him to search a premises and seize any property

[69] Section 5 of the Administration of Criminal Justice (Repeal and Re-Engagement) Law 2011 of Lagos State.
[70] Section 29 of the *Police Act*, Cap P19, LFN 2004.
[71] Section 82 of the *Criminal Procedure Code*, Cap C42, LFN 2004 and Section 6(2) of the *Criminal Procedure Act*, Cap C41, LFN 2004.
[72] Section 9(3) of the *Administration of Criminal Justice Act*, 2015 and Section 5(2) of the Administration of Criminal Justice (Repeal and Re-Engagement) Law, 2011 of Lagos State.
[73] Sections 7 and 112 of the *Criminal Procedure Act*, Cap C41, LFN 2004.
[74] *Ibid.*

that may constitute the evidence for the commission of a crime or intended to be used as a means of committing a crime.[75] Before a Police Officer exercises this power, he should inform the person of his suspicion and belief and give grounds for the belief. Where the procedure is not followed, it can be a ground for resisting the search and also a good defence.[76]

Similarly, a search warrant is procurable upon information on oath and must be in writing.[77] It may be issued on any day including a Sunday or a Public Holiday, although time of execution is restricted to 5.00am to 8.00pm. The Court may, however, use its discretion and allow it for 24 hours, that is to say it can be executed at any time if the warrant is so endorsed.[78]

Under the Criminal Procedure Code applicable in Northern States, a search warrant must be executed in the presence of two respectable people, and a list of all things seized in the course of search and the places in which they are found shall be drawn by the Police Officer carrying out the search and shall be endorsed by the witnesses.[79]

Where the premises to be searched is occupied by women in *purdah*, provided that the women are not the persons to be arrested, the Police Officer executing the warrant should allow the women to withdraw before executing the search warrant.[80] This provision has no equivalent in the Criminal Procedure Act of Southern States and this constitutes another area of legal pluralism in the administration of criminal justice in Nigeria.

Likewise, where premises are searched, persons found in such places may also be searched.[81] Generally, a Police Officer or other person executing the search warrant must be allowed access into the premises to be searched. The Police Officer is required by law to show

[75] *Ibid.*, Sections 107(1) and 110.
[76] *Onuorah v. COP (1960) WRNLR 110.*
[77] Section 107(1) of the *Criminal Procedure Act*, Cap C41, LFN 2004.
[78] *Ibid.*, section 111(1) and (2).
[79] Section 78(1) and (2) of the *Criminal Procedure Code*, Cap C42, LFN 2004.
[80] *Ibid.*, Section 79.
[81] *Ibid.*, Section 81.

the search warrant to the occupier of the premises, and where ingress is not allowed, the Police Officer may break into and enter such premises in order to execute the search warrant.[82]

It must be stressed that a Senior Police Officer of the rank of Cadet Assistant Superintendent or above is authorised to issue a search warrant to any Police Officer to enter into any premises in certain circumstances for the purpose of executing a search. However, the power of Superior Police Officer to issue a search warrant is limited to premises that are or have been within the preceding 12 months in the occupation of any person convicted of receiving stolen property or of harbouring thieves or of any offence involving fraud or dishonesty punishable by imprisonment.[83] Where property is seized in pursuance of the search warrant, the occupier of the premises from where the goods are seized may be arrested and brought before the Magistrate to account for his possession of the goods.[84]

It is interesting to note that where a search of a suspect or premises is conducted pursuant to a search warrant, the warrant ordinarily gives power to seize. Although only goods mentioned in the search warrant should be seized, there are authorities to the effect that a Police Officer executing the search warrant can lawfully seize other items which he reasonably believes to have been stolen and are relevant in respect of other offences.[85] Where anything is seized pursuant to a search warrant, the Magistrate may retain it until the end of the trial and where there is no charge, the items are to be released to the person who appears to the Magistrate to be the owner.[86]

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[82] *Ibid,* Section 34.
[83] Section 28(1) of the *Police Act*, Cap P19, LFN 2004.
[84] *Ibid.*, section 28(2).
[85] *Reynods v. Commissioner of Police of the Metropolis (1985) 8 CAR 125*
[86] Section 113 of the *Criminal Procedure Act*, Cap C41, LFN 2004. See also section 153(3) of the *Administration of Criminal Justice Act*, 2015.

Where the goods seized pursuant to a search warrant are of perishable or noxious nature, the law allows the Court to dispose of them as it deems fit.[87] Where it is gunpowder or any other explosive or dangerous or noxious substance or thing, the Police shall have the powers and protection as are given by any written law for the time being in force to dispose same in the manner as directed by any such written law, or in default of such direction as the Court may either generally or in any particular instance order.[88] In the words of Section 115 of the Criminal Procedure Act applicable to the States in Southern Nigeria "in default of such direction, as the Commissioner of Police of the State may either generally or in any particular instance order."

It is clear from the above that whereas with respect to Federal Offences the gunpowder, explosive or noxious substance shall be dispose of in the manner directed by the Court in the absence of any direction from any written law, such items are to be dispose of in the manner directed by a State Commissioner of Police in default of any direction from any written law, with respect to State Offences.

As regards forged bank notes, whether or not the person is committed for trial, the Magistrate may cause them to be defaced or destroyed.[89] As for counterfeit coins or other things not delivered up to the Commissioner of Police, a Magistrate may in his discretion order that they be destroyed in his presence.[90]

The above provisions with respect to disposal of perishable items, gunpowder/noxious substances and counterfeit currency have no equivalent in the Criminal Procedure Code applicable to the States in Northern Nigeria. The Code simply provides that any Court may, if it

[87] Section 154 of the *Administration of Criminal Justice Act*, 2015 and section 114 of the *Criminal Procedure Act*, Cap C41, LFN 2004.
[88] Section 155 of the *Administration of Criminal Justice Act*, 2015.
[89] *Ibid*, section 156. See also Section 116 of the *Criminal Procedure Code*, Cap C41, LFN 2004
[90] Section 117 of the *Criminal Procedure Code*, Cap C41, LFN 2004.

thinks fit, impound any document or things produced before it under the Code.[91] It is respectfully submitted by this researcher that the above provision gives the Court a blanket discretion as to how to dispose the above items, and this is a *lacuna* in this aspect of the law.

It must be noted that in practice, items recovered pursuant to a search warrant, other than those referred to above, are normally kept with a Police Exhibit Keeper.[92] Such items constitute parts of the exhibits which the prosecution always rely upon in proof of the allegation against the accused person.[93] The Police Officer in charge of exhibits must keep the items in safe custody and must ensure that they are not otherwise tampered with.

Instances are abound where exhibits are not produced during the trial of a case on the ground that they can no longer be traced or have been lost or misplaced. This is one of the challenges confronting the administration of criminal justice in Nigeria. Thus, in the case of *Adekunle v. The State*,[94] it was revealed at the trial that the Police Crime Diary containing relevant documents necessary for the effective prosecution of the case was missing from the custody of the Police.

There are situations where items recovered by the Police from a suspect or in the course of investigation are converted to personal use by Police Officers. It is now becoming rampant in Police Stations to see Police Officers converting items recovered from suspects or in the course of investigation to personal or office use.[95] This is inimical to the administration of criminal justice in Nigeria.

In order to avoid such embarrassing situations, it is now compulsory that a record of an inventory of the particulars of all items or properties recovered pursuant to a search warrant must

[91] Section 86 of the *Criminal Procedure Code*, Cap C42, LFN 2004
[92] Adebayo, A. M., *Op.cit*, p.26.
[93] *Ibid.*
[94] (2006) All FWLR (pt. 332) 1452.
[95] Adebayo, A. M., *Op.cit*, p.27.

be made.[96] A copy of the list must be forwarded to the Judge, Magistrate or Justice of the Peace who issued the search warrant in a prescribed form.[97] In Lagos State, the record of the inventory must be duly signed by the Police Officer, the arrested person and his Legal Practitioner, and a copy of the inventory must be given to them.[98]

Again, under the Criminal Procedure Code applicable to the States in Northern Nigeria, searches are to be conducted in the presence of two respectable people.[99] A list of all things seized in the course of the search and the places in which they are found shall be drawn up by the person carrying out the search and shall be signed or sealed by the witness.[100] In addition, the Code allows the owner of the things seized to have a copy of the list of the items seized.[101]

The Criminal Procedure Act applicable to the States in Southern Nigeria has no equivalent provisions on the above. It is submitted by this researcher that this creates a gap in the law which, as a matter of urgency, needs to be filled.

Be that as it may, the owner of items seized by the Police in the course of investigating a case may sue the Police to recover the items if at the end of investigation it was discovered that no offence has been committed and if the Police refused to return the items. Thus, in the case of *Abah v. Jabusco (Nig.) Ltd.,*[102] the Police went to the store of the respondent and seized various types of electronic appliances valued together at N317,200,00 (Three hundred and seventeen thousand, two hundred naira). The Police also arrested two of the respondent's salesman whom they took together with the seized goods to the Station where the electronics were put under the custody of the 1st to 5th Appellants. It was later discovered that the electronics were no more at

[96] Section 153(2) of the *Administration of Criminal Justice Act*, 2015.
[97] *Ibid.*
[98] Section 6 of the Administration of Criminal Justice (Repeal and Re-Engagement) Law, 2011 of Lagos State.
[99] Section 78(1) of the *Criminal Procedure Code*, Cap C42, LFN 2004.
[100] *Ibid.*, section 78(2)
[101] *Ibid.*, section 80.
[102] (2008) 3 NWLR (pt. 1075) 526 at 567

the station. All efforts to recover the goods from the 1st to 5th Appellants failed. The respondent sued the Appellants claiming against the Appellants N317,200.00 (Three hundred and seventeen thousand, two hundred naira) being the cost of the missing goods and N682,800 (Six hundred and eighty two thousand, eight hundred naira) as general damages. At the end of the hearing, judgement was given in favour of the respondent. Appellant's appeal to the Court of Appeal was also dismissed. The Court of Appeal held *inter alia,* that the 1st to 5th Appellants became bailees of the goods kept in their custody and they were under an obligation to return the goods to the bailor at the end of the period of the bailment.

5.3.8 Power to Grant Bail

Bail is the process by which a person is released from custody either on the undertaking of a surety or on his/her own recognisance.[103] It is the procedure by which a person arrested for an offence is released on security being taken for his appearance on a day and place certain.[104]

A person arrested by the Police on suspicion of having committed an offence must be taken to the Court within 24 hours if there is a Court of competent jurisdiction within a radius of 40 kilometers, or within 48 hours or such longer period as is considered reasonable where there is no competent Court within a radius of 40 kilometers.[105]

Where a person arrested by the Police cannot be brought before the Court within the stipulated time limit because investigation into the alleged offence has not been concluded, he must be granted bail by the Police.[106] The Police cannot grant bail if the offence the person is arrested for is punishable with death.[107]

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[103] Garner, B. A., *Op.cit,* p.160.
[104] *Ibid.*
[105] Section 35(5) of the 1999 CFRN (as amended).
[106] Sections (129(1) and 340 of the *Criminal Procedure Code*, Cap C42, LFN 2004 and Section 18 of the *Criminal Procedure Act*, Cap C41, LFN 2004.
[107] Section 27 of the *Police Act*, Cap P19, LFN 2004.

Where a person granted bail by the Police remains in Police custody because he is unable to fulfil the conditions of bail, then his continued detention in Police custody will not be in contravention of the Constitutional provisions.[108] This is because it is the duty of the suspect to comply with the conditions of bail. Usually, an application for bail is made in writing by the suspect or his surety on his behalf. The suspect may be admitted to bail with surety or on self cognisance.[109]

It must be pointed out that bail is free and is not to be paid for.[110] However, the contrary is the case in most Police Stations. It is common knowledge that it is almost impossible to get bail from the Police without payment. This is one of the notable vices bedeviling the image of the Police in Nigeria. Although Police Stations are replete with posters and inscriptions showing that bail is free and not to be paid for, and even warning members of the public not to pay for bail, this has not translated to affirmative action. There is hardly any Police Station in Nigeria, in this researcher's view, where bail is free.

It is therefore, evident that most Nigerians pay for bail for fear of long detention and indiscriminate arraignment in Court.[111] This is one of the causes of Courts congestion in Nigeria. Thus, suspects who fails or refuses to pay for bail face the risk of being charged to Court whether they are innocent or not.

However, the 1999 Nigerian Constitution provides for respite to persons who are unlawfully detained by the Police. It provides:

> "Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority and in this

[108] *Ede v. COP Bendel State (1982) 2 NCLR 219.*
[109] Section 345 of the *Criminal Procedure Code*, Cap C42, LFN 2004.
[110] Adebayo, A. M., *Op.cit.*, p.31,
[111] *Ibid.,* p.32

> subsection "the appropriate authority or person" means an authority or person specified by law."[112]

Thus, in the case of *Shagari v. Commissioner of Police,*[113] the appellants were arrested at various locations in Nasarawa State and the Federal Capital Territory, Abuja on the allegation that they committed various offences in May, 2003. They were detained in Police custody till September, 2003 without bail. They were later arraigned before a Chief Magistrate Court which also denied them bail. The Appellants' Application at the High Court was also refused. They further appealed to the Court of Appeal. The Court of Appeal in condemning the detention of the Appellants without bail said:

> This Court or indeed all Courts of this Country will be quick to give relief against any improper use of power especially by the Police as evident in the instant case leading to this appeal. The said abuse of power by the Police, have resulted in the continual unlawful detention of the Appellants. It is, therefore, unjust having regard to the fact that some other arrested suspects by the police are somewhere breathing the air of freedom with or without Police bail.[114]

5.3.9 Power to Institute Criminal Proceedings

The Police is one of the agencies authorised to institute criminal proceedings against alleged offenders in accordance with their duty of due enforcement of all laws and regulations.[115] The authority of the Police to prosecute in criminal proceedings is derived from the Police Act[116] which provides that subject to the powers of the Attorney-General to undertake, take over and continue or discontinue criminal proceedings against any person before any Court in Nigeria, any Police officer may conduct in person all criminal prosecutions before any Court.

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[112] Section 35(6) of the 1999 CFRN (as amended)
[113] (2005) All FWLR (pt. 262) 450
[114] *Ibid,* p.473.
[115] Momodu, B. (2007) *Law and Practice of Criminal Investigation and Prosecution in Nigeria,* Ibadan, Starling Hordon Publishers (Nig.) Ltd., p.156.
[116] Section 23 of the *Police Act,* Cap P19, LFN 2004.

In practice, the Police (whether qualified as a legal practitioner or not) generally prosecute the bulk of the criminal cases in the Courts of summary jurisdiction (i.e. Magistrate and other lower Criminal Courts). In the High Courts and other superior Courts of records, the Police Prosecutor is expected to be a Legal Practitioner, and when he is so qualified, nothing precludes him from prosecuting criminal cases in the High Courts and other Superior Courts of records without fiat from the Attorney-General. Thus, in *Olusemo v. The Commissioner of Police,*[117] the question was whether the Police can represent the State in the Courts of record? The Court of Appeal held they could, subject to the provisions of Section 23 of the Police Act.

Again in *C.O.P. v. Ali*[118] the Respondents were charged before the Magistrate Court for various offences. A Police Prosecutor appeared for the prosecution. The charge was struck out by the Court for lack of jurisdiction. The prosecution appealed against the decision of the trial Magistrate. The notice of appeal was signed and filed by S. A. Mbara Esq, Counsel to the prosecution. When the appeal came up for hearing, Counsel was asked by the Court to address it on the competence of the Police lawyer who is still a serving Police Officer to prosecute and appeal in a criminal case.

The Court ruled that the appeal filed by Mr. Mbara was incompetent and that Mr. Obia who argued the appeal, and who was also a serving Police Officer on salaried employment, though enrolled as a Barrister and Solicitor, was not entitled under the Legal Practitioners Act to practice as a Barrister or Solicitor and cannot advocate for the Prosecutor/Appellant in the High Court. Dissatisfied with the decision, the Commissioner of Police appealed to the Court of Appeal. In determining the appeal, the Court of Appeal considered the provisions of Section 2 of the Legal Practitioners Act. It held thus:

[117] (1998) 11 NWLR (pt. 575) 1164
[118] (2003) FWLR (pt. 157) 1164

> It was not in dispute that Mr. S. A. Mbara's name was "on the roll." Therefore, he was entitled to practise as a Barrister and Solicitor. Similarly, it was agreed on all sides that the name of Mr. E. Obia was "on the roll." He was equally entitled to practise as a Barrister and Solicitor. As a person entitled to practise as a Barrister and Solicitor, Mr. S. A. Mbara did on the 14th of February, 1994 signed and filed "notice of appeal" as Counsel for the prosecution. The "notice of appeal" thus signed and filed by him; I do hold was competent as Mr. S. A. Mbara was competent to sign and file it. Similarly, Mr. E. Obia being entitled to practice as a Barrister and Solicitor was competent to appear in and entitled to audience in the Court below as Counsel and I do so hold.

The controversy generated by the provisions of Section 23 of the Police Act appears to have been laid to rest by the Supreme Court in the case of *F.R.N. v. Osahon.*[119] The Respondents were arraigned before the Federal High Court, Lagos on a 6 count charge filed by Nuhu Ribadu, a Police Officer on behalf of the Federal Republic of Nigeria. In the course of the trial, the respondents filed an application seeking the order of the Court to quash the charge on the ground that by virtue of Section 174(1)(a) of the 1999 Constitution, only the Attorney-General of the Federation and Officers in his department can institute or undertake criminal proceedings against them on behalf of the Federation in that Court and also that lacking the required fiat of the Attorney-General to institute proceedings against them, the action prosecuted by Nuhu Ribadu was *ultra vires.*

The Police on their part contended that by virtue of Section 23 of the Police Act, they had powers to prosecute the Respondent before the Federal High Court without the fiat of the Attorney-General. The Federal High Court dismissed the application of the Respondents and held that the Police had the power to prosecute the Respondents on behalf of the government of the Federation.

On appeal, the Court of Appeal allowed the appeal and held that the Police Officers presently prosecuting the Respondents before the Federal High Court lacked the competence

[119] (2006) All FWLR (pt. 312) 1975

under Section 56(1) of the Federal High Court Act to do so. Aggrieved by this decision, the Police appealed to the Supreme Court. The Supreme Court held as follows:

> From colonial period up to date, Police Officers of various ranks have taken up prosecution of criminal cases in Magistrate Courts and other Courts of inferior jurisdiction. They derive their power under Section 23 of the Police Act. But when it comes to Superior Courts of record, it is desirable though not compulsory that the prosecuting Police Officer ought to be legally qualified. This is not deleting from the provisions of Section 174(1) of the 1999 Constitution of Nigeria, rather it maintains an age long practice of Superior Courts having Counsel rather than ordinary persons in most cases prosecuting matters. The confusion that this matter has caused is rather unfortunate for trial of criminal case. It has caused a disturbingly long delay. Previous Constitutions before 1979 provided for the post of Director of Public Prosecutions, an independent Officer, with powers in a Statute. The absence of this vital office from the subsequent Constitutions has created this dilemma. But the worrisome side of this case is the failure by the Attorney-General to take over the prosecution... For the forgoing reasons, I allow this appeal and hold that a Police Officer can prosecute by virtue of Section 23 of the Police Act, Section 56(1) of the Federal High Court Act and Section 174(1) of the Constitution of the Federal Republic of Nigeria, 1999.

It was, however, observed *obiter* that it is desirable that only Policemen who are qualified to practice as Legal Practitioners should be allowed to prosecute criminal cases in Superior Courts of record. This is because of the complex nature of criminal proceedings in the Superior Courts such as the law of evidence, Criminal Procedure Law etc. An ordinary Police Officer, no matter his experience, will not be able to comprehend the law governing relevancy and admissibility of documents and exhibits, cross examination and re-examination of witnesses and address of Counsel. Thus, the word "any" in Section 23 of the Police Act does not mean every Court of the land but "some" of the Courts.[120]

The above *obiter dictum*, in the opinion of this researcher, is quite instructive. Thus, most of the criminal cases in the Magistrate Courts are lost due to the incompetence of most Police Prosecutors and their inability to match the professional and legal skills of the defence Counsel.

[120] *Ibid.,* per Katsina-Alu JSC (as he then was)

Although trials at the Magistrate Courts are conducted summarily, the effect of the knowledge of both Substantive and Procedural laws cannot be over-emphasized.

Be that as it may, it is doubtful if the decision in *Osahon's* case will be valid today with respect to Federal Offences in view of the provision of the Administration of Criminal Justice Act, 2015. Section 106 of the Act seeks to oust the powers of lay Police Officers from prosecuting cases even in the Magistrate Courts. Interestingly, no measure is taken to post Lawyers to the Police Stations or to de-centralise the Ministry of Justice so that these Lawyers will take over the job being done by the lay Police Officers.

5.3.10 Constraints against Effective Policing in the Administration of Criminal Justice in Nigeria

Various factors have been identified as constituting stumbling blocks to the effective Policing in the administration of criminal justice in Nigeria. These include Corruption, Institutional and Constitutional constraints, Nepotism and Godfatherism. A brief analysis of each is provided below.

1. Corruption

Wide spread corruption in the Nigeria Police Force is seriously undermining the administration of criminal justice in Nigeria. Countless ordinary Nigerians are accosted by armed Police Officers who demand bribes and commit human rights abuses against them as a means of extorting money.[121] These abuses range from ordinary arrest and unlawful detention, extortion from motorist at illegally mounted road blocks, to collection of monetary gratification in order to alter the cause of justice.[122] As rightly noted by Okeshola and Mudiare,[123] the issue of corruption in the Nigeria Police cannot be treated in isolation of the larger society. The Police routinely

[121] Okeshola, F.B. and Mudiare, P.E.U. (2013) Community Policing in Nigeria: Challenges and Prospects, *American International Journal of Contemporary Research*, Vol. 3 No. 7, p. 135
[122] Onyeozili, E.C. (2005) Obstacles to Effective Policing in Nigeria, *African Journal of Criminology and Justice Studies*, Vol.1 No. 1, p. 32.
[123] Okeshola, F.B. and Mudiare, P.E.U., op. cit., p. 135.

extort money from various victims of crime to initiate investigations and demand bribes from suspects to drop investigations.[124] Corruption in the Police is so endemic that it has eroded public trust and confidence they have in the Police.

2. Institutional Constraints

Institutional constraints include inadequate manpower (both in strength and expertise), insufficient education and training, inadequate equipment and poor conditions of service of the average Police Man.[125] Others are inadequate funding, inadequate logistic support and Infrastructure, lack of serviceable information and technological equipment to cover all areas of the States.[126] These have contributed to the poor performance of the Police in the administration of criminal justice in Nigeria.

In terms of funding, the situation is pathetic. In the year 2014, the Police budgets cover recurrent expenditure on salaries and leave only around 20% (by some internal estimates) for operations.[127] Again, a report by a Police Reform Committee headed by retired Inspector-General of Police, Mr. M.D.Yusuf estimated the total cost of adequately re-equipping, paying and housing the Force at approximately US$17.5 billion.[128] This is nearly half the total of 2013 national budget of US$31 billion (N 4.987 Trillion)[129] and is clearly unfundable. Likewise, the total budget of the Nigerian Police in 2016 was N17 billion, but only 6 billion was eventually released.[130]

Similarly, poor funding of the Police Service Commission to carry out its constitutional mandate and responsibilities leaves much to be desired. This has also hindered the early

[124] Ibid.
[125] Onyeozili, E.C. op. cit., p. 40.
[126] Okeshola, F.B. and Mudiare, P.E.U., op. cit., p. 136
[127] Owen, O.(2014) *The Nigeria Police Force: Predicaments and Possibilities*, Nigeria Research Network (NRN) Working Paper No. 15, p. 8, available at www3.qeh.ox.ac.uk, retrieved on 13/2/2016 at 8:47 pm
[128] Ibid
[129] Ibid.
[130] Psr.nigeriagovernance.org/content/uploads/docs, retrieved on 20/5/2017 at 9:38 pm.

completion of the Corporate Head Office of the Commission.[131] For instance, the total budget of the Police Service Commission in the 2017 Budget Appropriation Bill stands at N1, 967,172,630.[132] It is respectfully submitted by this researcher that this is grossly inadequate.

3. Constitutional Constraints

The legal basis of policing in Nigeria is provided for in Section 214 of the 1999 Constitution. Section 215 (2) thereof place the Nigerian Police under the command of the Inspector-General of Police and contingents of the Force stationed in a State are placed under the command of the Commissioner of Police of that State. Again, the provisions of Section 215(4) of the Constitution empowers the Governor or a Commissioner of the Government in the State, to give to the Commissioner of Police, such lawful directions with respect to the maintenance and securing of public safety and public order within the State.

The powers of the State Governor to issue directives, instructions and orders to the State Commissioner of Police are qualified and subject to superintending authority of the President or a Federal Minister who is acting under the authority of the President in that regard. As rightly noted by Osinuga,[133] the Constitution is somewhat silent on the issue of which instructions will prevail in the event of conflicting and contradictory instructions from the Inspector-General of Police (IGP) and the State Governor. It is the view of this researcher that whatever Constitutional guarantees there are for the Governor with respect to control of the Police contingent in his State, it is somewhat limited, qualified, constrained and subject to the dictates of State Commissioner of Police, Inspector-General of Police, the President and a Minister acting under the authority of the President and not in accordance with the holders of such offices acting in good faith or in the interest of the public.

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[131] Ibid

[132] www.nationalplanning.gov.org/index.php/budgetoffice, retrieved on 20/5/2017 at 9:25 pm.

[133] Osinuga,O.O.(2010) *An Agenda for Effective Policing in Nigeria,* available at www.nigeriaworld.com, retrieved on 16/2/2016 at 9:16 pm.

It is respectfully submitted by this researcher that the framers of the 1999 Nigerian Constitution, whatever the good intentions they had, failed to envisage the problems Section 215 (2) and (4) would cause in defining the powers of the State Governors with respect to the Police contingent in their States.[134] It appears that the general direction of the State Government policies with respect to Security, Law Enforcement and Police powers are severely curtailed by Section 215 (4) of the 1999 Constitution.

In a truly Federal State in which power is divided between the Central authority and the constituent units (in Nigeria's case the States) the Governor should have superintending authority of the Commissioner of Police. Herein lies the most significant shortcomings and challenges of policing in the administration of the plural criminal justice in Nigeria.

4. Nepotism

Nepotism is favouritism shown to relatives or friends in professional appointment.[135] It is one of the problems bedeviling the Police Force in the administration of justice in Nigeria. In terms of posting within the Police, protégés are appointed to head the departments they are not qualified to hold, while career-minded Officers are redeployed for their uncompromising stand.[136] The consequence is that mediocrity is promoted at the expense of meritocracy.

5. God fatherism

Godfatherism is the funding and abetting of vices as well as shielding "connected" criminals from justice by Government agents and highly placed officials entrusted with the power and authority to investigate and prosecute such vices.[137] This has become a dominant in Nigerian polity and impedes the course of justice by virtue of their closeness to the seat of

[134] The case of the former Governor of Rivers State, Rotimi Ameachi and the then Commissioner of Police of the State, C.O.P Mbu readily comes to mind. The later restricted the movement of the former, presumably by order from above.
[135] Onyeozili, E.C., op. cit., p.44
[136] Ibid.
[137] Ibid, p. 41

power.[138] This problem in the Nigeria Police is self-evident and has been a serious source of concern to stake holders in the administration of criminal justice in Nigeria.

On the whole, the general duties and roles of the Nigeria Police in the administration of Criminal Justice have been outlined in the foregoing discourse. It has been shown that the Police are loaded with powers and discretions in order to facilitate the effective and efficient discharge of their functions of enforcing justice and maintenance of law and order. It is also carefully revealed that the Police powers and the exercise of discretions are regulated by various legislation which imposed certain limitations. Equally discussed are the constraints against effective policing in the administration of criminal justice in Nigeria.

5.4 The Criminal Courts

The 1999 Constitution of the Federal Republic of Nigeria, provides for the exercise of powers by the Legislature, the Executive and the Judiciary.[139] The Judiciary plays an important role in this balance of power. Section 6 of the Constitution provides for the judicial powers of the Courts in general terms. Under the Section, the Courts have the power to hear and determine civil and criminal matters, and to pronounce on the legality of any legislative or executive act of the Federal as well as the States.[140] The main duty of the Court is to see that justice is done between the litigants before it. Ogunbiyi JCA (as he then was) in the case of *Ibrahim v. Daily,*[141] observed thus:

> The cardinal principle of our adjectival law is to do justice. For it to do otherwise, it would fail to serve such function and certainly regulate its purpose to a mere toothless bulldog or salt without savour. For the principle of justice to hold, it must work fairness to all parties involved. In dealing with

[138] A case in point was the attitude of the former Commissioner of Police of River State, Mr, Mbu who due to his closeness to the then President, GoodLuck Jonathan, continued to support acts of impunity in the State.
[139] Sections 4, 5 and 6 of the 1999 CFR (as amended)
[140] *Ibid.*, Section 6(6).
[141] (2009) All FWLR (pt. 494) 1576 at 1584.

> the injustice factor, therefore, the Court is expected to take into consideration the totality of the applications before it in the light of the affidavit evidence together with all materials available to the Court.[142]

Under the Nigerian Constitution, the Court is saddled with the responsibility of adjudicating in criminal matters.[143] The Court or tribunal established by law is, therefore, the only institution empowered by the Constitution to pronounce on the guilt or otherwise of a person and to impose punishment for breach of the law of the land.

5.4.1 Hierarchy and Jurisdiction of the Courts in Criminal Matters

The Courts are organised in various classes according to the gravity of a particular crime.[144] The classes range from the Magistrate Courts that deal with cases summarily to the High Courts. The organisation is helpful in ensuring that various disputes are resolved in relation to their seriousness to reduce, to the barest minimum, congestion in a specific Court. For the administration of criminal justice, the Courts are provided for by the Constitution and other laws. The jurisdiction of Superior Courts of record in criminal matters in Nigeria is specifically provided for in the Constitution.[145]

Section 6(4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) empowers both the National Assembly and the House of Assembly of a state to establish Courts, other than those listed in Section 6(5) thereof, with subordinate jurisdiction to the High Court. The Magistrate, the Area and the *Shari'a* Courts are some of the Courts established by the House of Assembly of the states, pursuant to the Constitution, with powers to entertain criminal matters in Nigeria.

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[142] *Ibid.*
[143] Section 6 of the 1999 CFRN (as amended).
[144] Adebayo, A. M. *Op.cit*, p.209.
[145] Section 6(5) of the 1999 CFRN (as amended).

The Courts listed under Section 6(5) of the 1999 Constitution of the Federal Republic of Nigeria are:

(a) The Supreme Court of Nigeria;

(b) The Court of Appeal;

(c) The Federal High Court;

(d) The High Court of the Federal Capital Territory, Abuja;

(e) The High Court of a State;

(f) The *Shari'a* Court of Appeal of the Federal Capital Territory, Abuja;

(g) The *Shari'a* Court of Appeal of a State;

(h) The Customary Court of Appeal of the Federal Capital Territory, Abuja; and

(i) The Customary Court of Appeal of a state.

It must be pointed out that included in the above list are such other Courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws.[146] Equally included are such other Courts which may be authorised by law to exercise jurisdiction at first instance or on appeal relating to matters in respect of which a State House of Assembly may make laws.[147]

5.4.2 The Supreme Court of Nigeria

The Supreme Court is the apex Court in Nigeria and it is the Court of last resort as far as criminal matters are concerned.[148] It has no original criminal jurisdiction[149] and only hears appeals from the decisions of the Court of Appeal.[150]

[146] *Ibid.,* Section 6(5)(J)
[147] *Ibid.,* Section 6(5)(K)
[148] *Ibid.,* Section 235.
[149] *Ibid.,* Section 232(2).
[150] *Ibid.,* Section 233(1).

The Supreme Court of Nigeria was established under Section 230(1) of the 1999 Constitution, and consists of the Chief Justice of Nigeria and such number of Justices of the Supreme Court, not exceeding twenty one, as may be prescribed by an Act of the National Assembly.[151] The appointment of a person to the office of Chief Justice of Nigeria is made by the President on the recommendation of the National Judicial Council and subject to confirmation of such appointment by the Senate.[152] Similarly, Justices of the Supreme Court are appointed by the President on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the Senate.[153]

A person is only qualified for appointment to the office of the Chief Justice of Nigeria or a Justice of the Supreme Court, if he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than fifteen years.[154] Since there is no requirement of actual experience at the Bench or as a practising legal practitioner, it is rightly observed by Asein[155] that, theoretically, a person may be appointed without actual practical experience. However, this is very unlikely in view of the present tradition of appointing only persons with significant experience either at the Bench or the Bar.

In exercising his power in respect of appointments to the office of the Justices of the Supreme Court, the President is enjoined to have regard to the need to ensure that there are among them persons learned in Islamic Personal Law as well as persons learned in Customary Law.[156] For this purpose, a person is deemed learned in Islamic Personal Law if he is a Legal Practitioner in Nigeria and has been so qualified for a period of not less than fifteen years and

[151] *Ibid,* Section 230(2).
[152] *Ibid,* Section 231(1).
[153] *Ibid,* Section 231(2).
[154] *Ibid,* Section 231(3).
[155] Asein, J. O. (2005) *Introduction to Nigerian Legal System,* Second Edition, Ababa Press Ltd., Lagos, p.174.
[156] Section 288(1) of the 1999 CFRN (as amended).

has obtained a recognized qualification in Islamic Law from an institution acceptable to the National Judicial Council.[157] For customary law, a person is deemed to be learned in it if he is a Legal Practitioner in Nigeria and has been so qualified for a period of not less than 15 years and has in the opinion of the National Judicial Council considerable knowledge of and experience in the practice of customary law.[158]

In the event of a vacancy occurring in the Office of the Chief Justice of Nigeria or the incumbent not being able, for any reason under the law, to perform the functions of the office, the President is required to appoint the most Senior Justice of the Supreme Court to perform those functions until a person is appointed to and has assumed the functions of that office or until the incumbent has resumed the functions of that office.[159]

Except on the recommendation of the National Judicial Council such a temporary appointment shall cease to have effect after the expiration of three months from the date of appointment, and the President shall not re-appoint a person whose appointment has lapsed.[160]

Since Section 231(4) of the Constitution enjoins the President, in making a temporary appointment, to appoint the most senior of the Justices of the Supreme Court and the foregoing provision precludes him from re-appointing a person whose appointment has lapsed, it is not clear if he is thereby permitted to waive the seniority criteria in a subsequent appointment. Ordinarily, the Constitution must have anticipated that the President would have need for another temporary appointment after the first three months. But since provision has been made for a subsequent temporary appointment the "most senior" Justice in the subsequent case, it is submitted, must be construed to mean the most senior of those that had not been previously

[157] Ibid, Section 288(2)(a).
[158] Ibid, Section 288(2)(b).
[159] Ibid, Section 231(4).
[160] Ibid, Section 231(5).

appointed.[161] This interpretation, in the opinion of this researcher, though appealing to logic, would defeat the whole essence of seniority which is a hallmark of the judiciary.

The Supreme Court, in its pre-eminent position as the highest Court in Nigeria is essentially a Court of appeal, but it exercises some measure of original jurisdiction in civil matters only. Section 232(1) of the 1999 Constitution provides that the Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

In addition to the above, the National Assembly also has power to confer additional jurisdiction on the Court. The only exception here is that the Court may not be conferred with original jurisdiction with respect to criminal matters.[162]

It must be pointed out that in the exercise of this power, the National Assembly enacted the Supreme Court (Additional Original Jurisdiction) Act[163] conferring additional original jurisdiction on the Court. Section 1(1) of the Act provides that in addition to the jurisdiction conferred upon the Supreme Court by Section 232(1) of the Constitution, the Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute (in so far as that dispute involves any question whether of law or fact on which the existence or extent of a legal right depends) between:

(a) The National Assembly and the President;

(b) The National Assembly and any State House of Assembly; and

(c) The National Assembly and the State of the Federation.

[161] Asein, J.O. op cit., pp 175 – 176.
[162] *Ibid*, Section 232(2) of the 1999 CFRN (as amended).
[163] Cap. S16, LFN 2004.

In line with the constitutional prohibition of the conferment of original criminal jurisdiction on the Supreme Court, the Act expressly states that it does not confer original jurisdiction in criminal matters on the Supreme Court.[164]

The Supreme Court, like any other Court in Nigeria, can only invoke its judicial powers under Section 6(6) of the Constitution where there is a dispute between the parties. It has no power to give mere advisory or academic opinions however beneficial, and the Court has always refused to entertain purely academic or frivolous appeals.[165] For instance, where the resolution of an issue one way or another will not change the outcome of a case then that issue is an academic one that the Court should not entertain.[166]

It must be stressed that the Supreme Court in its appellate jurisdiction has exclusive jurisdiction to hear and determine criminal appeals from the Court of Appeal only.[167] A criminal appeal may either lie to the Supreme Court as of right or with the leave of that Court or the Court of Appeal. An appeal shall lie as of right from decisions of the Court of Appeal to the Supreme Court in the following cases:

(a) Decisions in any civil or criminal proceedings, where the ground of appeal involves questions of law alone;

(b) Decisions in any civil or criminal proceedings on questions as to the interpretation or application of the Constitution;

[164] Section 1(2) of the Supreme Court (Additional Original Jurisdiction) Act, Cap. S16, LFN 2004.
[165] See *Olagbegi v. Oba Ogunoye (1996) 5 NWLR, 332*. See also *Governor of Kaduna State v. Dada (1986) 4 NWLR, 687. W.R.N., 1 (SC).* See also *Global Transport Oceanico S.A. v. Free Enterprise Nigeria Limited (2001)* WRN 136 (SC) at 152
[166] *Asafa Foods Factory Ltd. v. Alraine Nig. Ltd. (2002) W.R.N., 1 (SC).*
[167] Section 233(1) of the 1999 CFRN (as amended).

(c) Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of chapter IV (dealing with fundamental rights) has been, is being or is likely to be contravened in relation to any person;

(d) Decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of Appeal has affirmed a sentence of death imposed by any other Court.

The right of appeal conferred under the Constitution shall be exercised, in criminal proceedings, at the instance of an accused person or, subject to the provisions of the Constitution and the powers of the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed.[168] The right of appeal conferred in the foregoing Sections shall be exercised in accordance with any Act of the National Assembly and rules of Court for the time being in force regulating the powers, practice and procedure of the Supreme Court.[169]

By Section 235 of the 1999 Constitution, the decision of the Supreme Court is final. This is without prejudice to the powers of the President or the Governor of a State pertaining to prerogative of mercy.[170] Unless in those cases, no appeal shall lie to any other body or person from any determination of the Supreme Court.

In exercising its jurisdiction as conferred upon it by the Constitution or any law, the Supreme Court shall ordinarily be duly constituted if it consists of not less than Five Justices of

[168] *Ibid,* Section 233(5).
[169] *Ibid,* Section 233(6).
[170] *Ibid,* Sections 175 and 212, respectively.

the Court.[171] However, the Court shall be constituted by seven Justices in the following special cases:

(a) Where the Court is sitting to consider an appeal on questions as to the interpretation or application of the Constitution;

(b) Where the Court is sitting to consider an appeal as to whether any of the provisions of chapter IV of the Constitution (dealing with fundamental rights) has been, is being or is likely to be contravened in relation to any person; and

(c) Where the Court is sitting to exercise its original jurisdiction in accordance with the Constitution;[172]

It is clear from the above that the Constitution has stipulated the minimum number of Justices that must be empanelled in the exercise of the Constitutional jurisdiction of the Court. As a matter of practice, however, the Supreme Court also empanels Seven Justices in every important case. For instance, where it is considering whether to over-rule a previous decision of its own for the purpose of precedent, or for ceremonial sittings, a full Court is usually empanelled but these are obviously outside the Constitutional functions of the Court.

5.4.3 The Court of Appeal

Section 237 of the 1999 Constitution of the Federal Republic of Nigeria establishes the Court of Appeal comprising a President of the Court of Appeal and such a number of Justices of the Court not less than forty-nine as may be prescribed by an Act of the National Assembly. At least three of the Justices must be learned in Islamic Personal Law and at least three learned in Customary Law.[173] This diversification in the areas of specialization is intended to cater for the

[171] *Ibid,* Section 234.
[172] *Ibid.*
[173] Section 237(2) of the 1999 CFN (as amended).

needs of Nigeria's heterogeneous society with different cultural values and a plural system of administration of justice consisting of English Law, Islamic Law and Customary Law.

The Court of Appeal has no original criminal jurisdiction. It is essentially a Court of appellate jurisdiction with limited original jurisdiction in election petition cases only.[174] The President and other Justices of the Court of Appeal are appointed by the President on the recommendation of the National Judicial Council. In the case of the President of the Court, the appointment is subject to confirmation by the Senate while no such confirmation is required in the case of other Justices.[175] To be eligible for appointment to the office of a Justice of the Court of Appeal, a person must be qualified to practise as a legal practitioner in Nigeria and must have been so qualified for a period of not less than twelve years.[176]

In what would appear to be an omission, the 1999 Constitution does not expressly mention the qualification for the office of President of the Court of Appeal. Under the 1979 Constitution, the same qualifications applied to both the office of the President and that of a Justice of the Court.[177] It is, therefore, safe to assume that the same qualifications would be required under the 1999 Constitution.

In addition to the requirement that the Court of Appeal consists of at least three justices learned in Islamic personal law and customary law respectively, the President is further enjoined in Section 288(1) to have regard to this balance. That Section also provides a rough guide for determining those to be considered learned in Islamic Personal Law or Customary Law for the purpose of appointment to the Court of Appeal.

[174] *Ibid*, Section 239(1).
[175] *Ibid*, Section 238(1) and (2).
[176] *Ibid*, Section 238(3).
[177] See Section 218(3) of the 1979 CFRN.

A person is deemed learned in Islamic Personal Law if he is a legal practitioner in Nigeria and has been so qualified for a period of not less than twelve years and has obtained a recognised qualification in Islamic law from an institution acceptable to the National Judicial Council.[178] On the other hand, a person is deemed to be learned in Customary Law if he is a legal practitioner in Nigeria and has been so qualified for a period of not less than twelve years and has, in the opinion of the National Judicial Council, considerable knowledge of and experience in the practice of customary law.[179]

In its appellate jurisdiction, the Court of Appeal has exclusive jurisdiction to hear and determine appeals in criminal matters from the following Courts:

(a) The Federal High Court;

(b) The High Court of the Federal Capital Territory, Abuja;

(c) The High Court of a State; and

(d) A Court martial or other tribunals as may be prescribed by an Act of the National Assembly.[180]

Appeals lie as of right to the Court of Appeal from the decisions of the Federal High Court or a State High Court in the following cases:

(a) Final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;

(b) Decisions in any civil or criminal proceedings, where the ground of appeal involves questions of law alone;

(c) Decisions in any civil or criminal proceedings on questions as to the interpretation or application of the Constitution;

[178] Section 288(2)(a) of the 1999 CFRN (as amended).
[179] *Ibid*, Section 288(2)(b).
[180] *Ibid.*, Section 240

(d) Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of chapter IV of the Constitution has been, is being or is likely to be contravened in relation to any person;

(e) Decisions in any civil or criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death.[181]

The right of appeal to the Court of Appeal from the decisions of the Federal High Court or a State High Court conferred under the Constitution is required to be exercised:

(a) ... in case of criminal proceedings at the instance of an accused person or, subject to the provisions of the Constitution and any powers conferred upon the Attorney-General of the Federation or the state to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed; and

(b) In accordance with any Act of the National Assembly and rules of Court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.[182]

Appeals lie as of right to the Court of Appeal from decisions of the Code of Conduct Tribunal established under the Fifth Schedule to the Constitution.

It is clear from the foregoing that the *Shari'a* Court of Appeal and the Customary Court of Appeal of the Federal Capital Territory and those of the States were deliberately left out by the researcher, in respect of which the Court of Appeal can hear and determine criminal appeals from. This is in view of the fact that these Courts do not have appellate criminal jurisdiction conferred on them by the Constitution.

In fact, Sections 240 and 244 of the 1999 Constitution provide for the general and special jurisdiction of the Court of Appeal as they relate to the *Shari'a* Court of Appeal. It is obvious

[181] *Ibid*, Section 241(1).
[182] *Ibid*, Section 243(a) and (b).

from the specific provisions contained in Section 244(1) of the Constitution, appeals that can lie from decisions of the *Shari'a* Court of Appeal are with respect to civil proceedings before it, involving questions of Islamic Personal law which it is competent to decide.[183]

Additionally, Section 247(1)(a) of the 1999 Constitution provides in clear and lucid terms that for the purpose of exercising its appellate jurisdiction in respect of appeals from the *Shari'a* Court of Appeal, the Court of Appeal must "consist of not less than three Justices of the Court of Appeal learned in Islamic Personal Law."[184] The Constitution does not contemplate such Justices to be learned in Islamic Criminal Law. This clearly shows that the *Shari'a* Court of Appeal does not have appellate criminal Jurisdiction under the Constitution.

It must be stressed that the Court of Appeal is, for administrative purposes, divided into judicial divisions, each presided over by a presiding Justice.[185] However, the law recognises only one Court of Appeal and the decisions of any judicial division are treated as decisions of the Court.

5.4.4 The Federal High Court

The Federal High Court is established under Section 249 of the 1999 Constitution. It was hitherto known as the Federal Revenue Court. It consists of the Chief Judge of the Federal High Court and such number of Judges of the Court as may be prescribed by an Act of the National Assembly. There is only one Federal High Court, divided into Judicial Divisions as may be determined by the Chief Judge of the Federal High Court.[186]

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[183] See *Ibid.*, Section 245(1) with respect to Customary Court of Appeal under the section, appeal shall lie from the decision of Customary Court of Appeal to the Court of Appeal as of right in any civil proceedings involving questions of customary law.

[184] See Section 247(1)(b) of the 1999 CFRN with respect to Customary of Appeal. The section provides that when entertaining appeals from the decisions of the Customary Court of Appeal, the Court of Appeal must consist of at least three justices learned in customary law.

[185] Asein, J. O. *Op.cit*, p.185.

[186] *Ibid.*

Appointments to the office of the Chief Judge and Judges of the Federal High Court are made by the President on the recommendation of the National Judicial Council. In the case of the Chief Judge, however, the appointment is subject to the confirmation of the Senate while no such confirmation is required in the case of appointment to the office of Judge of the Court.[187] To be qualified for the office of the Chief Judge or a Judge of the Federal High Court, a person must be qualified to practise as a legal practitioner in Nigeria and must have been so qualified for a period of not less than ten years.[188]

The Criminal Jurisdiction of the Federal High Court is limited to the trial of offences created by the Act of National Assembly, subject to the exercise of such jurisdiction as may be conferred on the State High Court by the Act.[189] For instance, Section 9 of the Robbery and Firearms (Special Provisions) Act conferred jurisdiction to try offences under the Act on the State High Court notwithstanding that it is a Federal Law.

For the purpose of exercising any jurisdiction conferred upon it by the Constitution or as may be conferred by an Act of the National Assembly, the Federal High Court has all the power of the High Court of a State. This notwithstanding, the National Assembly may, by law, make provisions conferring the Court with such additional powers as may appear necessary or desirable for enabling the Court more effectively to exercise its jurisdiction.[190]

5.4.5 The High Court of a State

Section 270 of the 1999 Constitution of the Federal Republic of Nigeria establishes a High Court for each State of the Federation, which consists of a Chief Judge and such number of Judges of the High Court as may be prescribed by a law of the House of Assembly of the State.

[187] Section 250(1) and (2) of the 1999 CFRN (as amended).
[188] *Ibid*, Section 250(3).
[189] Adebayo, A. M., *Op.cit*, p.210.
[190] Section 252 of the 1999 CFRN (as amended).

Section 272 of the Constitution also defines the jurisdiction of a State High Court subject to Section 251 of the Constitution. This latter Section confers exclusive jurisdiction on the Federal High Court in matters contained therein. Therefore, the conflict of jurisdiction between the Federal High Court and State High Court in reference to matters contained in Section 7 of the Federal High Court Act[191] has been resolved by the Supreme Court in favour of the Federal High Court.[192]

Appointment of persons to the office of Chief Judge of a State High Court is made by the Governor of the State concerned on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State.[193] On the other hand, appointment to the office of a Judge of a State's High Court is made by the Governor of the State acting on the recommendation of the National Judicial Council, without confirmation of such appointment by the State House of Assembly.[194] To be qualified for any of these offices, a person must be qualified to practise as a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years.[195]

Subject to the provisions of the Constitution, particularly Section 251 thereof, the High Court of a State has jurisdiction to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.[196] This jurisdiction includes original, appellate or supervisory.[197]

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[191] Cap. F12, LFN 2004.
[192] See *Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 6 S.C 158 at 328.* See also *Savannah Bank Ltd. v. Pan Atlantic Shipping and Transport Agencies Ltd. (1987) 1 NWLR 212.*
[193] Section 271(1) of the 1999 CFRN (as amended).
[194] *Ibid*, Section 271(2).
[195] *Ibid*, Section 271(3).
[196] *Ibid*, Section 272(1).
[197] *Ibid*, Section 272(2).

For the purpose of exercising its jurisdiction under the Constitution or any law, a State High Court is dully constituted if it consists of at least one Judge of the Court.[198] A State is divided into judicial divisions, the number of which depends on the volume of cases and geographical size. It should be noted that a judicial division may have more than one High Court, each presided over by a Judge of the High Court. Each presiding Judge exercises the full powers and authority of the Court and his personal jurisdiction extends to the whole State. The judicial divisions do not thereby have exclusive, distinct and separate jurisdictions since there is only one High Court established for each State.[199] The judicial divisions are, therefore, for the purpose of convenience.

In the exercise of its original jurisdiction, a State High Court has power to try all criminal cases and these cases may be instituted by way of complaint,[200] information[201] or charge[202] as obtained in the Northern States, preferred by the Attorney-General after obtaining the consent of the Judge. Where a Judge of the High Court refuses to give his consent or leave to file information or prefer a charge, the application can be taken to another Judge of the High Court.[203]

It must be pointed out that the decision of a Judge who grants consent to prefer a charge or file an information cannot be challenged nor can he be sued for the exercise of his discretion.[204] Where the consent is granted, the office of the Attorney-General proceeds to file the charge or the information. The Registrar of the Court then issues the processes and forward

[198] *Ibid.*, Section 273.
[199] Ukpai v. Okoro (1983) 11 S.C. 231.
[200] Section 143(d) of the *Criminal Procedure Code*, Cap. C42, LFN 2004 and Section 77(a) of the *Criminal Procedure Act*, Cap. C41, LFN 2004.
[201] Section 77(b) of the *Criminal Procedure Act*, Cap. C41, LFN 2004. This is done pursuant to Section 340(2) thereof.
[202] Section 185(1) of the *Criminal Procedure Code*, Cap. C42, LFN 2004. Note that some states in the North (Adamawa and Taraba) have introduced it by way of information in line with what obtains in the South.
[203] *Gali v. The State (1974) 5 S.C 587.*
[204] *Egbe v. Adefarasin (1985) 1 NWLR 549.*

the file to the Administrative Judge who assigns the case to a Judge for trial. Once the case is assigned to a Judge otherwise known as trial Judge, the trial Judge gives the matter a date for mention.

The application for consent must be accompanied by the proof of evidence which prosecution intends to rely on at the trial of the case. The proof of evidence must disclose a *prima facie* case against the accused person. Thus in *Ajidagba v. IGP*[205] the term "*prima facie* case" was explained to mean:

> ... But *prima facie* case is not the same as proof which comes later when the Court has found whether the accused is guilty or not guilty... And the evidence discloses a *prima facie* case when it is such that if not contradicted and if believed it will be sufficient to prove the case against the accused.

Thus, a *prima facie* case is established where after examining the proofs of evidence there is something that requires an explanation from the accused person. That is, the accused person must be sufficiently linked to the offence where an explanation is necessary from him at the trial.[206]

It is, therefore, the duty of the Judge to first consider whether the proof of evidence discloses a *prima facie* case against the accused person. Where the proof does not disclose a *prima facie* case against the accused person, the Judge should refuse his consent.

It must be stressed that a State High Court has jurisdiction to hear and determine cases involving the contravention of all federal offences. It is a Superior Court of record and as such, it is not limited in its jurisdiction to impose punishment.[207] Likewise, in its appellate jurisdiction, the State High Court sits on appeals from the Magistrate Courts and other inferior Courts within

[205] (1958) SCNLR 60.
[206] *Uket v. FRN (2008) All FWLR (pt 411) 242.*
[207] *Abbass v. C.O.P. (1998) 12 NWLR (PT 557) 308.*

the State. Equally important is the fact that the High Court in Northern States also entertains criminal appeals emanating from Upper *Shari'a* Courts and Upper Area Courts.

It is interesting to note that the High Court may also give an opinion on a case stated by a Magistrate or other lower Courts. A case stated is an interlocutory application made by a lower Court to the High Court to give its legal opinion on an issue in a case still pending before the lower Court.[208] A case stated differs from an appeal which is defined to mean an application by either of the parties to a case in the lower Court who is aggrieved by the ruling or decision of the lower Court to the High Court for a review.[209]

It must also be noted that the *Shari'a* Court of Appeal of the Federal Capital Territory, Abuja and those of the States, the Customary Court of Appeal of the Federal Capital Territory, Abuja and those of the States, as listed under Section 6(5) of the 1999 Constitution, were deliberately omitted from discussion here because they all lacked criminal jurisdiction.

5.4.6 The Magistrate Courts

Each State of the Federation has its own Magistrates' Court System. The Courts are established under the respective Magistrates' Court Laws of the States in the Federation. The Chief Judge of each State is responsible for the demarcation of the State into magisterial districts based on the needs of the different parts of the State.[210] A magisterial district may have one or more Magistrates' Courts of any grade and each district is usually under the administrative control of a Chief Magistrate.

Usually, the rank or grade of a Magistrate determines his jurisdiction. The grading systems vary from State to State. However, for the sake of convenience, further discussions will be based on Northern and Southern States of Nigeria respectively.

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[208] Ogunlola, Y. (2003) *Comprehensive Notes on Procedure*, College Press & Publishers Ltd., Ibadan, p.144.
[209] *Ibid.*
[210] Asein, J. O., *Op.cit*, p.224.

Undoubtedly, Magistrate Courts have jurisdiction to try almost all offences except those with a possible sentence of death or life imprisonment or where the enabling law specifically confer jurisdiction on the High Court.[211] Normally one Judge sits in the Magistrate Court to hear and determine such criminal cases.

(1) Magistrate Courts in Northern States

Magistrate Courts in Northern States are established by virtue of Section 8 of the Criminal Procedure Code.[212] The Section provides for four grades of Magistrate Courts. The Courts and their jurisdiction to punish are shown below:

S/No.	Court	Grade	Years of imprisonment	Amount of Fine (₦)
1	Chief Magistrate Court	-	5 Years	1,000.00
2	Magistrate Court	Grade I	3 Years	600.00
3	Magistrate Court	Grade II	1½ Years	400.00
4	Magistrate Court	Grade III	9 Months	200.00

Source: Sections 15, 16, 17, and 18 of the *Criminal Procedure Code*, Cap. C42, LFN 2004.

The above Section has suffered some amendments in some States where the grades of Magistrate Courts have been increased. In Kano State for instance, the Criminal Procedure Code was amended and the provisions relating to the number of grades of Magistrates' Courts and the punishment to be imposed by them were amended.[213] The grades with their punishments are as follows:

S/No.	Court	Grade	Years of imprisonment	Amount of Fine (₦)
1	Chief Magistrate	Grade I	14 Years	1,000,000.00
2	Chief Magistrate	Grade II	12 Years	500,000.00
3	Senior Magistrate	Grade I	10 Years	400,000.00
4	Senior Magistrate	Grade II	7 Years	300,000.00
5	Magistrate	Grade I	5 Years	200,000.00
6	Magistrate	Grade II	3 Years	100,000.00
7	Magistrate	Grade III	1 Year	50,000.00

Source: Kano State Magistrate Court (Amendment Law) No. 8 of 2006.

[211] *Ibid.*
[212] Cap. C42, LFN 2004
[213] See Kano State Magistrate Court Amendment Law No. 8 of 2006

The jurisdiction of a Magistrate Court to try a criminal cause or matter depends on whether the offence is contained in the Penal Code or is contained in any other laws. Where the offence is contained in the Penal Code as shown in column 6 of Appendix A of the Criminal Procedure Code (CPC), the grade of magistrate Court shown in that column has jurisdiction to try such cause or matter. However, Magistrate Courts of Higher grades or the High Court can also try the same offence.[214]

Again, where the offence is not contained in the Penal Code, Magistrate Court has jurisdiction to try same provided the law creating such offence expressly confers jurisdiction on the Magistrate Court.[215] For instance, whenever a law provides that an offence is triable summarily, the Magistrate Court has jurisdiction to try such an offence. This is because the Magistrate Court is a Court of summary trial. In this case the Magistrate Court can impose the punishment prescribed by law even though such punishments exceed its jurisdiction to punish.[216]

Similarly, where the law creating an offence is silent on jurisdiction, the Magistrate Court can still try that offence provided the prescribed punishment does not exceed the following:

S/No.	Court	Grade	Years of imprisonment	Amount of Fine (₦)
1	Chief Magistrate Court	-	10 Years	1,000.00
2	Magistrate Court	Grade I	5 Years	600.00
3	Magistrate Court	Grade II	2 Years	400.00
4	Magistrate Court	Grade III	3 Months	200.00

Source: Sections 13(2)(a)-(d) of the *Criminal Procedure Code*, Cap. C42, LFN 2004.

Where a person is convicted of more than one offence and the Court orders such sentences to run consecutively, the aggregate term of such sentences cannot exceed twice the limit of the jurisdiction of the Magistrate to impose punishment.[217]

[214] Section 12(1) of the *Criminal Procedure Code*, Cap. C42, LFN 2004. See also Ogunlola, Y., *Op.cit.*, p.139.
[215] *Ibid.*
[216] *Ibid.*
[217] Section 24(1) and (2) of the *Criminal Procedure Code*, Cap. C42, LFN 2004.

Another major differences between Magistrate Courts in the North and South is what the Magistrate Courts in the North do when after conviction they are of the opinion that the accused person ought to receive a more severe punishment than that which it can impose. In such a case the Magistrate Court shall record such fact and refer the accused person to a Court of higher grade for punishment.[218] The Magistrate or High Court, as the case may be, will then proceed to impose punishment without looking into the merit of the case.[219]

The Governor may by order in writing on the recommendation of the Chief Judge increase the jurisdiction of any Magistrate Court.[220]

(2) Magistrate Courts in Southern States

Magistrates' Courts exist in all the States in Southern Nigeria with similar features.[221] In Lagos State, for instance, Magistrates' Courts were, prior to 2009, established by Section 18 of the Magistrates Courts Law (MCL).[222] This Section creates seven grades of Magistrates' Courts. The Courts and their jurisdiction to impose penalty are as follows:

S/No.	Court	Grade	Years of imprisonment	Amount of Fine (₦)
1	Chief Magistrate Court	Grade I	7 Years	4,000.00
2	Chief Magistrate Court	Grade II	6 Years	3,000.00
3	Senior Magistrate Court	Grade I	5 Years	2,000.00
4	Senior Magistrate Court	Grade II	4 Years	1,000.00
5	Magistrate Court	Grade I	3 Years	500.00
6	Magistrate Court	Grade II	2 Years	200.00
7	Magistrate Court	Grade III	1 Year	100.00

Source: Sections 18 of the Magistrates' Courts Law, Cap. M1, Laws of Lagos State, 2004.

The above table represents the maximum punishment which Magistrates' Courts can impose before 2009. The jurisdiction in respect of which any Magistrates' Court can impose

[218] *Ibid*, Section 257(1).
[219] Note that there must have been a valid trial and conviction.
[220] Section 19 of the *Criminal Procedure Code*, Cap. C42, LFN 2004.
[221] Osamor, B. (2012) *Criminal Procedure Laws and Litigation Practices;* Dee-Sage Printers, Manchester, p.17.
[222] Cap. M1, Laws of Lagos State, 2004.

may, however, be increased by the Attorney-General on the recommendation of the Chief Judge by notice in the Gazette.

The same Section 18 of the Magistrates' Court's Law of Lagos State, 2004 provides for the jurisdiction of the Magistrate Court to try and impose punishment for offences. Thus, the jurisdiction to try an offence depends on whether the offence is indictable or non-indictable. An indictable offence is one which upon conviction may be punished by a term of imprisonment exceeding two years or by a fine exceeding N500.00 (Five hundred naira).[223] Any offence which does not fall under this cadre is a non – indictable offence.[224]

Therefore, all Magistrate Courts in Lagos State, prior to 2009, can try all indictable offences, with the exception of Magistrate Court grade III. Similarly, all grades of Magistrate Courts can try non – indictable offences. No Magistrate Court can, however, try an indictable offence punishable with death.[225]

With the coming into force of the Magistrate's Court's Law, 2009 of Lagos State, Magistrates' Courts are now constituted under Sections 2 and 4 of the Law. The Judges of the Court are appointed by the Lagos State Judicial Service Commission by a notice in Gazette.[226] To be eligible for appointment as a Magistrate, a person must be qualified to practise as a Legal Practitioner in Nigeria with relevant experience and must have been so qualified for a period of not less than five years.[227]

Upon appointment, each Magistrate shall have jurisdiction throughout the State.[228] Similarly, a Magistrate's criminal jurisdiction shall extend over to any territorial waters adjacent

[223] Ogunlola, Y. *Op.cit.* p.141.
[224] Ibid.
[225] Ibid.
[226] Section, 4(1) of the Magistrates' Court's Law, 2009 of Lagos State.
[227] *Ibid*, Section 4(2).
[228] *Ibid.*, Section 11

to the district in which for the time being he is exercising jurisdiction, as well as over inland waters whether within or adjacent to such district.[229] In addition, all Magistrates in Lagos State, now have, in all respects, equal powers, authority and jurisdiction under the Law.[230] Thus, only one cadre of Magistrates' Court within the Magistracy of Lagos State is now recognised.[231] All cadre or grades of Magistrates' Courts existing prior to the coming into force of Magistrates' Court's Law, 2009 are now abolished.[232] Similarly, the hierarchical order of the Magistracy in Lagos State is now according to the number of years of service.[233] Consequently, the Magistrates' Court's Law, Cap. M1 of 2004 and the Magistrate Court (Amendment) Law, 2007 are now repealed.[234]

It is clear from the above that the designation of Magistrates Courts in Lagos State into Chief Magistrates' Courts grade I and II, Senior Magistrates' Courts grade I and II and Magistrates' Courts grade I, II and III under the 2004 law is now abolished. There is only one grade of Magistrates' Court in Lagos State now, and that is "the Magistrates' Court of Lagos State."

Notwithstanding the above, the Judicial Service Commission of Lagos State is empowered by law to appoint, for each Magisterial District, a designating Magistrate who shall be called "Chief Magistrate",[235] regard being had to seniority, competence and integrity. In addition to any duty conferred by law, the designating Magistrate shall be responsible for:

(a) The even distribution of work among the Magistrates in the District;

(b) The expeditious disposal of all pending legal matters and actions; and

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[229] *Ibid*, Section 12.
[230] *Ibid*, Section 6(1).
[231] *Ibid*, Section 93(1).
[232] *Ibid*, Section 93(2).
[233] *Ibid*, Section 93(4).
[234] *Ibid*, Section 94.
[235] *Ibid*, Section 6(2) and 18(1).

(c) The taking of such steps as may be necessary to relieve congestion in the Courts under the District.[236]

Subject to any restrictions or conditions prescribed by the Constitution or any other law, Magistrates in Lagos State shall have jurisdiction and powers concerning summary trials and determination of criminal cases as prescribed by law.[237] Likewise, a Magistrate who has powers for summary trial of offences can, on conviction of any person accused of any such offence, impose the punishment provided by law for that offence.[238] Also, a Magistrate cannot impose a fine in respect of any offence exceeding the maximum provided for that offence under the law, and shall not impose a term of imprisonment in excess of the maxim provided by the law.[239] In addition, no Magistrate is permitted under the law to sentence any person to a term of imprisonment of more than fourteen years.[240]

Notwithstanding any provision contained in the Magistrates' Courts Law, 2009 or any other law, the criminal jurisdiction of Magistrates' Courts in Lagos State extends to the trial of offences contained the following laws:

(a) Urban and Regional Planning and Development Law, N0. 9 of 2005;

(b) Personal Income Tax Law Cap. P4, Laws of Lagos State, 2003;

(c) Environmental Sanitation Law Cap. E15, Laws of Lagos State, 2003; and

(d) Lagos State Lotteries Law, 2004, Cap. L89, Laws of Lagos State.[241]

It must be noted that Magistrates' Courts in Lagos State have powers to execute High Court processes. This includes the execution of writ, orders or processes issued from the High

[236] *Ibid,* Section 18(2)(a)-(c.)
[237] *Ibid,* Section 29(1).
[238] *Ibid.*, (2)
[239] *Ibid,* Section (3) and (4).
[240] *Ibid,* (5).
[241] *Ibid,* (6).

Court of the State.[242] The Attorney-General on the recommendation of the Judicial Service Commission may, by notice in Gazette, increase the jurisdiction of any Magistrate to impose punishment beyond that prescribed by Section 28 of the Magistrates' Court Law either generally or specifically.[243] This pertains to offences triable under other legislation by the Magistrates as contained in schedule 3 of the Magistrates' Courts Law, 2009.

The power granted to the Attorney-General to increase jurisdiction of the Magistrates' Courts is, however, subject to the approval of Lagos State House of Assembly.[244] The Attorney-General may also by notice in Gazette revoke the increased jurisdiction granted to the Magistrates' Courts.[245]

It must be stressed that schedule 1 of the Magistrates' Courts Law of Lagos State, 2009 provides for Ten Magisterial Districts as follows:

S/N	DISTRICT	NAME
1	Lagos Island including Obalande, Victoria Island, Ikoyi, Maroko and Lekki Residential Scheme.	Lagos Magisterial District
2	Lagos Inland from Iddo Island to Ikorodu Roundabout including Ebute-Meta, Yora Causeway and Akoka.	Yaba Magisterial District
3	From Iganmu via Western Avenue to Idi-Ore Roundabout to Lawanson, Itire and Idi-Araba Village.	Suru-Lere Magisterial District
4	Apapa and from Ijora Causeway to Apapa Wharf to Ojo, including Festac and Mile 2.	Apapa Magisterial District
5	Mushin and from Iki-Oro Roundabout to challenge; and Ikorodu Road Round about to Palm Grove including Somolu and Bariga.	Mushin Magisterial District
6	Ikeja and from Palm Grove to Onigbongbo, including Oshodi, Ikeja Airport, Alausa and Majodo.	Ikeja Magisterial District
7	Badagry and Environs up to Ojo	Badagry Magisterial District
8	Ikorodu and from Majidun Village to Agbowa Ikosi and environs.	Ikorodu Magisterial District
9	Epe and environs including Ejirin, Ibonwon, Ibeju-Lekki, Owode and Moba.	Epe Magisterial District

[242] *Ibid,* Section 31(a)-(c).
[243] *Ibid.*, Section 30(2).
[244] *Ibid.*, Section 30(4).
[245] *Ibid.*, Section 30(3).

10	Agege and environs up to Iju	Agege Magisterial District

Source: Schedule 1 to the Lagos State Magistrates' Courts Law, 2009

Magistrates' Courts of other States in Southern Nigeria are generally similar to what obtains in Lagos State under the 2004 Magistrates' Courts Law (Seven Grades of Magistrates' Courts).[246] However, the grades of Magistrates' Courts, their jurisdiction over offences and the punishments they can impose vary from one State to another.

In Delta State for instance, the grades of Magistrates' Courts and the penalties of imprisonment and fines which they can impose are as shown in the table below:

S/No.	Court	Grade	Years of imprisonment	Amount of Fine (₦)
1	Chief Magistrate Court	Grade I	7 Years	7,000.00
2	Chief Magistrate Court	Grade II	6 Years	5,000.00
3	Senior Magistrate Court	Grade I	4 Years	3,000.00
4	Senior Magistrate Court	Grade II	3 Years	2,000.00
5	Magistrate Court	Grade I	2 Years	1,000.00
6	Magistrate Court	Grade II	18 Months	500.00
7	Magistrate Court	Grade III	6 Months	200.00

Source: Osamor, B. (2012) *Criminal Procedure Laws and Litigation Practice,* p. 21

The Magistrates' Courts in other Southern States can impose both the imprisonment and fine contained in the table above.[247]

5.4.7 Area Court

With the enactment of Area Courts Edict in 1967, four grades of Area Courts were created for Northern States by virtue of section 17 thereof. The grades of Area Courts are as follows:

(a) Upper Area Court;

(b) Area Court Grade I;

(c) Area Court Grade II; and

[246] Osamor, B., *Op.cit*, p.19.
[247] *Ibid.,* p.21.

(d) Area Court Grade III.

Section 17 of the Area Court Edict, 1976 has been amended in some States of Northern Nigeria.[248] For instance, in Plateau State, there are now only three grades of Area Courts viz:

(a) Area Court;

(b) Area Court Grade I; and

(c) Area Court Grade II.[249]

Area Courts are established by warrant under the hand of the Chief Judge of the State. They exercise such jurisdiction as are conferred on them by the warrant which created them, or by any other law.[250] Area Courts are presided over by either a Judge sitting alone or a Judge sitting with one or more members.[251] The Courts are also empowered to sit with assessors approved by the Chief Judge of the State.[252]

Under the provision of Section 15 of the Area Courts Edict, the Area Courts have jurisdiction to try the following categories of persons:

i. Any person whose parents were members of any tribe(s) indigenous to some parts of Africa and the descendants of such a person;

ii. Any person, one of whose parents was a member of a tribe indigenous to any part of Africa; or

iii. Any person who consents to be tried by an Area Court.

However, there is a proviso under Section 15 of the Edict, to the effect that the Governor may direct that any person or class of persons shall not be subjected to the jurisdiction of Area Courts.

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[248] *Ibid.*, p.26
[249] *Ibid.*
[250] Section 3 of Area Courts Edict, 1967.
[251] *Ibid.*, Section 4.
[252] *Ibid.*, Section 5.

Section 12(2) of the Criminal Procedure Code[253] confers jurisdiction on Area Courts over offences contained in column 7 of Appendix A thereof. Column 7 of Appendix A to the Criminal Procedure Code contains a list of offences that Area Courts could try. The column also shows the lowest grade of Area Court that can try any particular offence. However, any Area Court of a higher grade can also try such an offence.

Area Courts also have jurisdiction to try other offences where the Governor of a State expressly confers jurisdiction on it. However, Area Courts have no jurisdiction to try cases of homicide.[254]

The maximum penalties which Area Courts can impose are stated as follows:

S/N	COURT	PENALTY	
		Imprisonment	**Fine**
1	Upper Area Court	Unlimited (but cannot impose death penalty)	Unlimited
2	Area Court Grade I	5 Years	N1,000.00
3	Area Court Grade II	3 Years	N600.00
4	Area Court Grade III	9 Months	N100.00

Source: Section 17 of Area Courts Edict, 1967

The above are the Upper limits of the sentences an Area Court can impose upon conviction, although the Area Court has discretion to impose penalty less than its upper limit. Also the amendment of Section 17 of the Area Courts Edict in some States, like Plateau State, which reduced the number of grades of Area Courts, also reduced their jurisdiction to impose penalties.[255]

With regards to practice and procedure, Section 387 of the Criminal Procedure Code[256] provides that the framing of formal charges is not necessary in the Area Courts and Section 6 of the Area Courts Edict makes it only necessary that proceedings before an Area Court accords

[253] Cap. C42, LFN 2004.
[254] Section 24 of Area Court Edict, 1967.
[255] Osamor, B., *Op.cit.*, p.28
[256] Cap. C42, LRN 2004. See also *Alabi v. C.O.P. (1971) NNLR 104.*

with substantial justice, without undue regard to technicalities. Therefore proceedings before an Area Court shall not be declared void or varied solely on the ground of technical irregularity, so long as there has been substantial compliance with the demand of natural justice.[257] Thus in *Agbi v. Ogbe*,[258] at a trial in the Area Court, Bwari, Federal Capital Territory, an accused person pleaded guilty to a two-count charge of negligent conduct and criminal breach of trust. In contravention of Section 157(1) of the Criminal Procedure Code, the Area Court Judge failed to "record as nearly as possible the words used by the accused person" in his plea of guilty. The accused person was convicted.

On appeal, the Court of Appeal held, *inter alia*, that failure by the Area Court to comply with Section 157 of the Criminal Procedure Code was a mere irregularity. Consequently, the failure did not vitiate the conviction of the accused person.

As regards the right of appearance of counsel in Area Courts, Section 390 of the Criminal Procedure Code and Section 28 of the Area Courts Edict prohibit the appearance of legal practitioners in Area Courts. These provisions have been held to be inconsistent with the spirit and letters of Section 36(6) of the 1999 Constitution of the Federal Republic of Nigeria. That constitutional provision guarantees an accused person the right to defend himself in person or by a legal practitioner of his own choice. Thus Section 390 of the Criminal Procedure Code and Section 28 of the Area Court Edict are null and void to the extent of their inconsistency.[259]

It must be noted that several States in Northern part of Nigeria have amended their Area Courts Laws to reflect the decision in *Uzodima's* case (e.g. Plateau).[260] Similarly, the current trend in the North is the appointment of Legal Practitioners as Area Courts Judges.[261]

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[257] *Akiga v. Tiv Native Authority (1965) 2 All NLR 146.* CF *Jos Native Authority v. Allah Na Gari (1986) NMLR 6*
[258] (2003) 15 NWLR (pt. 844) 493.
[259] *Uzodinma v. C.O.P. (1982) 1 NCR 27.*
[260] Osamor, B., *Op.cit.*, p.31

In criminal cases, appeals from the decisions of Area Courts grades I, II, and III go to Upper Area Court. However, appeals from the decisions of Upper Area Court go to High Court,[262] or to the *Shari'a* Court of Appeal if the appeal involves question of Islamic Personal Law.

5.4.8 *Shari'a* Courts

With the re-introduction of Islamic Criminal Justice System by some States in Northern part of Nigeria, different grades of *Shari'a* Courts were established and conferred with jurisdiction to hear and determine criminal cases. In Zamfara State for example, Section 3(1) of the *Shari'a* Courts Law, 1999 creates three grades of *Shari'a* Courts, namely:

1. Upper *Shari'a* Court;
2. Higher *Shari'a* Court; and
3. *Shari'a* Court.

Section 4 of the *Shari'a* Criminal Procedure Code, 2000 of Zamfara State also provides for similar Courts. The jurisdiction of the *Shari'a* Court of Appeal in the State was equally expanding by conferring on the Court appellate criminal jurisdiction.[263]

A *Shari'a* Court in Zamfara State shall be properly constituted if presided over by a single Judge of the Court.[264] Similarly, an Upper *Shari'a* Court is properly constituted by a single Judge sitting alone where the Court is exercising its original jurisdiction, and by at least two Judges, where the Court is exercising its appellate jurisdiction.[265]

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[261] *Ibid.*
[262] Sections 53 and 54 of the Area Courts Edict, 1967.
[263] The constitutionality or otherwise of the appellate criminal jurisdiction of the *Shari'a* Court of Appeal has been discussed in the preceding chapter 5.
[264] Section 4 of the *Shari'a* Courts Law, 1999 of Zamfara State.
[265] *Ibid.*

According to Section 6(2) of the *Shari'a* Criminal Procedure Code, 2000 of Zamfara State, *Shari'a* Courts can only assume jurisdiction when it is so conferred with it by the *Shari'a* Criminal Procedure Code or any other written law. Thus, this Section can be said to have made reference to the general jurisdiction of the *Shari'a* Courts in Zamfara State.

As regards jurisdiction over persons, a *Shari'a* Court in Zamfara State can assume jurisdiction over Muslims, or non-Muslims who, voluntarily, consent in writing to the jurisdiction of the Courts.[266]

With respect to territorial jurisdiction, Section 9 of the *Shari'a* Criminal Procedure Code, 2000 of Zamfara State provides that every *Shari'a* Court Judge shall have jurisdiction throughout the State unless his appointment is specifically limited to the area of any district or populated area or group of districts.

It is clear from the above that a *Shari'a* Court Judge in Zamfara State shall have jurisdiction throughout the State unless where he is limited to a specific district, local government or a designated area, and in this case he cannot assume jurisdiction unless within the confines of his territory.

The *Shari'a* Criminal Procedure Code of Zamfara State also made provisions for jurisdiction over subject matter.[267] The combined effect of these provisions is that the Upper *Shari'a* Court in the State has been conferred with jurisdiction to try all offences including those punishable with death. A look into Appendix A of the *Shari'a* Criminal Procedure Code of Zamfara State would reveal that an Upper *Shari'a* Court has power to try all *Hudud* and *Qisas*

[266] *Ibid.*, Section 7.
[267] Section 12(1), (2) and (3) of the *Shari'a Criminal Procedure Code*, 2000 of Zamfara State.

offences. It also has power to try all other offences triable by *Shari'a* Courts of lower grades and to impose punishment in respect of each offence.[268]

It should be noted that any offence under the Zamfara State *Shari'a* Penal Code may be tried by any *Shari'a* Court if such offence is shown in the sixth column of Appendix A to the *Shari'a* Criminal Procedure Code to be triable by that Court.[269] A careful perusal of column sixth of Appendix 'A' of Zamfara State *Shari'a* Criminal Procedure Code would reveal that all grades of *Shari'a* Courts, other than Upper *Shari'a* Court, do not have jurisdiction to try capital and other serious offences that attract the sentence of death or a term of imprisonment of more than ten years. As noted by Sa'id,[270] this is without prejudice to the power conferred to Higher *Shari'a* Court in the State to try offences under Sections 159, 166, 300, 340 and 389 of the *Shari'a* Penal Code, all of which attract a term of imprisonment of fourteen years.

As regards Sokoto State, Section 3(1) and (2) of the *Shari'a* Courts Law, 2000, established three classes of *Shari'a* Courts and vested them with criminal jurisdiction. These Courts are:

1. The *Shari'a* Court of Appeal;
2. The Upper *Shari'a* Court; and
3. The *Shari'a* Court.

It is clear from the above that there is not much difference between Zamfara State and Sokoto State in terms of establishment of the *Shari'a* Courts. The most glaring difference lies on the fact that Zamfara State has more grades of *Shari'a* Courts than Sokoto State by the inclusion of "Higher *Shari'a* Court" in its hierarchy of Courts.

[268] Sa'id, M. I. (2011) *Islamic Criminal Law and Practice in Nigeria*, Uman Dan Fodio University Press Ltd., p.185.
[269] Section 12(1) of the *Shari'a Penal Code*, 1999 of Zamfara State.
[270] Sa'id, M.I., *Op.cit*, p.185.

Another difference is the fact that whereas under Section 3(4) and (5) of *Shari'a* Courts Law, 2000 of Sokoto State, an Upper *Shari'a* Court is essentially an appellate Court with no original criminal jurisdiction, unless conferred on it by the *Grand Kadi* invoking his powers under Section 5(2) thereof, the position is not the same under the Zamfara State *Shari'a* Courts Law. By Section 4 of that law, an Upper *Shari'a* Court in Zamfara State exercises both original and appellate criminal jurisdiction.

With regard to Kaduna State, different grades of *Shari'a* Courts were established by the *Shari'a* Courts Law,[271] after the re-introduction of the Islamic Criminal Justice System in the State. For instance, Section 4 of the *Shari'a* Courts Law, 2001 of Kaduna State created the following grades of *Shari'a* Courts:

1. Upper *Shari'a* Court Grade I
2. Upper *Shari'a* Court Grade II
3. *Shari'a* Court Grade I
4. *Shari'a* Court Grade II

The *Shari'a* Courts in Kaduna State are duly constituted with a judge sitting alone or with two assessors.[272] Persons subject to the jurisdiction of the *Shari'a* Court are those of Islamic faith or any other person who consents voluntarily in writing to the jurisdiction of the Court.[273]

On the issue of jurisdiction on subject matter, both Upper *Shari'a* Courts I and II are not limited in their scope. However, with regard to territorial jurisdiction, the Upper *Shari'a* Court grade I has jurisdiction throughout the State, while the Upper *Shari'a* Court grade II is limited to its territory.[274] The implication of this is that an offence may be committed in, say, Zaria but the

[271] Kaduna State *Shari'a* Courts Law, No. 11 of 2001.
[272] *Ibid.,* Section 5(1)(a) and (b).
[273] *Ibid.,* Section 20(1)(a) and (b).
[274] *Ibid.,* Section 4.

accused person or persons may be arraigned before an Upper *Shari'a* Court grade I in Kaduna, notwithstanding that both accused persons and the subject matter of crime are situate in Zaria, and the offence was actually committed in Zaria.

It is clear from the foregoing analysis on Criminal Courts that there is legal pluralism in the administration of both Islamic and general Criminal Justice System in Nigeria. Worthy of note also is the fact that there are other specialised Courts apart from the ones discussed above, established by law and conferred with criminal jurisdiction. These include Court Martial dealing with persons subject to service law such as the Nigerian Army, Air force and Navy; the Juvenile Court, which deals with children and young offenders; and Code of Conduct Tribunal (CCT).

5.5 The Nigerian Prison Services

The Prison is the third arm of the Criminal Justice System, after the Police and the Courts in Nigeria. The Prison Service in Nigeria is within the exclusive jurisdiction of the Federal Government. In fact, Prison is on the Exclusive Legislative List under the 1999 Constitution in respect of which only the Federal Government can legislate upon.[275] Therefore, no State in Nigeria has the power to operate or maintain a Prison. Pursuant to the power given to the Federal Government by the Constitution, the Prison Act[276] was enacted by the federal legislature to, among other things, make comprehensive provisions for the administration of Prisons in Nigeria and other matters ancillary thereto.

It is clear from the above that Nigeria has a centralised system of Prison administration. Thus, every Prison in Nigeria is a Federal one. Like the Nigeria Police Force, the Nigerian Prison falls under the authority of the Ministry of Internal Affairs, a department which is reminiscent of

[275] See item 48 in Section 4 of the Second Schedule to the 1999 CFRN (as amended).
[276] Cap. P29, LFN 2004.

the Home Office in England.[277] At the top of the organisational hierarchy of the Nigerian Prison is the Controller-General of Prison. He is appointed by the President and Commander in Chief of the Armed Forces of the Federal Republic of Nigeria.[278]

At the moment, there are about 145 convict Prisons established by the Federal Government across the length and breadth of Nigeria,[279] with total number of 57,125 inmates.[280]

5.5.1 The Roles of the Nigerian Prison Service in the Administration of Criminal Justice.

Officially, the role of the Nigerian Prison Service is multifarious and multifaceted. The body is responsible for the safe custody of persons legally detained. It also provides treatment to them and seeks to rehabilitate them.[281] Consequently, the Nigerian Prison Service performs the following roles in the administration of Criminal Justice in Nigeria:

5.5.1.1 Legal Custody of Prisoners

It is the responsibility of the Nigerian Prison Service to take into lawful custody of persons legally detained by Courts of competent jurisdiction. This responsibility is legally conferred on the Superintendent of Prisons.[282]

In admitting a person into the Prison as a prisoner, the Superintendent of Prisons shall do the following:

(a) He must ensure that the person to be admitted into the Prison is duly accompanied by a warrant of arrest, an order of detention, or a warrant of conviction. He shall also verify that the prisoner is the person named in the warrant of arrest or order, and that the crime,

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[277] Nwanko, P. O. (2010) *Criminal Justice in the Pre-Colonial, Colonial, and Post-Colonial Era*, University Press of America, Lanham, Maryland, p.277.
[278] *Ibid.*
[279] *Ibid.*, p.278.
[280] This was the statistic given by Late Ocholi Enejo James Esq. (SAN), during his screening as a Ministerial Nominee, at the Senate floor, on the 22nd October, 2015 at about 3.00pm, during his confirmation by the Senate of the Federal Republic of Nigeria.
[281] Adebayo, A. M., *Op.cit*, p.288.
[282] Section 3 of *Prison Act*, Cap. P29, LFN 2004.

sentence and date of conviction are recorded therein. He must equally ensure that the warrant or order bears the signature of the proper authority.[283]

The above measure is to ensure that the person to be imprisoned is legally convicted or remanded by an authorised person. It will also ensure that the person convicted or remanded is the actual person to be admitted into Prison. As Adebayo[284] rightly noted, Nigeria is a Country where any unimaginable thing can happen. Thus, if this measure is not put in place, wrong persons may be brought to Prison without lawful authority, and people may be paid to serve Prison terms for convicted criminal.

(b) He must also ensure that prisoners on admission are searched by persons of the same sex. All monies, effects and articles whatsoever, except necessary clothing, are taken from the prisoners. But nothing shall be taken from debtors and other non-criminal prisoners, except knives, weapons, articles calculated to facilitate escape, prohibited articles and money.[285]

This step is taken to protect the life of the prisoner himself and other inmates. Criminals are desperate and may resort to any mean method either to escape or terminate their lives. If articles and weapons are not collected from prisoners, they may be used to facilitate their escape or for suicide mission in some cases.

(c) He must ensure that the name, age, height, weight, features, particular marks and general appearance of each convicted prisoner are noted in the Prison Register.[286]

[283] Regulation 2 of the Prison Regulations made pursuant to the *Prison Act*, Cap. P29, LFN 2004.
[284] Adebayo, A. M., *Op.cit*, p.290.
[285] Regulation 3 of the Prison Regulations.
[286] *Ibid.,* Regulation 5.

This is one of the most important roles of the Nigerian Prison Service in the administration of criminal justice. It will ensure that adequate data of prisoners are kept and made available. The performance of this all important roles has left much to be desired.

(d) The Superintendent of Prison shall take charge of all money, effects or articles taken from prisoners, or sent to the Prison for their use, and not allowed to be received and retained by them. He shall make an inventory in the Prison register for such money, effects and articles.[287]

However, on the discharge of the prisoner, his clothes and all other personal effects and articles collected from him on admission and thereafter shall be returned to him unless it has been found necessary to destroy the items.[288]

5.1.1.2 Production of Suspects in Courts

Another very important role of the Nigerian Prison Service in the administration of criminal justice in Nigeria is that it is solely responsible for the production of inmates in its custody in Courts when required.[289] It is very important that prisoners who are awaiting trial are present in Court at all the dates fixed for their trial. Failure to produce a prisoner in Court on the date of trial will automatically lead to an adjournment as the trial cannot be conducted in his absence. It is, therefore, very important that the Prison Officials who are responsible for conveying prisoners in their custody are not found wanting in the discharge of this responsibility.

Previously, failure to carry out this responsibility holistically was one of the problems associated with delay in the trial of inmates. This, as observed by Adebayo,[290] was due to lack of proper funding and vehicles. This problem seems to have been tackled by the Federal

[287] *Ibid.*, Regulation 4.
[288] *Ibid.*, Regulation 9.
[289] Section 6 of the *Prison Act*, Cap. P29, LFN 2004.
[290] Adebayo, A. M., *Op.cit*, p.293.

Government by purchasing new vehicles for the Prison Service to aid smooth transportation of inmates to Courts.

5.1.1.3 Treatment of Inmates

An accused person can only be tried and be punished for his criminal act when he is alive. It is, therefore, the responsibility of the Nigerian Prisons Service to ensure the treatment of sick inmates. This responsibility is legally bestowed on the Prison Medical Officers.[291] The roles of the Prison Medical Officer include:

(a) Examining all prisoners being admitted into Prison at the point of admission or so soon thereafter and record the state of health of the prisoner in the Prison Register. The entry must indicate whether the prisoner should be vaccinated or not, and any other observations which he may deem expedient to make.[292]

(b) Ensuring all prisoners are cleansed in a bath. If the prisoner is a male, the Medical Officer must ensure that his hair is cut, shaved or closely cropped. Where the prisoner is a female, her hair shall only be cut as may be necessary for health or cleanliness.[293]

(c) He must examine all prisoners prior to being removed or discharged from the Prison.[294]

(d) Recommending and supervising the removal of sick prisoners to the hospital in emergency situations. Thus, in case of serious illness of a prisoner confined in Prison in which there is not suitable accommodation for him or adequate facility for his treatment, the Medical Officer must ensure that he makes recommendation to the Comptroller-General of Prisons for the removal of the inmate to the hospital for his treatment.[295]

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[291] Section 12 of the *Prison Act*, Cap. P29, LFN 2004.
[292] Regulation 6 of the Prisons Regulations.
[293] *Ibid.*, Regulation 7.
[294] *Ibid.*, Regulation 8.
[295] *Ibid.*

(e) Recommending the release of a convict who is ill in mind or body whose life is endangered by further confinement or where his illness is likely to terminate fatally within a brief period and before the expiration of his sentence or if it is of such a nature as to endanger the health of other inmates.[296]

(f) Recommending the transfer of a prisoner who is suffering from a contagious disease such as pulmonary tuberculosis, leprosy or mental illness which is not deadly but is likely to endanger the health of other inmates.[297] It should be noted that diseases such as HIV, Ebola, etc. are regarded as contagious or infectious diseases.

It is becoming a common practice, it is submitted, for the Prison Medical Officers to write letters to Counsel to the accused persons in an application for bail stating that the Prison does not have the facility to take care of the sick inmates.[298] This, in some cases, is done to assist the prisoner to secure bail on the ground of ill health. This is an aspect of corruption rocking the administration of criminal justice in Nigeria. The law permits sick inmates to be taken to hospital even outside the Prison for treatment. For a Prison Medical Officer to write a letter stating that the Prison does not have the facility to take care of an inmate without first exploring the opportunity of a treatment in a hospital outside the Prison is, to say the least, unprofessional and a clog in the wheel of the administration of criminal justice in Nigeria.

5.1.1.4 Training of Prisoners

One of the roles of the Nigerian Prison Service is to train prisoners for eventual re-integration into the Society as normal law abiding citizens on discharge. In doing so, the Prison officials are expected to identify the causes of their anti-social dispositions.[299]

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[296] *Ibid.*, Regulation 12.
[297] *Ibid.*, Regulation 14. See also Section 7 of the *Prison Act*, Cap. P29, LFN 2004.
[298] Adebayo, A. M., *Op.cit*, p.294.
[299] *Ibid.*, p.295.

The philosophy of the Nigerian Prison Service is that treatment and rehabilitation of offenders can be achieved through carefully designed and well-articulated administrative, reformative, and rehabilitative programs aimed at inculcating discipline, respect for law and order, and regard for the dignity of honest labour.[300]

Thus, the works of the Prison officials start from the moment an accused person is ordered to be remanded in Prison either temporarily pending his trial or for a longer period of imprisonment after conviction.

5.5.2 Challenges of Nigerian Prison Services

The following are some of the challenges of the Nigerian Prison Service:

5.5.2.1 Security Challenges

Recently, the security of the Nigerian Prison has been seriously targeted by hoodlums thereby making it unsafe to transport Prisoners to Courts. The incessant attacks on Nigerian Prisons to free inmates have called to question the safety of the Nigerian Prison System. The Nigerian Prison Service has not witnessed such a large scale of attacks as is presently being carried out by criminals all over the Country. Section 10 of the Prison Act[301] allows Prison Officers to use weapons against a prisoner escaping or attempting to escape.

Notwithstanding the above provision, the Prison authority has not been able to confront the recent security challenges confronting it. For instance, the attack on Koton-Karfe Prison in Kogi State by men suspected to be members of *Boko Haram* sect that left a security personnel dead and about 119 inmates freed has again exposed the palpable lack of security in some of the nation's Prisons.[302]

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[300] *Ibid.*
[301] Cap. P29, LFN 2004.
[302] The Koton-Karfe Prison in Kogi State was attacked by gunmen on Wednesday, February 22nd, 2012.

The above was followed by another attack on Gombe Prison on 24th February, 2012 where 12 people were killed.[303] Prior to these, in September, 2010, gunmen suspected to be members of *Boko Haram* sect attacked Bauchi Prison and freed inmates. The sophistication of the weapons used in carrying out these attacks led the Prison security guard scampering for their lives. In most of the attacks, bombs and other forms of explosives were used to break the Prison gates.[304]

The Federal Government, therefore, should take drastic and holistic approach towards checking this menace. The number of Prison guards at Prisons in Nigeria should be increased to combat the spate of attacks on the Prisons. In Bauchi prison attack, for instance, it was revealed that over 50 gunmen carried out the attack, while over 20 gunmen carried out the attack on Koton-Karfe Prison.[305]

Recently, the Nigerian Prison Service has announced the suspension of 14 Officers, following the escape of two high profile inmates, Solomon Amodu and Maxwell Ajukwu, from lawful custody in Kuje Medium Security Prison on the 24th of June, 2016 during a Prison break.[306]

On the other hand, it is evident that most of Nigeria's Prisons are guarded by very few Prison guards who are lightly armed.[307] It is, therefore, very difficult for these few guards to combat over 20 armed men in such circumstance. Likewise, Prison guards should be more equipped with modern and sophisticated weapons to be able to combat the menace of jail-breaks effectively.

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[303] See The Punch Newspaper of 26th February, 2012.
[304] Adebayo, A. M., *Op.cit.* p.297.
[305] *Ibid.*
[306] www.vanguardng.com, accessed on the 27th of June , 2016, at 9:14 pm.
[307] *Ibid.*

5.5.2.2 Data Collection and Gathering

One of the problems facing most governmental agencies is the problem of data collection and storage. It is sad that most government agencies such as the Nigerian Prison Services, among others, still keep data in registers and other obsolete methods of keeping records.[308] In *State v. Obi Moses*,[309] the prosecution filed a counter affidavit to oppose the bail application of the accused person who was standing trial for knowingly sheltering armed robbery suspect. Available evidence revealed that he has been convicted for similar offence in the past and had served various Prison terms in Nigeria. All efforts to get the data and record of detention of the accused person from Nigerian Prisons failed despite the citation of the dates of imprisonment and particulars of the accused person to the Prison Officers.

Constitutionally, the Federal Government is responsible for the establishment and maintenance of Prisons in Nigeria. In the same vein, the responsibility of obtaining data for the purpose of identification of criminals and of keeping criminal records in Nigeria is constitutionally vested in the Federal Government.[310] Unfortunately, the Federal Government has not lived up to expectation with respect to Nigerian Prison Services.

Happily, the recently enacted Administration of Criminal Justice Act, 2015[311] has established the Central Criminal Records Registry for the Nigeria Police Force to, among other things, keep criminal records of persons arrested, investigated or prosecuted by the Nigeria Police. This is a welcome development and the same should be extended to the Nigerian Prison Services.

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[308] *Ibid.*, p.298.
[309] (2007) Unreported, Suit No. HCJ/10C/2007.
[310] See item 48 and 28 of the exclusive legislative list, under section of the Second Schedule to the 1999 CFRN (as amended).
[311] See section 16 of the *Administration of Criminal Justice Act*, 2015.

It must be stressed that data collection will assist in the administration of criminal justice in the following way:

(a) It will make it easier to determine the identities of persons admitted to Prison even long after they serve their Prison terms;

(b) It will assist law enforcement agencies to re-arrest escaped prisoners. Thus, where a prisoner escaped from lawful custody his data, including his photograph can be sent to other security agents all over the Country and the world at large for his apprehension.

(c) It may also be of assistance in the determination of whether a particular candidate for an elective office in Nigeria is a convict or not. Generally, a person who is under a sentence of death or a sentence for a term of imprisonment or fine cannot be elected into an elective office under the Nigerian Constitution.[312]

(d) Adequate data collection will also assist the Prison authority and other security agents to determine whether a particular person who is arrested or brought to Prison for admission is a notorious criminal or not.[313] This will enable the Prison authority to take further security measures to safeguard the prisoners where he is discovered to be notorious.

5.5.2.3 Overcrowding

Another problem associated with Prisons is that of overcrowding,[314] in terms of the relationship between the total capacity of a Prison and the actual number of admissions of prisoners. Several factors are responsible for overcrowding in Prisons. These include budgetary constraints, aging or obsolete facilities, high population of those remanded or awaiting trials, among others. It is, however, submitted rightly that the overcrowding in Nigerian Prisons is not

[312] See Section 137(1)(d) and (e) of the 1999 CFRN) (as amended) as it relates to the membership of the National Assembly and the officer of the President respectively.
[313] Adebayo, A. M., *Op.cit*, p.300.
[314] Dambazau, A. B. (2007) *Criminology and Criminal Justice System*, Nigerian Defence Academy Press, Kaduna, p.209.

in terms of space, but in terms of available facilities.[315] Thus, most Nigerian Prisons were designed and constructed during the colonial era for different purposes than what the criminal justice system requires today. There is, therefore, the need to upgrade them to meet international standard.

5.5.2.4 Inadequate Rehabilitation Programmes

Another major problem of Nigerian Prisons is that of inadequate rehabilitation programmes and facilities. This reason, as noted by Dambazau, accounts for high rates of recidivism in Nigeria.[316] As the saying goes "an idle mind is a devil's workshop", prisoners left unoccupied with positive and constructive activities are likely to engage in vices, such as sale and abuse of drugs. They are also likely to perfect their criminal activities by learning from one another all the necessary tricks involved in various crimes.

5.5.2.5 Problem of Corruption

In some instances, corruption involving the activities of Prison officials in their relationship with prisoners is one of the major problems of prisons in Nigeria.[317] Prison officials may engage in trading illegal substances with the inmates, receive bribes from privileged or rich inmates to allow them have access to heterosexual relationships or other activities outside the Prison, and even steal from inmates rations eventually causing shortage of food for the prisoners.[318]

5.6 The Office Attorney-General

In Nigeria, the Attorney-General is the Chief Law Officer of the Federation and a member of the cabinet. The Attorney-General at the Federal level is also the Minister of Justice

[315] *Ibid.*
[316] *Ibid.,* p.210.
[317] *Ibid.,* p.211.
[318] *Ibid.*

responsible for legal affairs.[319] In Nigeria, each State has an Attorney-General, who is a Commissioner with similar responsibilities to the Federal Ministry with respect to State laws.[320] The main function of the Federal and State Attorneys-General in Nigeria is the institution, taking over and discontinuance of criminal proceedings before any Court in Nigeria except 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. In the case of *Anyebe v. The State,*[321] 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 Federal Attorney-General.

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. Thus, 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. In the case of *Emelogu v. The State,*[322] 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.

[319] Section 174(1) of the 1999 CFRN (as amended).
[320] *Ibid.,* Section 211(1).
[321] (1986) 1 SC 87.
[322] (1988) 5 SCNJ 79.

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.[323] The Attorney-General is free to delegate his powers to any Officer of his Department and such delegation cannot be challenged.[324]

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.[325] 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.[326]

Where, however, the Attorney-General makes 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.[327]

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.[328]

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.[329] However, this

[323] Sections 174(2) and 211(2) of the 1999 CFRN (as amended).
[324] *Ibrahim v. The State (1991) 1 NWLR (pt. 18) 650.*
[325] *Ibid.*
[326] *Ndukauba v. Kolomo (2001) 12 NWLR (pt. 726) 117.*
[327] *Unipetrol Nig. Ltd. v. E.S.B.R. (2006) All FWLR (pt. 317) 413 at 426.*
[328] *FRN v. Adewunmi (2007) All FWLR (pt. 368) 978 at 994.*
[329] See Section 104 of the 1963 CFRN.

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 regards to public interest, the interest of justice and the need to prevent the abuse of legal process.[330] 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*[331] 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 Sections 174 and 211 of the Constitution. It held further that the provisions of the subsections were mere restatement of the law.

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*[332] 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.

5.6.1 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,*[333] the Supreme Court held that a private

[330] Sections 174(3) and 211(3) of the 1999 CFRN (as amended).
[331] (1983) 2 SC 155.
[332] (1985) 2 NWLR 483.
[333] (2007) All FWLR (pt. 368) 978.

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.[334] 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.[335]

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.*,[336] 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*,[337] 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

[334] *C.O.P. v. Tobin (2009) All FWLR (pt. 483) 1302.*
[335] Adebayo, A. M., *Op.cit*, p.119.
[336] (2009) All FWLR (pt. 471) 996.
[337] (2009) All FWLR (pt. 462) 1103.

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.

5.6.2 The Attorney-General's 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.[338] In practice, the Attorney-General's decisions in criminal cases are usually conveyed through legal advice which are issued in respect of any matter whether charged to Court or otherwise.

The 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.[339] 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,[340] and the Criminal Procedure Code[341] do not make provisions for the issuance of legal advice by the Attorney-General. The adoption and acceptability of the Attorney-General's legal advice in the administration of criminal justice in Nigeria has been filled in Lagos State by the Administration of Criminal Justice Law of Lagos State, 2011.[342] In the same vein, the Administration of Criminal Justice Act, 2015[343] provides that the Attorney-General of the Federation may issue a

[338] Adebayo, A. M., *Op.cit*, p.120.
[339] *Ibid.*
[340] Cap. C41, LFN 2004.
[341] Cap. C42, LFN 2004.
[342] Section 74(1)-(5), Administration of Criminal Justice Law of Lagos State, 2011.
[343] Section 105(1) of the *Administration of Criminal Justice Act*, 2015.

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.

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*,[344] 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 of 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 researcher that the office of the Attorney-General should cease to be political. If this is done, it is humbly submitted that, 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

[344] (2008) All FWLR (pt. 421) 797.

questioned or be reviewed. His discretion in exercising his powers is absolute.[345] In *Amaefule v. The State,*[346] 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.[347]

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 of the Attorney-General by the Police. Most cases in Magistrates Courts spent years on the ground that they were waiting for the Attorney-General's advice.[348] 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 advice. This trend should be adequately addressed by providing enough

[345] *The State v. Ilori (supra).*
[346] (1988) 2 NWLR (pt. 75) 156.
[347] Adebayo, A. M., *Op.cit*, p.123.
[348] 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 is still languishing in Kaduna prison.

resources to the Police to assist them in carrying out their constitutional duties effectively and efficiently.

5.6.3 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 judgement, any criminal proceeding against any person. This is generally referred to as the power of *Nolle Prosequi*.[349] 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.[350]

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[351] to withdraw from criminal trial before a Magistrate Court. Thus, in *Clarke v. The A.G. of Lagos State,*[352] 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.[353] 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

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[349] 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.
[350] *The State v. Ilori (supra).*
[351] Cap. C41, LFN 2004.
[352] (1986) 1 QLRN, 119.
[353] *The State v. Ilori (supra).*

review by the Court.[354] 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.[355]

The effect of *nolle prosequi* when effectively entered is a discharge of the accused person and not an acquittal.[356] The accused person may, therefore, be subsequently prosecuted for the same offence.[357] 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 this researcher that the power of the Attorney-General 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. 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 appointor in matters that the appointor 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

[354] Adebayo, A. M., *Op.cit*, p.125.
[355] *Ibid.*
[356] 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.
[357] *The State v. Ilori (supra).* See also *Clarke v. A. G. Lagos State (supra).*

truncating the course of justice. As Adebayo[358] 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.[359]

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 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, this researcher is 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.

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[358] Adebayo, A. M., *Op.cit*, p.126.
[359] See the *Punch Newspaper* of February 27th, 2010.

5.7 The Institution of *Hisbah*

The term "*Hisbah"* is the abstract noun from the Arabic verb "*Yahsibu"* which, in common parlance, means to calculate or to suffice.[360] Technically, the term means two things. First, it is an Institution under the authority of the State that appoints people and vests them with jurisdiction of enjoining good and forbidding wrong and second, the function of an officer assigned with the supervision of moral behaviour.[361] The purpose of this is to safeguard the society from deviance, protect the faith, and ensure the welfare of the people according to *Shari'a*. The title of the Officer in charge of *Hisbah* is "*Al-muhtasib*" who, in the past had been one of the most important government functionaries.

Indeed, Allah, the most high, in so many verses of the Holy *Qur'an*, repeatedly ordains man to enjoin good and forbid wrong. Allah (SWT) says:

> "Let there arise from you a group calling to all that is good, enjoining what is right and forbidding what is wrong. It is these who are successful."[362]

In another verse, Allah (SWT), while condemning the negative attitude of the children of Israel towards the evil then prevalent among them, says:

> "Curses were pronounced on those among the Children of Israel who rejected faith, by the tongue of David and Jesus, the son of Mary; because they disobeyed and persisted in excesses: Nor did they usually restrain one another from the wrong they did. Verily, evil was that which they used to do."[363]

In the *Sunnah*, the Prophet (S.A.W.) is reported to have said:

> "Anyone who discovers an evil should change it with his hands, if he cannot he should change it with his tongue, if he cannot he should oppose it in his heart, and this is the weakest form of faith."[364]

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[360] Omer, A. I. (1981) *The Institution of Al-Hishah in the Islamic Legal System,* Journal of Islamic and Comparative Law, Vol. 10, CIL, A.B.U., Zaria, p.63.
[361] *Ibid.*
[362] Holy *Qur'an,* Chapter 3, Verse 104.
[363] *Ibid.*, Chapter 5, Verse 78-79.
[364] Abdul, M. A. (nd) Selected Traditions of Al-nawawi, p.58.

In another tradition, the Prophet (S.A.W.) confirms that a Muslim will win a meritorious reward "for every bidding to do the right and also for every forbidding of the wrong."[365]

It has also been reported that Umar *Ibn* Khattab, the second Caliph, used to issue instructions, from time to time, to his Provincial Governors directing them to see that the appointed prayers, including Friday congregation, are duly observed; that deposits are restored to owners and that governors should not be tired of exhorting their subjects to always speak the truth and make the truth their objective.[366]

The above authorities clearly show that the Institution of *Hisbah* has been recognised as one of the components of the administration of justice (both criminal and civil) from the early days of Islam.

It is interesting to note that some of the States that have re-introduced the Islamic Criminal Justice System in Nigeria have recognised the Institution of *Hisbah* and have also established the *Hisbah* Corps,[367] whose main duty is enjoining good and forbidding wrong. It must also be noted that in the past, there was in each town and market place in Northern Nigeria, a gentle man bearing the traditional title of *Sarkin Kasuwa*.[368] He was regarded as Local Authority Officer. His main duties included the collection of market dues, overseeing the market and reporting to the authorities concerned any irregularity or wrong that may occur concerning the market place.

It is clear from the above that the duties performed by the *Sarkin Kasuwa* (Market Chief) in the past resemble, to some extent, the work of the *Hisbah* corps. In Kano State, for instance, the duties of *Hisbah* Corps include rendering necessary assistance to the Police and other

[365] *Ibid.*
[366] Omer, A. I., *Op.cit*, p.65.
[367] See for instance, *Hisbah* Corps of Kano State which was established by Kano State *Hisbah* Board Law No. 4 of 2003.
[368] In Zaria City, for instance, he is termed "*Magajin Kasuwa."*

security agencies in the areas of prevention, detection and reporting of offences, advising people against acquiring interest, usury, hoarding and speculations, assisting in traffic control and emergency relief operations,[369] among others.

A careful perusal of the above would reveal that the institution of *Hisbah* is essentially organized around safeguarding the limits sets by law, protecting the honour of the people and assuring public safety. Equally important is the monitoring of the market place, craftsmanship and manufacturing concerns to make sure that the laws are upheld by these entities. The *Hisbah* must also ensure that quality standards are maintained.

It must be pointed out that, the *Hisbah* carries out these responsibilities in conjunction with the appropriate government agencies such as the Police, the Customs and other relevant establishments. However, this has generated a conflict between the Police and *Hisbah* Corps. This, as noted, by Uthman, is because of duplicity of responsibility between the two Institutions.[370] Moreover, the Police belong to the Federal Government which has been in constant opposition to the application of *Shari'a* in Nigeria.[371] There is, therefore, the need to harmonise the working relationship between these two important Institutions in the administration of criminal justice in Nigeria. This can be done through systematic approach geared towards building mutual trust and understanding between the two institutions.

This chapter has so far appraised the legal institutions for the administration of criminal justice in Nigeria. It is clear that the Nigerian Police, the Courts, and the Nigerian Prison Services are the most important institutions in criminal justice administration in the Country.

[369] Section 7(4) of Kano State *Hisbah* Board Law of 2003.
[370] Uthman, M.B. *et al* (2007) *An Overview of The Shari'a Penal Codes and The Shari'a Criminal Procedure Codes,* Ahmadu Bello University Journal of Islamic Law (ABUJIL), Vol. IV-V, p.227
[371] *Ibid*

Suffice it to conclude by stating that the Customary Court of Appeal was deliberately left out in view of the fact that the Court does not have appellate criminal jurisdiction.

5.8 The Economic and Financial Crimes Commission (EFCC)

The Economic and Financial Crimes Commission (EFCC) is a Nigerian law enforcement agency that investigates financial crimes such as advance fee fraud and money laundering. The EFCC was established in 2003, partially in response to pressure from the Financial Action Task Force on Money Laundering (FATF), which named Nigeria as one of 23 Countries non – cooperative in the international community's efforts to fight money laundering.[372] The Commission has its head office in Abuja.

The EFCC has addressed financial corruption by prosecuting and convicting a number of high – profile corrupt individuals, ranging Nigeria's former chief law enforcement officer to several bank chief executives. By 2005, the EFCC arrested government officials including the late Diepreye Alamieyeseigha.[373] On the 14th of September, 2010, the head of the Forensic Unit of the Commission, Abdullahi Mu'azu, was assassinated in Kaduna.[374]

The mandate of the EFCC is to rid Nigeria of economic and financial crimes, and to coordinate the domestic effort of the global fight against money laundering and terrorists financing.[375] The Commission is also mandated to operate according to the best international standards and to lead the fight against economic and financial crimes in Nigeria.

It is clear from the above that the EFCC is one of the institutions for the administration of criminal justice in Nigeria.

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[372] www.efccwikipedia.org, accessed on 8/2/2018 at 4:11 pm
[373] Ibid.
[374] ibid
[375] Ibid.

5.9 The Independent Corrupt Practices and other related offences Commission (ICPC)

The Independent Corrupt Practices and other Related Offences Commission (ICPC) is a Nigerian Agency that was inaugurated on the 20th of September, 2000 following the recommendation of the then President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo. The Commission is to receive and investigate reports of corruption and in appropriate cases prosecute the offender(s), to examine, review and enforce the correction of corruption prone systems and procedures of Public life, and to educate and enlighten the public on and against corruption and related offences with a view to enlisting and fostering public support for the fight against corruption.[376]

With respect to the prosecution of cases, the ICPC Act provides that every prosecution for offences under it shall be deemed to be done with the consent of the Attorney – General. Furthermore, it is provided that the Chief Judge of a State or the Federal Capital Territory (FCT) shall designate a Court or Judge to hear and determine all cases arising under the Act.[377] Presently, there are two such designated Judges in each state of the Federation and the FCT.

5.9.1 Relationship with Other Organisations

In 2003, the Economic and Financial Crimes Commission (EFCC) was established as a law enforcement agency to investigate financial crimes such as advance fee fraud and money laundering. While the ICPC targets corruption in the public sector, especially bribery, gratification, graft and abuse or misuse of office, the EFCC investigates people in all sectors who appear to be living above their means, and is empowered to investigate and prosecute money laundering and other financial crimes.[378]

[376] Section 6 of the ICPC Act, 2000.
[377] www.logbaby.com. Accessed on 15/2/2018 at 9:24 pm
[378] Ibid

The EFCC also tracks illicit wealth accruing from abuse of office, especially attempts to integrate such wealth into the financial system. It is against this background that the then chairman of ICPC, Justice Emmanuel Ayoola (Retired JSC), complained about duplication of the functions of ICPC by the EFCC, particularly overlap between the ICPC A nti – Corruption Units and the EFCC Anti – Corruption and Transparency Committee.[379]

The Association of Certified Anti – Money Laundering Specialists (ACAMS) is a global organisation of professionals dedicated to controlling and preventing money laundering and terrorist financing. In June 2009, ACAMS established a Nigerian chapter in Lagos. The then chairman of ICPC, Justice Emmanuel Ayoola, stated that the ICPC was looking forward to to a fruitful partnership with ACAMS in the campaign against corruption and all other related crimes.[380] The ICPC also works with other international bodies such as the United Nations Committee on Anti – Corruption (UNCAC), Transparency International and the African Union (AU) Convention against Corruption.

5.10 The Department of State Security (DSS)

The Department of State Security (DSS) otherwise known as State Security Service (SSS) is the primary domestic intelligence agency of Nigeria. It is primarily responsible for intelligence gathering within the country and for the protection of senior government officials, particularly the President and State Governors.[381] It is one of the three successor organisations to the National Security Organisation (NSO), dissolved in 1986. The agency operates as a department within the presidency and is under the control of the National Security Adviser.

The mission of the DSS is to protect and defend the Federal Republic of Nigeria from domestic threats, to uphold and enforce the criminal laws of Nigeria, and to provide leadership

[379] Ibid
[380] Ibid
[381] www.wikipedia.org. Accessed on 9/2/2018 at 8:36 pm

and criminal justice services to both Federal and State law enforcement organs. The DSS is also charged with the protection of the President, Vice – President, Senate President, Speaker of the House 0f Representatives, State Governors, their immediate families, other high ranking government officials, past Presidents and their Spouses, certain Candidates for the offices of President and Vice President, and visiting foreign heads of State and government.[382] The DSS has constantly adapted to various roles necessitated by evolving security threats in Nigeria including counter – terrorism and counter – insurgent.

[382] Ibid

CHAPTER SIX

DATA PRESENTATION AND ANALYSIS

6.1 Introduction

The question of scientific status in any research dependents upon the degree to which it conforms or deviates from certain scientific principles. One of such principles is that of the presentation and analysis of the systematically collected data. This chapter therefore, contains not only demographic profile of the studied population, but also data analysis and interpretations. The significance of this Section becomes obvious, given the fact that only accurate analysis and interpretations can yield reliable and valid conclusions.

6.2 Socio-demographic Characteristics of Respondents

This sub-section analyses the socio-demographic characteristics of the respondents as indicated in the table below.

Table 1: Distribution of Respondents Socio-demographic Characteristics

1	**Age in Years**	**Frequency**	**Percentage**
	Below 20	16	8
	21 – 30	20	10
	31 – 40	33	17
	41 – 50	47	24
	51 – 60	51	26
	Above 60	26	14
	Total	**193**	**100**
2	**Sex**	**Frequency**	**Percentage**
	Male	152	79
	Female	41	21
	Total	**193**	**100**
3	**Religion**	**Frequency**	**Percentage**
	Islam	109	56
	Christianity	84	44
	Total	**193**	**100**
4	**Ethnicity**	**Frequency**	**Percentage**
	Yoruba	52	27
	Hausa	63	33
	Igbo	40	21
	Others	38	19
	Total	**193**	**100**

5	**Level of Education**	**Frequency**	**Percentage**
	Informal Education	8	4
	Primary Education	12	6
	Secondary School	28	15
	Tertiary	145	75
	Total	**193**	**100**
6	**Occupation**	**Frequency**	**Percentage**
	The Police	73	38
	Legal Practitioner	91	47
	Judge	22	11
	Others	7	4
	Total	**193**	**100**
7	**Geo-political Zone**	**Frequency**	**Percentage**
	North-west	64	33
	North-central	30	15
	South-west	52	27
	South-east	40	21
	Others	7	4
	Total	**193**	**100**

Source: Researcher's field work, 2017

From table 1 above, the age pattern of the respondents reveals that their proportion in age group 21- 30, 31- 40, 41-50 and 51-above are higher as compared to what obtained in the remaining two groups i.e. below 20 and above 60. This implies that the majority of the sampled population is in the economic active group.

The table also indicates that about 79% of the respondents were males while the remaining (21%) were female. This suggests a form of gender bias on the sex pattern of the respondents.

On the issue of religious backgrounds of the respondents the table reveals that about 56% of the respondents were Muslims while 44% of them were Christians. This shows that both of them are likely to be affected by either Islamic laws or English laws or both.

In the same vein, according to the same table, majority of the respondents are the Hausas constituting (33%), the Yorubas constitutes (27%) and the Igbos represents (21%). Only 20% of them are from the minority ethnic groups. This suggests the existence of ethnic plurality.

The education pattern indicates that at one extreme end, about 4% (8) of the respondents had no formal education. At the other end, about 75% (145) of the respondents have tertiary educational qualifications. In between the two, only 6% (12) and 15% (28) of the respondents had primary and secondary levels of education respectively. This shows that majority of the respondents are educated.

On the occupation of the respondents, 38% were Police Personnel and 47% were Legal Practitioners. Whereas 11% were Judges of both Superior and Lower Courts, others constitute 4%. This suggest that majority of the respondents are within the targeted group.

As regards geo-political Zone, 33% of the respondents were from the North-West, 15% were from North-Central and 27% were from the South-West. Whereas 21% were from the South-East, 4% represents others. This reveals that there was wide representation of the geo-political Zones among the respondents.

6.3 General Knowledge among the Respondents on Legal Pluralism in the Administration of Criminal Justice in Nigeria

This sub-section of the study depicts the picture of the degree of awareness among the respondents on the existence and persistence of legal pluralism in the administration of criminal justice in Nigeria.

Table 2: Distribution of Respondents According to their Level of Awareness on the Existence of Legal Pluralism in the Administration of Criminal Justice in Nigeria.

Aware of the Existence of Legal Pluralism in Nigeria	Frequency	Percentage
Yes	182	94.3
No	11	5.7
Total	**193**	**100**

Source: Researcher's field work, 2017

From table 2 above, a significant number of the respondents (94%) have presented their responses in the affirmative, in relation to the question of whether, or not, they are aware of the

existence of Legal Pluralism in the Country. Only an insignificant number of the respondents, (7%) have registered their lack of awareness on the subject matter. This implies that, most of the targeted respondents were very knowledgeable on the problem in question.

Table 3: Distribution of the Respondents According to their source of Information on Legal Pluralism in the Administration of Criminal Justice in Nigeria

Source of Knowledge on Legal Pluralism	Frequency	Percentage
Mass Media	8	4.1
School	166	86.0
Law Enforcement Agencies	19	9.8
Total	**193**	**100**

Source: Researcher's field work, 2017

Table 3 above indicates that majority of the respondents (86%) have learnt about the existence of Legal Pluralism in the administration of Criminal Justice in Nigeria from the school. Only 4% and 10% of them had mass media and law enforcement agencies as their sources of knowledge of legal pluralism in Nigeria. This has justified the claim to literacy among the targeted respondents.

Table 4: Distribution of Respondents According to their Levels of Awareness of the Challenges Common to Legal Pluralism in the Administration of the Criminal justice in Nigeria.

Aware of the Challenges of Legal Pluralism	Frequency	Percentage
Yes	181	93.8
No	12	6.2
Total	**193**	**100**

Source: Researcher's field work, 2017

From table 4 above, it has been revealed that majority of the respondents (94%) are aware of the existence of a number of problems inherent in the practice of Legal Pluralism in the Country. Only 12 (6%) of them have registered their ignorance on the problems common to Legal Pluralism in the administration of Criminal Justice in Nigeria. This shows that majority of the respondents are vast in knowledge and experience on the subject matter. They are therefore

in the positions to provide this study with a valid and reliable knowledge on the problem in question

Table 5: Distribution of Respondents According to their Views on the Challenges of Legal Pluralism in the Administration of Criminal Justice in Nigeria.

Pattern of Challenges of Legal Pluralism in Nigeria	Frequency	Percentage
Multiplicity of Substantive and Adjectival Criminal Laws	53	27.5
Procedural Differences	39	20.2
Nature of the Punishment	60	31.1
Difference of Enforcement mechanism	41	21.2
Total	**193**	**100**

Source: Researcher's field work, 2017

On the problems inherent in the practice of Legal Pluralism in the Administration of Criminal Justice in Nigeria, table 5 shows that majority of the respondents have attributed the problem to the multiplicity of Substantive and Adjectival laws (27.5%) and the Nature of Punishments (31.1%). Others have identified the problems within the realm of procedural differences (20.2%) and differences of enforcement mechanisms (21.2%).

This study therefore, accepted all the identified problems as the dominant patterns of the challenges of Legal Pluralism in the administration of Criminal Justice in Nigeria.

6.4 Respondents Responses on Legal Pluralism in the Administration of Criminal Justice in Nigeria.

This segment appraises the respondents' responses on Legal Pluralism in the Administration of Criminal Justice in Nigeria as indicated in the table below

Table 6: Distribution of Respondents Responses on Legal Pluralism in Nigeria

	Perception of respondents on Legal Pluralism in Nigeria	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
1	A unified general Criminal Justice(English styled criminal laws) is possible in Nigeria	80 (40%)	70 (36%)	4 (2%)	28 (15%)	11 (6%)	193 (100%)
2	A unified General Criminal Justice may strengthen the system and foster national unity	53 (27%)	69 (36%)	15 (8%)	38 (20%)	18 (9%)	193 (100%)
3	Re-introduction of the Islamic Criminal Justice system by some States in Nigeria is constitutional	68 (35%)	44 (23%)	12 (6%)	15 (8%)	54 (28%)	193 (100%)

4	The practical applications of the re-introduced Islamic Criminal Justice system may not necessarily promote human rights in Nigeria	15 (8%)	38 (20%)	9 (3.5%)	62 (32.5%)	69 (36%)	193 (100%)
5	Legal Pluralism may intensify conflicts of power among law enforcement agents in Nigeria	38 (20%)	69 (36%)	15 (7%)	53 (28%)	13 (9%)	193 (100%)
6	Limited Legal Pluralism may advance human rights in Nigeria	43 (22%)	65 (34%)	3 (2%)	61 (32%)	21 (11%)	193 (100%)

Source: Researcher's field work, 2017

From table 6 above, majority of the respondents (76%) have registered their agreement with the proposition that it is possible to have a unified system of general criminal justice (Penal and Criminal Code Systems) in Nigeria. About 39 (21%) of them disagreed, while only 4 (2%) of the respondents have remained undecided in their responses.

With respect to the question of unified general criminal justice (English styled criminal laws) as the tool for strengthening the system and fostering national unity in Nigeria, about 122 (63%) of the respondents have registered their levels of agreements, 53 (29%) of them were in disagreement while only 15 (8%) of the respondents depicted the picture of neutrality in their responses.

On whether the re-introduction of the Islamic Criminal Justice system by some States in Nigeria is constitutional or not, majority of the respondents (112) amounting to 58% were in agreement, while only 12 (6%) of them have remained neutral in their responses. However, 36% (69) disagreed with the proposition.

Concerning the view that the practical application of Islamic criminal justice system may not necessarily promote human rights in Nigeria, majority of the respondents (131) amounting to 69.5% have disagreed, while 53 (27%) have agreed. However, 3.5% (9) of the respondents remained neutral in their responses.

As regards the possibility or otherwise of legal pluralism promoting conflict of power among the law enforcement agents in Nigeria majority of the respondents (56%) saw conflict as inevitable, 37% of them were in disagreement with the assertion and that, only 7% of the respondents have maintained their neutrality.

Finally, majority of the respondents (58%) have given their responses in the affirmative on the preposition that says limited legal pluralism may advance human rights in Nigeria, 34% of them were in disagreement while only 2% of the respondents were undecided in their individual responses.

CHAPTER SEVEN

SUMMARY AND CONCLUSION

7.1 Introduction

This Chapter is the concluding part of this research work. It therefore, summarises what has been discussed in the previous Chapters, brings out the major findings of the research work and finally proffers some recommendations which, if implemented, will reduce to the barest minimum the problems associated with legal pluralism in the administration of the criminal justice in Nigeria.

7.2 Summary

This research work appraises legal pluralism in the administration of criminal justice in Nigeria. Accordingly, it discusses the general criminal justice system, comprising the Penal Code/Criminal Procedure Code Systems applicable to the States in the North and the Criminal Code/Criminal Procedure Act Systems applicable to the States in the South (together with their procedural rules) and the Administration of Criminal Justice Act, 2015.

The research work also discusses the Islamic Criminal Justice System in Nigeria by appraising the *Shari'a* Penal Codes and the *Shari'a* Criminal Procedure Codes. It also appraises the challenges in the implementation of the Islamic Criminal Justice System in Nigeria and the prospects of its full implementation.

Equally appraised is the plural institutions in the administration of criminal justice in Nigeria such as the Criminal Courts, the Nigeria Police Force, the Prisons and the *Hisbah* Corps, among others. The research work further discusses data presentation and analysis. Accordingly, it analyses the socio-demographic characteristics of the respondents, general knowledge among

the respondents on legal pluralism and the respondents' responses on legal pluralism in the administration of criminal justice in Nigeria.

It is trite beyond any equivocation that, the Nigerian society is made up of people with diverse cultures, behaviours and ways of life. When the British came as colonial masters, they understood this, and before they departed in October 1960, they devised ways of accommodating the inherent differences in the cultures of the North and South by ultimately creating two distinct criminal justice systems, the Penal Code System for the North and the Criminal Code System for the South. This was based on the premise that there was the need to respect the people's diverse cultures, religions and ways of life.

All these sets of legislation, i.e. the Penal and the Criminal Codes, the Criminal Procedure Code and the Criminal Procedure Act, have gone through several changes and modifications. Despite their similarities in definition, ingredients and sometimes in the punishments, there are however, significant disparities in terms of ingredients, to procedural nature and the various punishments prescribed.

Recently, the idea of a unified criminal justice system in Nigeria was raised in several fora, although there are challenges that may arise from an attempt to carry out such exercise. This, it is submitted, will strengthen the administration of criminal justice in Nigeria because the continuous retention of plural criminal justice system has been one of the mechanisms that has perpetuated the concept of North and South dichotomy in critical national issues. It is in line with this that the Federal Government of Nigeria recently enacted the Administration of Criminal Justice Act, 2015. The aim of the Act is to abolish the dichotomy that presently exists between the Criminal Procedure Code (CPC) and Criminal Procedure Act System (CPA).

The Islamic Criminal Justice System, which has been in application in areas constituting the present day Northern Nigeria since the 11th Century, until its abrogation in 1960 with the coming into force of the Penal Code, has now been re-introduced by some States in Nigeria. This makes the Nigeria's plural criminal justice system tripartite in nature, with its attendant conflicts in terms of both legal and institutional frameworks.

Many challenges, however, have emerged as a result of the re-introduction of Islamic Criminal Justice System. Firstly, there is the question of whether or not the re-introduction of the Islamic Criminal Justice System is constitutional, and the question of violation of human rights. Secondly, there is also the question of whether or not the changes and reforms brought about in the judiciary, including the Courts and their jurisdiction, ensure effective administration of the Islamic Criminal Justice System. Thirdly, how are the States, which re-introduced Islamic Criminal Justice System, enforce the provisions of the *Shari'a* Penal Codes and execute judgments of the *Shari'a* Courts? Again, the expansion of the jurisdiction of the *Shari'a* Court of Appeal by some States to entertain criminal appeals has generated some conflict between the jurisdictions of the State High Court and that of the *Shari'a* Court of Appeal on criminal appeals emanating from the Upper *Shari'a* Courts.

It must be stressed that the administration of criminal justice envisages four plural institutions, namely, the Police, the Criminal Courts, the Prisons and the office of the Attorney-General, which at times conflict with one another. The Nigeria Police Force is the only one in the Country. It is responsible for the prevention and detection of crimes, the apprehension of offenders, the preservation of law and order, the protection of lives and property and the

enforcement of all laws and regulations made by the Federal and State governments as well as bye-laws made by the local government authorities.[383]

Section 215(2) of the 1999 Constitution places the Nigerian Police Force under the command of the Inspector-General of Police, and contingents of the Force stationed in the States are placed under the Commissioner of Police of that State. Section 215(4) of the same Constitution empowers the Governor of a State to give to the Commissioner of Police such lawful directions with respect to the maintenance and securing of public safety and public order within the State.

However, the Constitution is somewhat silent on the issue of which instructions will prevail in the event of conflicting and contradictory instructions from the Inspector-General of Police and the State Governor. It is respectfully submitted that whatever constitutional guarantees there are for the Governor with respect to control of the Police contingent in his State, they are somewhat limited, qualified and subject to the dictates of the State Commissioner of Police, the Inspector-General of Police and the President.

The 1999 Nigerian Constitution provides for the exercise of powers by the Legislature, the Executive and the Judiciary in Sections 4, 5 and 6 thereof. The Judiciary plays an important role in this balance of power. Section 6 of the Constitution saddled the Court with the responsibility of adjudicating in criminal matters.

The Supreme Court of Nigeria is the apex Court in the Country and has no original criminal jurisdiction. Its jurisdiction is entirely appellate. Next in line is the Court of Appeal which, like the Supreme Court, has only appellate jurisdiction and is restricted to entertaining criminal appeals from the Federal High Court, States' High Courts, Code of Conduct Tribunal

[383] Akande, I. O. (2000) *Introduction to the Constitution of the Federal Republic of Nigeria, 1999*, MIT Professional Publishers Ltd. Lagos, p.326

and the Court Martial. This is followed by the Federal and States High Courts. Both the Federal and State High Courts are conferred by the Constitution with both original and appellate criminal jurisdiction.

Likewise, the Constitution empowers both the National and States Houses of Assembly to establish Courts, other than those listed in the Constitution, with subordinate jurisdiction to the High Court. Consequently, the Magistrate Courts, the Area/*Shari'a* Courts and Customary Courts were established by the States Houses of Assembly, pursuant to the Constitution, and conferred with original criminal jurisdiction.

Just like the Police, the Nigeria Prison Service is the only one in the Country and it is within the exclusive jurisdiction of the Federal Government. The role of the Nigeria Prisons in the administration of criminal justice is multifaceted. It is responsible for the custody of persons convicted and sentenced to a term of imprisonment or persons remanded by a Court of competent jurisdiction. It also provides treatment to inmates and also seeks to rehabilitate them. It is a paradox that a Country with plural criminal justice system like Nigeria still operates a centralised system of Prison administration.

The office of the Attorney-General is also an important institution in the administration of criminal justice in Nigeria. The Attorney-General is the Chief Law Officer of the Federation or of the States. By the provisions of Sections 174 and 211 of the 1999 Constitution the Attorney-General, whether of the Federation or that of those of the States, can institute, take over or discontinue any criminal proceedings against any person before any Court in Nigeria other than Court Martial before judgement is given. This clearly shows that the powers of the Attorney-General under the Constitution are enormous.

7.3 Findings

This research work, therefore, reveals the following findings.

1. Legal Pluralism in the Administration of the General Criminal Justice System in Nigeria (Penal and Criminal Codes Systems) has been one of the weaknesses of the System as it does not provide a uniform Platform for Members of the General Public to be aware of Offences that apply in all Jurisdictions.

This research work found that legal pluralism in the administration of the general criminal justice system (Penal and Criminal Code Systems) in Nigeria has somewhat weakened the System. It does not provide a platform for members of the general public to be aware of offences that are applicable in all jurisdictions in Nigeria neither has it enhanced the ease with which Legal Profession is practiced in the Country. This weakens the criminal justice administration, rather than strengthening it.

2. Multiplicity of Substantive and Adjectival Laws, Procedural Differences, Nature of the Punishments and Differences of Enforcement Mechanisms are some of the Challenges of Legal Pluralism in the Administration of Criminal Justice in Nigeria.

The research work also found that multiplicity of substantive and adjectival laws, procedural differences, nature of punishments inflicted and differences of enforcement mechanisms are some of the challenges of legal pluralism in the administration of criminal justice in Nigeria.

3. The Islamic Criminal Justice System being applied in Nigeria Today is Disabled and Incomplete Because Of Some Impediments.

It is also found that the Islamic Criminal Justice System being applied in Nigeria today is disabled and incomplete. This is so because the States that re-introduced the Islamic Criminal Justice System in Nigeria by enacting the *Shari'a* Penal Codes*/Shari'a* Criminal Procedure Codes and by establishing the *Shari'a* Courts and vested them with criminal jurisdiction have no Police Force or Prisons of their own. Rather, they rely on the Federal Agencies which are

under the control of the Federal Government. Enforcement of *Shari'a* Courts judgments is, therefore, problematic.

4. The Nigeria Police Remains a Centralised one operating in a Federal System of Government.

The Nigeria Police, in the performance of its constitutional duties in criminal justice administration, remains a centralised force in a federalised polity and the conflict between the two arrangements has largely remained unresolved. This is because while Section 215(2) of the 1999 Constitution places the Nigeria Police under the command of the Inspector-General of Police and contingents of the force stationed in the State are placed under the command of the Commissioner of Police of that State, Section 215(4) of the same Constitution empowers the governor of a State to give to the Commissioner of Police such lawful directions with respect to the maintenance and securing public safety and public order within the State.

However, the power of the State Governor to issue directives to the State Commissioner of Police is somewhat limited, qualified, constrained and subject to the dictates of the State Commissioner of Police, the Inspector-General of Police and the President as the case may be. Meanwhile, in a truly Federal State, the Governor should have superintending authority of the Commissioner of Police in his State.

5. There is Lack of Coordination among the Plural/Overlapping Agencies Taking on Specialised Policing Duties in Terms of Information Gathering and Exchange.

Other plural/overlapping agencies, like the Department of State Security (DSS), the Economic and Financial Crimes Commission (EFCC) and the National Security and Civil Defence Corps (NSCDC), etc. taking on specialised policing duties such as detection, prevention and investigation of crimes, lack proper coordination with the Police in terms of

information gathering and exchange. This in turn undermines the role of the Police in criminal justice administration.

6. The Extension of Jurisdiction of the *Shari'a* Court of Appeal on Criminal Appeals has generated a Conflict Between its Jurisdiction and that of the State High Court.

The purported expansion of the jurisdiction of the *Shari'a* Court of Appeal by some States that have re-introduced Islamic Criminal Justice System to entertain criminal appeals has generated a conflict between the jurisdiction of the State High Court and that of the *Shari'a* Court of Appeal on criminal appeals emanating from Upper *Shari'a* Courts.

7. The Disparities in the *Shari'a* Penal Codes have reduced their binding force and better compliance.

Although the States that have re-introduced the Islamic Criminal Justice System in Nigeria have enacted the *Shari'a* Penal Codes and other relevant laws to satisfy the requirements of the Constitution, there are still disparities in the Codes notwithstanding that there is in place the harmonised version of the *Shari'a* Penal Code. To the best knowledge of this researcher only Zamfara State has adopted the harmonised version of the *Shari'a* Penal Code.

8. Corruption within the Police such as receiving bribes, diverting funds, allowances or delaying salaries are widespread among the Police.

Corruption within the Police such as receiving bribes, diverting funds, allowances or delaying salaries are widespread among the Police. This, in turn, badly affects the morale of the members of the Force;

9. The Nigeria Police Force are not adequately funded to enable it achieve its mandated task of enforcing the law and effective administration of criminal justice.

The Nigeria Police Force are not adequately funded to enable it achieve its mandated task of enforcing the law and effective administration of criminal justice.

10. The concept of plea bargaining amounts to judicial distortion of statutory provisions that enable an accused person gets far lesser punishment than statutorily prescribed.

The concept of plea bargaining as practiced in Nigeria today amounts to judicial distortion of statutory provisions in that an accused person may be charged with an offence far lesser than those he committed and, therefore, gets far lesser punishment than statutorily prescribed for offences actually committed. This has the potentials for perpetuating and entrenching fraud and corruption in the Country, thereby making a mockery of criminal justice administration in Nigeria.

7.4 Recommendations

Based on the above findings, the following recommendations are hereby proffered:

1. The General Criminal Justice System (Penal and Criminal Codes Systems) should be harmonised.

This research work recommends that the general criminal justice system in Nigeria which consists of the Penal Code System (applicable to the States in the North) and the Criminal Code System (applicable to the States in the South), should be harmonised. Harmonisation of the Codes will not only enhance the ease with which the legal profession is practiced but also provide a uniform platform for members of the general public to be well aware of offences that are applicable in all jurisdictions in Nigeria.

Harmonisation of the two systems will also strengthen the administration of the general criminal justice in Nigeria since a crime in Kaduna, for instance, will also be a crime in Port Harcourt. In addition, it will aid in pushing to the fore the ideas and ideals that Nigeria as a nation holds dear while relegating to the background cultural differences which, even though, remain significant but nevertheless should not be the focal point. This will enhance limited legal pluralism in the administration of criminal justice in Nigeria.

2. The Challenges of Legal Pluralism in the Administration of the General Criminal Justice in Nigeria (Penal and Criminal Codes Systems) Should be Resolved by the Adoption and Domestication of the Administration of Criminal Justice Act 2015 by the States

It is recommended that the challenges of legal pluralism in the administration of the general criminal justice (Penal and Criminal Codes Systems) in Nigeria such as multiplicity of adjectival laws, procedural differences etc. should be resolved by the adoption and domestication of the Administration of Criminal Justice Act 2015 by the States in the Federation with modifications to suit their peculiar circumstances.

3. The Federal System Operating in Nigeria Should be re-structured.

It is recommended that the Federal system operating in Nigeria should be re-structured in such a way as to enable States in the Federation exercise limited control over the Police and Prisons, and to jointly, with the Federal Government oversee their functions and administration. The Police and Prisons should be removed from the Exclusive Legislative List and placed under the Concurrent Legislative List so that both the Federal and State governments can legislate on them. Evidence should also be removed from the Exclusive Legislative List and placed under the Concurrent Legislative List in the Constitution. This may ease the enforcement of the *Shari'a* Penal Codes and the execution of *Shari'a* Court judgments.

4. Conflict between the Federal and State Authorities over policing should be resolved by Constitutional amendment.

It is further recommended that the conflict between the Federal and State governments on the issue of the Nigeria Police Force should be resolved by the requisite constitutional amendment and regularisation of the Nigerian Police Council, incorporating both the Presidency and the State Governors to jointly oversee the Police, which is currently in abeyance.

5. There should be Proper Coordination in terms of Information Gathering and Exchange between the Police and other Plural Agencies taking on Specialised Policing Duties.

This research work equally recommends that the Nigeria Police and other plural/overlapping agencies such as the Department of State Security (DSS) and the Economic and Financial Crimes Commission (EFCC) etc., taking on specialised policing duties in terms of detection, prevention and investigation of crimes, should liaise with one another in the areas of coordination, information gathering and exchange. The practice where each of the plural agencies keeps information to itself is detrimental to the effective administration of the criminal justice system.

6. The Constitution of the Federal Republic of Nigeria 1999 should be amended to expressly confer appellate criminal jurisdiction on the *Shari'a* Court of Appeal.

The 1999 Constitution of the Federal Republic of Nigeria be amended to confer appellate criminal jurisdiction on the *Shari'a* Court of Appeal to entertain criminal appeals from Upper *Shari'a* Courts. The Court of Appeal should also be conferred with jurisdiction to entertain and determine criminal appeals from the exercise of appellate jurisdiction to such matters by the *Shari'a* Court of Appeal.

7. States that have re-introduced Islamic Criminal Justice System and enacted the *Shari'a* Penal Codes should adopt the harmonised version of the Code.

All States implementing the Islamic Criminal Justice System should adopt the harmonised version of the *Shari'a* Penal Code. This will give the States uniform Code, enhance its binding force and ensure better compliance with the Islamic Criminal Justice System. Likewise, the unfortunate refusal to allocate specific punishment to *Ta'azir* offence by the Kaduna State *Shari'a* Penal Code can be remedied if the harmonised version of the Code is adopted by the State.

8. Internal mechanisms for checking corruption within the Police Force should be reviewed and updated and Police Officers engaged in acts of corruption should be prosecuted.

Internal mechanisms for checking corruption within the Police Force should be reviewed and updated and Police Officers engaged in acts of corruption should be prosecuted. The Government should ensure that salary and other emoluments of Police personnel are raised to be at par with that of other Forces in Nigeria. In addition, Government should provide benefits of housing, educational subsidies and health benefits for defendants of serving Officers. It should also have in place a benevolent fund for Officers who die in active service and a generous pensions for Officers who retire from service; and

9. Government should provide increased funding in equipping the Nigeria Police with renewed emphasis on sophisticated weaponry and modern policing techniques including training on forensic science and psychology.

Government should provide increased funding in equipping the Nigeria Police Force with renewed emphasis on sophisticated weaponry and modern policing techniques including training on forensic science and psychology. This will, no doubt, increase professional efficiency and proficiency among both the rank and file and other Officer cadre of the Police.

10. A holistic approach should be adopted in reforming the criminal justice system in the Country if the gains of plea bargaining is to be realised.

In order to achieve the gains of plea bargaining, a holistic approach should be adopted to reform the criminal justice system in the country. The concept of plea bargaining should be backed by statutory sentencing guidelines and prosecution policies that will regulate its operation. There should be a bench mark that will serve as a guide to Judges in sentencing accused persons who have pleaded guilty as a result of plea bargaining.

BIBLIOGRAPHY

BOOKS

Adebayo, A.M. (2012) *Administration of Criminal Justice System in Nigeria,* Princeton Publishing Company, Lagos.

Agbede, I.O. (1991) *Legal Pluralism,* Odua Printing Company Ibadan.

Ajomo, M.A. (1991) *Human Rights and Administration of Criminal Justice in Nigeria,* Intec Printers Limited, Ibadan.

Akande, I.O. (2000) *Introduction to the Constitution of the Federal Republic of Nigeria, 1999,* MIT Professional Publishers Limited, Lagos.

Al-Dasuqi (nd) *Hashiyat al-Dasuqi,* Vol.4, Darul Kutub, Beirut, Lebanon.

Al-Jaza'iri, A.J. (1992) *Minhajul Muslim,* Darul Fikr, Beirut, Lebanon.

Al-Kasani (1980) *Bada'i al-Sana'i,* Vol.7, Sa'eed Publishing Company, Karachi.

Asein, J.O. (2005) *Introduction to Nigerian Legal System*, 2nd Edition, Ababa Press Limited, Lagos.

Audah, A. (2001) Attashir'ul Jina'i al-Islami, 14th edition, Vol.II, Resalah publishers, Beirut, Lebanon.

Chukkol, K.S. (2010), *The Law of Crimes in Nigeria*, 2nd Edition, Ahmadu Bello University Press Limited, Zaria.

Cotteral, R. (2006) *Law, Culture and Society; Legal Idea in the Mirror of Social Theory,* Ashgate.

Dalhat, A.I. (2010) *An Analysis of the Law of Homicide in Islamic Law and Its Application in Nigeria,* Unpublished LL.M. Dissertation, Faculty of Law, Ahmadu Bello University, Zaria.

Dambazzau, A.B. (2007) *Criminology and Criminal Justice System*, Nigerian Defence Academy Press, Kaduna.

Elias, T.O. (1964) *The British Commonwealth; The Development of its Laws and Constitutions,* Sweet and Maxwell, London.

Garner, B.A. (2009) *Black's Law Dictionary,* 9th Edition, West Publishing Company, Minnesota, USA.

Ibn Farhun (nd) *Tabsiratul Hukkam, Vol.I,* Darul Fikr, Beirut, Lebanon.

Ibn Rushd (2006) *Bidayat al-Mujtahid,* Translated by Prof. I.A. Khan, Garnet Publishers Ltd. United Kingdom.

Idris, K.A. (1982) *The Excellence of Shari'a,* Gaskiya Corporation, Zaria.

Karibi-Whyte, A.G. (2005) *History and Sources of Nigerian Criminal Law,* Spectrum Books Limited, Ibadan.

Kurawa, I.A. (2000) *Shari'a and the Press in Nigeria,* Kurawa Holdings Limited, Kano.

Ladan, M.T. (2010) *Introduction to Jurisprudence: Classical and Islamic;* Malthouse Press Limited, Lagos.

Malemi, E. (2009) *The Nigerian Legal System: Text and Cases,* Princeton Publishing company, Lagos.

Momodu, B. (2007), *The Law and practice of Criminal Investigation and prosecution in Nigeria,* Staring Hordon Publishers (Nig) Limited, Ibadan.

Nwako, P.O. (2010) *Criminal Justice in the Pre-Colonial, Colonial and Post Colonial Era,* University Press of America, Lanham, Maryland.

Obilade, A.O. (2005) *The Nigerian Legal System,* Spectrum Books Limited, Ibadan.

Ocheme, P. (206) *The Nigerian Criminal Law,* Liberty Publications Limited, Kaduna.

Odeku, K.O. (2006) *Police and the Rule of Law in Nigeria,* Princeton Publishing Limited, Lagos.

Ogunlola, Y. (2003) *Comprehensive Notes on Procedure,* College Press and Publishers Limited, Ibadan.

Ojukwu, E. et al (2012) Handbook on Prison Pretrial Detainee, Law Clinic, NULAI, Abuja.

Okoro, B.C. (2013), *The Police, Law and Your Rights,* Princeton Publishing Company, Lagos.

Olakanmi, O. (2004) *Cases and Materials on Criminal procedure Code,* Law lords Publications, Abuja.

Olawepo, R. A. *et al* (2014) Data Collection Strategies in Social Sciences, in Jimoh, A. (ed), *Research Method in Social Sciences,* College Press, Ibadan.

Oluyode, P. (1992) *Constitutional Law in Nigeria,* Evans Pres, Lagos.

Osamor, B. (2012) *Criminal Procedure Laws and Litigation Practices;* Dee-Sage printers, Manchester.

Ostein, P. (2007) *Shari'a Implementation in Northern Nigeria 1999 – 2006; A Source Book,* Vol.I-IV, Spectrum Books Limited, Ibadan.

Owoade, M.A. (1985) *Law of Homicide in Nigeria,* Obafemi Awolowo University Press Limited, Ife.

Park, A.E. (1986) *Sources of Nigerian Law,* 10th Edition, African University press Limited, Lagos.

Richardson, S. (1987) *Notes on the Penal Code Law, Ahmadu Bello University press, Zaria.*

Rush, G. (1977) *Dictionary of Criminal Justice,* Holbrook Press Inc. USA.

Ruud, P. (2008) *Islamic Criminal Law in Nigeria*, Spectrum Books Limited, Ibadan.

Sa'id, M.I. (2011) *Islamic Criminal Law and Practice in Nigeria,* Usman Dan Fodio University Press Limited, Sokoto.

Schoderbak, P.P. (1986) *Management System,* Wiley Press, New York.

Suleiman, I. (2000) *A Revolution in History,* Mansel; London and New York.

Tamuna, T.N. (1970) *The Police in Northern Nigeria: 1861 – 1965,* University of Ibadan Press Limited, Ibadan.

Tobi, N. (1996) *Sources of Nigerian Law,* Mij Professional Publishers Limited, Lagos.

Yusuf, A.B. (1982) *Nigerian Legal System: Pluralism and Conflict of Law in Northern States,* National Publishing House, New-Delhi.

JOURNALS/SEMINARS, WORKSHOPS AND CONFERENCE PAPERS

Abdulqadir, I.A. (2003) "Constitutional Impediments to the Total Enthronement of Shari'a in Nigeria"*;* in Zakariyau, I.O. (ed) *Digest on Islamic Law and Jurisprudence in Nigeria*; Essays in Honour of Justice Umar Faruk Abdullahi PCA (as he then was).

Agbele, I.O. (1989) "Legal Pluralism: The Symbiosis of Customary and Religious Laws: Problems and Prospects", in Ajomo, A.N. (ed) *The Fundamentals of Nigerian Law.*

Aliyu, I.A. (2007) "Shari'a Implementation in Nigeria 1999 – 2005: A Review of its Legal, Institutional and Social Establishment", *Ahmadu Bello University Journal of Islamic Law* (ABUJIL), Vol. IV-V.

Bello, M. (2000) "Sharia and Constitution" in the "the Sharia Issue": *Working papers for dialogue,* published by a Committee of Concerned Citizens, Arewa House, Kaduna.

Dalhat, A.I. (2014) "Analytical Survey of the Application of Islamic Law of Homicide in Nigeria", *Ahmadu Bello University Journal of Private and Comparative Law* (ABUJPCL), Vol.6 and 7.

Galanter, M. (183) "Justice in Many Rooms: Courts, private Ordering and Indigenous Law," *Journal of Legal Pluralism,* Volume 9.

Griffits, J. (1986) "What is Legal Pluralism*", Journal of Legal Pluralism,* Volume 24.

Idris, S. (2005) "The Constitutional Validity of the Appellate Jurisprudence of Sharia Court of Appeal in Criminal Matters as Conferred by Some States Laws*,"* in Chukkol, K.S. (ed) *Contemporary issues in Nigerian Law,* Faith Printers International, Zaria.

Imam, Y.O. (2003) "Application of *Shari'a* in Nigeria's Fourth Republic: Problems and prospect," in Zakariyau, I.O. (ed) *Digest on Islamic Law and Jurisprudence in Nigeria;* Essays in honour of Justice Umar Faruk Abdullahi PCA (as he then was).

Kumo, S. (1998) "*Application of Islamic Law in Northern Nigeria: Problems and Prospects;* in Rashid, S.K. (Ed) Islamic Law in Nigeria: Application and Teachings.

Kumo, S. (nd) "*Sharia* and the Nigerian Constitution: Issues and perspectives," *in* Yakubu, A.M. et al (ed), *Understanding Shari'a in Nigeria: Applications and Teachings.*

Muhammad, A.M. (2007) "An Overview of the Administration of *Sharia* Penal Justice System in Nigeria", *Ahmadu Bello University Journal of Islamic Law* (ABUJIL), Vol. IV-V.

Nwabueze, B.O. (2000) "Constitutional problems of *Shari'a*," *in* "the *Sharia* Issue"*: Working Papers for Dialogue,* Committee of Concerned Citizens, Arewa House, Kaduna.

Oba, A.A. (2004) "The *Sharia* Court of Appeal in Northern Nigeria: The Continuing Crises of Jurisdiction", *The American Journal of Comparative Law,* Vol.52, No.4.

Oba, A.A. (2007) "Islamic Law as a Customary Law: The Changing Perspective in Nigeria," *Journal of International and Comparative Law Quarterly*, U.K.

Okeshola, F.B. and Mudiare, P.E.U. (2013) "Community Policing in Nigeria: Challenges and Prospects", *American International Journal of Contemporary Research,* Vol.3, No.7.

Okunola, M. (1993) "The Relevance of *Shari'a* in Nigeria," in Alkali, M.N. (ed), *Islam in Africa,* Spectrum Books, Ibadan.

Olaniyan, H.A. (2005) "Status Crime and Section 42 of the 1999 Constitution" in Chukkol, K.S. et al (ed) *Contemporary Issues in Nigerian Law,* Faith Printers International, Zaria.

Omer, A.I. (1981) "The Institution of *Al-Hisbah* in the Islamic Legal System" *Ahmadu Bello University Journal of Islamic and Comparative Law* (ABUJICL) Vol.10.

Onyeozili, E.C. (2005) "Obstacles to the Effective Policing in Nigeria," *African Journal of Criminology and Justice Studies,* Vol.I, No.1.

Oredola, M.A. (2013) "Criminal Jurisdiction of *Shari'a* Court of Appeal", *Nigerian Journal of Islamic Law* (NJIL) Vol. I.

Sa'id, M.I. (2003) "Sharia and the Constitution: Legal Issues in perspective," in Zakariyyau, I.O. (ed) *Digest on Islamic Law and Jurisprudence,"* Legal Essays in Hour of Justice Umar Faruk Abdullahi, PCA (as he then was) Auchi, Nigeria.

Sartori, P. and Shahar, I: (2012) "Legal Pluralism in Muslim Majority Colonies: Mapping the Terrain," *Journal of Economics, Social History of the Orient."* Vol.6

Suleiman, I.) 2000) "The Application of Islamic Law in Multi-Religious Society" *Ahmadu Bello University Journal of Islamic and Comparative Law* (ABUJICL), Vol.22.

Tamanaha, B.Z. (2007) "Understanding Legal Pluralism" Past to Present, Local to Global," *Sydney Law Review,* Vol.30.

Tamanaha, B.Z.A. (1993) "The Folly of the 'Social Scientific' Concept of Legal Pluralism", *Journal of Law and Society,* Vol.20.

Tobi, N. (1995) "Law, Religion and Justice" in Owaboye, W. (ed) *Fundamental Legal issues in Nigeria;* Essays in Honour of Andrew Obaseki J.S.C. (Rtd).

Uthman, M.B. et al (2007) "An Overview of the *Shari'a* Penal Codes and the *Shari'a* penal Codes," *Ahmadu Bello University Journal of Islamic Law* (ABUJIL) Vol.IV-V.

Woodman, G.R. (1996) "Legal Pluralism and the Search for Justice", *Journal of African Law,* Vol.40, No.2.

Woodman, G.R. (1998) "Ideological Combat and Social Observation: Recent debate about Legal Pluralism", *Journal of Legal Pluralism,* Vol. 42.

Woodman, G.R. (2002) "Who is Afraid of Legal Pluralism", *Journal of Legal Pluralism and Unofficial Law,* Vol.47.

Yadudu, A.H. (2000) "The Sharia Debate in Nigeria: Time for Reflections", in "the Sharia Issues": *Working Papers for Dialogue,* Arewa House.

Zubair, A. (1994) "Islamic Law: Between Severity and Deterrence," *KWLR,* Vol.3.

INTERNET SOURCES

Adebisi, O. et al. (2014) *Should the Criminal Laws be Merged?* Retrieved from, www/thenationonlineng.net/news, on the 10/5/2015.

Mughal, M.A. (2012) Comparative of Administration of Justice in the West and Islam; retrieved from SSRN:http://ssm.com/abstract, on the 7/9/2015.

Osinuga, O.O. (2010) *An Agenda for Effective Policing in Nigeria;* retrieved form www.nigeriaworld.com, on 16/2/2016.

Prs.nigeriagovernance.org/content/uploads/docs, retrieved on 20/5/2017 at 9:38 pm.

www.nationalplanning.gov.ng/index.php/budget.

www.vanguardng.com

www.wikiquate.org/wiki/administration of justice.

Yusufari, M.L. (2015) *Shari'a Implementation in Kano State,* retrieved from www.gamji.com/article on the 20/4/2016

Zubair, A. (2014) *The Process of Islamic Criminal Justice*, retrieved from www.ilorin.edu.ng/publications on the 16/8/2016.

Newspapers

The Punch Newspaper of 27th February, 2010.

The Punch Newspaper of 26th February, 2012.

APPENDIX A

QUESTIONNAIRE ON THE APPRAISAL OF LEGAL PLURALISM IN THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA

SECTION A: SOCIO-DEMOGRAPHIC DATA OF RESPONDENTS

Guideline: Indicate answer by means of (x) in the appropriate box

1. Age (years)
   (a) Below 20 years [ ]
   (b) 21 – 30 [ ]
   (c) 31 – 40 [ ]
   (d) 41 – 50 [ ]
   (e) 51 - 60 [ ]
   (f) Above 60 [ ]

2. Sex
   (a) Male [ ]
   (b) Female [ ]

3. Religion
   (a) Islam [ ]
   (b) Christianity [ ]
   (c) Traditional [ ]
   (d) Others specify ……

4. Ethnicity:
   (a) Yoruba [ ]
   (b) Hausa [ ]
   (c) Igbo [ ]
   (d) Others specify ……

5. Level of education:
   (a) No formal education [ ]
   (b) Primary School [ ]
   (c) Junior Secondary School [ ]
   (d) Senior Secondary School [ ]
   (e) Tertiary [ ]

6. What is your role in the administration and enforcement of criminal justice?
   (a) The Police [ ]
   (b) Counsel [ ]
   (c) Judge [ ]
   (d) Others (specify) ……

7. What part of the Country do you belong?
   (a) North West [ ]
   (b) North Central [ ]
   (c) South West [ ]
   (d) South-East [ ]
   (e) Others (specify) ……..

SECTION B: KNOWLEDGE ABOUT LEGAL PLURALISM

8. Are you aware of the existence of legal pluralism in the Administration of Criminal Justice in Nigeria?
   (a) Yes [ ]
   (b) No [ ]

9. If yes, from which source did you learn about its existence?
   (a) Radio and Tv [ ]
   (b) Newspaper [ ]
   (c) School [ ]

(d) Law enforcement Agents [ ]

(e) Others (specify) ……..

10. Are you aware of the challenges common to the different legal and institutional frameworks in the Administration of the Criminal Justice in Nigeria?

    (a) Yes [ ]

    (b) No [ ]

11. If yes, what are the forms of challenges, in your own opinion, are more prevalent in the Administration of Criminal Justice in Nigeria……
    ……
    ……

SECTION C: RESPONDENTS' PERCEPTION ON LEGAL PLURALISM IN NIGERIA

Instructions: Kindly, evaluate the following statements and choose one of the options which you feel is in line with your personal experience on the subject matter.

s/n	Mark (x)	Strongly agree	Agree	Neutral	disagree	Strongly disagree
(1)	A unified general Criminal Justice system (English styled laws) is possible in Nigeria.					
(2)	A unified general Criminal Justice may strengthen the system and foster national unity.					
(3)	The re-introduction of the Islamic Criminal Justice system, by some States in Nigeria, is constitutional.					
(4)	The practical application of the re-introduced Islamic Criminal Justice					

	system may not necessarily promote human rights in Nigeria.					
(5)	Legal pluralism may intensify conflicts of power among law enforcement agents in Nigeria.					
(6)	Limited Legal pluralism may advance human rights in Nigeria.					