

CRIMINAL LAW AND THE MAINTENANCE OF PEACE AND SECURITY IN NIGERIA

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Abstract: Crime precipitates fear, unrest, breach of peace, and general insecurity as it is widely experienced in Nigeria. However, to maintain peaceful coexistence and sustain check and balance, there are laws, rules and regulations that guides human conducts and relationship with one another especially armed conflicts and criminal activities. The law that guides criminal conducts are usually referred to as *criminal law*, Criminal law was enacted to checkmate criminal behaviors. Arising from this; the paper sought and observed the reasons for the persistently increase in crime in spite of the existence of criminal law in Nigeria. The study adopts the historical method which involves the use of records and secondary data. The information was collected through content analysis of relevant books and documents, web rich files, downloaded papers, statutes, decided cases and journals. The paper measured the adequacy of criminal law and the criminal justice system to determine whether it is adequate enough to prevent crime and maintain peace in the Nigerian society. Findings showed that the Nigeria criminal law and the criminal justice system in Nigeria are not adequate enough to fight a 21st century criminal activities in Nigeria society and various recommendations were made accordingly.

Keywords: Crime, Criminal Law, Peace and Security.

1. INTRODUCTION

Conflict is the opposite term of peace; peace means a state of tranquility, quiet, and harmony; absence of violence. Wiktionary described peace as a state free of oppressive and unpleasant thoughts and emotions, harmony in personal relations and a state free of war. According to United States Institute of Peace lecture note (2008) Peace involves a high level of reciprocity and cooperation, and the virtual absence of self-defense measures among parties.

Conflict occurs when individuals or groups cannot agree or settled on a particular term. Conflict has been part of human life since the biblical days of Cain and Abel, when the duo made a spiritual sacrifice to God in a contest manner (Genesis 4:2-8); conflict is a friction, or disharmony that arises within a given group and assemble of people with opposing interest, beliefs or actions of one or more members of the group and being either resisted by or unacceptable to one or more members of another group. National Open University of Nigeria (2007) in its lecture note defined conflict as a situation in which two or more human beings desire goals which they perceive as being obtainable by one or the other but not both. Bush and Folger (1994), see conflict as apparent incompatibility of parties' needs or interests.

Tegegne (2019) posit that "conflict occurs between people in all kinds of human relationship and in all social settings, because of the wide range of potential differences among people..." ; since conflict has become inevitable, and that a protracted conflict are mostly likely to result in crime where lives and properties would be endangered, the law, which is to guide human conduct in his society thereby make other laws out of which the criminal law exist to prescribe what crime is and the penalty for committing it.

Williams (2017) admits the true meaning of conflicts as unrest and confrontations that breeds insecurity and offers an in-

depth and wide-ranging assessment of more than six hundred armed conflicts which took place in Africa from 1960 to the present day, these conflicts were believed to have ranged from the wars in Great Lakes region to the expansive conflicts across the Sahel and the tissue of wars in the centres, and throughout the regions of Africa including Nigeria. It is on this background that Winword Dictionary defined conflict as an open clash between two opposing individuals or groups; and further states that, it is a state of opposition between persons, ideas or interests. Oxford Advanced Learner's Dictionary (6th edition) also sees conflict as a situation in which people, groups or countries are involved in a serious disagreement or argument.

Ottob (2016) pointed out that African countries have been plagued with a various crisis such as ethnic/tribal rivalry or dominion, economic mismanagement, life-presidents' syndrome, massive electoral manipulation, religious conflicts and militancy to mention a few and most of these conflicts are characterised with various incidences degree of violent crimes. These violent crimes, always have direct impact on people's lives, properties, moral and physical environment.

There are various sources of conflicts in Africa ranging from land dispute, commerce, religion, inheritance and succession, chieftaincy, tribalism and ethnicity, non-inclusion in government and resource control. Conflict can arise between members of the same group, known as intragroup conflict, or between members of two or more groups, and involve violence, interpersonal discord conflict. Conflict in groups often follows a specific course. Conflict could either be violent or non-violent conflict, and spans a wide of spectrum of situations between peace and war. Conflict is not stationary, it may grow and becomes intractable; however, intractable conflicts are ones that stayed unsettled for long periods of time and then become wedged at a high level of power and destructiveness. They often have the effect of mass destruction of properties, lives and also cause forced migration which in its own effect is accompanied with crime.

Conflict therefore is inevitable as long as man exists, however, where conflict ensued, there must also be a proactive way of resolution, lest it escalates and metamorphosis into a violent conflict. Unresolved conflict tends to escalate and becomes violence where aggrieved person or group of persons become rage, being unable to control their annoyance; a violent person is non-resilient and would in no time engage in acts such as assault, battery, arson, destruction of property, killing, maiming etc, which are termed as crime; therefore, there is a strong connection between trio terms; conflict, violence and crime whose end result is fear, insecurity, breach of peace and forced migration.

Since man can not live without conflict, and conflict often leads to fear, crime, unrest, displacement or forced migration; law was therefore made by man as a potent tool to maintain peace and order in the society, and also as a tool of conflict resolution. Law is generally defined as a body of rules that guides human conducts in his society. Black Law Dictionary (9th Edition) define law as the regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society; the legal system.

Laws represent formalized Norms that may derive from folkways or mores and are enacted by the lawmaking bodies in response to new or newly recognized developments or needs. That is, laws are the folkways and mores deemed so vital to dominant interests that they become translated into written, legal formalizations that even non-members of the society are required to obey. The law that defines crime, regulate criminal behavior and prescribe punishment is the criminal law (Chapters 2, 4 and 5 of the Criminal Code, Cap C38 LFN, 2004). The criminal law seeks to protect persons, lives, property, government and the sovereign state. This paper therefore seeks to investigate the criminal law in its role to maintain peace and security in Nigeria between the period of 2000 and 2019; the paper also looks at the criminal justice system in Nigeria in the application of criminal law.

2. CONCEPTUAL REVIEW

Criminal law is an arm of law that describes criminal offences and prescribes punishment for it. While law is defined as a body of rules to guide human's conduct in a particular society. The main function of criminal law is to define what criminal offences are; and what are the punishments for violating such offences. It is a trite law that no one shall be punished for an offence which punishment has not been prescribed in law. Criminal law is not only to punish the offender but also to make deterrence of others. The law dealing with crime in Nigeria is referred to as the Criminal Act and Penal Code; the former is applicable in the Southern Nigeria while the latter in the North.

Crime is a particular form of deviance; it is a violation of a law. Laws are the most formal of norms. Deviance relates to the violations of folkways and mores, whereas the term 'crime' specifically refers to those behaviours that violate norms encoded in the penal code or criminal laws. Punishment for crime is therefore commonly harsher and more formalized

than those for breakers of the folkways and mores. But the punishments are not necessarily uniformly applied and the patterns of inequality are quite common.

According to Curzon (1973) "Crime is any act or omission resulting from human conduct which is considered in itself or in its outcome to be harmful and which the state wishes to prevent, which renders the person responsible liable to some kind of punishment; the result of the proceedings which are usually initiated on behalf of the state and which are designed to ascertain the nature, extent and the legal consequence of that person's responsibility.

Technically, crime is composed of two elements:

- the act itself (or, in some cases, the failure to do what the law required; technically referred to as '*actus reus*') and
- the criminal intent (in legal terminology, *mens rea*, or "guilty mind") intent is a matter of degree, ranging from willful conduct to negligence in which a person does not deliberately set out to hurt anyone but acts (or fails to) in a manner that may reasonably be expected to cause harm. Jurists weigh the degree of intent in determining the seriousness of a crime and may find the person who kills another guilty of first-degree murder, second-degree murder, or manslaughter.

Black's Law Dictionary (9th edition) define law as "the regime that orders human activities and relation through systematical application of the force of politically organized society or through social pressure backed by force in such a society. Law therefore may be defined as the body of rules that guides human conducts in a given society. There are various laws that regulate various activities of man in his relations to another, and his society. The law that relates to crime and criminal activities is called criminal law.

Black Law Dictionary (9th edition) defined criminal law as "the body of law defining offences against the community at large, regulating how suspects are investigated, charged and tried and establishing punishment for convicted offenders; also termed penal law". A criminal is the person who has violated the prescribed rules that are regarded as criminal offences having the characteristics of a crime and it is punishable by the law. Black's Law Dictionary in its own definition defined a Criminal as one who has committed a criminal offence and or one who has been convicted of a crime.

A criminal should be understood as a person who has violated the criminal law of the land and has been found guilty by a court of law and punished accordingly. This is the legal phenomenon of the definition of criminal. A violation of criminal laws constitutes a violation of the collective conscience, since it is understood that a person who violates a society's law invites society's anger and must be disciplined. Durkheim asserts that an action does not shock the common conscience because it is criminal; rather it is criminal because it shocks the common conscience. We do not reprove it as a crime, but it is a crime because we reprove it". A violation of criminal law calls for punishment, but a violation of a civil law requires compensation of the victim by the offender. For example, if a person has failed to pay a debt, he is called upon to pay it, and may be required to compensate his creditor. Criminal laws call for retribution whereas civil laws seek to restore parties to their status quo ante.

According to Curzon (1973), criminal law is a branch of public law, which deals with the relationship between members of the public and the state. It spells out clearly the trial and punishment of offenders. It is the principles law of crimes. Molan (2003), in his own definition described criminal law as a recital of prohibitions and duties; acts and omissions that the State sees as unacceptable, or actions that the state demands. In another definition, Schmalleger (2004) describe criminal law as the bodies of rules and regulations that define and specify punishment for offences of a public nature or for wrongs committed against the state, individual or society. According to McConnell (2004), a sociological approach to crime will enable us to understand the economics, gender, education, race, religion, family life and all other social phenomena that are directly involved in crime.

In another perspective, Stephen and Peter (2001), posits that crime depends on law and on particular instances of action being identified and interpreted as crime. It is believed that criminal law assumes that criminal acts injure not just individuals but society as a whole. In common law from which a great deal of Nigerian legal tradition devolves, offenders were said to have violated the "King's peace" when they committed a crime. On this basis, in criminal cases, the state as the injured party commences the official process of bringing the offender to justice. Even if the victim is dead and has no one to speak on his or her behalf, the agencies of justice will investigate the crime and file charged against the offenders. In essence, criminal law involves a violation of public rights and duties, which create a social harm. Criminal law is

different from other types of law; it is used to regulate acts that are contrary to the community interest of the social or government unit. Criminal law is also called penal law.

3. THE PLACE OF LAW IN CONFLICT MANAGEMENT AND CONFLICT RESOLUTION

The underlying purpose of the criminal law is to prevent and control crime; and also to create a peaceful society for the coexistence of humans. More especially in a complex state of the Nigeria's nature where there are people of diverse culture, language, religion, traditions and interests to live together in peace with the assurances of adequate security. Peace is a state of tranquility, a state of non-violence in which the contradictions in society have been effectively conciliated in the interest of all. Peace is conceived of as a state of calmness, quietness, and living in harmony with oneself and one's neighbours. Peace also means freedom from fear, conflict, violence, war and civic disorder. The criminal justice system seeks to carry out this goal by sanctioning behaviour by an individual or group of individuals who violates the criminal law.

4. NIGERIA'S CRIMINAL JUSTICE SYSTEM

According to Larry Siegel (2006) in his book 'Criminology' the criminal justice system refers to the agencies of government charged with enforcing law, adjudicating criminals, and correcting criminal conduct. The criminal justice system is essentially an instrument of social control. Society considers some behaviours so dangerous and destructive that it either strictly controls their occurrence or outlaws them outright. It is the job of the agencies of justice to prevent social harm by apprehending and punishing those who violate the law and in so doing deter those who may be contemplating future wrongdoing. Only the criminal justice system has the power to control crime and punish criminals.

The main components of this enormous system are the police, courts and correctional agencies. In addition to viewing the criminal justice system as a collection of agencies, it is possible to perceive it as a sequence of decision points through which offenders flow. This process begins with initial contact with police and ends with the offender's re-entry into society.

The function of the Police in the criminal justice system is to conduct arrest, interrogate and finally charge the offender to court for prosecution (the onus here lies on the police to prove to the court that the offender actually committed the offence being charged for).

The court is made up of the bar and the bench; the bar is made up of advocate lawyers whose duties are either to defend the accused criminal or stand in support of the state in the prosecution of the accused criminal. The lawyers rely on principles of law, judicial precedents or decided cases, and technicalities to prove their case before the court (court in this instance means the judge). There are various courts in Nigeria with various jurisdictions, the courts that have jurisdictions over criminal matters are the magistrate courts and the High courts (both federal and states), the high courts have originate jurisdictions over capital offences while appeals from the decisions of the High courts go to the Courts of Appeal and subsequently rests at the Supreme court.

On the receipt of the offender, the court acting on the law would presume the offender is innocent, and therefore has a duty to keenly listen to the Prosecutor and also the defence of the accused to see why he must be set free from the charges made against him. The sole duty of the court in this instance is the application of the law. Where the accused is found guilty, he would be convicted and punished appropriately; and this is where the third tier of the criminal justice system comes to play.

Prison which is the third tier of the criminal justice system has recently be renamed correctional agency, its duty is to receive the convicted criminal, and keeps him or her in its custody for correction purposes pending the expiration of his or her jail term. The Prison may also keep accused person (s) who are awaiting trial in its custody for the purpose of trial and for him not to escape (this function is to the discretion of the court).

5. ISSUES IN NIGERIA'S CRIMINAL JUSTICE SYSTEM

The tripod institution: police, court and the prison that make up the justice system has an overall function of maintenance of peace and security in Nigeria. However, there are lacunas in the official duties of the institution's operators which have become an impediment to the effectiveness of the institution. The Nigerian Bar Association (NBA) recently bemoaned the crisis in the nation's criminal justice system; the NBA Human Rights Institute reported that every aspect of the criminal

justice system – from law enforcement through the judiciary to the prisons is characterized by inefficiency, corruption, lack of resources and disregard for the due process (Punch Editorial Board: 14/09/2010).

Some of the issues or short comings of the criminal justice systems are: technicalities, corruption, politics, pressures, tribalism and religious affiliation etc

On the issue of technicalities; the fundamental human rights provisions as enshrined in the Chapter 14 of the 1999 Constitution of Nigeria particularly Sections 33, 34, 35, 38, and 39 respectively.

Section 33 (1) provides that:

Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty

This constitutional provision abhors the unlawful killings of anyone in Nigeria regardless of his status, sex, religion or nationality. Several sections of the Criminal Code Act (the law that defines crime and prescribe punishment for committing it) describe the crime of killing in many ways and terms such as *homicide, infanticide, concealment of birth*; Section 315 says:

Any person who unlawfully kills another is guilty of an offence which is called murder or manslaughter...

While Section 316 particularly subsections 1, 2, 3, 4, 5, and 6 emphatically stress on the provisions of Section 315 of the Criminal Code Act. The law prescribes death penalty as the punishment for the crime of murder. However, while the law respect the constitutional right of the offender's right to life presumed him to be innocent no matter how, where, and when the crime was committed and this is where the counsels to the offender bring in technicalities to save their client and either set him or her free or procure a minimum punishment for him.

In the recent case of Chukwudumeme Onwuamadike alias Evans, an alleged notorious kidnapper; his arraignment for the alleged murder of two persons was stalled because of technicality, as the presiding judge, Justice Oluwatoyin Taiwo held that the charge sheet was irregularly filed, having not been accompanied with a valid proof of evidence. The Judge said the error is fundamental and could not be overlooked.

Every criminal offence is a matter against the state and the prosecution of is done by the State to secure appropriate punishment against the accused person. However, section 73 1of the Criminal Procedure Act particularly subsection 1 provides that:

(1) in any criminal proceedings for an offence against a law of the State and at any stage thereof before judgment, the Attorney General of the State may enter a nolle prosequi either by stating in court or informing the court in writing that the State intends that the proceedings shall not continue and thereupon the accused shall be at once discharge in respect of the charge or information for which the none prosequi is entered.

Subsection 2 of the Section 3 further states:

If the accused has been committed to prison, he shall be released, or if on bail the recognizance shall be discharged, and, where the accused is not before the court when such nolle prosequi is entered, the registrar or other proper officer of the court shall forthwith cause notice in writing of the entry of such nolle prosequi to be given to the officer in charge of the prison or other place in which the accused may be detained and such notice shall be sufficient authority to discharge the accused or if the accused be not in custody shall forthwith cause such notice in writing to be given to the accused and his sureties and shall in either case cause a similar notice in writing to be given to any witnesses bound over to prosecute

The provisions of the above sections of the Criminal Procedure Act indicates clearly that the effectiveness of Criminal Law on crime offenders could be impeded by the Attorney who is the chief law officer of the State and adviser on legal matters. His decision could be influenced by his political boss and the chief executive officer of the State. The Attorney General's appointment and disengagement lies in the hands of the Governor; the Governor also has the prerogative power of mercy to pardon a criminal convict, this is clearly stated in Section 371A of the Criminal Procedure Act as follows:

The provisions of sections 371B to 371G of this Act shall apply in the case of a sentence of death for an offence in respect of which the power of pardon is vested in the President.

The Governor of any State of the federation also has the power to pardon criminal offenders as well. Such pardon does not always come from the President or the Governor with an iota of political influence or pressure.

Police whose function in the criminal justice system is to apprehend offenders, investigate and bring the accused before court for prosecution, often resolved matters with the offenders at the police station level upon the influence of money; no wonder the public often raised the alarming corruption of the police. The courts are not exempted in the corrupt practices as well the case of Justice Walter Nkanu Onorghen (the former Chief Judge of Nigeria) who forced to resign from office as a result of corruption. Justice..... was also indicted of corruption in the Election Petition Tribunal between Oyinlola Olagunsoye v. Aregbesola; Justice Ajumogobi a Federal High Court Judge was dismissed from office and subsequently convicted of corruption. The court Registrars and Clerks are not left out in the corrupt practices.

The prisons who are saddled with the responsibility of keeping the convicted criminals pending the expiration of his or jail term, takes monies from well to do convicts and let them go to sleep in their homes while the law presumes the convict is in jail serving his or her term. An example of this is the case of Fre Ajudua, who was remanded and at the same time was seen at the naming ceremony of his child.

6. OBSERVATION

Findings show that the Nigerian criminal law which is enacted to define crime and prescribe punishment for committing crime is not potent enough to perform such functions. The Nigerian Bar Association (NBA) recently bemoaned the crisis in the nation's criminal justice system; the NBA Human Rights Institute reported that every aspect of the criminal justice system – from law enforcement through the judiciary to the prisons is characterized by inefficiency, corruption, lack of resources and disregard for the due process (Punch Editorial Board: 14/09/2010).

Obviously, each of the tripod institution, police, court and the prison that make up the justice system is in dire need of reform. An ugly hallmark of the system, over the year, is the alarming number of awaiting trial inmates. The comptroller-General of the Nigeria prisons service, Mr. Olusola Ogundipe, recently disclosed that, as at July 2010, the population of prisoners stand at 47,628 out of which 13,300 or 23 percent were convicted persons and 77 percent were awaiting trial inmates.

The Nigerian constitution which is the supreme law and the basis for all laws has in its principles of 'equity' shot the criminal law and the administration of criminal justice at their feet in its doctrine of justice and fairness upon which equity stands. This technicality created room for the legal practitioners to take criminals off the hook of criminal law thereby letting him walk freely back home while the lawyers smile home to their wives.

One of the technicalities is the principle of fair trial; the constitution further injures the criminal law and the administration of criminal justice when it says no one shall be convicted for a crime which penalty has not been prescribed in law, and also that an accused person shall be deemed innocent until found guilty by the court (not all courts in this instance as that has also given room for another technicality; it must be a court of competent jurisdiction).

Defendant lawyer often takes the advantages of these provisions of law and painstakingly look for loopholes to set his criminally accused client free; leaving the onus on the prosecutors who are not always lawyers to prove his case, moreso, it is a trite law that 'he who alleges must prove'.

Other factor of the technicalities is the referrer of criminal cases to the Director of Public Prosecution (DPP) for guidance advice. We also need to know that the duty of the court is to interpret laws and apply them as appropriate. The DPP would have to advice the court whether or not the accused person has a case to answer or not. The DPP has his choice of decision. He has absolute power to file a *nolle prosequi* at any time of the proceeding as long as judgment has not been entered to withdraw the interest of the State in the matter and as such the accused criminal is discharged and acquitted (he goes home scot free). The legal term *nolle prosequi* is defined by the Black Laws Dictionary to mean; to abandon a suit or proceeding, to have a case dismissed. It is at this juncture that; influence, corruption, pressure, tribalism or politics plays.

The making of Nigerian laws is faulty *abi nitio*; law making in Nigeria is the sole business of the legislator who are not lawyers; it is a place where any Tom, Dick and Harry could emerge from a popular political party, win an election and sworn into office, perhaps for law making. The law even permitted a secondary school leaver whether passed or failed to contest as long as he is a Nigerian and sponsored by a registered political party. It is therefore not a thing of surprise to see these legislators sleeping during sessions being unable to make contributions as a legal maxim would say '*nemo dat non*

habet' meaning you cannot give what you don't have. The law that brings them in has already created room for incompetency.

7. CONCLUSION

This paper conclude that Nigerian Criminal Law is not adequate enough to curtain crimes which it was enacted, therefore needs some amendment to enable it curtain the 21st century crimes that were not included in it; more so the law provides that no one shall be punished for an offence which punishment had not been prescribed. The paper further conclude that the Nigerian criminal justice system needs a total overhaul as the entire criminal justice system is full of inefficiency, corruption, lack of resources and disregard for the due process (Punch Editorial Board: 14/09/2010).

8. RECOMMENDATION

Crime is an offence against the State and therefore, the Attorney General who is the Chief Law Officer of the State must meticulously look at the law and cases upon its merit; not minding pressure, nativity or relationship, he must stand firm not giving up to pressures in any criminal related matters. The Director of Public Prosecution must have the fear of God and the interest of the nation at heart to give appropriate and speedy advice in all criminal matters referred to him. Even though the popular saying is that the wheel of justice grinds slowly, judges too are to follow the principles of law, brave and bold, should not entertain technicalities that would create unnecessary delays in criminal proceedings to disabuse the saying "*justice delay justice denial*".

The adjudication for the Constitutional Amendment must be given a good attention and place on a clean table by making provisions for competent persons to occupy sensitive political offices in Nigeria

Finally, Law is dynamic and cannot be static, the Nigerian Criminal law is long overdue for amendments to accommodate 21st century events in other to effectively control crime to create peaceful and secured environment for everyone.

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