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SCHOOL OF LAW

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COURSE TITLE: CRIMINAL LAW II

CRIMINAL LAW II : UNEDITED

MODULE 1 OFFENCES AGAINST PROPERTY

Unit 1 Stealing
Unit 2 Housebreaking and burglary
Unit 3 Obtaining property by false pretence

UNIT 1 STEALING

CONTENTS

1.0 INTRODUCTION

One of the aims of criminal law is the protection of property. The protection comes in different ways and one of this is through the offence of stealing. The law therefore makes it an offence for you to take a property belonging to another person without the person's consent given freely. The offence of stealing is one that is frowned at in all parts of the world, including Nigeria and constitutes an offence in all jurisdictions. Apart from being a crime, stealing is an act that is viewed as morally wrong. Thus, both the Criminal Code (CC) and the Penal Code (PC) criminalizes the act of stealing.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Define or describe what is stealing

- Explain the acts which can constitute stealing
- To know that some property are not capable of being stolen
- Differentiate between the offences of stealing and robbery
- Understand why receiving stolen property is also treated as an offence

3.0 MAIN CONTENT

3.1 Stealing

Definition

According to section 383(1) of the Criminal Code, when a person fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing. Theft, instead of stealing is used in the Penal Code and defined in section 286(1) as 'whoever intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to take it is said to commit theft.'

In other words, stealing can be described as the wrongful taking or conversion of property belonging to another.

It also an offence for you to unlawfully treat or deal with the property of another person as your own. In the either cases of taking or converting, the intention to permanently deprive the owner of such property or the person who is in rightful possession of it must exist on your part; otherwise this will not amount to stealing.

If you take a handset which belongs to another person, removed the sim card, insert yours and start to use it, this will amount to stealing.

Things capable of being stolen

You have to note that the thing stolen must be capable of being stolen and section 382 of the Criminal Code contains several examples of such things. According to the section, every non-living thing which is the property of another and is capable of being made movable is capable of being stolen. Under section 286(2) of the Penal Code, electricity or electric current is capable of being stolen by being abstracted, diverted or consumed.

Also, living things, like animals, whether domestic, wild by nature or tamed, such as dog, ostrich or monkey are capable being stolen, because the definition of property includes everything animate or inanimate, capable of being the subject of ownership (See section 1 CC). You must however note that if wild animals are in

the enjoyment of their natural habitat they are not capable of being stolen but their dead bodies are. It therefore means that if you go hunting in the forest and captured a gorilla, you cannot be said to have stolen it, except if the forest is a reserved one where hunting is prohibited.

Going by our statement above that the thing stolen must be capable of being stolen; it means that is not every property that is capable of being stolen. For instance, one cannot steal land because it is an immovable property and therefore not capable of being stolen. Also, a property which is abandoned or not capable of being owned at all, and as such cannot be said to be owned by anybody is not capable of being stolen.
You must note also that a corpse is also not capable of being stolen because it is cannot be an issue of ownership at common law.

SELF ASSESSMENT EXERCISE 1

What are the things capable of being stolen and why is land not capable of being stolen?

3.2 What constitutes stealing?

You need to understand that for an act to amount to stealing; some elements must be present or follow the act.

In the first place there must be either a ‘taking’ or ‘conversion’ of something (section 383 CC).

Taking

Taking in this sense does not mean that the person alleged to have stolen should have had in his or her possession, the thing said to be stolen. It is sufficient if the person accused of stealing merely moves or cause the property to be moved with the intention of stealing it. If for example Musa intends to steal from your luggage opens the luggage and pulls out a camera but drops it when he sighted you coming, this will amount to the offence of stealing. The position is the same under the Penal Code.

Conversion

In the absence of taking, there must be a ‘conversion’ of property. Conversion in this sense is as defined at common law, which according to Atkin J. in *Lancashire and York Railway Company v. McNicol* (1919) 88 L.K. 601 at 605 is dealing with goods in a manner inconsistent with the right of the true owner provided there is

an intention on the part of the person converting the property to deny the owner's right or to assert a right which is inconsistent with that of the owner. The word 'converts' is therefore equated with the word 'appropriates' according to the learned authors, Smith and Hogan on Criminal Law but they however stated that these words would not be entirely synonymous.

Thus, it is conversion if you treat somebody else's property as your own or assert ownership on such property. It is equally conversion if you retain a property which has come into your possession by accident. It is conversion for instance if you sell, destroy or use the property belong to another person without that person's authority. In *Pitman and Hehl* (1977) 65 Cr. App Rep 45 it was held the accused stole the furniture of another through the act of appropriation by inviting two people to buy the furniture.

You must however note that land cannot be converted. Also, property such as timber and crops cannot be converted unless they have been cut down from the ground or harvested.

In addition to the 'taking' or 'conversion' of property, the intention to be fraudulent must be present or accompany such acts on the part of the person taking or converting any property. Such intention may not be immediately present at the initial time of taking or converting the property but it is sufficient if the person thereafter forms that intention. See *R. v. Ekpenyong* (1942) 8 W.A.C.A. 140. The position is the same under the Penal Code, although the word 'dishonestly' is used instead of the 'fraudulently' used in the Criminal Code.

Fraudulent intention

In other for you to ascertain whether the intention of the person taking or converting any property was fraudulent or dishonest at that material time in order for such acts to amount to stealing, any of the following intentions must be present:

i. An intent to permanently deprive the owner of the property of it: this is because an intention to deprive the owner of the property temporarily of it will not amount to stealing. See *R. v. Easom* [1971] 2 All E.R. 945. Thus if you take someone's handset and state that you will not return it unless the person surrenders your camera in his possession, this will not amount to stealing. You have to note that it will still amount to stealing if you take someone's property with the intention to permanently deprive the owner of it notwithstanding the fact that you thereafter changed your mind and return it.

ii. An intent permanently to deprive any person who has any special property in the thing of such property: here, any intent on the part of the person taking or converting property to deprive any person who although is not the owner of the property but has such special interest in it, such as in the case of a bailee (a person entrusted with goods under a contract of bailment) or chargee, etc., in which the person holding possession is equally entitled to benefit in the property, will amount to stealing.

iii. An intent to use the thing as a pledge or security: if you use someone's property as security for a loan, it will be deemed that you fraudulently took the property.

iv. An intent to part with the property on a condition as to its return, which the person taking or converting it may be unable to perform.

v. An intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion.

vi. In case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.

In the case of lost property, if you find such property and coverts it, this will not be regarded as fraudulent if at the time of converting it you did not know who is the true owner or if you reasonably believe that owner cannot be found.

Punishment

The punishment for stealing where no other punishment is stipulated by law is three years imprisonment (section 390 CC). There are however stiffer penalty of an imprisonment for life where the thing stolen concern wills, postal matters or relating to property, etc., (section 390(1) CC). Stealing of animals and in other circumstances such as from a dwelling house, vehicle, etc., can attract stiffer punishments.

Under the Penal Code theft attracts maximum imprisonment for five years or to both fine and imprisonment. See section 287. The punishment maybe higher in other cases. See sections 288, 289 and 290.

SELF ASSESSMENT EXERCISE 2

In the offence of stealing there are several intents specified by law in proving fraudulent intention on the part or anyone taking or converting the property of another, mention three of these intents.

3.3 Stealing with violence

Apart from the mere act or taking or converting a property, the law views with all seriousness the use or threatened use of actual violence to any person or property at the time of stealing, whether immediately before or after.

Thus, stealing and the use or threatened use of violence constitutes the offence of robbery (See sections 401 CC and 296 PC). It is important for you to note that it is the use or threatened use of violence that is distinguishing factor between the offences of stealing and robbery. You can see as treated above that in stealing, the use or threatened use of violence is absent.

In robbery, you must note that it is not a defence to the offender that the gun used at the time of robbery was in fact not loaded, if reasonable man in the circumstances of the victim would anticipate that violence will result to his person. See *Babalola v. State* [1970] 1 All N.L.R. 44.

The use of violence by one of the people who have gone to steal will not constitute robbery on the part of others if it can be shown that the other people in that group were not party to the use or threatened use of violence.

Punishment

The punishment for robbery is imprisonment for fourteen years (section 402 CC) and under the Penal Code it is up to ten years imprisonment (section 298), while an attempt to commit the offence under both codes carries the punishment of imprisonment for seven years (sections 403 CC and 299 PC). Under the Penal Code the offender is in addition liable to a fine.

The punishment for robbery is however severe both under the Criminal and the Penal Codes if at the time of robbery, the offender is armed with dangerous weapon or offensive weapon, etc. In such cases the punishment can extend to imprisonment for fifteen years or even for life under both Codes. See sections 403 CC and 298(b) and (c) PC.

SELF ASSESSMENT EXERCISE 3

What distinguishes the offence of stealing from that of robbery or stealing with violence?

3.4 Receiving stolen property

You must understand that under the law, it is not only an offence for anyone to steal but also an offence for anyone to receive a stolen property. Section 427 of the Criminal Code thus makes receiving anything which has been obtained through the commission of crime also a crime. It is immaterial that the property was not obtained through such a crime in Nigeria. This offence is itself geared towards discouraging stealing and protection of property. Under the Penal Code receiving stolen property is covered by section 316.

The important elements here are that, you must have 'received' the property in question and also have 'knowledge' of the fact that the property so received was stolen.

To constitute 'receiving', it is sufficient if you are in actual (physical) possession of the stolen property or if it can be deemed that you are in possession (by virtue of the fact that the stolen property is in possession of someone over whom you have control or authority), either alone or in conjunction with others, or if you have aided the disposal or concealment of such property. See *R v. Osakwe* [1963] All N.L.R. 362.

In the same vein, knowledge that the property is stolen is required before you can be guilty of the offence. You will however be deemed to have such knowledge if judging from circumstances of the case, a reasonable man ought to have suspected the property in question to have been stolen, for example where the property in question is sold at a ridiculously low price. See *R. v. Braimah* (1943) W.A.C.A. 197.

The general condition of the property may also indicate that the accused ought to have suspected that the property was stolen e.g. where the name written on it or other marks of the owner has been defaced or altered. You must be very careful in purchasing second goods on the streets and in places that are not ordinarily markets or places used in the ordinary course of business, in order not to risk buying a stolen property.

You need to appreciate that being in possession of a property which has been stolen within twelve months before the accused was charged or that within five years before accused was charged for the offence, he has been convicted for an

offence involving fraud or dishonesty, is sufficient to prove guilty knowledge on the part of the accused. (See section 46 of the Evidence Act).

Doctrine of recent possession

There is also the doctrine of recent possession contained under section 148 of the Evidence Act. If a person is possession if a stolen goods after its theft, that person is presumed to be either the thief or has received the goods in the knowledge that they have been stolen, except the person can give justifiable account of such possession. See *R. v. Iyakwe* (1944) W.A.C.A. 180; *Martins v. State* (1997) 1 NWLR (Pt. 481) 355 CA.

You must realize that where the stolen property was converted to another one, the person who received the converted property will not be guilty of the offence of receiving stolen property. E.g. where Stephen stole a gold wristwatch sold it and from the proceeds gave Toiru the sum of N2,000, Toiru will not be guilty of receiving stolen property because what was stolen is not money.

Punishment

The punishment of receiving stolen property ranges from imprisonment for seven to fourteen years, depending on the nature of property in question.

SELF ASSESSMENT EXERCISE 4

1. Give two examples of acts that can constitute receiving in the offence of receiving stolen property.

2. What is the doctrine of recent possession?

4.0 CONCLUSION

In this unit we are able to learn about the offences of stealing, stealing with violence, otherwise known as robbery and receiving stolen property. The elements of these offences were analyzed and the distinguishing factor between the offences of stealing and robbery was also considered. Also considered, are the various punishments for different offences and why the punishment of one offence is severe more than others in some cases.

5.0 SUMMARY

Stealing essentially involves the fraudulent taking or conversion of the property of another with the intent to deprive the owner permanently of that thing.

It is important that the property in question must be capable of being stolen.

Land, timber, corpses and animals in their natural habitats cannot be stolen.

In the offence of stealing, there is no use or the threatened use of force or violence while in robbery this is present.

The offence of receiving stolen property is aimed at protecting the interest of property owners in a third party and also to discourage stealing.

6.0 TUTOR MARKED ASSIGNMENT

1. Sandra and Susan were both having a lecture and have their handbags which are similar placed on table in the lecture room. At the end of the lecture, Sandra mistakenly picked the handbag belonging to Susan and left for home. On getting home, Sandra discovered that the handbag belonged to Susan. Sandra however decided to use the handbag to a party before returning the bag to Susan on the third day. Since Sandra has deprived Susan the use of her bag, has Sandra committed the offence of stealing?

2. What constitutes taking in the offence of stealing? Can the mere picking up and examination of a property belonging to another constitute taking in the offence of stealing?

7.0 REFERENCES/FURTHER READINGS

Okonkwo and Naish: Criminal Law in Nigeria, 2nd Edition, Sweet & Maxwell, London, 1980.

Frank, W.F., The General Principles of English Law, 6th Edition, Harrap, London, 1975.

Smith and Hogan, Criminal Law, 5th Edition, Butterworth, London, 1983.

The Criminal Code Act, Cap 77, Laws of the Federation of Nigeria 1990.

The Penal Code (Northern States) Federal Provisions Act, Cap 345, Laws of the Federation of Nigeria 1990.

UNIT 2 HOUSEBREAKING AND BURGLARY

CONTENTS

1.0 INTRODUCTION

The protection offers property by law extends to dwelling houses and property contained in them. The law makes the acts of breaking and entering into the house of another with the intention of committing a crime in it an offence. This offence also covers situation where someone enters a building and after committing a crime in it breaks out of it.

2.0 OBJECTIVES

By the time this unit is treated, you should be able to:

- Describe what is housebreaking and burglary
- Explain the elements of housebreaking
- Distinguish between the offences of housebreaking and burglary
- Appreciate why punishment for burglary is severe

3.0 MAIN CONTENT

3.1 Housebreaking

It is an offence for anybody to break and enter the dwelling-house of another with the intention of committing a crime in it or having entered the dwelling-house with intent to commit a crime in it or having committed a crime in it breaks out of the house (section 411). House breaking is covered under section 346 of the Penal Code.

3.2 Elements of housebreaking

You need to note that the essential ingredients to be proved in the offence of housebreaking are, that the building in question is a dwelling-house, intent to commit a felony (a crime), that there is breaking in and/or out, and entry into the building.

Breaking

The act of breaking in can be committed by the actual breaking of any external or internal part of a building or by unlocking, pulling, pushing, lifting of a door, window shutter which are ordinarily used for closing or opening a building or used as giving passage to the building or from one part of the building to another. (See section 410 CC).

It is also breaking in where entrance into a building is obtained by means of a threat or by trick. Thus, if a person intending to commit a crime in your house knocked on your door and pretended to be looking for someone in your premises made you to open your door and stole your things in the process, this will be housebreaking. The situation will be different if the door is left open and a person comes in to steal. As you cannot claim that the person breaks in, this cannot amount to housebreaking or where the door is partially open and the thief pushes it further in order to be able to gain entrance into the building.

It will however amount to breaking in if entrance is obtained into a building by collusion with any person in building or if entrance is gained through the chimney or any small opening in the building left open for any use other than as a means of entrance.

Entering

To constitute entering, the whole body of the accused person needs not to have entered the building. It is sufficient if any part of the accused's body is within the building. See *Collins* [1972] 2 All ER1105. Thus there will be entry where the accused person projects his hand or leg inside the building but not of any instrument used by him.

However, if the instrument projected by the accused person into the building was actually used to steal from the building, such as where the accused used the instrument to draw a handset or other property from within the building, this will constitute entry except if the instrument was used only to further the accused's entry into the building and nothing more. This is the distinction drawn at common law in respect of projection of instrument into the building, it is left to the Nigerian courts whether to follow this distinction or not.

Dwelling-house

The definition of a dwelling-house includes any building or structure, or part of a building or structure which is for the time being ordinarily used for residence. The fact that there was nobody living in the building at the time the offence was committed or that the building is not occupied from time to time is irrelevant. (See section 1 of the Criminal Code on interpretation of dwelling house).
The deciding factor whether a building is a dwelling-house or not is the use to which the building in question is put to and not what it is built for. Thus, a caravan or houseboat used as a house will qualify as a dwelling-house for this purpose. See *R. v. Rose* [1965] Q.W.N. 35. The same applies to a ship. See *The Jupiter (No. 3)* [1927] p. 122.

Intent to commit felony

As a necessary ingredient of this offence, you need to know that the accused person must intend to commit felony (a serious crime) within the building. It need not necessarily be the intent to steal anything from the building but the intent to commit a crime – e.g. murder, must be present at the time of breaking into the building. If such intent is lacking at that material time but is only formed after the breaking in and entry into the building is completed, there is no housebreaking.

SELF ASSESSMENT EXERCISE 1

1. If Stephanie in the process of breaking into the house of Rose with intend to steal from it projects the instrument into the window in order to force open the window and thereby gain entry into the building. When Rose heard the noise being

made by the force exerted on the window, raised an alarm which made Stephanie to take to his heels abandoning his instrument. Has Stephanie committed any offence?

3.3 Burglary

It is important to state that the offence of burglary have the same ingredients as that of housebreaking. The only difference between the two offences is the time when the offence was committed. If the offence is committed during the day it is housebreaking and if committed at night is it burglary.

In order to show that the offence is committed at night, there is necessity to prove the offence was committed between the hours of 6.30pm in the evening and 6.30am in the morning. Thus, if the breaking and entry took place 6.00pm and after committing a crime within the building the accused left the building at 6.45pm this will not be burglary unless after committing the crime, the accused breaks out of the building at 6.45pm.

Under section 347 of the Penal Code, for the offence to be burglary it must be committed between sunset and sunrise.

SELF ASSESSMENT EXERCISE 2

What is the distinguishing element between the offence of housebreaking and burglary?

Punishments

The punishment for housebreaking is imprisonment for fourteen years and for burglary, it is imprisonment for life (section 411 CC). An attempt to commit the offence attracts seven years imprisonment while that of burglary it is imprisonment for fourteen years (section 412 CC). Breaking in/out of other buildings carries stiffer punishments.

House trespass under section 349 of the Penal Code carries a maximum of one year imprisonment or with fine. Housebreaking by night under the Code attracts three years imprisonment with fine (section 355 PC).

SELF ASSESSMENT EXERCISE 3

What is the punishment for the offence of housebreaking under the Criminal Code and housebreaking by night under the Penal Code?

4.0 CONCLUSION

In this unit, we are able to learn about the offences of housebreaking and burglary, the essential ingredients needed to be proved in respect of the two offences and how these elements are necessary to securing conviction of the accused. We also saw that the punishment for burglary is severe than that of housebreaking.

5.0 SUMMARY

In housebreaking, it is essential that there must be a breaking in and entry into a living house with intent to commit a serious crime.

Housebreaking and burglary have the same elements except that one is committed by day and the other at night.

When the acts of breaking in and entry into a dwelling house is carried out by day it is housebreaking and if done at night it is burglary.

The punishment for burglary is severe than that of housebreaking because the offence is committed at night.

6.0 TUTOR-MARKED ASSIGNMENT

On a Saturday evening at 6.10pm Jang broke into Orlando's flat in order to access Frank's flat in another part of the building with intent to steal from it but on getting to Frank's flat Jang did not find something worth stealing and broke out of Frank's flat through the window at 6.50pm after ransacking the whole flat. What offence has Jang committed if any and what is the punishment for the offence identified by you?

7.0 REFERENCES/FURTHER READINGS

Okonkwo and Naish: Criminal Law in Nigeria, 2nd Edition, Sweet & Maxwell, 1980.

Frank, W.F., The General Principles of English Law, 6th Edition, Harrap, London, 1975.

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UNIT 3 OBTAINING PROPERTY BY FALSE PRETENCE

CONTENTS

1.0 INTRODUCTION

The aim of the offence of obtaining property by false pretence (otherwise known as '419' in Nigeria because the offence is contained in section 419 of the Criminal Code) is to protect the interest of property owners where such owners gave their consent to the property that was obtained but it turned out that such consent was acquired by false pretence. This is because under stealing, the offence will not be committed where the owner of the property freely gave his consent to the property that was taken or converted.

The offence of obtaining property by false pretence will be committed where anyone obtains from another, anything capable of being stolen or induces the delivery of any of such thing from one person to another, under false pretence with the intention to defraud that person.

2.0 OBJECTIVES

By the time the subject in this unit is fully treated, you should be able to:

- Describe what is obtaining property by false pretence
- Explain the elements of obtaining property by false pretence
- Appreciate why obtaining property by false pretence is an offence

3.0 MAIN CONTENT

3.1 Obtaining property by false pretence

The offence of obtaining property by false pretence covers acts where someone obtains anything capable of being stolen from another person under false pretence with the intention to defraud that person. The offence is also committed where someone by false pretence induces (influence) any person to deliver to another person anything capable of being stolen with the intention to defraud (See section 419 CC). Under the Penal Code, the offence is covered by the offences of cheating (section 320) and cheating by personation (section 321).

3.2 Elements of obtaining property by false pretence

The elements of the offence are, 'false pretence', 'intent to defraud', 'obtaining' and 'anything capable of being stolen'. In other words, there must be a false representation made by someone with the intention to defraud another through which the other person parted with his/her property or delivers such property at the false pretence of someone to another.

False pretence or representation

You need to know that there must be a representation made by the accused person whether by words, in writing or by words in respect of any matter either in the past or present. Such representation will only amount to a false pretence if the person making it knows that what he/she presents as true is false or does not believe it to be true.

Issuing a cheque for the payment of goods which the accused knew that will not be honoured, whether by reason of fact that there is no money in the account on which it was drawn or that accused does not have overdraft facilities on the account for the cheque to be honoured. See *Halstead v. Patel* [1972] 2 All E.R. 147.

However where the accused merely exaggerated as to the quality of goods, beyond what is reasonable this may not amount to a false pretence. See *Bryan* (1857) Dears & B 265.

Note that the false pretence must relate to a past or present matter. If it relates to the future then this will not amount to false representation. *R. v. Dent* [1955]2 All E.R. 806. Although a representation may relate to the future, if the material part of it relates to the present, this will amount to false representation. See *R. v. Jennison* (1862) L & C 157.

SELF ASSESSMENT EXERCISE 1

If Rashid approached his bank for a loan and offered to pledge his Rolex gold wristwatch on account of which he was advanced a loan after which it was discovered that the wristwatch is in fact a fake. What offence has Rashid committed, if any?

Intent to defraud

The accused person must have the intention to defraud by the false representation, although the intention to defraud a particular person is not required. If that intention is absent then the offence is not committed.

Obtaining

It must be established that the false representation by the accused induced the owner of the property to part with it. The offence therefore presupposes that there must be a person or persons who have acted on the false pretence. See *Director of Public Prosecution v. Ray* (1973) 3 All ER 131. One can therefore not obtain by false pretence from a machine, e.g. vending machines, as a machine cannot be deceived.

Anything capable of being stolen

As treated under stealing, anything capable of being stolen has the same meaning here. Hence, property capable of being subject of ownership whether living or non-living thing falls under this category. Land therefore cannot be obtained by false pretence. Neither is tree or crops, except where they have been severed from the ground.

SELF ASSESSMENT EXERCISE 2

Timmons intends to acquire an international passport with the aim of travelling to Spain met Bolus claiming to be an immigration officer obtained the sum of N15,000 from Timmons with the aim of assisting him to procure an international passport. Bolus failed to procure the passport and did not return Timmons's money. Advise if Bolus has committed any offence.

Punishments

The offence of obtaining by false pretence attracts a punishment of three years in imprisonment. If however the value of the property involved is one thousand naira or more then the punishment is seven years imprisonment (section 419 CC). Cheating under the Penal Code attracts maximum three years imprisonment of with fine (section 322), while cheating by personation attracts maximum five years imprisonment or with fine (section 324).

4.0 CONCLUSION

In this unit, we have learnt about the offence of obtaining property by false pretence, the elements of this offence and the punishments available under this. This offence has proved to be an important one is protecting property owners against fraudulent individuals.

5.0 SUMMARY

In the offence of obtaining property by false pretence, it is essential that there is false representation by one person.

The false representation must have been acted upon by another by delivery of property.

The intention to defraud must be present on part if the person making the false representation and who has obtained the property in question.

If a person is not deceived by the false representation in parting with his property, then the offence is not committed.

Obtaining property by false pretence is an offence notwithstanding the fact that the property owner parted with it with his consent because the consent was obtained by fraud.

6.0 TUTOR-MARKED ASSIGNMENT

Rambo and Baker walked into Tesco restaurant which has a mini-mart inside, having sat down comfortably Rambo ordered for a plate of fried rice with chicken and an Irish cream as the preferred drink. Baker on his part bought an expensive blackberry handset from the mini-mart and issued a cheque in payment for the handset. As the waiter in the restaurant went into the inner room to bring an order by another customer, Rambo, noticing that nobody was watching quickly walked out of the restaurant before the waiter emerges from the inner room and escaped

the payment for his order. The cheque issued by Baker in payment for the handset was dishonoured on presentation for lack of money in Baker's account. Advise the Management of Tesco restaurant as to the offences committed by Rambo and Baker.

7.0 REFERENCES/FURTHER READINGS

Okonkwo and Naish: Criminal Law in Nigeria, 2nd Edition, Sweet & Maxwell, 1980.

Smith and Hogan, Criminal Law, 5th Edition, Butterworth, London, 1983.

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MODULE 2 OFFENCES AGAINST THE STATE AND PUPLIC ORDER

UNIT 1 TREASON

CONTENTS

1.0 INTRODUCTION

It is deemed that the safety of a sovereign nation and of its head is essential to the existence of that nation. Thus, in order to prevent any person or group or persons from waging war against the Government of Nigeria or threatening its existence, certain acts of individual(s) such as levying, instigating or conspiring to wage war against the Government have been prohibited by the offence of treason.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Describe what is treason or treasonable felony
- Explain acts which can constitute treason or a conspiracy of it
- Know that there is time limitation for prosecution of offences

3.0 MAIN CONTENT

3.1 Treason

An offence viewed with all seriousness by the state is that which tends to threaten its stability or safety by acts of levying war against the State. In section 37 of the Criminal Code, it is an offence for any person to levy war against the State in order to intimidate or overawe the President or the Governor of a State. This is covered under section 410 of the Penal Code.

3.2 What constitutes treason?

To constitute the act of levying of war, it does not matter the persons charged with treason do not belong to the military or even have special training in the use of arms or that they are small in number. The war the accused persons are charged with must not relate to a private purpose but a general and public one, otherwise the offence may be riot rather than treason. See *R v. Hardle* (1821) 1 St. Tr. 609.

In proofing the offence of treason, it is not required that the President or Head of State should be personally intimidated or overawed, as intimidating the State also amounts to intimidating the Head of State and vice versa because the Head of State is the embodiment of the State. See *R v. Boro* [1966] 1 All N.L.R. 266.

You must bear in mind that it is also an offence for any person to conspire with another either within or outside Nigeria to levy war against the State.. See *Enahoro v. Queen* [1965] 1 All N.L.R. 125.

As a result of the seriousness attached to this offence, its punishment is capital punishment – death, both under the Criminal and Penal Codes. This is to deter people from engaging in treasonable acts and to maximally punish those that engage in it, and also to preserve the stability and safety of the nation and reign of its leaders.

It is also treason for any person to instigate any foreigner to invade Nigeria or any part under both the Criminal (section 38) and Penal Codes (section 412(1)(b).

Concealment of treason - accessory before and after the fact

It is an offence for anyone who becomes an accessory after the fact to treason or knowing that treason is to be committed and did not such give information with reasonable dispatch to the President or the Governor of the State or a peace officer.

An accessory after the fact is someone who helps a criminal after he has committed a crime to avoid arrest or trial, although the helper was present at the place where the offence was committed. Punishment for this is imprisonment for life (section 40 CC).

SELF ASSESSMENT EXERCISE 1

Tubman, Bashiru, Kotun and Dan are supporters of one of the political parties in Nigeria and were arrested while shooting into the air and engaging in other violent acts at one of the polling boots in Abuja during the 2007 presidential election. They were thereafter charged with treason. Advise the Government on this charge.

3.3 Treasonable felony

Note that the forming of an intention by any person to levy, instigate or conspire to wage war against the State and/or the President and the manifestation of such intention by an overt act is treasonable felony and is punishable by imprisonment for life (section 41 CC).

Promoting native war is also an offence and is punishable with imprisonment for life (section 42 CC).

SELF ASSESSMENT EXERCISE 2

1. What are the acts that can constitute treason and treasonable felony?

3.4 Time limitation for prosecution of offences

Although there is generally no time limitation for the prosecution of a crime in criminal law, there is an exception with respect to treason and related offences, as nobody can be tried for such offences unless the prosecution is commenced within two years after the offence is committed (section 43 CC).

SELF ASSESSMENT EXERCISE 3

Can someone be tried for the offence of concealing the treason five years after the offence has been committed?

3.5 Evidence

In the prosecution of the offences under treason, nobody can be convicted unless he/she pleads guilty to the offence(s) or there is proof of the commission of such offence(s) by two witnesses in open court of at least one overt act of the type of

treason or felony charged with or by two witnesses who are witnesses to different overt acts each of the treason or felony the accused is charged with. See *Omisade v. Queen* [1964] 1 All N.L.R. 233.

4.0 CONCLUSION

In this unit, we have examined treason and related offences. Also examined are the elements of these offences and what is required to be proved by prosecution under each offence. The nature of evidence required before a person charged for any treason and related offences can be convicted and the time limitation for the prosecution of offences under this heading were considered.

5.0 SUMMARY

It is treason to levy war against the State or the President or Government of a State.

The President need not be personally intimidated by the act of leaving war against the State.

It is treason for any person to instigate any foreigner to invade Nigeria with an armed force.

It is an offence for anyone to conceal the offence of treason.

Anyone who gives any assistance to person(s) who have committed the offence of treason equally commits an offence.

The war the accused persons are alleged to be levying must relate to a general and public purpose, not a private one.

Prosecution for treason offences can only be carried out within two years after the commission of the offence.

6.0 TUTOR-MARKED ASSIGNMENT

1. A, B, C, and D were charged with the offence of intending to levy war against Nigeria which is manifested by the overt acts of their two weeks of intensive training session of how to effective aim and get a target with the locally made gun. They claimed that they were merely training to defence themselves in the event of any unprovoked attack on their community. Advise if any offence has been committed.

2. A and B were charged for treasonable felony of being giving assistance to those who have been charged with levying war against Nigeria four years after the offence has been committed. Can this charge be sustained against A and B?

7.0 REFERENCES/FURTHER READINGS

Okonkwo and Naish: Criminal Law in Nigeria, 2nd Edition, Sweet & Maxwell, 1980.

Smith and Hogan, Criminal Law, 5th Edition, Butterworth, London, 1983.

Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990

The Penal Code (Northern States) Federal Provisions Act, Cap 345, Laws of the Federation of Nigeria 1990.

UNIT 2 SEDITION

CONTENTS

1.0 INTRODUCTION

The offence of sedition is aimed at protecting public peace by prohibiting any act or conduct which brings or tends to bring hatred or contempt to the person of the President or Governor of a State, or which excites disaffection against them, Federal or State Government or against the administration of justice or raise discontent or disaffection among the citizens or other inhabitants of Nigeria. It also covers the protection of government against malicious criticisms. These acts can be by words or publication.

Generally, sedition is usually opposed by the public because of its interference with the exercise of free speech by the citizens. Section 39(1) of the 1999 Constitution for instance provides that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

The court therefore plays a crucial role in clearly defining the limits of the law of sedition in order to protect the right to free speech which is an essential ingredient of a democratic society, including the right to fairly criticize government and its activities. State security and the right to free speech thus ought to be properly balanced in this respect.

2.0 OBJECTIVES

At the end of this unit, you should be able to:
- Describe what sedition is
- Explain what the elements of the offence are
- State the exceptions to sedition
- Explain possible defences to the offence of sedition

3.0 MAIN CONTENT

3.1 Sedition

Under section 51 (1) of the Criminal Code the offence of sedition cover situations where:

a. any person does or attempts to do any preparation, or conspires with any person to do, any act with a seditious intention;
b. any person utters any seditious words;
c. any person prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;
d. any person imports any seditious publication, unless he has no reason to believe that it is seditious.

In any of the above cases, such a person shall be guilty of an offence and be liable on conviction, for a first offence to imprisonment for two years or to a fine of N200 or to both, and for a subsequent offence, to imprisonment for three years; and any seditious publication shall be forfeited to the government. It also an offence for any person without lawful excuse to have in his possession any seditious publication (section 51(2) CC).

Sedition is provided in section 416 of the Penal Code with punishment up to seven years imprisonment or with fine, or both.

SELF ASSESSMENT EXERCISE 1

1. Mention two acts that can amount to the offence of sedition.

3.2 Seditious intention

It is essential for you to know that in an offence of sedition, there must be seditious intention and this has been defined in section 50(2) as an intention:

a. to bring into hatred or contempt or to excite disaffection against the person of the President, or the Governor of a State, or the Government of the Federation, or of any State thereof, or against the administration of justice in Nigeria; or
b. to excite the citizens or other inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established; or
c. to raise discontent or disaffection amongst the citizens or other inhabitants of Nigeria; or
d. to promote feelings of ill-will and hostility between different classes of the population of Nigeria.

Under section 416 of the Penal Code, seditious intention as provided in the Criminal Code have almost the same meaning, although the word 'seditious intention' was not used in the Penal Code.

You must note that section 50(2) of the Criminal Code provides for acts, speech or publication that is not seditious if only it intends:

i. To show that the President or the Governor of a State has been misled or mistaken in any measure in the Federation or a State, as the case may be; or
ii. To point out errors or defects in the Government or constitution of Nigeria, or of any State thereof, or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or
iii. To persuade the citizens or other inhabitants of Nigeria to attempt to procure by lawful means the alteration of any matter in Nigeria as by law established; or
iv. To point out, with a view to their removal, any matter which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Nigeria. The position is the same under the Penal Code.

According to learned authors, Okonkwo and Naish, the provision in clause IV above is essential to safeguarding the right of the citizens to fairly criticize government.
The Nigerian Supreme Court has recognized this fact and demonstrated ability to protect the right to criticize the government of the day in *D.P.P. v. Obi*, [1961] 1 All N.L.R. 186 at 194 per Ademola, FCJ., where it affirmed the right of citizens to fairly criticize or censure the activities of government, including their public policy as long as this is not done in a maligned manner in a way that public peace can be affected.

The position in Nigeria is in consonance with the position in other jurisdictions. The U.S. Supreme Court for instance since 1927 in *Whitney v. California,* 274 U.S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 (1927) has taken the protection of the right

to free speech under First Amendment of the U.S. Constitution seriously where court per Justice Louis D. Brandeis stated that, free speech under the First Amendment cannot be denied where the advocacy does not amount to an incitement and also where there is no evidence that the advocacy would be immediately acted upon. In the UK case of *Burns* (1886) 16 Cox CC 355 at 362 per Cave J., the importance of free speech and of the press was emphasized.

Under the Criminal Code, there is no requirement that the alleged seditious words should intend to incite to violence in as much as the seditious intention is very clear. See *R. v. Wallace Johnson* (1939) 5 W.A.C.A. 56. No such requirement is manifest under the Penal Code.

Among some of the cases that have come before Nigerian courts, publication accusing the government of a region of abuse of office, misuse of public funds, etc. for instance, has been declared as seditious. See *African Press Ltd. v. Att.-Gen. (W.N.)* [1952] 1 All N.L.R. 12. Also, accusation of partiality and corruption in the administration of justice directed at the police and the Legal Department has equally been declared as seditious. See *R. v. African Press* [1957] W.N. L.R. 1.

SELF ASSESSMENT EXERCISE 2

1. What is a seditious intention?

2. Mention three acts, speech or publication that will not amount to sedition.

3.3 Proof of seditious intention

Seditious intention on the part of the accused can be inferred from either the manner of publication of the alleged seditious words or the language used by the accused, although such seditious words may produce different results depending on the audience being addressed. For instance, if the audience is that of enlightened educated people the use of a particular language may not incite to violence than it would if the audience is that of uneducated young artisans. See *R. v. Aldred* (1909) 22 Cox CC 1.

The essential element that you must note here is that, the words used must have the tendency to incite ordinary people to violence. It is however not a defence that the people addressed were unmoved by such words to violence. See *Burns* (supra).

You therefore need to know that, the alleged seditious words will be interpreted in the light of the surrounding circumstances. According to section 50(3) of the Criminal Code, in determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious,

every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself. This means that, you must take care in ensuring that your act, words or publication is in fact not seditious.

It follows from the above provision that if you publish or utter words which are seditious but for which you have no seditious intention, you will nevertheless be liable for the offence, if from your words or publication, such intention can be inferred. The provision of section 50(3) is essential in inferring seditious intention from the natural consequences of the publication or words used. Thus, it behooves responsibility on the part of anyone publishing or uttering words on public issues to ensure that they are not seditious.

However, you must note that the essential part of the common law of sedition and seditious libel as indicated by the Supreme Court of Canada in *Boucher v. The King* [1951] 2 D.L.R. 369 is to the effect that, an alleged seditious action should be directed against the State with intention to cause public mischief and that such mischief must directly and materially obstruct public authority. This being so, the intention to incite should be required under the Criminal Code and not merely by deeming a person to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself. This is in accord with the decision in the old UK case of *Collins* (1839) 9 C & P 456 at 461.

SELF ASSESSMENT EXERCISE 3

1. Mention two ways by which seditious intention can be proved or inferred.

3.4. Defences to charge of sedition

You need to know that the truth of an alleged seditious words or publication may sometimes amount to a defence in the charge of sedition, especially in showing that the intention of the accused relates to the exceptions contained under section 50(2) of the Criminal Code. See *D.P.P. v. Obi* [1961] 1 All N.L.R. 186.

Otherwise, generally, once the prosecution has proved seditious intention, it is not a defence on the part of the accused that the words or publication alleged as seditious are true. See *Service Press v. Att.-Gen.* (1952) 14 W.A.C.A. 176.

Apart from the defence of truth, it is up to the accused to defend the alleged seditious words by proving that they are not seditious. This the accused can do by narrating the surrounding circumstances in which the words were uttered or point to other words in the alleged publication negating such intention. Also, if someone

is charged with being in possession of a seditious publication, it is a defence if he has a lawful excuse for such possession, especially if he is unaware that the publication contained any seditious subject.

Under section 51(1) (c) of the Criminal Code, you must bear in mind that anyone who sells, offer for sale and distributes seditious publication e.g. vendors may be guilty of sedition without being aware that such publication contained seditious matter.
In a way, there is connection between treason and sedition in that, in both offences action and conduct are addressed towards threatening public peace. However in sedition, the seditious words or publication although capable of inciting the public to violence is not equivalent to treason because treason is a direct act of violence against government.

SELF ASSESSMENT EXERCISE 4

1. Can truth of alleged seditious publication be a defence to a charge of sedition?

3.5 Requirements for prosecution

There are requirements to be met before any person can be successfully prosecuted on the charge of sedition. These are spelt out under section 52 of the Criminal Code as follows:

1. No prosecution for any seditious offence (under section 51 CC) shall be begun except within six months after the offence is committed;
2. A person cannot be prosecuted for sedition (under section 51 CC) without the written consent of the Attorney-General of the Federation or of the State concerned;
3. No person shall be convicted of an offence under paragraph (b) of section 1 of section 51 CC (i.e. concerning uttering of seditious words) on the uncorroborated testimony of one witness.

SELF ASSESSMENT EXERCISE 5

1. What is the period within which the prosecution for any seditious offence must be commenced?

4.0 CONCLUSION

In this unit, we have shown what sedition and seditious intention are. We have also noted that it is an offence for any person who without lawful excuse has in his possession any seditious publication. We also learnt that there is no requirement that the alleged seditious words should intend to incite to violence under the

Criminal Code once the seditious intention is clear. It is shown in this unit that seditious intention can be inferred from the language used by the accused because what is material here is that the words used must have the tendency to incite ordinary people to violence.

5.0 SUMMARY

Sedition is principally an offence of exciting feeling of disaffection against the person of the President, or the Governor of a State or against the Government, among others.
To fairly criticize the activities or measures of government in order to obtain alteration by lawful means and without exciting a feeling of disaffection will not amount to an offence.

That in view of the provision of section 50(3) of the Criminal Code which shall deem every person to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself, it behooves responsibility on the part of anyone publishing or uttering words on public issues to ensure that they are not seditious.

The truth of an alleged seditious publication may sometimes be a defence but generally is it not a defence to a charge of sedition.

6.0 TUTOR MARKED ASSIGNMENT

1. In order for words to amount to sedition, is it necessary that the alleged seditious words should intend to incite to violence? Would the position be different if the words used are inciting but the audience was not moved to violence?

7.0 REFERENCES/FURTHER READINGS

Okonkwo and Naish: Criminal Law in Nigeria, 2nd Edition, Sweet & Maxwell, 1980.

Smith and Hogan, Criminal Law, 5th Edition, Butterworth, London, 1983.

E. Lauterpacht and C.J. Greenwood (eds), International Law Reports: Volume 87 Cambridge University Press 1992.

Okonkwo & Naish (1990) Criminal Law in Nigeria Ibadan: Spectrum
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The Criminal Code Act, Cap 77, Laws of the Federation of Nigeria 1990.

The Penal Code (Northern States) Federal Provisions Act, Cap 345, Laws of the Federation of Nigeria 1990.

The Constitution of the Federal Republic of Nigeria 1999.

UNIT 3 UNLAWFUL ASSEMBLY, RIOT AND AFFRAY

CONTENTS

1.0 INTRODUCTION

Under both the Criminal and Penal Codes, there offences meant to prevent the breach of public peace; these are unlawful assembly, riot and affray, although such exact words may not be used in both Codes. The Nigerian position is patterned after common law where the said offences and some others, e.g. rout, causing a breach of the peace and public nuisance, relates to preservation of public order. Such public order offences are therefore created in order to combat conceivable situations of public order problems.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Know what public order offences are
- Explain act(s) which can fall into breach of public peace
- Identify the elements of different offences under this heading
- Note the potential danger posed by some of these offences to the exercise of fundamental rights of the citizens

3.0 MAIN CONTENT

3.1 Unlawful assembly

Section 69 of the Criminal Code defined unlawful assembly as: “When three or more persons, with intent to carry out some common purpose, assemble in such a manner, or, being assembled, conduct themselves in such a manner, as to cause persons in the neighbourhood to fear on reasonable grounds that the persons so

assembled will tumultuously disturb the peace, or will by such assembly needlessly and without and any reasonable occasion provoke other person tumultuously to disturb the peace, they are an unlawful assembly." This offence is provided under the Penal Code in section 100 but the assembly is of five or more persons.

This offence is committed irrespective of the fact that the original assembling was lawful if, being assembled; they conduct themselves with a common purpose in such a manner as aforesaid. The position is the same under the Penal Code.

You need to distinguish between an assembly for the purpose of protecting a house against persons threatening to break and enter the house in order to commit an offence therein from other unlawful assemblies. In the former, it is not an unlawful assembly.

The punishment for taking part in an unlawful assembly both under the Criminal and Penal Codes is imprisonment for one year (sections 70 CC and 102 PC), in the case of the Penal Code, with fine or both.

Take note that the purpose of these offences is combat the disturbance of public peace or a likelihood of it. Thus, the assembly of three or more persons will be unlawful if it can be reasonably ascertained as likely to cause a breach of public peace. The important test for you to commit to memory here is that rational men should have reasonable grounds for the disturbance of public peace.

Conduct

You must know that it is an unlawful assembly if three or more persons come together with intent to carry out some common purpose. It is immaterial that the people involved changed their minds and left the place where they are assembled without causing a threat to peace.

Also bear in mind that, people may be at a meeting lawfully in the first place but if three or more persons come together to carry out some common purpose, the offence of unlawful assembly is committed. See *Burns* (supra) It is however not every presence at a meeting that is illegal. You will only be guilty by such presence if you share in the common purpose.

Another important point for you to note is that, a meeting for the purpose of committing an offence not connected to a breach of the peace is not an unlawful assembly, e.g. stealing, robbery, etc. There must be a probability of violence or tumult for a meeting to be an unlawful assembly. See *Chief Constable of Devon, ex parte Central Electricity Generating Board* (1981) 3 All ER 826.

You must note that the assembly need not necessarily be in a public place. If three or more persons met in a private house with intent to go out and commit acts that endangers public peace, it is unlawful assembly. See *Brodribb* (1816) 6 C & P 571.

Note that for an assembly to be unlawful, it is not important that those assembled should have the intention to commit any crime; it suffices if the persons are in such in a number that their presence reasonably raises terror and alarm within the neighbourhood. See *Stephens* (1839) State Tr. NS 1189.

The circumstances of every case will in most times determine whether the presence of people in such a particular large number will constitute an unlawful assembly, such as the manner in which they conduct themselves, if they are armed with clubs or weapons, the language used, etc.

Intent

The presence of a person at a meeting is not in all cases illegal, in order to show that a person unlawfully assembled, it must be proved that the person intends to use or abet the use of violence or that the person does or abet acts which to his knowledge is likely to result in the disturbance of public peace. See *Hunt* (1820) 1 State Tr NS 171. See also *Ogenyi v. I.G.P*. [1957] N.R.N.L.R. 140.

The offence of unlawful assembly covers acts that provoke other people to breach the peace.

SELF ASSESSMENT EXERCISE 1

1. What are the essential elements to be proved in the offence of unlawful assembly?

Unlawful assembly under the Public Order Act

A law hitherto regulating assemblies, meetings and processions in Nigeria was the Public Order Decree No. 5 of 1979 which repealed all public order laws in the States of the Federation and replaced them with a Federal Act for the purpose of maintaining public order among others. On the return to civil rule in 1999, the law was then codified as an Act of the National Assembly and designated as Public Order Act cap 382 Laws of the Federation of Nigeria 1990.

Under the law the Governor of each State is charged with the conduct of all assemblies, meetings and processions on public roads and places in the State (See section 1(1)). Anyone desirous of convening or collecting any assembly or

meeting or of forming any procession in such places must first seek and obtain a licence from the Governor. A licence may be issued upon conditions and a breach of this may entitle a superior officer of the police to order the assembly to disperse.

The Governor may delegate his powers under the Act to the Commissioner of Police in relation to the whole State or part thereof, (See section 1(4)) Provision was made for a person aggrieved by the decision of the Commissioner of Police or any superior police officer to appeal to the Governor who may require the Commissioner to give a decision on any appeal but the decision of the Governor shall be final.

Penalties are imposed for any assembly, meeting or procession which takes place without a licence, or that violates its condition, etc. (See sections 3, 4(5) and 5(1),(2) and (3)).

The Public Order Act has been a controversial law in Nigeria as some have alleged that the police used the law 'to harass, intimidate and brutalize innocent Nigerians', in the process of protesting unpopular policies of government by using excessive force against them, arresting and/or prosecuting those lawfully engaging in peaceful protest or rallies.

In this regard, the law has been viewed by many as infringing on the rights of Nigerians to freely assemble and associate with other persons contained in section 40 of the 1999 Constitution. Although the provision of section 40 is subject to section 45 (1) which permits any law that is reasonably justifiable in a democratic society, in the interest of defence, public safety, public order, etc., which led the Court of Appeal to affirm the lawfulness of the Public Order Act in *Lewis Chukwuma & 2 others v. Commissioner of Police* (2005) 8 NWLR (Pt. 927) 278.

Notwithstanding the above decision, it has been contended that it is only in cases of emergency that the right to freely assemble can be restricted and that the provisions of the Act, especially that of requiring people to seek and obtain licence from the police before people can freely assemble is antithetical to a democratic society as it placed a lid on the exercise of a right guaranteed by the Nigerian Constitution.

However, in *I.G.P. v. A.N.P.P.* (2007) 18 N.W.L.R. (Pt. 1066) 457 the Court of Appeal sitting in Abuja struck down the Public Order Act as impinging on the fundamental rights of Nigerians as guaranteed by the Constitution. The court held that no individual or group of persons requires a police permit or approval to hold rallies and peaceful assembly. This decision upheld the decision of the Federal

High Court, Abuja in *A.N.P.P. v. I.G.P.* (Suit No. FHC/ABJ/CS/54/2004) delivered on 24th day of June, 2005 which had declared the Act to be in conflict with the provision of section 40 of the 1999 Constitution.

The decision nullifying the Act is in conformity with the position in Ghana where the country's Supreme Court had in *New Patriotic Party v. IGP Accra* (2000) 2 HRLRA 1 nullified the Public Order Decree 1972 of Ghana requiring people to obtain police permit before embarking on public procession.

SELF ASSESSMENT EXERCISE 2

1. People numbering about 200 gathered at a public place to peacefully protest the planned total removal of petroleum subsidy by the Federal Government. The police swooped on them and arrested 40 of them on grounds that they are likely to cause a breach of public peace. Advise those arrested on the legality or otherwise of the police action.

Unlawful procession

An offence relating to breach of the peace is that of unlawful procession under section 88(1) of the Criminal Code, which provides:

Any persons who assemble together, to the number of three or more, under any of the following circumstances-

(a) Bearing or wearing or having any firearms or other offensive weapon, etc.; or

(b) Publicly exhibiting any, emblem, flag, or symbol, which is calculated to promote animosity between persons of different religious faiths or different factions, or

(c) Being accompanied by any music, beating of drums, etc., calculated to promote such animosity;

and, being so assembled, join in any parade or procession for the purpose of celebrating or commemorating any event connected with any religious or difference between persons residing in Nigeria or of demonstrating any such religious or difference, are guilty of an offence; and each of them is liable to imprisonment for one month. If the offender is himself bearing or wearing firearms, a bow and arrows, spear, sword, knife, or any other offensive weapon, he is liable to imprisonment for six months.

Under the Penal Code, related section is 111 connected with wearing or carrying of emblem or flag and carries punishment up to six months or with fine or both. In addition, the flag, emblem or article of clothing is liable to be forfeited.

3.2 Riot

Section 71 of the Criminal Code provides that any person who takes part in a riot is guilty of a felony and is liable to imprisonment for three years. In section 106 of the Penal Code, the punishment is imprisonment up to three years, or with fine or both.

Section 70 defines riot as: 'When an unlawful assembly has begun to act in so tumultuous manner as to disturb the peace, the assembly is called a riot, and the persons assembled are said to be riotously assembled'. Section 105 of the Penal Code defined the offence as whenever force or violence is used in an unlawful assembly, which is essentially the same as defined by the Criminal Code.

You must note that where certain group of people marched through some streets and forced their way through opposing groups causing people in the neighbourhood to fear, the offence of riot was not committed. See *Beatty v. Gillbanks* (1882) 9 Q.B.D. 308.

The congregating of about 500 people who were armed with weapons on a public highway, singing/chanting and constituting obstruction to the public way, and refusing to leave when asked to do so by the police was held to be a riot. See *R. v. Eyo* [1962] 1 All N.L.R. 515

Also, the stripping and beating up of someone in a public place by other people who came together for that purpose was held to constitute a riot. See *Adebiyi v. Inspector General of Police* [1956] W.N.L.R. 49.

However, you must be able to distinguish between the offence of unlawful assembly and riot because the essential factor is that in the former there need not be the actual use of violence, but the causing of persons in the neighbourhood to fear on reasonable grounds that the assembly will tumultuously disturb the peace; while in the latter, should be the actual disturbance of peace in the neighbourhood, usually by violence or use of force.

SELF ASSESSMENT EXERCISE 3

1. About 120 members of a social group marched through the streets of Benin without any offensive weapon causing those in the neighbourhood to fear. The police arrested them and charged 60 of them for the offence of riot. Is this charge properly or not?

The making of proclamation to disperse assembly

Under section 72 of the Criminal Code, a category of persons can make a proclamation in the name of the Federal Republic if they apprehend that riot will be committed by those assembled, commanding them to disperse peaceably. Failure to disperse following this, force can be used on those continuing or arrested, and it is an offence to continue the riot or prevent the making of the proclamation. (See sections 73, 74 and 75 CC)

3.3 Affray

Section 83 of the Criminal Code makes it an offence for any person to take part in a fight in a public place and such a person is liable to imprisonment for one year.

Where someone strikes another in self defence or use force to apprehend a fleeing criminal he will not be guilty of affray. The offence will be committed by a person striking another in violent manner irrespective of whether the person struck with violence retaliates or not. See *Taylor v. Director of Public Prosecutions* [1973] A.C. 964

SELF ASSESSMENT EXERCISE 1

1. If Kobina strikes Tafa in defence of Princess his ward being attacked by Tafa at the bus stop at about 8pm order to prevent Tafa from snatching Princess's handbag, has Kobina committed the offence of affray?

4.0 CONCLUSION

In this unit we have treated the offences of unlawful assembly, riot and affray as relating to preservation of public order. We also dealt with the Public Order Act under which police permit was required for holding public meetings or rallies and concluded that this Act has been declared void for being in conflict with the provisions of section 40 of the 1999 Constitution. We also treated the offence of unlawful procession which sought to deal with cases of processions calculated to promote religious or other animosity.

5.0 SUMMARY

Public order offences are those connected with the disturbance of public peace or a likelihood of it

There must be a probability of violence or tumult for a meeting to be an unlawful assembly.

It is an unlawful assembly if three or more persons come together with intent to carry out some common purpose.

It is unlawful assembly irrespective of the fact that the original assembling was lawful if, being assembled; they conduct themselves with a common purpose in such a manner as to cause persons in the neighbourhood to fear on reasonable grounds that the persons so assembled will tumultuously disturb the peace.

Not every presence at a meeting that is illegal, you will only be guilty by such presence if you share in the common purpose.

A meeting for the purpose of committing an offence not connected to a breach of the peace is not an unlawful assembly.

An assembly need not be in a public place for it to be unlawful. It suffices if the assembly in a private house is with intent to go out and commit acts that endangers public peace.

The offence of unlawful assembly covers acts that provoke other people to breach the peace.

In order to show that a person unlawfully assembled, it must be proved that the person intends to use or abet the use of violence or that the person does or abet acts which to his knowledge is likely to result in the disturbance of public peace.

The offence of unlawful procession is geared towards the prevention of acts that promote religious animosity or other difference or distinction among people.

The offence of riot relates to the use of force or violence in an unlawful assembly. The taking part in a fight in a public place by any person constitutes the offence of affray.

The offence of affray is not committed if you strike another in self defence or use force to apprehend a fleeing criminal.

Public order offences potentially pose threat to fundamental rights, such as the right to freely assemble and associate with others, among others.

6.0 TUTOR MARKED ASSIGNMENT

1. Advance argument for and against the decision of the Court of Appeal in *I.G.P. v. A.N.P.P.* (2007) 18 N.W.L.R. (Pt. 1066) 457 nullifying the Public Order Act.
2. Smart, Jalingo, and Dan were holding a meeting in the house of Kushiro with intention of going to rob a branch of Wonder Bank. Police got wind of the meeting and swooped on and arrested them. They were subsequently charged for the offences of unlawful assembly. Advise Smart, Jalingo, Dan and Kushiro as to the appropriateness of this charge, stating what is essential to be proved in the offence of an unlawful assembly.

7.0 REFERENCES/FURTHER READINGS

Okonkwo and Naish: Criminal Law in Nigeria, 2nd Edition, Sweet & Maxwell, 1980.

Smith and Hogan, Criminal Law, 5th Edition, Butterworth, London, 1983.

John Roach and Jurgen Thomaneck (eds), Police and public order in Europe, London; Dover, N.H.: Croom Helm, c1985.

The Criminal Code Act, Cap 77, Laws of the Federation of Nigeria 1990.

The Penal Code (Northern States) Federal Provisions Act, Cap 345, Laws of the Federation of Nigeria 1990.

The Constitution of the Federal Republic of Nigeria, 1999.

MODULE 3 OFFENCES OF CORRUPTION

Unit 1 Corruption and abuse of office by public officers
Unit 2 Corruption relating to administration of justice
Unit 3 Corruption related offences under the Code of Conduct
Unit 4 Offences of corruption under ICPC and EFCC Acts, etc.

UNIT 1 CORRUPTION AND ABUSE OF OFFICE BY PUBLIC OFFICERS

CONTENTS

1.0 INTRODUCTION

In Nigeria and other parts of the world, the offences against corruption serve many purposes apart from the general criminal law aims of punishing the offender and deterrence. In other words, offences against corruption are marks of disapproval of the acts of corruption but importantly they also protect the society against corruption.

However, corruption is more serious and pervasive than may be envisaged, posing serious threats to the political stability and security of societies, undermining democratic institutions, socio-economic development, ethical values and justice and jeopardizing sustainable development and the rule of law.

Offences of corruption dealing with public officers are geared towards ensuring accountability and transparency in the management of public affairs.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Understand the offences of bribery and abuse of office
- Explain the elements and shades of the offence of bribery
- Differentiate between acts bribery and extortion

3.0 MAIN CONTENT

3.1 Official corruption and abuse of office

Offences of corruption by public officers cover acts such as bribery and extortion. Although the two are forms of corruption, there is however notable difference between the two as stated by the court in *Abu Osidola v. Commissioner of Police* [1958] N.R.N.L.R. 42 at 46 as follows:

'While extortion injures the individual who is made to yield to it, bribe injures the common weal, not the giver of the bribe. It is made an offence for the protection of the community, not for the protection of persons who pay bribes'.

In the Australian case of *R v. Pangallo* (1991) 56 A Crim. R. 441 for instance, the court stressed the deterrence purpose of the offence of bribery.

3.2 Bribery

Sections 98, 98A, 98B, and 98C of the Criminal Code deals with all cases of official corruption and abuse of office. Section 98 concern cases where a public officers invites bribes on account of his action. Under the Penal Code, 'gratification' is used by sections 115, 116, 118 and 119; also the word 'public servant' is used instead of 'public officer'.

A public official is defined under section 98D to mean any person employed in the public service (as defined in the interpretation section 1(1) of the Criminal Code) or any judicial officer within the meaning of section 98C.

Section 98 makes it an offence for any public officer to corruptly ask for or to agree or attempts to receive or obtains any property or benefit of any kind for himself and any other person, or bribes etc., on account of anything done or to be done afterwards or omitted, or any favour or disfavour already shown to any person by the public officer in the discharge of his official duties. See section 115 of the Penal Code.

Such a public officer is guilty of official corruption and is liable to imprisonment for seven years both under the Criminal and Penal Codes. (See section 98(1) (a)(b)(i) and (ii) CC but under section115(c) (1) PC with fine or both).

One way by which it can be proved that the a public officer has received a bribe corruptly is that if during the prosecution for the offence it was proved that the officer received a bribe, promise or benefit from any person who is seeking or has a contract or seeking any other thing from government department where the officer is serving, it will be deemed that he received it corruptly, unless the contrary is proved (section 98(2) (a) and (b) CC).

Section 98A deals with situations where any person on account of actions of a public officer corruptly gives, confers or procures any property or benefit for a public official or corruptly promises or offers to give or to procure or attempt to procure any property or benefit for a public official or for any other person on account of the public officer's act or omission in relation to the performance of his duties. The public officer is guilty of the felony and is liable to imprisonment for seven years. See section 98A(1) CC. Under section 118 of Penal Code the punishment is three years or with fine, or both.

The offence under section 98A covers situations where such bribe was invited by or from any person acting on behalf of or related to such a person.

Section 98B covers cases where any person apart from the public officer, corruptly asks for, receives or obtains a bribe for himself or any other person or corruptly agrees or attempts these, on account of anything already done or omitted to be done by a public official in connection with his duties. The person is guilty of official corruption and is liable to imprisonment for seven years. See section 98B(1) (a) (b) (i) and (ii) CC.

Under section 98B, it is unnecessary to prove that any public officer counseled the commission of the offence, or that the accused believed that any public officer would do the act in question or that the accused intended to give the bribe or benefit in question or any part of it to a public officer. See section 98B(2)(a)(c) and (d) CC.

While the wording of these sections appears too technical, an analysis of the elements of both offences of corruptly receiving and giving will aid your understanding of these. These can be stated as follows:

The guilty act

Under sections 98, 98A and 98B CC, guilty act consist in mere asking for a bribe, giving or receiving it. Under section 98, mere asking without having received constitutes the offence. Note therefore, that the liability of a public officer who

having asked for the bribe thereafter changes his mind not to receive it will not be affected, although the court might be lenient in his punishment.

Under section 98, it is not a defence that the public officer did not subsequently do the act or omission. See section 98(3)(a) and (b) CC. Also, it need not be proved that the accused fulfilled his promise. See *Sogbanmu v. C.O.P.* 12 W.A.C.A. 356.

You should realize that the offence under section 98 is not committed if the public officer innocently receives the money but formed the corrupt intention only afterwards. This is because the corrupt intent must accompany the receipt of the money to constitute 'corruptly receives'. Learned authors, Okonkwo and Naish have submitted that is that case, the public officer might be guilty of stealing by conversion and cited the East African Court of Appeal case of *A.G. v. Kajembe* [1958] E.A. 505 at 513 in support.

SELF ASSESSMENT EXERCISE 1

1. Kato, a public officer demanded for the sum of N5,000.00 from Bram in order to help facilitate the processing of his application for compensation in respect of Bram's acquired land by government. In Kato's charger for the offence of bribery, he claimed that he did nothing to influence the processing of Bram's application. Discuss what constitutes guilty act in the offence of bribery; can the claim of Kato be a defence to his charge?

The manner of the act

Under sections 98, 98A and 98B CC, the offering or giving, receiving of the bribe must have been corruptly done. In section 98A for instance, you must note that the act, i.e. giving the bribe or a promise of it, must have been corruptly done. The offence is committed if the offeror intend to sway or deflect the public officer from the honest and impartial performance of his duties. See *Biobaku v. Police* (1951) 20 N.L.R. 30. In *Ogbu v. R* [1959] N.N.L.R. 22 the giving of a bribe to influence the appointment of someone as a village head was held to constitute the offence of corruptly giving.

Note however, that under section 98 a public servant will still be guilty of corruptly receiving a bribe irrespective of whether he did not do the act or omission, contrary to the decision in *Biobaku v. Polic*e, which was decided based on the old section 98 (1) of the Criminal Code which has now been deleted and replaced by the current section 98 in order to prevent situations where public officers who are manifestly corrupt evade punishment.

Also, a person acts corruptly if offers a bribe to a public officer, it does not matter that he intend to expose him as corrupt. See the English case of *R v. Smith* [1960] 2 QB 431.

For offences under sections 98 to 98B a judicial officer cannot be arrested without a warrant and no prosecution shall be commenced against a judicial officer except on a complaint or information signed by or on behalf of the Attorney-General of the Federation or of the State (section 98C(1) and (2)) CC. For the purposes of offences of official corruption, a judicial officer is defined under section 98C(3) CC.

The giving or receiving must relate to public officer's duty

Note that, under sections 98 and 98A, the giving or receiving of the bribe must relate to the duties of the public officers' office. See *R v. Eka* [1945] 11 W.A.C.A. 39 although under the sections, a public officer can be rightly convicted if he asks or receives for any other person. In that sense, the bribe may relate to the other person's duty.

SELF ASSESSMENT EXERCISE 2

1. Dario, a public officer working in the National Airline demanded and received the sum of N50,000.00 from Ben, with the promise of assisting Ben's son to secure admission in one of the public universities. In his charge for bribery, Dario claimed that he is not liable for the offence as the money received does not relate to his office. Advise the prosecution on the claim by Dario and whether he can be successfully prosecuted for bribery.

3.3 Extortion by public officers

Section 99 of the Criminal Code provides for the offence of extortion by public officers, where the officer takes or accepts a bribe for the performance of his duties, any reward beyond his proper pay and emoluments, or any promise of reward. The punishment is imprisonment for three years.

It would appear however, that looking at the wording of section 99 nothing suggests extortion. Rather, note that extortion is committed where the public officer uses his office to obtain or receive property or benefit which ordinarily the person who gives will not part with but for the threat. The right section of the Criminal Code dealing with extortion is section 406, which provides the offence of demanding property with menace with intent to steal it. The punishment for this is imprisonment for three years.

The definition of extortion in section 291 of the Penal Code as intentionally putting another in fear of any injury to that person or any other and thereby dishonestly induces the person so put in fear to deliver to any person any property or document of title or anything convertible to valuable property, is unambiguous. The punishment is up to five years imprisonment or with fine or both. See section 292 PC.

In the English case of *Thorne v. Motor Trade Association,* [1937] AC 797 at 817, per Lord Wright, a menace was interpreted as a threat of any action that is detrimental to or unpleasant to the person addressed. The wording of section 406 of the Criminal Code and that of section 291 of the Penal Code in substance, accords with this definition.

Note that despite the provisions of sections section 99 and 406 of the Criminal Code, section 404(1)(a) is however often used for public officers who extort money or other property. This is because of the use of the words 'under the colour of' in that section. Thus, a public officer who corruptly and under the colour of his employment demands or takes property from any person is guilty of an offence, notwithstanding that no threat was used. The punishment is imprisonment for five years.

According to the definition of the words 'under the colour of' decided in the English decision of *Wallace Johnson v. R* (1938) 5 W.A.C.A. 56, this phrase was held to require some element of pretence on that part of the public officer that he was entitled to the money or that he has a duty to receive it. You must note that the decisions in which the said section 404(1)(a) has been considered have not been consistent.

In *Potts Johnson v. C.O.P.* (1947) 12 W.A.C.A. 198 for instance, where a lady welfare officer threatened three prostitutes that unless they pay her a certain sum of money, she would cause them to be repatriated. The prostitutes seeing that their means of livelihood is endangered paid the officer the money and she was held guilty under section 404.

Following the decision in *Potts Johnson,* it thus means that it is not necessary under section 404 that there should be pretence at to the fact that the public officer is entitled to the money and that it is sufficient if the public use the power or influence of his office to demand for the money. Which decision is not in accord with that of *Wallace Johnson.*

However, in *Motayo v. C.O.P.* (1950) 13 W.A.C.A. 22 the decision in *Potts Johnson* was rightly reversed on the basis that the words 'under the colour of'

requires some element of pretence that the public officer is legally entitled to the money as decided in *Wallace Johnson*.

In other words, the public officer should extort money or property under section 404(1) CC under the guise or pretence of being legally entitled to it and which his employment gives a cloak of legality to in the mind of the giver. Unfortunately, the decision in *Motayo*'s case has not been followed in other cases. See *Otiti v. I.G.P.* [1960] L.L.R. 123; *Azubogu v. C.O.P.* (1948) 12 W.A.C.A. 358.

You need to know that the essential requirement under section 404(1)(a) is that, the demanding or taking must be done corruptly, with the element of corrupt intent accompanying either the demanding or taking simultaneously. See *R. v. Okuma* (1936) 13 N.L.R. 106.

Other offences of official corruption are contained under sections 101, 102 and 103 relating to public officers knowingly acquiring interest directly or indirectly in government contract or agreement made on account of the public service, etc., with different grades of punishment.

SELF ASSESSMENT EXERCISE 3

1. Ajax was accosted on the road by a policeman who demanded that he should open the big bag he was having with him. On opening the bag, the policeman did not find anything incriminating and thereafter requested Ajax to bring out everything in his pocket, among the things brought out is N10,000.00 in 1000 denominations. The policeman at this juncture said that Ajax is under arrest for being suspected of stealing the money found on him and demanded that Ajax should hand over the money to him which Ajax did. On the way to the police station, the policeman abandoned Ajax and made away with the money collected from him. Advice as to the proper offence of official corruption that the policeman can be charged with.

3.4 Abuse of office

Under the Criminal Code, it is an offence for a public officer to abuse the authority of his office by doing or directing to be done, any arbitrary act prejudicial to the rights of another. Such officer is guilty of a misdemeanour, and is liable to imprisonment for two years.

Where the act done or directed to be done by the pubic officer is for the purposes of gain, he is guilty of a felony, and is liable to imprisonment for three years (section 104 CC). The offender cannot be arrested without warrant.

A prosecution for an offence under sections 101 -104 CC cannot be instituted except by or with the consent of a law officer.

Other offences relating to public officers and those that can be committed by non-public officers and covered by sections105, 106, 107, 108, 109, 110 and 112 are, giving of false certificate, false assumption of authority, personating public officers, etc., with varying degrees of punishment.

In relation to the offence of personating members of the armed forces under section 110 CC; there is a proviso to that section which exempts the use of such uniforms in the course of a stage play or in any bona fide public entertainment. This justifies the use of such uniforms in home videos and on state plays or drama by artists.

4.0 CONCLUSION

In this unit, we examined the offences of bribery and its elements, the different ways the offence of bribery can be committed, extortion and its essential elements and abuse of office. We however mentioned in passing, a variety of other public officer's related offences such as, public officers knowingly acquiring interest directly or indirectly in government contract or agreement made on account of the public service, acquiring interest in property in his charge and making false returns or statement, and those offences that can be committed by non-public officers.

5.0 SUMMARY

Bribery generally covers all cases of corruptly asking for, giving or receiving a property or benefit or an attempt of these by a public officer in discharge of his duties or any other person on account of the public officer's act or omission.

The guilty act consists in mere asking for a bribe, giving or receiving it.
That fact that a public officer who having asked for bribe thereafter changes his mind and did not to receive it will not affect his liability.

It is not a defence that the public officer having received the bribe did not subsequently do the act or omission.

The corrupt intent on the part of the public officer must accompany the receipt of the money to constitute 'corruptly receives'.

The offence is not committed if the public officer innocently receives the money but formed the corrupt intention only afterwards. He might be guilty of stealing or conversion.

In all bribery offences, the offering or giving, receiving of the bribe must have been corruptly done, i.e. the offeror of the bribe must intend to sway or deflect the public officer from the honest and impartial performance of his duties.

A person acts corruptly if offers a bribe to a public officer, it does not matter that he intend to expose him as corrupt.

The giving or receiving of the bribe must relate to the duties of the public officers' office.

Extortion is committed where the public officer uses his office to obtain or receive property or benefit which ordinarily the person who gives will not part with but for the threat.

6.0 TUTOR MARKED ASSIGNMENT

1. Mention and discuss two essential elements of the offence of corruptly receiving a bribe by a public officer.

2. What do you understand by the words 'under the colour of' used in section 404(1)(a) of the Criminal Code, as defined in the English decision of *Wallace Johnson v. R* (1938) 5 W.A.C.A. 56?

7.0 REFERENCES/FURTHER READINGS

Okonkwo and Naish: Criminal Law in Nigeria, 2nd Edition, Sweet & Maxwell, 1980.

Smith and Hogan, Criminal Law, 5th Edition, Butterworth, London, 1983.

The Criminal Code Act, Cap 77, Laws of the Federation of Nigeria 1990.

The Penal Code (Northern States) Federal Provisions Act, Cap 345, Laws of the Federation of Nigeria 1990.

United Nations Convention Against Corruption, 2003.

UNIT 2 CORRUPTION RELATING TO ADMINISTRATION OF JUSTICE

CONTENTS

1.0 INTRODUCTION

Offences relating to the administration of justice are to preserve the integrity of the courts and the general administration of justice. As a result of the fact that offences touching on the administration of justice have the likelihood of tilting the scale of justice by wrongfully affecting any person or interest negatively or positively, accounts for the reasons why the punishments for these offences are a bit severe than that of bribery and abuse of office.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Have an understating of offences of judicial corruption
- Know what perjury is
- Explain the elements of the offence of perjury
- Identify the many shades of the offences of judicial corruption

3.0 MAIN CONTENT

3.1 Perjury

In any judicial proceeding or for the purpose of instituting any judicial proceedings, any person who knowingly gives false testimony touching any matter which is material to any question pending before the court or intended to be raised

before the court is guilty of the offence of perjury and is liable to imprisonment for fourteen years (sections 113 and 118 CC). See corresponding section 156 of Penal Code which also attracts fourteen years imprisonment but with fine.

If the offender commits the offence in order to procure the conviction of another person for an offence punishable with death or with imprisonment for life, he is liable to imprisonment for life. The offender cannot be arrested without warrant.

It is essential for you to know that in the offence of perjury, the offender must have given a testimony which is not only false but was deliberately given, knowing it to be false; otherwise the offence is not committed. The certified true copy of the court proceeding which indicates the testimony of the accused may be used as a proof of the false testimony. A testimony can however not be said to be false where such is ambiguous or not categorical. See *Omoregie v. D.P.P.* [1962] 1 All N.L.R. 126

Learned authors, Okonkwo and Naish have opined that perhaps a person who gives a testimony in such a reckless manner, not paying attention to the truthfulness of it may be guilty of perjury. It was however stated that if the witness believed the testimony to be true but which turned out to be false he is not guilty.

You must note that a testimony regarded as false must have been given in a judicial proceeding or for the purpose of instituting such proceeding.

Such a false testimony must also relate to any issue which is material to any question which is pending in the proceeding or to be raised in it. See *R v. Onward* [1955] W.N.L.R. 28. Testimonies which impugn the credibility of witnesses or those made on oath after an accused has pleaded guilty in order to mitigate punishment are material. See *R. v. Baker* [1895] 1 Q.B. 797; *R. v. Wheeler* [1917] 1 K.B. 283.

A person can however not be convicted of the offence of perjury, or of counseling or procuring the commission of that offence upon the uncorroborated testimony of one witness (section 119 CC).

SELF ASSESSMENT EXERCISE 1

1. Paki was charged for the offence of perjury having falsely stated during the proceeding trying him for the offence of stealing that he has one wife whereas he is married to three wives. Advice the prosecution on whether the alleged false testimony is material to the Paki's trial for stealing and the likelihood of his being successfully prosecuted for the offence of perjury.

3.2 Fabricating evidence

If any person with the intention of misleading any tribunal in any judicial proceeding, fabricates evidence by any means other than by perjury or counseling the offence, or knowingly makes use of such fabricated evidence is guilty of a felony and is liable to imprisonment for seven years. Sections 120 CC and 157 PC.

Under the Criminal Code, the offender cannot be arrested without warrant.

SELF ASSESSMENT EXERCISE 2

1. During Ajax's trial for robbery, he tendered a medical report which indicated that on the date of the alleged robbery, he was in fact on admission in a government hospital where he was receiving treatment for malaria. It was discovered that the said medical certificate was fake and a forgery. What is the proper offence of judicial corruption can Ajax be charged for?

3.3 Corruption of witnesses

Giving false or withhold true testimony

The offence of corrupting witnesses covers all cases where any person:

i. Gives or promises or offers to give or procures or attempts to procure any property or benefit of any kind for any person, on agreement or understanding that a witness called or to be called in any judicial proceeding shall give false testimony or withhold true testimony, or

ii. Attempts by other means to induce such a witness referred to above to give false testimony or to withhold true testimony, or

iii. Asks, receives or obtains, or agrees to receive or obtains any property for himself or any other person, upon any agreement or understanding that any person shall as a witness in any judicial, proceeding give false testimony or withhold true testimony;

is guilty of a felony, and is liable to imprisonment for seven years (section 121 CC).

The offender cannot be arrested without warrant.

Deceiving a witness

Any person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, is guilty of a felony, and is liable to imprisonment for three years (section 122 CC).

The offender cannot be arrested without warrant.

Destroying evidence

Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, willfully removes, conceals or destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence is guilty of a felony, and is liable to imprisonment for three years. Sections 123 CC and 166 PC.

The offender cannot be arrested without warrant.

3.4 Perverting the course of justice

Any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a felony, and is liable to imprisonment for seven years (section 126 (1) CC). The offender cannot be arrested without warrant (section 182 of Penal Code).

If the manner by which any person attempts to obstruct or pervert or defeat the course of justice is not specifically defined in the code, the offender is guilty of a misdeamenour and liable to imprisonment for two years (section 126 (2) CC). See *R. v. Duruibe*, (1989) 4 W.A.C.A. 124 although the case was decided on old section 114 of the Criminal Code, dealing with 'where a judicial officer corruptly asks, receives or obtains or where any person corruptly gives, offers or promises to give', which has now been deleted by the Criminal Justice (Miscellaneous Provisions) Decree No. 84 of 1966, which repealed sections 98, 100, and 114 to 116 of the Code, and replaced them with new sections 98, 98A, 98B, 98C, and 98D, in order to rectify the anomalies in the interpretation of the old sections and in the Criminal Code generally.

Confusion and inconsistency has trailed the interpretation of the deleted sections 114 and 115 in their application to a judicial officer who 'corruptly asks or receives', leading to their being deleted as noted. See *R. v. Olua* (1943) 12

W.A.C.A. 30; *R. v. Ibrahim* (1953) 20 N.L.R. 137; *Ogbebor v. C.O.P.* (1950) 13 W.A.C.A. 22.

SELF ASSESSMENT EXERCISE 3

1. Jingo, a court clerk received the sum of N20,000.00 and a goat from the relatives of an accused person standing trial for stealing, promising to influence the discharge and acquittal of the accused person for the offence he was charged with. What offence if any, has Jingo committed and under which section of the Criminal Code can he be properly charged?

3.5 Compounding felonies & penal actions

Note also, it is an offence for any person to ask, receive or agree or attempt to receive any bribe for oneself or another on agreement or understanding that he will conceal a felony or refrain from prosecuting or discontinue or delay prosecution of a felony or withhold evidence in respect of the same and in a case where the felony is such that a person convicted of it will be sentenced to death or life imprisonment, the offender is guilty of a felony and liable to imprisonment for seven years (sections 127(1) CC and 168 P C).

Here, all you need to know is, asking, receiving or attempting to receive a bribe for the purpose of concealing a felony or refrain from prosecuting or discontinue or delay prosecution of a felony constitutes an offence. See *Sogbanmu v. Police* supra, where the accused, a police constable demanded for a bribe in order not to prosecute an offender.

However, you should note that there is no offence where the police officer falsely represents to another that he has committed an offence and the latter parts with bribe in order not to be arrested, whereas no offence was in fact committed. See *R v. Ezejiogu* [1944] 10 W.A.C.A. 230. In a case where the police officer, as opposed to the offeror of the bribe believes that an offence has been committed whereas no offence has been committed, the police officer will be liable, because here, there is intention to interfere with administration of justice. See *Hattab v. I.G.P.* [1956] N.R.L.R. 24 (CA).

There are several other offences under sections 124, 125, 128, 130, 131, 134, 135, 137, 138 and 145 CC relating to preventing witnesses from giving evidence, conspiracy to bring false accusation, compounding an action brought under a penal law without the consent of the court, etc. Under the Penal Code, some of these are covered by sections 162, 165, 167, and 169. The punishment for these offences ranges from imprisonment for one year, or to a fine of two hundred naira, to imprisonment for life, with or without fine or with both.

SELF ASSESSMENT EXERCISE 4

1. A policeman arrested Boka while stealing a mobile handset from a packed car, the policeman demanded that Boka should give him the sum of N20,000 in order for him not to take him to the station. Boka, intending to avoid the likelihood of detention and prosecution parted with the said amount. Advise the prosecution as the offence, if any, that the policeman has committed and under what section of the law he will be charged?

4.0 CONCLUSION

In this unit, we treated a broad range of offences relating to the administration of justice. In particular, we examined the offences of perjury and its elements, perverting the course of justice and compounding felonies and penal actions. We looked cursorily at other offences relating to the administration of justice, such as fabricating evidence, corrupting witnesses, destruction or concealing of evidence, etc., and mentioned others in passing.

5.0 SUMMARY

Offences of judicial corruption are those relating to or touching on the administration of justice.

Knowingly giving false testimony touching a matter material to any question pending before the court or intended to be raised before the court is perjury.

In perjury, the offender must have given a testimony which is not only false but was deliberately given, knowing it to be false.

A testimony which is ambiguous or not categorical cannot be said to be false.

Giving a testimony in a reckless manner without paying attention to its truthfulness may amount to perjury.

The false testimony must have been given in a judicial proceeding or for the purpose of instituting such proceeding.

The false testimony must relate to any issue which is material to any question pending or to be raised in a proceeding.

Another offence of judicial corruption is the fabricating of evidence with the intention of misleading any tribunal in any judicial proceeding other than by perjury.
Corruption of witnesses covers cases where a witness bribed, offered bribe or promised a bribe in return for giving a false testimony or for withholding true testimony.

Deceiving a witness in order to affect his testimony, destroying or concealing evidence is an offence.

Any act tailored to defeating the course of justice is perverting the course of justice.

Giving or receiving bribe to conceal a serious crime or compounding them is an offence.

6.0 TUTOR-MARKED ASSIGNMENT

1. Mention and discuss two elements of the offence of perjury.

2. Andy is standing trial for the offence of stealing, Bongo, the prosecuting police officer demanded the sum of N10,000.00 from Andy in order to delay the prosecution of the case and also to destroy a material evidence against Andy. Advice as to the offence or offences committed by Bongo and under what sections of the law he can be charged?

7.0 REFERENCES/FURTHER READINGS

Okonkwo and Naish: Criminal Law in Nigeria, 2nd Edition, Sweet & Maxwell, 1980.

Smith and Hogan, Criminal Law, 5th Edition, Butterworth, London, 1983.

The Criminal Code Act, Cap 77, Laws of the Federation of Nigeria 1990.

The Penal Code (Northern States) Federal Provisions Act, Cap 345, Laws of the Federation of Nigeria 1990.

UNIT 3 CORRUPTION RELATED OFFENCES UNDER THE CODE OF CONDUCT

CONTENTS

1.0 INTRODUCTION

Despite the fact that the Criminal and Penal Codes provides for the offences against corruption and abuse of office by public officers, the Constitution also provides against corruption by public officers under the Code of Conduct, Fifth Schedule Parts I & II of the 1999 Constitution. Public officers are expected to observe the code of conduct for the purpose of preventing and combating corruption by public officers.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Understand the code of conduct expected of public officers
- Explain which acts of public officers will not contravene the Code
- Know when receiving gifts will not constitute a bribe

3.0 MAIN CONTENT

3.1 Code of conduct for public officers

The 1999 Constitution in Fifth Schedule Parts I provides for a code of conduct for public officers. We shall however examine provisions relevant to preventing corruption.

No conflict of interest

Under article 1 of the Code, a public officer is prohibited from putting himself in a position where his personal interest conflicts with his duties and responsibilities. You must know that a public officer can therefore not receive or be paid salaries of another public office or engage in the management or running of a private business, profession or trade, except where he is not employed on full time basis (see article 2).

It is essential for you to know that no public officer is prohibited from engaging in farming, which in principle was designed to boost food production in Nigeria.

Prohibition from operating foreign account

You must bear in mind that a category of public officers, which includes the President, Vice-president, Governor, Deputy Governor, Ministers, Commissioners, members of the National and State Assembly, and such public officers and persons as the National Assembly may by law prescribe are prohibited from maintaining or operating a foreign bank account (see article 3).

Also, you need to know that a retired public officer while receiving his pension is prohibited from accepting more than one position where he is paid salary in any company owned or controlled by government or in any public authority (see article 4).

SELF ASSESSMENT EXERCISE 1

1. Apugo, a commissioner in Afijo State has a big farm where he engages in diverse acts of farming and operates a foreign account for the purpose of facilitating payment for his farming equipment and spare parts, which he buys from abroad. Apugo is accused of contravening the Code of Conduct by engaging in farming and operating a foreign account and charged before the Code of Conduct Tribunal. Apugo has approached you to advise him if his actions have in any way contravened the Code of Conduct.

Prohibition from accepting gift or benefit

You must equally know that a public officer is prohibited from asking for or accepting bribe of gift or benefits from any other person, on account of anything done or omitted to be done by him in discharge of his duties (article 6(1)).

As a way of proving this, any officer who receives gift or benefit from any commercial, business enterprises or persons having contracts with government

shall be deemed to have received a bribe unless the contrary is proved (article 6(2)).
Exceptions are that a public officer may accept gifts or benefit from relatives or personal friends only on occasions as recognized by custom (article 6(2)). Thus, gifts given at Yuletide, Ramadan, and New Year periods, etc., would normally be permitted.

Also, no public officer shall accept any property, gift or benefit as an inducement or bribe for granting of any favour in discharge of his duties (article 8).
No abuse of office

A public officer shall not abuse his office by doing or directing to be done any arbitrary act prejudicial to the rights of any person, knowing such act is unlawful or contrary to government policy (article 9). You will recall that this is an offence under criminal law.

Declaration of assets

The Code in article 11 provides for declaration of assets by every public officer which shall be done within three months of the coming into force of the Code or immediately after assumption office. Thereafter, this shall be done at the end of every four years, and at the end of his term of office. Any declaration which is false shall be a breach of the Code.

Any public officer who does an act prohibited by the Code through a nominee, trustee or other agent shall be deemed to have committed a breach of the Code (article 13).

Any allegation concerning a breach of the Code by a public officer shall be referred to the Code of Conduct Bureau (article 12).

SELF ASSESSMENT EXERCISE 2

1. Explain circumstances when receiving gifts by public officers will not amount to a contravention of the Code of Conduct.

3.2 Code of Conduct Bureau

A Code of Conduct Bureau is established by the Constitution under Third Schedule Parts I. The Bureau is charged with the duties of receiving and examination of declarations, to ensure compliance with the Code. The Bureau also receives complaints about non-compliance and breach of the provisions of the

Code, investigate such complaints and where appropriate refer to the Code of Conduct for trial.

3.3. The Code of Conduct Tribunal

The Code of Conduct Tribunal formerly established by the Code of Conduct Bureau and Tribunal Act (No.1 of 1989) Chapter 56, Laws of the Federation of Nigeria 1990, is now provided in the 1999 Constitution under the Fifth Schedule Part I, to deal with all cases of complaints of corruption by public servants in breach of the Code.

4.0 CONCLUSION

In this unit, we examined the code of conduct for public officers as contained in the Constitution, which includes prohibition of public officers from putting themselves in conflict of interest with their duties, prohibition of a category of public officers from operating foreign account, prohibition of public officers from accepting the bribe of gift or benefits, prohibition from abuse of office and declaration of assets by public officers.

We noted the peculiar circumstances in which the receiving of gifts or benefit by public officers would not amount to a bribe or a contravention of the Code. We examined the Code of Conduct Bureau and Tribunal, and their functions.

5.0 SUMMARY

A public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities.

A public officer shall not be paid salaries or emoluments from another public office.

A public officer cannot engage in running of a private business, profession or trade, except where he is not employed on full time basis.

Certain categories of public officers are prohibited from operating foreign accounts.

A public officer can only accept personal gifts or benefit from relatives or friends on occasions as recognized by custom

Public officers must declare their assets.

6.0 TUTOR MARKED ASSIGNMENT

1. What is the time stipulated for every public officer to declare his or her assets?

2. Can a public officer engage in the management or running of a private business, profession or trade? Support your answer with the relevant articles of the Code.

7.0 REFERENCES/FURTHER READINGS

The Criminal Code Act, Cap 77, Laws of the Federation of Nigeria 1990.

The Penal Code (Northern States) Federal Provisions Act, Cap 345 Laws of the Federation of Nigeria 1990.

The Code of Conduct Bureau and Tribunal Act (No.1 of 1989) Chapter 56, Laws of the Federation of Nigeria 1990

The Constitution of Federal Republic of Nigeria 1999, the Third and Fifth Schedule Part I.

UNIT 4 OFFENCES OF CORRUPTION UNDER ICPC AND EFCC ACTS, ETC.

CONTENTS

1.0 INTRODUCTION

Apart from the negative impacts of corruption on the society, democratic institutions and the rule of law, corruption has also been linked with other forms of crime such as organized and economic crime, including money laundering.

Although the Criminal and Penal Codes contained offences against corruption, they have not been able to effectively combat the scourge. For instance, both Codes have provisions dealing with the forfeiture of proceeds of crime; they are however insufficient to deal with the full range of economic and financial crimes. New laws became necessary to deal with new crimes or those not sufficiently covered by the general criminal law and to provide for stiffer penalties for financial crimes. This led to the enactment of the Corrupt Practices and other Related Offences Act 2000 and the Economic and Financial
Crimes Commission (Establishment Act) 2004, among others.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Understand the scope of bribery under the ICPC Act
- Explain corruption related acts prohibited by the EFCC Act
- Appreciate why prohibiting money laundering is essential to eradicating corruption and other crimes

3.0 MAIN CONTENT

3.1 Offences of corruption under ICPC Act

Under the Corrupt Practices and other Related Offences Act 2000 (ICPC Act) a wide range of offences are created which cover acts of corruption that can be committed by both public and non-public officers. We shall look at some of these as follows:

Accepting or giving gratification

Section 8 of the ICPC Act makes it an offence for any person to accept gratification by corruptly asking for or receiving any property or benefit, or an attempt of this. A public officer who commits any of these acts is liable to imprisonment for seven years. The provision of section 8 is *impari material* (i.e. the same) with that of section 98 of the Criminal Code on bribery.

Section 9 of the ICPC Act cover acts of any person giving or accepting gratification through agent, by corruptly giving or procuring any property or benefit, this provision is the same as section 98A of the Criminal Code.

Section 17 of the ICPC Act is on the offence of receiving gratification through agent. The section also defines what are 'consideration', 'agent' and 'principal'. This offence attracts five years imprisonment.

Section 1 of the ICPC Act has a very wide definition of the word 'gratification' used throughout in the Act.

Acceptor or giver of gratification to be guilty irrespective of purpose not carried out

Section 10 ICPC Act deals with any person who asks for, receives or obtains property or benefit. This provision is similar to the provision of section 98B of the Criminal Code. The difference is that under section 10 of the ICPC Act, the word 'corruptly' was not used to qualify the 'asking' or 'receiving'. Also, section 10 of the ICPC Act only captured the provisions in section 98B(1) and excludes the one under section 98B(2) but the provision of 98B(2) is made as section 11 of the ICPC Act.

Therefore, on sections 8, 9, 10 and 11 of the ICPC Act, the analysis made under bribe above as regards sections 98, 98A and 98B of the Criminal Code will apply.

Fraudulent acquisition or receipt of property

Section 12 of the ICPC Act is on fraudulent acquisition of property and the provision is almost the same as the one in section 101 of the Criminal Code, save that the provision of section 12 ICPC Act excludes the words 'and to be fined at the discretion of the court' contained in section 101 of the Criminal Code. Also, the punishment under the ICPC Act is stiffer, being seven years imprisonment while that of the Criminal Code is three years.
Also the proviso that, the offender cannot be arrested without warrant contained in section 101 of the Criminal Code is not included in the provision of section 12 of the ICPC Act.

Section 13 of the ICPC Act is on fraudulent receipt of property and same provision is part of the one contained in section 427 of the Criminal Code, the penalty is provided under section 14 of the Act as three years imprisonment.

Section 14 of the ICPC Act is on penalty for offences committed through postal system. This provision is remaining part of that contained in section 427 of the Code. While the offence under the Act carries a surprisingly lesser penalty of seven years imprisonment that of the Code is stiffer as it is imprisonment for life.

Deliberate frustration of investigation by the Commission

It is an offence under section 15 of the ICPC Act for anyone with intent to defraud, conceal a crime or frustrate the Commission in its investigation of anyone suspected of crime under the Act, by destroying or falsifying any book, document, etc., or is a privy to such acts, or, omits or is a privy to omitting any material particular from any such book, document, etc. The penalty is imprisonment for seven years.

Section 16 of the ICPC Act prohibits a public officer from making false statements or returns. This attracts seven years imprisonment. This offence is similar to the in section 103 of the Criminal Code but that of the Code carries a lesser punishment of three years.

Wider scope of bribery offence

Section 18 of the ICPC Act makes it an offence for any person to give bribe to a public officer or for a public officer to solicit, counsel or accept gratification in respect of any act or omission which includes voting or abstaining from voting at any meeting of public body in favour or against any measure, resolution or the preventing of any official act. Receiving bribe to vote at meetings is wider that covered by the Criminal Code.

Also, receiving gratification covers acts such as performing or otherwise, aiding, expediting or delaying, or hindering the performance of any official act. The punishment for this is five years imprisonment. This offence is wider in scope than the ones under the Criminal Code in respect of bribery

Section 19 of the ICPC Act makes if an offence for any public officer to use his office for gratification by conferring corrupt or unfair advantage upon himself or any person. The offence carries a punishment of five years imprisonment.

Forfeiture of gratification

Under section 20 of the ICPC Act, any public officer found guilty of soliciting, offering or receiving gratification under the Act, in addition to the punishment specified for the offence, shall forfeit the gratification and also be liable to pay a fine of not less than five times the sum or value of the gratification. Where the gratification cannot be valued, the fine to be paid is ten thousand naira.

Bribery in respect of auctions or contracts

Sections 21 and 22 of the Act, provides for offences on account of accepting bribe in respect of auctions and for giving assistance as regards contracts, etc. The provision of section 22 prohibits various acts such as, influencing execution of contracts, inflation of contract sum or price of goods and services, signing of contracts without budgetary provision, transferring or spending the sum allocated for a particular project or service on another. These offences carry punishment ranging from three to seven years imprisonment, and in some cases with additional fine of one hundred thousand or one million naira, as the case may be.

Duty to report bribe

It is now mandatory under section 23 of the ICPC Act, for a public officer to who gratification has been given, offered or promised, and any person from whom gratification has been solicited or obtained or from whom an attempt has been made to obtain from, to report the same to either at the nearest office of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) or a police officer.

Failure to report without reasonable excuse carries a fine of one hundred thousand naira or to a term of imprisonment not exceeding two years, or to both fine and imprisonment.

Other offences specified in the ICPC Act includes dealing with property acquired through gratification – section 24, making false or misleading statement to the ICPC – section 25, attempt and conspiracy punishable as an offence under the Act – section 26.

SELF ASSESSMENT EXERCISE 1

1. What in your opinion makes the scope of the offence of bribery under section 18 of the ICPC Act wider than those of the Criminal Code?

Powers of the Commission

The ICPC Act established the Independent Corrupt Practices and Other Related Offences Commission (ICPC), which have powers to receive all cases of alleged corrupt practices, under the Act, investigate and prosecute them.

The Chairman of the Commission also has wide powers under sections 45, 46, 48, 50 and 51 of the Act to enhance the effective performance of the Commission.

SELF ASSESSMENT EXERCISE 2

1. What is the duty imposed by the ICPC Act on a public officer to who bribe has been given, promised or offered, or any person from whom bribe has been solicited, obtained or attempt made to obtain from?

3.2 Offences of corruption under the EFCC Act

The Economic and Financial Crimes Commission (Establishment Act) 2004 (EFCC Act) also created corruption and related offences under the Act.

The definition of economic and financial crimes in section 46 of the EFCC Act includes any form of fraud, money laundering, embezzlement, bribery, tax evasion, foreign exchange malpractices, looting and any form of corrupt malpractices, etc. So this makes the consideration of the Act relevant to this unit.

Securing compliance with the Act

Section 14 of the EFCC Act makes it an offence for any person who being an officer of a bank or other financial or non-designated financial institution, to fail or neglect to secure compliance with the provisions of the Act or the authenticity of any statement submitted pursuance to the provisions of the Act. The punishment is a term of imprisonment not exceeding five years or to a fine of five hundred thousand naira or to both such fine and imprisonment.

Giving false information

Under section 16 of the EFCC Act it is an offence for any person to give false information to any public officer in relation to any information required under the Act. The punishment is not less than two years and not more than three years imprisonment. Where the offender is a public officer, penalty is stiffer, from three to five years.

Concealment of proceeds of crime

Under sections 17 and 18 of the EFCC Act, concealment or retention of or acquiring interest in the proceeds of crime is a crime with punishment ranging from two to three years. In some cases, the imprisonment can be with a fine.

Forfeiture of assets

A person convicted of an offence under the EFCC Act, shall have his passport, assets and properties, shown to be derived or acquired from economic or financial crime forfeited to the Federal Government. See sections 20, 21, 22 and 23.

Powers of the Commission

The Economic and Financial Crimes Commission have powers under its establishment Act to examine and investigate all cases of economic and financial crimes, including advance fee fraud, money laundering, computer credit card fraud, contract scam, etc. It also has powers to identify, trace, freeze, confiscate or seize proceeds of crimes committed under the Act. See section 6.

SELF ASSESSMENT EXERCISE 3

1. Does the scope of definition of economic and financial crimes under the EFCC Act make the fight of those crimes more effective than under the Criminal or Penal Codes?

3.3 Offences aimed at corruption under Money Laundering Act

Introduction

The Money Laundering (Prohibition) Act 2004 (ML Act) repealed the Money Laundering (Prohibition) Act 2003 and makes comprehensive provisions to

prohibit laundering of the proceeds of crime or an illegal act, among others. The former 2003 Act repealed the previous Money Laundering Decree No 3 of 1995.

Money laundering flows from illegal acts such as arms sales, smuggling, drug trafficking, advance fee fraud, embezzlement, bribery, computer fraud schemes, e-crimes, and other white-collar crimes. All these crimes generate huge profits and create a desire in the perpetrators to *'legitimize'* the ill-gotten gains. The ML Act therefore prohibits many acts some of which are discussed here with a view to deprive perpetrators of their gains.

Prohibition of disguising the illicit origin of resources or property

Under section 14, it is an offence for any person to convert or transfer resources or properties derived directly or indirectly from illicit traffic in narcotic drugs and psychotropic substances or any other crimes or illegal act with the aim of either concealing or disguising the illicit origin of the resources or property, or aiding any such person. The punishment is imprisonment for not less than 2 years or more than 3 years. This is without regard to the fact that the various acts constituting the offence were committed in different countries or place.

Limitation to cash transaction

The ML Act in order to prevent money laundering limits the amount of cash payment that an individual can make or accept to N500,000 or its equivalent, and N2million or its equivalent in case of body corporate (section 1). Any transaction that is over the said amount is required to be reported by financial institutions or casinos (see section 10).

Duty to report foreign transfer of funds

The ML Act also makes it mandatory for all international transfer of funds and securities in excess of US10,000 or its equivalent to be reported to the Central Bank of Nigeria, which information shall include the nature, amount, names and addresses of sender and receiver (section 2).

Identification of customers

A financial institution, casinos, persons whose usual business is the carrying out of over-the-counter exchange transaction, are required to identify and verify their customers' identity and keep records of all transactions, which shall be reserved for at least ten years (see sections, 3, 4 and 5 ML Act).

Offences under the ML Act

Section 15(1) provides for various offences concerning acts prohibited under the ML Act.

These are:

a) Any person being an employee of a financial institution who warns or intimate the owner of funds involved under the mandatory disclosure required by section 10; or

b) Destroys or removes a register or record required to be kept under the Act; or

c) Carries out or attempts under a false identity to carry out any of the transactions specified in sections 1 to 5 of the Act; or

d) Makes or accepts cash payments exceeding the amount authorized under the Act; or

e) Fails to report an international transfer of funds or securities requited to be reported under this Act; or

f) Who being a director or an employee of a financial or a designated non-financial institution contravenes the provisions of sections 2, 3, 4, 5, 6, 7 or 10 of the Act.

Under section 15(2) the punishment for offences under paragraphs (a) to (c) is imprisonment for a term not less than 2 years or more than 3 years.

In the case of an offences under paragraphs (d)-(f) where the offender, if an individual, a fine of not less than N250,000 or more than 1 million Naira or a term of imprisonment of not less than 2 years or more than 3 years or to both fine and imprisonment, and if a financial institution or any body corporate, to a fine of not less than N250,000.

(3) A person found guilty of an offence under section 15 may also be banned indefinitely or for a period of 5 years from exercising the profession, which provided the opportunity for the offence to be committed.

SELF ASSESSMENT EXERCISE 4

1. Why is the prohibition of money laundering essential to the fighting of corruption and other crimes?

3.4 The Public Complaints Commission

A body which is related to checking corruption in Nigeria although not specifically created to handle corruption issues, is the Public Complaints Commission established in 1975 by Decree No. 31 of 1975 as amended by Decree No. 21 of 1979. The Decree was entrenched in the 1979 Constitution, now Cap 377 Laws of the Federation 1990.

Although the Commission is not directly charged with handling corruption cases, its investigative powers make it relevant in checking corruption in Nigeria. The Commission have powers under section 5 of the law establishing it to inquire into complaints lodged with it by members of the public pertaining to any administrative action taken by the Federal, State or Local Governments, public institutions and companies, whether in the public or private sectors, including the courts.

The complaints dealt with by the Commission, as contained in its Annual Reports for 2004 and 2005 in relation to corruption, include cases of allegations of extortion by court officials, demand for gratifications, suppression of appeal by judicial officers, unlawful arrest by the police, abnormal increase in electricity bills, wrongful accusation and extortion of money by the police, harassment by the police, withholding of recovered money by the police, etc.

The Commission is however prohibited from inquiring into matters pending before or relating to the National Assembly, the National Councils of State and Ministers and the Armed Forces, and those under the Army, Navy, Air Force and Police Acts.

4.0 CONCLUSION

This unit examines corruption and related offences under the ICPC, EFCC and ML Acts, the wide scope of bribery under the ICPC Act, the duty imposed to report bribes, the powers of both the ICPC and EFCC in tackling corruption, the prohibition of laundering of the proceed of crimes under the ML Act in fighting corruption and other crimes. Also considered is the potential of the Public Complaints Commission in checking acts of corruption through its power of inquiry into complaints by members of the public.

5.0 SUMMARY

Under the ICPC Act, it is an offence to give, accept or obtain gratification or attempt these by corruptly asking for or receiving any property or benefit, or an attempt of this.
Under the ICPC Act, it is an offence for a public officer to solicit, counsel or accept gratification for the purpose of voting or abstaining from voting at any meeting of public body in favour or against any measure, resolution or the preventing of any official act.
Under the ICPC Act gratification covers acts such as performing or otherwise, aiding, expediting or delaying, or hindering the performance of any official act.

ICPC Act prohibits various acts such as, influencing execution of contracts, inflation of contract sum, price of goods and services, signing of contracts without budgetary provision, spending the sum allocated for a particular project or service on another.

It is now mandatory under the ICPC Act to report bribe.

Definition of economic and financial crimes under the EFCC Act includes any form of fraud, money laundering, embezzlement, bribery, tax evasion, foreign exchange malpractices, looting and any form of corrupt malpractices, etc.

The ML Act prohibits laundering of the proceeds of crime or of an illegal act with a view to deprive perpetrators of their gains and also discourage the crime or illegal act.

The ML Act limits the amount of cash payment an individual can make or accept to N500,000 or its equivalent, and N2million or its equivalent in case of body corporate.

A financial institution and others specified are required to identify and verify their customers' identity.

Public Complaints Commission because its investigative powers make it relevant in checking corruption in Nigeria.

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the objectives of the Money Laundering Act 2004 by prohibit laundering of the proceeds of crime or illegal act?

2. What is the maximum of cash transaction specified by the Money Laundering Act 2004 for both individual and corporate bodies?

7.0 REFERENCES/FURTHER READINGS

The Criminal Code Act, Cap 77, Laws of the Federation of Nigeria 1990.

The Public Complaints Commission Decree No. 31 of 1975 as amended by Decree No. 21 of 1979, Cap 377, Laws of the Federation of Nigeria 1990.

The Corrupt Practices and other Related Offences Act 2000.

The Economic and Financial Crimes Commission (Establishment Act) 2004

The Money Laundering (Prohibition) Act 2004

Charles O. Adekoya, The Renewed Battle Against Money Laundering in Nigeria, (2007) MLJ Vol. 1. Issue 1.

MODULE 4 ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA

UNIT 1 THE PERSONNEL OF CRIMINAL JUSTICE SYSTEM

CONTENTS

1.0 INTRODUCTION

This unit is devoted to judicial office holders and other court officials without whom the machinery of Administration of Criminal Justice may not function properly.

2.0 OBJECTIVES

When you have read this unit, you should be able to:

- Identify the Judicial offices, and functions
- Identify the roles of judicial officers, law enforcement agents, who are involved in a criminal judicial process.

3.0 MAIN CONTENTS

3.1 Officers of the Court

Judicial officers have the ultimate responsibility to declare, interpret, and apply the provisions of the Constitution and Statutes. They and the law stand for the future as they stood for the past as the sustaining pillars of society. They are:

a) Judicial Officers of the Superior Court

Judges include:

The chief justice of Nigeria (CJN)
Judges of the Supreme Court
President of Court of Appeal
Justice of Appeal
Chief Judge of the State or of Federal Capital Territory
Judges of the High Court (Federal or state)
Grand Kadi of the Sharia Court of Appeal
Judges of the customary Court of Appeal

There are others but they have either a severely limited or no criminal jurisdiction

b) Judicial officials of the Inferior Courts

These include:

The Magistrates
Persons who preside over the following:

The juvenile welfare court
The area court
Court Martials
National Industrial court
The judicial tribunal etc.

3.2 Magistrates Courts

The magistrates Courts handle nearly 80.0 per cent of criminal cases and are of particular importance in the present discourse. The courts are most widespread. The law of each state, which create the Magistrate, also determine their grades, powers and jurisdiction and these may vary from one state to another.

3.2.1 A Magistrate is ex-Officio a Justice of Peace

He exercises the following power and function.

- Preservation of the peace
- suppression of riots and affray
- dispersal of all disorderly and tumultuous assembly; call in aid assistance of the police and others. Issuing summonses and warrants to compel attendance of accused person or witnesses before the court in civil causes and matters
- accused persons or grant bail.
- Take solemn affirmation and statutory declaration
- Administer oaths.

- Summary trials of criminal matters within the competence of the magistracy. Determination and punishment of offences other than offences triable on indictment. e.g. non- indictable offence, indictable offences, not being capital crimes, with the consent of parties.
- Inquiry into charges of offences triable on indictment.
- Execution of writs and orders or process issuing from the high court.
- Other duties as may be legitimately conferred.

The Magistrate is to ensure as far as practicable, that all matters in controversy are completely and finally determined and all multiplicity of legal proceedings are avoided. It is legitimate for a Magistrate to encourage reconciliation not only in all civil causes but also in such criminal cases as simple offences and misdemeanour, not aggravated in degree.

3.2.2 Applicable Law

The Magistrates' courts are empowered to administer

- Common law and equity concurrently, with the Equity prevailing in certain cases
- Legal and equitable remedies
- Native law and Custom that is not repugnant to natural justice, equity and good conscience and not incompatible with any local statute
- Local statutes: Criminal Code, Penal Code, and any other law or statute

3.2.3 Preventive Role of the Magistrate

You should note one very important jurisdiction of the magistrate – its preventive role. Under certain circumstances, a magistrate may bind over a person, not

charged with an offence by means of recognizance for a specified period to keep the peace or to be of good behaviour.

3.2.4 Trial in the Magistrate Court

The trial in the magistrates' court is summary. The law creating certain crimes permits the magistrate to try some indictable offences but there are limitations which vary according to the grades or rank of the magistrates.

There are different grades of Magistrates Courts. The grades also may vary from one State to another, generally but the procedural rules are largely similar. The grades determine the substantive jurisdiction and powers of individual Magistrates Court. See example, the grades of the Magistracy in Lagos State which is older, larger and busier than any other in Nigeria.

Court	**Sentencing Power**	**Financial Limits**
Chief Magistrate I	7 years imprisonment or a fine of N4,000	N25,000.00
Chief Magistrate II	6 years imprisonment or a fine of N3,000	N15,000.00
Senior Magistrate I	5 years imprisonment or a fine of N2,000	N15,000.00
Senior Magistrate II	4 years imprisonment or a fine of N1,000	N15,000.00
Magistrate Grade I	3 years imprisonment or a fine of N500	N5,000.00
Magistrate Grade II	2 years imprisonment or a fine of N200	N3,000.00
Magistrate Grade III	1 year imprisonment or a fine of N100	N1,500.00

The Magistrates' Court in the 17 Southern States exercise summary jurisdictions in both civil and criminal matters. It exercises only criminal jurisdiction in the 19 Northern States. It is only in the North that the District Court hears civil matters only.

Another difference of note is that jurisdiction has no relation with grades of Magistrates' Court in, say, Lagos State. It does in the Northern States. In Lagos state every Magistrate Court has the power to try any non-indictable offence. Every grade of the Magistrates Court, other than a Magistrate Grade III, may try

indictable offences except capital crimes, with the consent of the accused person, and of the prosecutor, if he is a law officer.

Self Assessment Exercise 1

The jurisdiction to try a case is different from the jurisdiction to punish for the offence. *Comment*.

3.2.5 Application of the Criminal Procedure Act or Code

In some parts of the Northern States, the Criminal Procedure (Punishment on summary convictions) Order, has fixed the powers to try offences and punish offenders. In those areas the magistrates' power over a matter is hinged upon its punishing power. It tries offences where maximum punishment is within its range as shown below:

Chief Magistrate	10 years or a fine of N1,000
Magistrate Grade I	5 years or a fine of N4000
Magistrate Grade II	2 years or a fine of N200
Magistrate Grade III	3 months or a fine of N50

The jurisdiction of the magistrate to punish is as follows:

Chief Magistrates	5 years imprisonment or a fine of N1, 000
Magistrate Grade I	3 years or a fine of N600
Magistrate Grade II	1½ years or a fine of N400
Magistrate Grade III	9 months or a fine of N200

Unlike the southern States, Magistrates Courts in the North may refer a case to a higher court for enhanced punishment. Except the Magistrates Court III, other courts may impose canning.

The Chief Magistrates' Court Grade I, exercises jurisdiction in civil matters in:

1. all personal actions arising from contract, or from tort or from both, where the debt or damage claimed, whether as balance of account or otherwise is not more than twenty five thousand naira;
2. all actions between landlord and tenant for possession of any lands or houses claimed under an agreement or refused to be delivered up, where the annual values or rent does not exceed twenty-five thousand naira (now varied by the Rent Control Law to two hundred and fifty thousand naira)
3. all actions from the recovery of any penalty, rates, expenses contribution or other like demand, which is recoverable by virtue of any enactment for the time being in force; if:

- it is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other court;
- the amount claimed in the action does not exceed twenty-five thousand naira.

He may appoint guardians *ad litem* and make orders, issue and give directives relating thereto. He can grant in any action instituted in the court, an injunction or other order. A person who has been convicted by a Magistrates' Court for an offence may appeal as of right to the High Court against conviction or sentence on a question of law or fact. However, if he has pleaded guilty or admitted the truth of the charge preferred against him/her, he/she can appeal only against sentence.

3.3 The Role of the Judiciary

The judiciary is the branch of governance invested with judicial powers, the system of courts in a country, the body of judges (the bench). It is that branch of government which is intended to interpret, construe and apply the law. Its role may be summarized as follows:

3.3.1 Interpretation of Statute

The Courts interpret and apply the laws. In that way, they serve as a check on the exercise of legislative and executive powers. Hence the judiciary is described as the guardian of the Constitution. In fact, the Constitution is what the court says it is. *See 1963 1(30, 259)* In determining and interpreting the statute, the court adopts the passive operation of judicial procedure.

3.3.2 Enforcement of Individual Fundamental Rights

Any person who alleges that any of his/her rights has been, is being or likely to be violated is at liberty to apply to any court for redress.

3.3.3 Defence and Maintenance of the Rule of Law

Constitutionalism, as a system of restraint upon governments, has no practical value if, when the restraints are transgressed, no means of enforcing them exists. The enforcement of the limitation of the Constitution and other laws is the peculiar province of the court. Hence *Nwabueze **(19…)*** described judicialism as the backbone of constitutionalism.

3.3.4 Sustaining Peace and Order

General Ibrahim Babangida, Military President of the Federal Military Government explained this too well when he said:

"*The importance of the function discharged by the (courts) in sustaining order, peace, harmony and happiness in our society is best appreciated through an analogy with the saying of the Holy Prophet Muhammad. He is reported by established authorities to have said; 'there is a small organ in the body of man. If it is in perfect condition, then the whole of the body will be perfect and function well, if it is faulty, damaged or weak, then the whole of the rest of the body shall likewise be sick and in disarray'. That organ is the heart. Government, which is the functional expression of the living statement, like the living body, has its own perfect heart if is to function well. The dispensation of justice which is the task of the courts is the heart and soul of all good governance. When the Holy Prophet spoke, his concern was definitely not human biology. He was echoing the same wisdom revealed to Jesus of Nazareth … of the need, most absolutely, to maintain and do justice to all men. Indeed, there is hardly any human society known to recorded history, which does not make justice the absolutely essential condition of order, survival, happiness and good relation among men".*

3.3.5 To uphold Fundamental Human Rights

It is for the judiciary not only to maintain the Rule of Law but also to protect individual fundamental freedom to do whatever is not forbidden by law. The process of Judicial Review, as an aspect of Rule of Law enables the Court to protect the individual human rights and fundamental freedoms against the excesses of over – powerful executives within the restricted nature and procedure of the judicial review itself.

3.3.6 To determine Justice

In the Criminal Justice Administration, the court or judge determines justice to the state, justice to the accused and justice to the larger society. What all this amounts to, says *Hon. Justice Nnamani **(19…)** (JSC),* "is a general recognition of the role of the Judiciary as;

- the defender of the rights which the Constitution has guaranteed the citizen.
- an insurance against arbitrariness in the exercise of power
- a vehicle for settlement of disputes whether person to person and person and person(s) and state within accepted principles of law and procedure, obviating the need to resort to self help measures
- a guarantee for the maintenance of law and order, and
- a democratic society.

In theory, there is equal access to justice; It is available and the judge exists to administer that justice. He hears appeals of the weak and receives protests against the violation of rights.

In the determination of justice:

> *"there can be no balance of forces, no opportunism, no bargaining. A judicial decision derives its authority not from the fact that it is well adapted to the requirements of a particular temporary situation but from its being founded on reasons, which have general force and universal cogency apart from the particular case in point. All judicial institutions are based on two principles, which are spiritual in nature: legal logic, as a rational element and justice, as a moral element. These two principles, these two mainstays of the judicial functions, raise it above the rough and tumble in which the interests and passions of people, parties, classes, nations and races (ethnic groups) clash with one another". (P.C.I.J. Series C No. 7-1, Pg. 18)*

The CFRN, 1999 Section 6 is explicit on the role of the judiciary. The role appears quasi-scientific and technical, considering the objective nature of legal analysis and the expertise required of judicial officers and legal practitioners. See also section 36 which provides for fair hearing especially subsection (6).

For the purpose of carrying out its duties and responsibility, the Judiciary also exercises not only Constitutional and statutory powers but also the inherent powers and sanctions of the court of law, notwithstanding anything to the contrary. In so doing the court is able to conform to the role-profiles into which it had been socialized under the colonial rule.

The CFRN, 1999 section 46 and the legal Aid Act seek to make the attainment of ideal standard of justice a reality.

Activity

In practice, access to justice is easier for some than for others and for those unable to afford legal service, justice may be difficult to obtain at all". Discuss (Share your personal experience or observation)

3.9 Judicial Immunity

When they are acting within their jurisdictions, judges and magistrates enjoy complete immunity in respect of :

1) Statement made in court.
2) Acts done or omissions made in the discharge of their official duties.
3) Wrong decisions upon a point of law.

Note also that statements, acts, or omissions in a judicial capacity include those made by

i) Persons and bodies exercising judicial functions.
ii) Parties to the suit but only in the course of judicial proceedings.

A counsel is not liable to his client for negligence in and about the conduct of his/her client's cases save in exceptional circumstances. The reason is that the counsel is a minister in the temple of Justice.

3.10 Immunity from Criticism

A Judicial officer may be criticised for his conduct while he/she occupies a judicial office. There is no immunity from criticism of judicial conduct. However, such criticism must be;

i) made in good faith and
ii) not input improper motives.

In essence, criticism is required to be genuine, not malicious or intended to be statements or behaviours that tantamount to:

1) disobedience of court's order..
2) a form of insult on the judge in the course of trial.
3) a publication of matters scandalising the court.

When a judge acts beyond proper judicial boundary he/she may lose or forfeit his/her immunity. But where lies this boundary?

The law lays down no such boundary. It is probable therefore that no action may lie against a judge acting in his judicial capacity.

However, a judge or magistrate may be criminally liable if he/she accepts bribe or where he/she improperly refuses to grant the writ of habeas corpus in the vacation. Such behaviours are obviously beyond ones judicial boundary.

When an action is brought against a judge, the onus is on the plaintiff (claimant) to prove, on preponderance of probability that the Judge has acted beyond his jurisdiction.

There is some authority also that;

i) The reverse is the case if the defendant is not a judge (e.g. if he/she is a Magistrate).
ii) A magistrate may be liable if he/she is guilty of malice even when acting within his jurisdiction.

Judicial Officers are individuals. They enjoy powers which the law has conferred on private citizens. Thus a judge may himself in his individual capacity, arrest or direct the arrest, with or without warrant, of any person(s) committing any offence(s) in his presence. He may commit the offender(s) for trial before another judge or even try the offender(s) by him/herself.

3.11 Other Considerations

The Magistrates, judges of the Area Courts and other judicial officers are public officers. The statute or instruments under which the particular courts are established also prescribe the conditions of appointment and of removal from office of the judicial officers. Judges and magistrate, on appointment, must take the Oath of Allegiance as well as the Judicial Oath by which each of them promises to "be faithful and bear true allegiance to the Federal Republic of Nigeria… discharge his duties and perform his functions honestly, to the best of his ability and faithfully in accordance with the Constitution of the Federal Republic of Nigeria and the Law; (to) abide by the Code of Conduct contained in the Fifth schedule of the Constitution of the Federal Republic of Nigeria, not allow personal interest to influence his official conduct or official decision, and preserve, protect and defend the Constitution of the Federal Republic of Nigeria"

A Nigerian judge is expected to exhibit certain qualities e.g. Integrity of character, patience, wisdom, courage. He is unimpeachable and must do right to all manner of people after the law and usages of the realm, without fear, favour, affection or ill-will, i.e without partiality and prejudice.

As *Lord Mackay* (19..), L C, puts it: the qualities of a judge are

> *"good sound judgement based upon knowledge of the law, a willingness to study all sides of an argument with acceptable degree of openness, an ability to reach a firm conclusion and to articulate clearly, the reasons for the conclusion".*

4.0 CONCLUSION

The majority of criminal matters are dealt with in the magistrates courts. The laws which call the magistrates court into existence also prescribe their powers and the scope of their jurisdiction and these vary from state to state. the Nigeria police undertakes the presentation of criminal matters for the state in magistrate Courts.

5.0 SUMMARY

Justice is the pillar on which the society rests and how the courts and the law enforcement agents dispense it is fundamental. The administration of criminal justice is by both superior and inferior courts. The judicial officers of the superior court can be found in the constitution, which also prescribes, their qualification, tenure and removal from office. Inferior courts are state's creation, and the law setting them up also prescribes their powers. The magistrate is the most predominant court in the criminal justice process. .

6.0 TUTOR-MARKED ASSIGNMENT

1. Differentiate between the judicial officials in the superior courts and those in the other courts

2. What are the roles of the judiciary

3. Write any essay on "the magistrate Court"

7.0 REFERENCES/FURTHER READING

Kasumu A. (1997). The Supreme Court of Nigeria, Keinemann, Ibadan

Slapper, G (2004): The English legal system, Cavendish..

UNIT 2 SPECIAL COURTS

CONTENTS

1.0 Introduction

Administration of (criminal) justice is notconfined to the regular courts alone. There are specialised courts, which also exercise jurisdiction over crimes and offenders. You shall learn a few of these in this unit.

2.0 Objectives

When you have read this unit, you should be able to:

- Enumerate a number of special courts with criminal jurisdiction
- Define such terms as “coroner”, ‘inquest’, convener etc
- Explain the powers of and procedures in a court martial

3.0 Main Content

In this unit, you shall learn above the Coroner, and his inquest. This is introductory only. The rest is for the Law School, legal practitioners and the Police. You will also learn about the court martial, which answers the description of a court. The Orderly Roomprocesses in the different law enforcement Agencies do not have any have no criminal jurisdiction.

3.1 Coroners Court And Inquest

The Establishment of a Coroners Courts, its constitution, jurisdiction and powers, among other things, are governed by the Coroners Act.

a) Coroner defined

A coroner may be defined as a public official whose duty is to:
1. investigate the causes and circumstances of any death that occurs suddenly, suspiciously or violently, and
2. hold inquests

A coroner means any person empowered to hold inquest under the Coroners act.

Who may be coroner?

Persons who may serve as coroners are:

1. Magistrates
2. Other fit Persons so appointed

In some jurisdiction, a Coroner must be a barrister, solicitor or a general medical practitioner of at least five years standing in their profession.

b) Inquest

An inquest is an inquiry by a Coroner, into the manner of death of a person, who has died under suspicious circumstances.

3.1.2 Early History

The office of the Coroner was first established in England in 1194. It was the "keeper of the Pleas of the Crown". Its duties were administrative or inquisitorial in nature and consisted of holding inquests upon dead bodies, among other things.

a) When an Inquest may be held

An Inquest shall hold, when a coroner is informed that the dead body of a person is lying within his jurisdiction and there is a reasonable cause to suspect that such a person has died:
a. a violent death
b. an unnatural death
c. a sudden death of which the cause is unknown
d. in prison, Police custody or confinement in a lunatic asylum
e. in such a place or under such circumstances as to require an inquest in pursuance of an Act (e.g. Death in the Hospital, Mental Hospital, Police Custody).

It is immaterial that the cause of death arose within or outside his/her jurisdiction.

b) Mandatory Inquests:

The Coroner must conduct an inquest in the following circumstances

i. death from any cause of any prisoner or any person in police custody
ii. death as a result of the execution of death sentence (in such a case, inquest must hold within four hours)

c) Discretional Inquest

The Coroner, at his discretion, dispense with an Inquest if:

i. from the report of a medical practitioner, it appears that death was due to natural causes
ii. the body shows no appearance of death being attributable to or having been accelerated by violence culpable or negligent conduct of the deceased, or
iii. any other person.

3.1.3 Suspension of Inquest

Inquest shall not commence where a criminal proceeding has been instituted or about to be instituted against a person in respect of the deceased's death.

Where the Inquest had commenced before the criminal proceeding is instituted, the inquest shall be adjourned. This is to ensure that the criminal charge is not compromised by evidence heard in the coroners court. The Inquest may resume if desirable when the criminal proceeding has been concluded.

Inquest will not be adjourned by reason of the institution of criminal proceedings except murder, manslaughter or infanticide.

Where the coroner is of the opinion that sufficient grounds are disclosed for making a charge against any person in connection with the death, he may stop the inquest, and proceed to issue a summons or warrant to secure the attachment of such a person before a Magistrates' Court.

3.2 Purpose

The purpose of a Coroners Inquest is to enquire into the death of a person

a) Powers

The Coroner is empowered to:

i. adjourn an inquest when he is informed that some person has been charged with murder, manslaughter or infanticide of the deceased
ii. if of the opinion that a post-mortem examination may prove an 'inquest to be unnecessary' direct a legally qualified Medical Practitioner to make a post mortem examination.
iii. at anytime 'after he has decided to hold an inquest' to request any legally qualified Pathologist to make:
    a. a post-mortem examination and/or
    b. a special examination of parts or contents of the body or other substances or things or request any other suitably qualified person to do the same.
iv. To summon medical or other witnesses
v. To order the exhumation of the body of the person who has died in circumstances requiring the holding of an inquest and has been buried.

It is an offence to inter (bury) or cremate a body without lawful authority or excuse where:
- the coroner has prohibited the burying or cremation
- a person died in Police custody or in any prison
- a person died in circumstances where inquest must be held.

b) **Jurisdiction**

What determines whether a Coroner has a jurisdiction to hold an Inquest or not is the place where the body is lying, NOT the place where death was caused, except where the place of death is material.

A place of death is material where the body is unobtainable e.g. because it has been destroyed by fire etc.

c) Duty to Report

Where death has occurred in such circumstances that an inquest is necessary or desirable, a report must be made to the nearest Local/Native Authority or the Police by:
1. Any person who finds such a body
2. Any person becoming aware that death has occurred in circumstances demanding an Inquest.

3.3 Rules of Evidence

The Coroner is not bound by rules of evidence. But we receive evidence on oath as to the identity of the deceased, time, place and manner of death.

Any person, who, in the opinion of the Coroner is a properly interested person, is entitled to examine any witness in person or by his/her counsel.

No witness at an inquest is obliged to answer any questions tending to incriminate him/herself. Where it appears that a witness has been asked such questions, the coroner shall inform the witness that he/she may refuse to answer.

a) Venue

An inquest holds on any day in public, except where the interest of national security demands that it should hold in camera.

b) Procedure

There are different forms designed for use in Coroners inquest. For example Form A is used for an order of Exhumation: Form B is Death Report to Coroner. There are other forms for specific purpose. We shall leave this as the Nigerian Law School and during practice. It suffices to know that such things exist to assist parties.

Proceedings and evidence are directed toward establishing or identifying the following:

- who the deceased was
- how, when and where he/she came to his/her death
- persons, if any to be charged with murder, manslaughter or infanticide
- necessary particulars for the registration.

The findings of the coroner are commonly any of the following:

1. There are no suspicious circumstances surrounding the death nor are there any marks of violence on the body
2. In his/her opinion, an inquest ought to/need not be held
3. the body has been viewed and buried at ….(place where deceased is buried) having been satisfied that the body viewed was the body of ….(name of deceased)
4. the body has been sent to … (specify as appropriate)
5. the following persons have been arrested (or are about to be arrested) in connection with the death on the charges (set out the names of suspects)

In essence, the coroner may:

a) Direct interment where he finds that death is by a natural cause.

b) Where in his summon, the cause of death is murder, manslaughter or infanticide, the coroner may issue a summons or warrant of arrest to secure the attendance of such a suspect before a Magistrates Court.
c) If in the course of inquest, the coroner is of the opinion that sufficient grounds have been disclosed for instituting criminal proceedings, he must stop (for the time being) the inquest until the trial of the accused has been concluded.
d) If the accused is discharged, or the charge is dismissed or the accused is at large, the coroner would resume or conclude its inquest.

Where a body has been wrongfully buried without first holding an inquest, the Coroner may make an order for exhumation and conduct the necessary inquest, if the circumstances of death require the holding of an inquest.

The coroner's finding is not a conviction but only an indictment.

3.4 The Courts Martial

The Courts Martial are special Courts. They are military courts set up to try violations of military law by persons who are subject to the jurisdiction of that Court; e.g. The Nigerian Army, The Nigerian Navy and The Nigerian Air Force.

3.4.1 Constitution

(a) Court Martial may be composed of
    i. a President who holds the rank not below a Major
    ii. Two other officers.

This type of a Court Martial has power to sentence an offender to imprisonment not exceeding two years.
(b) A Court Martial may also be constituted by:

(i) A president, who must be of the rank of a major or above.
(ii) Four other officers

This Court Martial has powers to try officers of the rank of a Warrant Officer. There is no limit to its sentencing power.

3.4.2 The Convener

i. A Commander of the Nigeria Army or equivalent
ii. A General Officer or his Equivalent

iii. A Brigadier or Colonel or other officer acting as (i) or (ii) above, - presumably an Adjutant-General, Quarter-Master or Director General, Armed Forces Hospitals.

The statute does not forbid the convener from appointing himself as a member or even a presiding officer.

A person accused before a Court Martial may object to the competence of a member or members of the Court Martial.

The Sentence by the Court Martial is subject to confirmation of the convening officer, his successor or superior. The convening officer, may confirm, vary or remit the matter back to the court with an order for revision.

The sentence is also subject to review by the Following:

a. the forces council
b. officer whom the forces council may so designate or a supervisor
c. officer in command to the convening officer.

The Power to review a sentence is ousted when an accused appeals to the Court of Appeal.

3.4.3 Appeals

Appeals from decisions of the Courts Martial go to the Court of Appeal. Appeals on Sentence of death are a right. Others are with leave of Court.

3.4.4 Other Matters

Majority of military offences are dealt with summarily and informally by appropriate authority. However more serious ones are dealt with at Court Martial. Examples of such serious offences are:

- Cowardly behaviour before an enemy,
- Mutiny
- Desertion
- Looting
- Theft of Service or public property
- Treason.

When a person who is subject to military law, has been tried by a Court Martial or dealt with by his Commanding Officer for an offence, a civil court is debarred from trying him/her subsequently for the same, or substantially the same offence

as that offence. If for example a soldier has been dealt with for theft by a Court Martial, he/she cannot be subsequently charged with that same theft before a civil court.

4.0 Conclusion

There are regular courts in Nigeria. These are also special courts which are established for particular purposes. Exercises are the coroners court and the court martial. Their powers and functions are contain in the law which set them up.

5.0 Summary

A Coroner's inquest is necessary where a person dies a sudden, violent or unnatural death, or in the police custody; prisons, asylum or in circumstances where inquest is desirable. Coroners are not bound by rules of evidence.

Some religions frown at the institution of coroners inquest. This arises from the belief that a post mortem enquiries or examinations amount to a disturbance of the deceased's soul. However, the powers, functions, rules and regulations governing the coroners inquest are contained in the Coroners Act. The court martial exists for military offences among members of the Armed forces, namely, the Nigerian Army, Navy and Air force.

6.0 Tutor Marked Assignment

1) Write an essay on any one of the following
   a) Coroner's inquest
   b) Court martial

2) Describe the Javenile justice Administration in Nigeria showing how it differs from the adult criminal justice administration.

7.0 References/Further Reading

Kasamu A. (1977). The Supreme Court of Nigeria, Heinemann, Ibadan

Slapper G. (2004). The English Legal System, Cavendish

UNIT 3 LEGAL OFFICERS OTHER THAN JUDGES AND MAGISTRATES

CONTENTS

1.0 Introduction

In this unit you shall learn about the personnel of courts, who are not judicial officers, Without them, the courts may not function.

2.0 Objectives

When you have read this unit, you should be able to:

- Distinguish judicial from non-judicial personnel of the court
- Understand the role of the Attorney General
- Understand the role of the legal practitioner, the police and the prisons.

3.0 Main Contents

3.1 Legal Officers Other Than Judges and Magistrates

a) Attorney- General

Teslim Elias informed us that the exact date of the origin of the office of Attorney-General is obscure. The office of Attorney-General was introduced to modern Nigeria by the British Colonial Administration. The chronology of Attorneys-

General of the Federation, has shown that one R.M Combe probably first served as Attorney-General from March 1918 to August 1918. In this remote beginning, the Attorney-General maintained the interest of the crown before the courts. He subsequently emerged as the states chief legal representative in the court and appeared on behalf of the State in both civil and criminal matters.

In contemporary Nigeria, it would appear that most of the traditional functions performed by the British Lord Chancellor and those by the British Attorney-General are performed in Nigeria by the Attorney-General, who also is the Minister of Justice and the chief law officer of the government.

3.1.1 Constitutional Position

The Constitution of the Federal Republic of Nigeria,1999 provides that;
The President may, in his discretion, assign to any Minister of the Government of the Federation, responsibility for any business of the Government of the Federation, including the administration of any department of government. See *CFRN, 1999, Section 148 (1).*

Similarly the Governor of a State, may in his discretion, assign any Commissioner of the Government of the State, responsibility for any business of the Government of that State, including the administration by any department of government. *See CFRN, 1999 Section 193 (1).*

The Attorney General is, accordingly, assigned in practice, the Portfolio of the Minister or Commissioner responsible for the Ministry of Justice for the Federation or Commissioner for the Ministry of Justice of a State.

The Attorney-General of the Federation is also;

i) A member of the Federal Judicial Service Commission. (*See Third Schedule, part I, Para 12 (c))* .

ii) The Public Officer for the purposes of the Code of Conduct. *(Fifth Schedule, part II (6), CFRN, 1999).*

iii) A member of the Council of State *(Third Schedule, Part 1 B (h). Also see sections 150 and 195, CFRN, 1999.*

To qualify for appointment as an Attorney-General, one must be a legal practitioner. One must also be so qualified for a period of not less than 10 years.

The Attorney-General is a political appointee. Each government appoints its own Attorney-General. He is the chief law officer of the Federation or of the state. He represents the Federation or the state (as the case may be) in proceedings in which it is specifically mentioned. He is the legal adviser to the government.

Note *CFRN, 1999 Section 174* which provides that:-

1 The Attorney-General of the Federal (and also of the state) shall have power:-

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

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

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

2 The power conferred upon the Attorney-General of the Federation to institute, take over or discontinue a criminal proceeding may be exercised by him in person or through officers of his department.

3 In exercising his powers, the Attorney-General shall have regard to: the public interest, the interest of justice and the need to prevent abuse of legal process.

In practice, the Attorney-General may at any stage before judgment, enter a *nolle presecui* either by stating in court or informing the court in writing that the state intends that the proceedings shall not continue. Thereupon the accused shall at once be discharged in respect of the criminal charge or information for which the *nolle presecui* is entered. It may be exercised through the Director Public Prosecutor (DPP) or the Police.

The exercise of the power of *nolle prosecui* is not questionable.
The Attorney-General also enjoys the sole right to prosecute in certain circumstances. He appears for the state in important cases at will. The decision whether to prosecute or not or the number of persons(s) to prosecute among confederates in any particular case is a quasi-judicial function. He does not take orders from the government; and the court can not question it. In some jurisdictions, exercise of power of *nolle prosequi* may be subject to judicial review. In Nigeria, it is not.

Nolle presecui is to be used sparingly. The objective of the exercise is:

1. To protect public interest
2. To protect the interest of justice
3. To prevent abuse of legal process.

The Constitution did not define the terms: "*public interest*", "*interest of justice*" or "*abuse of Legal Process*" or the point at which need for exercise is deemed to arise.

The guiding principles or criteria are not laid out by statute.
Perhaps the following cases may enrich your understanding:
R v DPP Ex. P. C (1994)
R v DPP Ex. P. Jones (2000)
R v DPP Ex. P. Manning (2000)

Self Assessment Exercise 1

1) Dikko, a professor of law, has recently been appointed Attorney-General. He has never practiced since he graduated in law, at the Harvard University in 1988. Comment.

2) Discuss the role of the Attorney-General in the light of the doctrine of Separation of Power.

3.2 Solicitor General

The Solicitor General is a public officer. He is subordinate to the Attorney-General. However, their duties are similar.

3.3 Director of Public Prosecution (DPP)

He oversees the prosecution of criminal cases on behalf of the Federation or the State. He is responsible to the Attorney-General, advises government departments, the Police, etc on important or difficult cases either on application, as a matter of law or practice or on his initiative.

Activity
State as many instances as you can when the legal advice of the DPP must be obtained in a criminal charge as a matter of law.

3.4 Registrar

The Registrar may be a lawyer or a layman, responsible for the administrative work of courts. Invariably, the Chief Registrar is a lawyer. In some cases, he may hear and determine interlocutory applications.

Lay Registrars serve in the court halls. They are the communication link between the judge and the parties or their counsels except when counsels address the courts.

Activity
You are advised to visit any court in session and you will find it richly rewarding. Note the parties and how they relate to one another.

3.4.1 Sheriff

The Sheriff is responsible for the execution of judgements of Courts. The Chief Registrar often is the Sheriff.

3.4.2 Bailiffs

Bailiffs are couriers. They serve court processes and are responsible to the Sheriff through the deputy sheriff.

3.5 Legal Practitioners

Legal Practitioners are either Solicitors, or Solicitors cum Advocates. Solicitorship and Advocacy are different, but they are combined in Nigerian in contrast with the United Kingdom where they are separate.
Qualifications:

A Legal Practitioner must obtain the following:-
i) A law degree in an approved institution or its equivalent.
ii) Attendance at the Nigeria Law School and a qualifying Bar Certificate.
iii) Good character.
iv) Citizenship qualification.
He must also be formally called to the Bar, upon obtaining a Certificate of Call. Otherwise he is a solicitor.

A legal practitioner has a right of audience in any court sitting in Nigeria. But there are exceptions namely:

(a) Except where the law expressly excludes him
(b) Where he defaults in paying practice fess,
(c.) Where the nature of his employment constitutes a disability.

The court is a Temple of Justice and the Bench or Inner Bar (Magistrates and Judges) as well as the Outer Bar (legal practitioners) are Ministers in that Temple

of Justice. The object that is common to both, is the attainment of justice and what is right *according to law*.

Legal Practitioners represent parties and assist them to prosecute or defend their cases. Every person has a right to a Counsel of his choice provided such a Counsel is available and is not under a disability. This right to counsel is at the root to fair hearing and its necessary foundation. A denial of the right to a counsel on absence of legal representation leads the court to a conclusion that the accused has been denied a right to fair hearing and this can be fatal to the judgment of the Court.

The relationship between the legal practitioner and his client is fiduciary in nature and calls for utmost honesty, fairness and diligence. The relationship enjoys certain statutory recognition, privileges and immunities including professional secrecy.

Legal Practitioners have a duty to the court. Hence legal Practitioners should be men of integrity who can be trusted not only by the court but also by the public for whom they act.

Certain controlling organs exist to sustain the integrity of the Legal Practitioners and Standards of Legal Profession. These include:

- The Council of Legal Education,
- Nigeria Bar Association,
- General Council of the Bar,
- Body of Benchers,
- Legal Practitioners Privileges Committee,
- Legal Practitioners Remuneration Committee and
- The Legal Practitioner Disciplinary Committee.

Activity

Find out the powers, duties and limitations of each of the controlling organs mentioned above.

3.6 THE POLICE

There is a Police Force for Nigeria. It is known as the Nigeria Police Force. The Constitution provides that no other police force may, in law, be established for the federation or any state of the federation. The duties of the police are specified in section 4 of the Police Act. These are:

- Prevention of crimes
- Maintenance of law and order,
- Detection and investigation of crimes,
- Prosecution in court,
- Arrests, execution of Warrants of Arrests and searches,
- Detention or release on bail of suspects,
- Summons or service of summonses,
- Protection and preservation of persons and property

Some members of the Police Force serve in quasi-judicial capacities when they are appointed members of Tribunals, or special Court-Martial. They have been known to serve in supreme Military Councils, or as Military Governors and Administrators of a number of states. They serve as orderlies, and render such foreign services as the President may direct.

The Police escort detainees between the Prisons and Court - a duty that the Prisons Authority had, until recently transferred informally to the Police and police by acquiescence had assumed. Now however, the prisons have properly assumed that role. The Police prosecute most criminal cases before the Magistrate Courts, which deal with 80.0 per cent of criminal cases. Some of their members, who are qualified legal practitioners, may prosecute criminal cases in all courts in Nigeria.

Self Assessment Exercise 2

A national police service is constitutionally objectionable and politically dangerous. Discuss by reference to cases, events and illustrations.

Legal Responsibility and Status of Police Officers

The Police constable is an officer of the peace. He has statutory powers, duties, and privileges as any other police officer, irrespective of rank or status.

As *Lord Denning* MR, explained "I hold it to be duty for the Commissioner of Police to enforce the law of the land…….. but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown (Federation or State) can tell him that he must or must not keep observation on this place or that, or that he must or must not prosecute this man or that one nor can any police authority tell him so. Responsibility for law enforcement lies on him; he is answerable to the law and the law alone."

Police Liability for Wrongful Act

Both the offending police officer and the Inspector General of Police are liable for torts committed by the police officer in performance or purported performance of his functions. An offending police officer is responsible for the crimes he commits.

Complaints against the Police
The nature of police duties involves some elements of "reasonable force" but force must not be deliberate or excessive. Where they are, the responsible police officer may be prosecuted.

Violence against the Police
Resistance to Police arrests and other actions had been uncommon. They became noticeable during the Military Regimes. In recent times violence against the police officers in the course of their duties has increased. Sometimes, their attacks are fatal and unprovoked. Perhaps, the statutory offence of assaulting or obstructing a police officer needs to be revisited, broadened and given more teeth. More investment in the Security of Police Officers may be necessary.

Violence against the police may be component of the declining respect for the way the police operates, implying that the rate of operational changes and strategies lad behind social change. Quoting *Nunn, Okonkwo* enumerated other complaints against the police, namely;

c) Exaggeration by the police of evidence in court.
d) Fatuousness in dealing with police demonstration.
e) Ineptitude in handling the public on occasion of public procession
f) Incivility to members of the public and
g) Unnecessary delay in attending to complaints.

These complaints may tend to widen the gap between the police and the public, they may also be reactions to the treatment they themselves encounter, the perception of the Police Organization or other stereotype.

There are other Agencies that exercise jurisdiction over crimes and administration of Criminal Justice. Examples are:

The states security services
National Drug Law Enforcement Agencies,
Economic and other Financial Crimes Commission.

Self Assessment Exercise 3

How do you react to the observations above with justification?

3.7 PRISONS

It is hardly recognized that the Prisons form part of the Nigeria Criminal Justice System. The Prison is a Federal agency responsible for the convicted offenders during the period they are incarcerated. It also holds, temporarily, suspects who are undergoing prosecution, in Court.

The United Nations Congress on Crime Prevention and Treatment of Offenders has laid down a Standard Minimum Rules for Prisons, which Nigeria has adopted. Thus the treatment of persons sentenced to imprisonment or a similar measure shall have as far as the length of the sentence permits, the purpose of;

i) Establishing in them, the will to lead law abiding and self supporting lives after their release and to fit them to do so.
ii) Encouraging their self-respect and developing their sense of responsibility.

In essence the objective of the prison regime is to reform and rehabilitate the offender. Hence the aphorism that the "offenders are sent to prisons as punishment but NOT for punishment".

Self Assessment Exercise 4

Critically think about the aphorism "offenders are sent to prison as punishment but NOT for punishment". Examine its validity or invalidity in the light of your experience with Prisons and Treatment of Offenders in Nigeria.

Still on Treatment of Offenders, Legal writers and criminologists have impressed on the Courts, the Police and the Prisons, the need to imbibe a new orientation for:

i) The recognition of the rights of suspects at the police station, of accused persons in court and convicts in prisons.
ii) Constant heart searching
iii) Desire and eagerness to rehabilitate offenders in a world of industry,
iv) Tireless effort towards discovery of curative and regenerative processes in regard to treatment of crimes and criminals.

The product of such orientation would ultimately serve as the symbol of the nation's civilization. The public generally and the Bar and media in particular must be alert to encourage prison objectives and to resist any voices of indolence or cynicism that might belittle any efforts or hamper their further development and actualisation. No one can afford to be indifferent. Even you as students of Criminology and Security Studies cannot afford to. You too have a stake in the matter.

4.0 CONCLUSION

The Attorney-General is the Chief Law Officer of Government. As a minister of the Federation or Commissioner in the State, he may be assigned responsibility for any business of government (Federal or State as the case may be). He heads the Ministry of Justice, prosecutes important cases and appears for the Federation or State as appropriate. Legal Practitioners represent their clients. Sometimes they appear for the Attorney-General. The Police prosecutes the majority of criminal cases while the prison strives to reform and rehabilitate the offender.

5.0 SUMMARY

The Attorney-General, the Legal Practitioners, the Police and the Prisons are part of the personnel of the Nigeria Criminal Justice System. They play important statutory and complementary roles in the administration of Criminal Justice.

6.0 TUTOR MARKED ASSIGNMENT

1. Write a critique of "*Nolle Prosecui*"
2. Rehabilitation of the offender is a Public concern. *Discuss*.

7.0 REFERENCES/FURTHER READINGS

Elias, T. (1972) The Nigerian Magistrate and The Offender, Ethiope, Benin City.

MODULE 5 JUNENILE JUSTICE ADMINISTRATION

UNIT 1 ADMINISTRATION OF CRIMINAL JUSTICE OVERVIEW

CONTENTS

1.0 Introduction

In this unit, you shall learn how the crimes and offenders known to the police are processed through the criminal justice machinery by the law enforcement agents and the courts.

2.0 Objectives

When you have read this unit, you should be able to:

- Discuss certain technical terms like charge, Judge Rules, bail, criminal proceedings, etc
- Describe the stages of a criminal process in the sequence
- Enumerate Dispositional methods

3.0 MAIN CONTENTS

ADMINISTRATION OF CRIMINAL JUSTICE: overview:

The constitution provides that all authorities and persons exercising legislative, executive and judicial powers should conform to and observe and apply the provisions of the chapter 11 of the CFRN, 1999. It also stipulated that the independence, impartiality and integrity of courts of law and easy accessibility shall be secured and maintained. *(Sections 13 and 17).*

3.1 Commencement Of A Criminal Process

A police officer may, with or without warrant, arrest any person who commits an offence in his presence or whom he suspects, upon reasonable grounds, of having committed an offence. In certain circumstances, a private person may also arrest another without warrant and as soon as practicable, hand him/her over to the police.

Similarly, a judge or magistrate may arrest or order the arrest of any person who commits an offence in his presence and within his/her jurisdiction. A person may also go the police and lodge a complaint at a Charge Room that a crime has been committed by a suspected person (known or unknown), which may form the basis of further Police action.

What is arrest and why do the Police or Court Arrest?

Arrest is the taking and restraining of a person from his or her liberty in order that he or she shall be forthcoming to answer to an alleged or suspected crime or offence.

The Police may arrest for the following reasons:

1. To prevent the person arrested from continuing with his/her offence or from committing further offences
2. To protect the offender against likely harm or danger
3. To punish the offender.

The procedure for arrest is prescribed by law, (CPA and CPC).

3.2 Charge Room

At the Charge Room, the officer in charge (Charge Room Officer) hears the complaints, records it, and attaches a label to his summation of facts in the light of his knowledge of law. If the label is other than a crime, he dismisses the complaint. The charge room officer may dismiss any complaint on the ground that it is false, trivial, vexatious, frivolous or civil. Otherwise, he admits the case,

records it and refers both the complaint and the complainant and the suspects, if any, to the Crime Branch for investigation accordingly. As a matter of practice, the Charge Room Officer must record the name and address of the complainant, time, date, place and nature of every complaint he/she receives in the course of his/her duty, as well as his actions, and decisions on each.

3.3 Criminal Branch

The crime officer receives the complaint referred to him for investigation. An investigating Police Office (IPO) or a team of investigation Police Officers (IPO) is assigned to it.

Judges Rules
Certain Judges rules were laid down in 1912 to guide the Police and other members of the Executive who may be engaged in criminal investigation. The rules were designed to forestall the use of third hand method or extra legal means of obtaining statements or extracting evidence from suspects. The rules have no force of law, but the Police invariably follow them because the court would seize on non-observance and reject evidence obtained outside the rules; and hence lose the case. The rules were revised in 1964 for Britain but the revised rules do not appear applicable. More will be said in the law of Evidence.

Under the Judges rules, however, a police officer, in endeavoring to discover whether or by whom an offence has been committed, is entitled to question any person(s) whether suspected or not from whom he thinks that useful information may be obtained. The IPO may obtain voluntary statement from the complainant and from witnesses if any. He visits the scene, gathers evidence, and tests each evidence at his disposal. He identifies the author(s) of crime and formally effects arrests.

The IPO must make up his mind to arrest for an offence, he must inform the suspect of the crime for which he (IPO or other) is arresting him. Thereafter, when the Police officer formally cautions the suspect that anything he/she says would be taken down in writing. The phrase “and may be used in evidence AGAINST him/her” is not to be used. A voluntarily statement may be given in evidence: it is NOT given in evidence AGAINST anybody. You would observe that the Police is required to ‘caution’ the suspects first when he is arrested, and second when he invites or the suspect decides to make a statement; and then at every other time a statement is taken from him. The device of caution is to assure voluntaries of statement be it oral or written. It constantly reminds the suspect of his/her right to remain silent, or say ‘confirm’/deny what he chooses in exercise of his/her freewill.

It is important that the suspects should cooperate with the IPO in the process of investigation and lead the IPO to his/her witnesses, if any.

Bail

Arrest is the beginning of imprisonment. The first thought of a person under arrest is how to secure his/her release. The suspect may be released on bail if the crime is bailable or within police powers to grant bail. Otherwise, he may be remanded pending arraignment "as soon as practicable". Where the arrest is by warrant, it is usual to find the bail terms endorsed on it. Otherwise he is taken before the issuing Magistrate of Judge, Complaints against juvenile delinquents or women are generally assigned to female investigating Police Officers (W/IPO).

On completion of investigation, the IPO (or W/IPO if the IPO is a female) puts up a comprehensive report and recommendation to his/her 'superior' Officer who decides. He may refuse the case because, in his opinion, there are no credible witnesses; or because it is false, frivolous, vexatious, trivial, civil or contrary to public policy to prosecute. Certain cases are to be referred to the Attorney-General (either as matter of law or as a matter of practice) for legal advice, or prosecution. Where the case diary is not so referred, the Police officer may prefer a criminal charge. This method of bringing a person to court is most frequently.

A Charge means the statement of offence or statement of offences with which an accused is charged in a summary trial before a court.

Self assessment Exercise 1

a. Mention 5 cases which the Police must refer to the Attorney-General

b. Mention 5 cases which the Police may or may not refer to the Attorney-General.

3.4 Arraignment and Trial Process

Arraignment is the initial step in a criminal prosecution whereby the accused person is brought before the court to hear the charge or charges and to enter a plea.

A criminal proceeding may be initiated in any of the following ways.

1) Bringing a person arrested without a warrant before a court upon a Charge by a police officer.
2) Laying a complaint before a Magistrate or High Court.
3) Filing information before a High Court with the consent of the Judge.
4) First Information Report before a court.

What is a Criminal Proceeding?

A Criminal proceeding is the proceeding which a Court classifies as criminal.

In the absence of express categorization, the Court, in deciding whether a proceeding is criminal, may consider:-

- The true nature of the proceedings, taking into account the severity of the penalty which may be imposed, looking especially at whether imprisonment is a possible penalty *(Smith and Hogan) 2005 (9)*
- Whether the rule applies only to a specific group or to the public generally.
- Whether the imposition of any penalty is dependent upon a finding of culpability
- Whether in law, the particular conduct has been defined as criminal.

For more details, read the following: The Criminal Procedure Act (CPA) Sections 77, 78, 340 and Criminal Procedure Code (CPC) Section 143. The choice between a "Charge or "Information" depends on the nature and seriousness of crime and what the law stipulates.

Information is formal criminal charge after an accused has been committed for trial or on complaint or otherwise filed in a High Court.

The charge or the information sets out the particulars of the accused, the act or omission which forms the subject matter of charge, time, place, date of the act or omission and the law contravened or the law specifying punishment. The original copy of the charge sheet or information is retained by the Court. A copy is usually served on the accused.

3.5 Mode Of Trial

A trial may take any of the following forms or modes;

1. Summary Trial for a summary offence
2. A summary Trial for an indictable offence
3. Trial following a Preliminary Inquiry.

Statutes permit some indictable offences to be tried summarily. The choice must be based on good reasoning. Example the motivation of the prosecutor in this regard may range from convenience, expedition, and desire to obtain a plea of guilt.

Note: Lord Parker's caveat: "there is above all, the proper administration of criminal justice to be considered, question such as the protection of the society and the stamping out of the sort of criminal enterprise, if it is possible. In serious cases

therefore, it may not be acting in the best interests of the society by inviting summary trial".
See *Coe (1969*), Also *Broad (1979*)

3.6 Appearance in Court

At the court, the Registrar calls on the accused. He goes to the dock; the registrar confirms his name, reads the charge aloud, asks him if he/her understands and whether or not he/she wants to be tried summarily at the Magistrate Court or on indictment at the High Court. The Court takes his plea if he elects summary trial and having confirmed that the accused understood the charge(s). The court provides an interpreter at state expense, as appropriate. The pleadings open to a person charged with an offence are:-

(i) **Guilty**:
If the accused pleads guilty, the prosecutor is only obliged thereafter to give a resume of evidence of the elements of the crime. The court may confirm the plea and find him guilty if it satisfies itself that the accused clearly understands the meaning of the charge in all its details and essentials and also the consequence of his/her plea. The court may yet find him not guilty despite his admission of guilty in appropriate cases.

(ii) **Not Guilty:**
Upon a plea of not guilty, by the accused, the court records it, considers his bail or remand and adjourns for trial. The reason for defence adjournment is to give the accused reasonable time for his defence.

i) *Autrefois acquit*
This is pleaded if the accused person had earlier been tried and found "not guilty" for the same offence.

ii) *Autretois convict*
By this defence, the accused says that he had already been tried, and convicted for the same offence

iii) *Pardon*
This is a claim that he had been tried, convicted and pardoned by the state for the same offence.

vi) *Keeping mute to malice*: He may keep mute to malice, that is, not saying anything and the court enters a plea of "Not Guilty". This runs contrary to the common parlance that "silence means consent".

3.6.1 Trial

That is the hearing of evidence by a Magistrate or Judge and the full inquiry into a case culminating in a verdict. Parties and their witnesses are present in court. The

case is called, the accused enters the dock while the witnesses leave the court and out of hearing. The prosecutor opens his case. He may or may not make a statement. He calls his first witness, leads him/her in evidence-in-chief. The accused or his counsel cross examines and the prosecutor re-examines. The process is repeated for each witness until the case witness is examined in chief, cross examined and re-examined. That is the case of the prosecution. The court turns to the accused to open his/her case, and warns him/her of his/her rights, namely:

i.) The right to elect to keep mute, remain at the dock, not saying anything.
ii.) The right to elect to give evidence from where he is at the dock and he will neither be sworn nor questioned.
iii.) The right to elect to testify on oath in the witness box and be cross-examined.

It is important that the accused must elect and his election must be recorded. Where he testifies in the witness box as a witness, he, like any other witness or witnesses, is led in evidence-in-chief, cross examined and re-examined. Should he introduce new matters, in the course of re-examination, the prosecutor will be given opportunity to rebut it. The Magistrate/Judge has power to call any witness or call on earlier witness. At the conclusion of the case for the defence, the counsels on both sides may address the court.

The court serves as both judge and jury. As a jury, the court must set out the facts of the case as it finds it. As a judge, the court applies the law to the facts. There are general as well as special defences for a crime. You will learn more of this in your Criminal Law Course.

3.6.2 Verdict

The court must give a verdict of either “guilty” “not guilty” “not guilty by reason of insanity”. Upon a verdict of not guilty, the accused must be discharged and acquitted. Where the court finds that the prosecution has established all the elements of the offence(s) charged “beyond reasonable doubt” the court is would pronounce a verdict of “Guilty”, where the accused is sane or “not guilty by reason of insanity”.

The verdict may be one of ‘Not Guilty’ if the prosecutor fails to prove its case to the criminal standard of proof or the defence successful rebuts evidence adduced on the balance of probability.

Note the following:

- No person shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under a written law at the time when it was committed.
- It is a general principle of law that only the law and the law alone can define a crime and prescribe a penalty

An offence must be clearly defined in law. The court will not construe a criminal law by analogy.

3.6.3 Sentence

Upon a finding of "Guilty" the court asks the accused (now a convict) if he/she has anything to say why a sentence should not be passed on him/her according to law. This is what is usually referred to as "*Allocutus*". The Court receives evidence of accused's antecedent. This comprises of evidence of any thing in the convicts favour, date of birth, education, employment, domestic and family life, circumstances, general reputation and association, date of arrest, whether he/she has been on bail or remand or if previously convicted, the date of last discharge. The totality of this information enables the court to arrive at an appropriate sentence.

4.0 Conclusion

The Constitution of the Federal Republic of Nigeria has provided that Nigerian courts shall be independent, impartial and of integrity and easy accessibility. The process of arrest, bail, arraignment and trial are prescribed by law and can be found in the Criminal Procedure Act, Criminal Procedure Code and the Evidence Act or Law.

5.0 Summary

You have learnt additional technical terms, thus enriching your vocabulary. You are now familiar with such terms as arrest, arraignment, bail, etc. Judges rules serve as a guide to criminal investigation. You learnt of the stages of the criminal process from the point of contact with the police, at the police station and from appearance in court to the final disposition of the charge.

6.0 Tutor-Marked Assignment

Your friend in the United Kingdom wants information about the criminal process in a Nigerian court. Write him or her an appropriate reply.

7.0 References/Further Reading

FGN
- The Criminal Procedure Act
- The Criminal Procedure Code
- The Evidence Act

UNIT 2 JUVENILE JUSTICE ADMINISTRATION

CONTENTS

1.0 Introduction

In the administration of criminal justices adult offenders are treated differently from delinquent children and young persons. In this unit, you shall learn how the law requires that this special group should be treated.

2.0 Objectives

When you have read this unit, you should be able to:

- Identify the special group of children and young persons
- Demonstrate an understanding of the situation when children and young persons may be arrested and /or detained
- Discuss the Juvenile welfare court
- Critique the dispositional methods
- Compare Adult and Juvenile Justice Administration in Nigeria.

3.0 MAIN CONTENT

3.1 Definition of Terms

a) Child

A child means a person under the age of 14 years.

b) Young Person

A young person means a person who has attained the age of fourteen years and is under the age of seventeen years.
In Street Trading Offences, a young female is a girl between the ages of fourteen and sixteen years.

The children and Young Persons law (Northern Nigeria Law) 1963 defines a young person as a person who has attained the age of 14 years but has not attained the age of 18 years.

c) Juvenile

The term Juvenile is a general term embracing a Child and a young person.

3.1.1 Determining the Relevant Ages

A person attains a particular age on the commencement of the relevant anniversary of the date of his birth. The Court may presume the age of a person brought before it from the evidence available at that time. Where a statute demands that the age of a person must be strictly proved, no presumption by court will avail. It must be strictly proved. Examples of cases requiring a strict proof of the age of the Juvenile are:

- Age of a victim of sexual offences
- A child whose written statement is tendered in evidence.

3.2 Criminal Responsibility

Criminal responsibility means liability to punishment. A person under the age of seven years is not criminally responsible for any act or omission.

A person under age twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission, he had capacity to know that he ought not to do the act or make the omission.

A male person under the age of twelve years is presumed to be incapable of having carnal knowledge. The younger the child is, the stronger must be the evidence of capacity to know that he ought not to do the act or make the omission. This can be proved by strong evidence of mischievous discretion; concealment, design or ferocity etc.

A person of the age of twelve years or more is presumed to have sufficient discretion. He is deemed to have full criminal responsibility.

When an adult is being prosecuted for an offence and previous conviction becomes an element. Any previous convictions when he/she was under twelve years of age are to be disregarded.

3.3 Arrest or Custody of Children and Young Person

Where a Juvenile is arrested with or without a warrant, he must be brought immediately before a Magistrate's Court.
If the Juvenile cannot be brought before the Magistrates' Court, the Police Officer in immediate charge, for the time being, of the Police station to which the Juvenile is brought, shall enquire into the case forthwith and shall release him/her ***unless***:

- The charge is one of homicide or other grave crime or
- He/she ought in his/her own interests to be further detained (e.g. to remove him from association with any reputed criminal or prostitute) or
- The police officer has reason to believe that the release of the /juvenile would defeat the ends of Justice.
- If he/she was arrested without warrant, he/she would fail to appear.

However, if the juvenile has been arrested with a warrant, his/her parent or guardian must enter into recognizance (with or without surety) to secure the appearance at the hearing of both the juvenile and the parent or guardian. Where the juvenile is not released, arrangement must be made for the juvenile to be taken into the care of the Local Authority. The Officer to whom the juvenile is brought shall cause him/her to be detained in a place of detention (provided under the Act) ***unless***:

- It is impracticable to do so
- The juvenile is of so unruly or depraved a character that he/she cannot be safely so detained
- By reason of his state of health and his mental or bodily condition, it is unadvisable so to detain him/her. In this case, a certificate shall be required to that effect.

It is important that children and young persons do not associate with adults charged with or convicted for any offence other than an offence with which the child or young person is jointly charged or convicted.

3.3.1 Power to detain otherwise than for an offence.

Any Police Officer may detain a child or young person whom he reasonably believes to be in need of care or protection order or to be prevented from receiving education.

3.3.2 The Category of Children and young persons in need of care and protection includes

- Orphans or juveniles deserted by relatives
- Juveniles who have been neglected or ill-treated by persons under whose care and custody they are.
- Juveniles whose parents or guardians does not exercise proper guardianship
- Juveniles who are found destitute and have both parents or surviving parent, undergoing imprisonment
- Children and young persons under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child.
- Daughter of a father who has been convicted of defilement of girls in respect of any of his daughters.
- Persons found wandering and have no home or settled place of abode or visible means of subsistence.
- Persons found begging or receiving alms, whether or not this is any practice of singing, playing, performing, offering anything for sale or otherwise, or is found in any street, premises, or place for the purpose of so begging or receiving alms.
- A child or young person who accompanies another person when that other is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise.
- One who frequents the company of any reputed thief or common or reputed prostitute. If however, the only common or reputed prostitute is the mother of such child and it is proved that she exercises proper guardianship and due care to protect the child from contaminations, the latter will NOT be regarded as in need of care and protection
- A child or young person who lodges or resides in a house or the part of a house used by prostitutes for the purpose of prostitution, or is otherwise living in circumstances calculated to cause, encourage or favour the education or prostitution of the child.
- A child or young person in relation to whom any of the offences against morality under the Criminal Code has been committed or attempted. (Offences against Morality includes unnatural offences, indecent treatment and practices, defilement, seduction or prostitution, keeping or frequenting brothels, procuration, Abduction, Abortion, obscenity etc).

- Children and young person, who having been born or bought within the Republic of Nigeria, would but for the provisions of the law relating to the legal status of slavery, be a slave or
- Children and young persons, who are otherwise exposed to *Moral Danger*

3.3.3 Moral Danger

A child or young person is said to be exposed to moral danger if he/she is:

- Found destitute
- Wandering without any settled place of abode and without visible means of subsistence
- Found begging or receiving alms, whether or not there is any practice of singing, playing performing or offering anything for sale
- Found loitering for the purpose of so begging or receiving alms.

3.4 Juvenile Welfare Courts

One of the functions of the Magistrate is to sit as a Juvenile welfare Court (JWC) to hear allegations of delinquency against children and young persons. Juvenile welfare courts are courts of summary jurisdiction, which are established under the Children and Young Persons Acts 1913-1943. The Juvenile court is constituted by a magistrate and two Assessors, one of whom must be a woman. In some states, the Chief Judge appoints the Assessors. Certain institutions have specially beencreated for the welfare of the delinquents and to enable the JWC to function effectively. They are:

- Approved schools
- Remand schools
- Probation and probation officers.

3.4.1 JUVENILE COURTS PROCEDURE

At a court appearance, the parent or guardian of the juvenile may be rsommoned to attend the court.

Juvenile Court

The Juvenile Court is a court of summary jurisdiction. It shall not sit in a room where a court other than a juvenile court is held.
If the Juvenile Court and any other court (not being a Juvenile Court) are to be held in one room, the Juvenile Court session shall not sit within one hour before or after the sitting on that other court.

The only persons who may be present at a Juvenile Court proceeding are:

- The officers of the court
- Parties to the case and persons who are directly involved
- Persons specially authorized
- Newspaper Reporters
- Court messenger or clerk

No child (other than an infant in arms may be admitted to the court unless he/she is a witness.

Function of the Juvenile Welfare Court (JWC)

The functions of JWC include:

1. Treatment of Juvenile delinquents other than those charged with homicide
2. Hearing Application in respect of children and young persons who are:
   - In need of care or protection
   - Beyond parental control
   - facing complaints of truancy
3. Dealing with applications for Adoption of children where the law so provides.

3.4.2 Procedure in the Juvenile Court.

After the court has been set,

- the clerk calls the case and the Juvenile delinquent.
- The allegation is read.
- The substance of the delinquency is explained in simple language until he/she confirms that he/she understands the charge.
- A juvenile delinquent has no right of election. Juvenile offences, other than homicide are triable summarily and disposed of in the juvenile court. The juvenile is asked if he admits the allegation.
- If the allegation is not admitted, the prosecution calls his/her witnesses one after the other. Where a witness is a juvenile and is called to testify in a case which is contrary to decency or morality, the court may order that all persons not directly concerned be excluded. A Newspaper reporter may not be so excluded; but he/she is barred, in the interest of justice, from disclosing the identity of the juvenile offender or juvenile witness.

When the last prosecution witness has finished his evidence, and the court is satisfied that no *prima facie* case has been made out, the matter ends.
Conversely, where a prima facie case has been established, the delinquent and his/her defence witnesses are heard. The juvenile may give evidence or make a

statement. His/her witness or the juvenile delinquent may make an unsworn statement. But if he/she chooses to give evidence or testify on his/her own behalf he/she may be required to subscribe to an oath as follows:

"I promise before Almighty God (or Allah) to tell the truth, the whole truth, and nothing but the truth"

The court may receive unsworn statement, if the child is of tender age and the court is of the opinion that the child:

- does not understand the nature of the oath
- understands the duty of speaking the truth
- has enough intelligence to justify the reception of his/her evidence.
  An unsworn evidence must be corroborated by a sworn evidence, implicating the juvenile delinquent in a material particular. If the juvenile delinquent admits the allegations or where the offence is proved, the court hears information of and gives due consideration to:
- juvenile Delinquent's Allocutus
- Before it makes an order, the court must first consider the antecedent of the delinquent. Such antecedent includes:
  - General Conduct
  - Home Surrounding or home life
  - School Records
  - Medical History

The Juvenile offender may be committed for trial for an indictable offence if:

1) The court considers that, if found guilty, he or she should be detained for a long time
2) He/she is charged jointly with an adult and in the interest of justice, the court considers it necessary to commit both for trial.

Parties to Trials

Persons who may attend the Juvenile Welfare Court session are:

- Members and officers of the court
- Parties to the case
- Parties counsels
- Persons specially authorised
- Newspaper reporters, with leave of court
- Others who may be directly concerned

3.4.3 Dispositional Methods

If the delinquency preferred against the child or young person has been proved or admitted, and the reports of his antecedents, Allucutus and plea for leniency have been given due weight, the court makes an order.

4.0 Conclusion

Children an young persons are a special group of people who need care and protection. The Children and Young Persons Act has provided guidelines and procedure for treating their delinquency.

5.0 Summary

Different laws define 'child' or 'young' person. It is an irrebuttable presumption of law that a person under the age of seven in Nigeria cannot be criminally liable. One who is seven but under 12, is not liable for crimes he or she commits unless there is evidence of mischievous discretion. A child or young person may be arrested in exceptional circumstances and those circumstances and the power to detain can be found in the Children and Young Person Act. There is a special procedure for dealing with delinquents and delinquencies and the dispositional orders, which may be made against a delinquents, are the subject of the next unit.

6.0 Tutor-Marked Assignment

Distinguish between treatment of an adult offender and a delinquent from the point of contact with the police to the disposal of the offence or delinquency in court.

7.0 References/Further Reading

FGN - Children and Young Person Act.

UNIT 3 ADMINISTRATION OF JUVENILE JUSTICE AND STANDARDS

Contents

1.0 Introduction

Juvenile Justice Administration is different from adult criminal process. You need to know the differences and be able to make a choice between both and support such a choice. This unit equips you to do so.

2.0 Objectives

When you have read this unit, you should be able to:

- Distinguish between Adult and Juvenile criminal Justice Administration
- Enumerate the rights of the Juvenile
- Assess how well protected these rights are
- Compare and contrast institutional and non-institutional treatment of Delinquents.

3.0 Main Content

3.1 Judicial Attitude Minimum Standards Rules

Judicial attitude is positive, creative and therapeutic. It is one of a shift from movement away from Law of “an eye for an eye” to one of “Love your neighbour”. The juvenile court may impose a fine in order to serve as a deterrent or restitution, rather than imprison him/her and run risks of contamination. In imposing a fine, the court takes into consideration the economic circumstance of

the child or young person and may order the delinquent's parent to pay the fine. A reasonable chastisement and flogging inflicts fear and pain but they are part of Nigerian culture aimed at pressing home that delinquency does not pay.

3.1.1 Language

Use of certain terms is not encouraged in the course of investigation and prosecution of juvenile delinquencies. See below for some examples:

Unusable Terms	Preferred Terms
Accused/suspect	Subject, Delinquent
Crime or offence charged	Delinquency, allegation
Guilty, conviction	Proved, not proved
Sentence	Order

3.2 Juvenile Offences

Stealing is the predominant juvenile delinquency. The children and young persons are also victims of a number of offences which may be committed against them. Examples are:

- Cruelty to children and young persons under sixteen years of age
- Allowing persons under sixteen years of age to be in a brothel
- Taking a pawn from a person under fourteen years of age
- Acquiring scrap metal from a person under sixteen years of age.
- Abandoning or exposing a child under two years of age.

3.2.1 Exceptional Cases Where Juvenile May Appear Before Adult Courts

A child or young person who is charged alone or jointly with another or other juveniles must be dealt with by the juvenile court. However, a Juvenile may appear before an adult court in the following extreme situations:

1. when he/she is charged jointly with an adult
2. when he/she is a principal offender, aided and abetted by an adult
3. when he/she is found to be a juvenile during the proceedings
4. when an application for remand or bail is made
5. when he/she aids and abets an adult
6. when he/she and an adult are charged at the same time with different offences arising out of the same or connected facts.

Care Proceedings
In addition to criminal proceeding, children and young person may also face "Care Proceeding". Both the criminal proceeding which we have so far dealt with and care proceeding to which we shall now turn should be distinguished one from the other.

Any Local Authority, police officer, or authorised person, reasonably believing that there are grounds for making an order, after giving appropriate notice, bring a child or young person before a juvenile court, if the court is of the opinion that:

- His/her proper development is being avoidably prevented or neglected or his/her health is being avoidably impaired or neglected or he/she is being ill-treated, or
- The above is probable where another child of the same household is not or was so placed, or
- He is exposed to moral danger, or
- He is beyond control of parents or guardians
- He/she is not receiving efficient full time education (a matter for local education authority only), or
- He/she is guilty of an offence, excluding homicide and
- He/she is in need of care or control, which he/she is unlikely to receive unless the court makes an order.

Order
The order which the court may make in this circumstance includes:

- An order binding over the parents to take care and exercise control over him or her (ONLY IF THE PARENTS CONSENT)
- Supervisory order
- Care order
- Hospital order
- Guardianship order

3.3 Refractory Juvenile

Action by parent/guardian
The third category of proceeding is where a parent brings his/her child or young person before a juvenile court on the ground that he/she is unable to control him/her. Such a child or young person is a refractory juvenile.

There are set preconditions;

1. The Parent must first give notice in writing to the Local Authority within whose area the child or young person resides to bring the child or young person before the juvenile court and
2. The Local Authority has declined to do so.

3. Then the parent or guardian may apply by Complaint to a juvenile court for an order directing them to do so.

Action by any person.

Any person who is acting in the interests of a juvenile, may by information on oath, depose to the justice that there has been reasonable cause to suspect:

- That the juvenile has been or is being assaulted ill-treated, or neglected in a manner likely to cause him unnecessary suffering or injury to health,
- That a first schedule offence has been or is being committed against the juvenile.

First schedule offences include:

a. offences against the person (Homicide, Abandonment, Assault, child Stealing)
b. infanticide
c. sexual offences
d. offences against children and young person (See above)

3.4 Standard Minimum Rules for the Administration of Juvenile Justice

The United Nations General Assembly, following the recommendation of the 7th Congress, has adopted a "Standard Minimum Rules for the Administration of Juvenile Justice". This is contained in Resolution 40/33 of November, 1985 and it provides as follows:

Part

1. General Principles
2. Investigation and Prosecution
3. Adjudication and disposition
4. Non- institutional Treatment

A. General Principles

Fundamental Perspectives

- Member states shall seek to further the well-being of juvenile and their families.
- Member states shall try to develop conditions to ensure meaningful lives in the community for juveniles
- Sufficient attention should be given to positive meanings involving mobilization of resources, such as the family, volunteers and community groups to promote the well-being of juveniles.

- Juvenile justice shall be an integral part of the national development process of each country.

B. Age of Criminal Responsibility

In legal systems, recognizing the concept of an age of criminal responsibility for juvenile, such an age level shall not be fixed too low, bearing in mind emotional, mental and physical maturity.

Activity

Write a research on 'Comparative Study of Criminal Responsibility'. *(Make reference to Nigeria and at least 2 other countries)*

C. Aims of Juvenile Justice

Any reaction by the Juvenile Justice System to juvenile offenders shall be in proportion to both the offenders and the offence

D. Scope of Discretion

Appropriate scope for the exercise of discretionary power shall be allowed at all levels of legal proceedings affecting juveniles.

E. Rights of Juveniles

Basic procedural safeguards shall be guaranteed at all stages of proceedings, namely:

- presumption of innocence
- the right to be notified of charges
- the right to remain silent
- the right to Counsel
- the right to the presence of a parent or guardian
- the right to confront and cross examine witnesses
- the right to appeal

F. Protection of Privacy

The Juvenile right to privacy shall be respected at all stages

G. Investigation and Prosecution

- ***Initial Contact***
  Upon apprehension of the Juvenile, the Police shall notify his/her parents as soon as possible and the competent authority shall consider his/her release without delay.

- ***Detention Pending Trial***
  The Police dealing frequently with juveniles shall be specially instructed and trained. Consideration should be given to dealing with the juvenile offenders without resort to trial. Detention pending trial shall be as a last resort and for the shortest possible period of time. While in the custody, juveniles shall
- be kept separate from adults
- receive care, protection and all necessary assistance that they may require in view of their age, sex and personality

3.5 Adjudication and Disposition

- Juvenile offenders shall be treated by the competent authority according to the principles of fairness.
- Juvenile proceedings shall be conducted in an atmosphere of understanding, allowing the juvenile free self- expression
- Prior to sentencing and final disposition, the background and circumstances of the offender shall be properly investigated.
- The reaction taken shall always be in proportion not only to the circumstances and gravity of the offence, but also to the needs and circumstances of the juvenile and society.
- Restrictions on the personal liberty of juvenile shall be imposed only after careful consideration and shall be limited to the minimum.
- Deprivation of liberty shall not be imposed except in cases of serious acts involving violence against another person or of persistence as committing other serious offences

3.5.1 Dispositional Methods

- Capital punishment shall not be imposed for any crime committed by juveniles
- Juveniles shall not be subjected to corporal punishment
- To provide flexibility so as to avoid institutionalism to the greatest extent possible, a large variety of dispositional means should be made available, including probation, community services, supervision, financial practices, group counseling, foster care etc.
- No juvenile shall be removed from parental supervision unless due to necessary circumstances.
- Least possible use of institutionalization
- The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.
- Each case shall be handled expeditiously

- Records of juvenile offenders shall be kept strictly confidential and limited to duty authorized personnel. They shall not be used in subsequent adult proceedings

Non – Institutional Treatment
Efforts shall be made to provide necessary assistance, such as lodging, education, vocational training, and employment, to facilitate the rehabilitation powers. Help from volunteers shall be sought

3.5.2 Institutional Treatment

- Measures shall be taken, within institutions for juveniles to provide care, protection, education, and vocational skills to assist offenders in assuming constructive and productive roles to society.
- Conditional release from institutions with appropriate support and assistance shall be used to the greatest extent possible.
- Research as a basis for planning, policy formulation and evaluation.
- Efforts shall be made to review and appraise periodically, the causes and problems of juvenile delinquency and crime and needs of juvenile custody.

Nigeria's Response to the United Nations Standards
Nigeria is among the countries that ratified Resolution 33/40 of 1985. In response governments of Nigeria have taken the following measures.

a.) Creation of more juvenile courts in the states of the federation to deal with cases involving juvenile delinquencies.
b.) Employment and training of Probation Officers and Assessors to assist Juvenile Court in ensuring the protection and observance of the rights of the juvenile offenders.
c.) Periodic conferences, seminars and workshops for Magistrates with a view to acquainting them with modern principles and practices in Juvenile Justice Administration.
d.) Employing various agencies, bodies and other stake holders to review the children and young persons Laws. The idea is to make the applicable Law more realistic, relevant and functional in contemporary Nigeria and fully incorporate the UN prescriptions.

Self Assessment Exercise 1

To what extent are the children and young persons not realistic, relevant and functional in contemporary Nigeria?

The Juvenile Justice Administration in Nigeria is characterized by minimum use of detention ranging from a period of not more than three months of pre-trial detention, to a maximum of three years post-trial detention. Juvenile courts are headed by Magistrates and they deal exclusively with cases involving juveniles. Juvenile delinquents are not allowed to get in contact with adult offenders.

The Remand Homes serve as pre-trial detention centres. The institutionalised centres are Approved Schools and the Borstal Institutions. In exceptional cases where the juvenile is sentenced, he/she serves the term in the Juvenile Wing of the Prison. In some States, there are separate Approved Schools for girls, intermediate boys and senior boys. Available vocational training differs between Approved Schools and Borstal Institutions.

Trials are in camera. A main characteristic of the juvenile justice administration in Nigeria is its heavy reliance on the non formal system e.g. intervention of parents, peers, religious leaders, community leaders, title holders, age-sets and age-grades. There also is a great use of non-institutional measures – probation, repatriation, discharge, fines, compensation, binding over, and fostering. Both the Laws and culture favour caning. The belief in the efficacy of caning is strong and it is expressed in the adage: "spare the rod, spoil the child", it is probably a worse violence not to cane an earring child than to cane him.

The Administration of Criminal Justice in relation to adult crimes and criminals differ significantly from that in relation to juvenile delinquencies and delinquents. The discrepancies can be observed in the language and attitude of the police and the courts, the cadre and treatment of parties involved before, during and after trial, choice of venue of trial, prescription as to the constitution and procedure of court and disposition methods. In administering juvenile criminal justice, the court can be seen to make conscious efforts to correct and to reform the delinquent child or young person. The Care and Protection proceeding and protection from Moral Danger are unique.

Generally the end of justice appears better served in the Juvenile Justice Administration than in Adult's Justice Administration. The Juvenile courts, in reliance of reports of Probation Officers, and presence of lay Assessors is compelled to consider excruciating circumstances which may surround the delinquent/delinquencies – be they parental or environmental, which may have precipitated the proscribed behaviour or situation. Common in the administration of criminal justice, both in the adult court and in the juvenile courts is the fact that both, always look at the law, the prescribed sanctions and justice of the case.

4.0 CONCLUSION

In the classical age, everyone was responsible for his acts or omission and the consequences that followed. The thought was that everything done was a matter of choice and by freewill. The neo-classicalists recognized that there exists certain extenuating circumstance which may negate the concept of freewill. One of such is non-age or immaturity. Today it is an irrebuttable presumption of law that a child who is under seven years of age cannot commit any crime in Nigeria. The liability as to punishment of one who is seven but under twelve years in age, however, is rebuttable: for he cannot commit crimes in the absence of any evidence of mischievous discretion. Their conduct may have been *reus* but the perpetrators are not.

The law is strict as to the treatment of juvenile delinquents and their delinquencies.

5.0 SUMMARY

Children are different from young persons by definition. In both cases, their delinquencies are subject to the children and young person's legislation unlike the adult offences and offenders who are subject to the criminal code or the penal code, among others. They face two classes of treatment:

- One for care and protection from moral danger.
- The other for juvenile delinquencies.

6.0 TUTOR MARKED ASSIGNMENT

1. Write a critique of the Juvenile Criminal Justice Administration in Nigeria.

7.0. REFERENCES/FURTHER READINGS

Kasumu A.(1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

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UNIT 4 PENAL THEORIES AND DISPOSITIONAL METHODS

Contents

1.0 INTRODUCTION

This is a continuation of the criminal justice administration. In the last unit you learned about the arrest, detention and the juvenile welfare court procedure up to the point of making an orders. In this unit, you shall learn what order the Juvenile Welfare Court may make and conclude with the principles of administering justice.

2.0 OBJECTIVES

When you have read this unit, you should be able to:

- Explain penal theories
- Enumerate the orders which may be made against a child or young person.
- Enumerate the sentence that may be made against an adult offender
- Critique the role of the prosecutor

3.0 MAIN CONTENTS

3.1 Penal Theories and Dispositional methods

There are a number of penal theories. Some of them are:

a) Justice

The penal theory of justice argues that the purpose of punishment is to ensure that justice is done and seen to be done in all circumstances.

Accordingly, professor H.L.A. Hart, the chief exponent of this principle, argued that like offenders or offences should be treated alike. He suggested that exemplary sentences are modes of ensuring justice.

> For example if the punishment for stealing is imprisonment for three years or a fine of N300 in lieu of imprisonment and A and B are indicted for stealing, A and B, if found guilty should suffer equal and the same terms of imprisonment or equal amount of fine.

A person who murders shall be hanged and so be it irrespective of offenders standing or circumstance of the offence.

The problem with this theory is that it is nearly impossible to find that any two offenders, offences and /or circumstances are in all points the same.

b) Protection of the Society

The exponents of this principle have argued than the aim of punishment is to protect the society from social dissention and disorganization. Such protection is attained through prevention or reduction of crimes and criminality.

Other names of this philosophy is "prophylaxis theory". This theory holds that by hanging a murder, - process of elimination, crimes of murder in particular and crimes in general will be eliminated or reduced. Similarly by putting an offender in prison (imprisonment), the offender is disabled, at least during his/her incarceration, from committing crimes. In the same way the society is protected from a drunken driver who is under a disqualification or from an alien by an order of his deportation.

c) Retribution

This is the theory of just desert – an eye for an eye; a tooth for tooth.

Thus a person who does an act or makes an omission which constitutes an offence must be punished. The range of maximum punishment are provided by the law prescribing the offence.

A minor offence is punished by an imprisonment for less than 6 months; misdemeanor may attract 2 years while a felon may earn three or more years imprisonment. A simple theft may attract 3 years imprisonment aggravated ones may attract between 7 years and life imprisonment. Attempts to commit crimes attract half of the punishment for the full offences. Offences are punished according to its seriousness or gravity. The theory believes that the severity of punishment deters crimes.

d) Deterrence

This theory argues that the purpose of punishment is to deter:

1. The offender (specific deterrence)
2. The general public (general deterrence)

Capital punishment, for example, completely deters the offender. He/she will not be available to commit further crimes. Whether the general public is deterred is controversial. The increasing rate of recidivism suggests that punishment or imprisonment is an effective deterrent

e) Rehabitation Reformation, Restoration

The prison Authorities have asserted that the prisons administration is run in a progressive spirit with a view towards not only the prisoner's custody but also his reformation and ultimately social rehabilitation.

Conversely, criminal responsibility means liability to punishment.

It is argue that the purpose of sending one to prison is not to punish him or her. He is in prison as a punishment, but he or she is there for reformation.

This leads to the rationalisation that the prison may be rehabilitatory but the period of incarceration when he/she is being prepared for rehabilitation or reformation is governed by the principles of retribution.

Furthermore, the period of imprisonment is justified by the extent of the prisoners' culpability.

However, with the setting up of the National Open University of Nigeria, Prisons Special Study Centre, he philosophy of rehabilitation, Reformation and Restoration may have been retrenched.

3.2 Dispositional Methods

Before making an order or passing a sentence, the court considers a number of factors.

3.2.1 Juvenile Welfare Court

The children and young persons law, make it mandatory that the court must first consider the Antecedent of the delinquent. This includes reports of his/her history, home life, school, associates etc. the orders which the court may make includes:

a. Dismissal
The Court may make an order dismissing the charge.

b. Fine
The court may impose a fine and order the parent or Guardian to pay a fine, cost or damage.

c. Probation or Supervision
This order, which the Court may make, requires a person having attained the age of 17 years and found liable of an offence, the sentence which is not fixed by law, is to be under the supervision of a Probation Officer for a period from one to three years. The Court may include requirements as to residence, mental treatment, and/or securing the probationer's good conduct generally.

The Children and Young persons Act sets out what the Court must consider before making a Probation order and the consequence of any breach.

d. Discharge
The Court may make an order discharging the delinquent. A discharge may be;
a. absolute
b. Conditional e.g. that he commits no "further offence" for any period not exceeding three years.

One may ask: *'What does "further offence" mean in this context'*?
Does it mean the same offence for which he/she is brought to court or a different type of offence?

Will he/she now be dealt with for the latter offence only or for both the past and the present?

e. Caning

Caning is most widely used in Nigeria; followed by fines, probation and binding over in that order. Canning must not exceed 12 strokes. Female delinquents are not caned. The desirability or otherwise is beyond the scope of this present syllabus, it is topical.

f. Imprisonment

A young person may be sent to jail if there is no other means of dealing with him/her. A person under the age of 17 years at the time of offence cannot be sentenced to death.

g. Admonition

The child or young person may be warned.

h. Binding Over

The delinquent or his parent may be ordered to enter into a bond to be of good behaviour for a specified time.

i. Repatriation

The court may directed that the child be sent elsewhere as to him/her domicile or other appropriate place

j. Committal (or corrective) orders (or mandate)

The Court can make an order committing the delinquent to;

1. the care of a fit person
2. an approved school
3. the custody in a place of detention provided under the children and Young Persons Law.
4. any other method.

Some state laws qualify these orders as “corrective orders”, “committal orders” or “mandate”

Self Assessment Exercise 1

1. Discuss exhaustively, committal or Corrective orders in relation to juvenile delinquents.
2. “Borstal Institutions and Remand Homes or Approved School should be abolished”. *Comment.*

3.3 Juvenile Offenders and the Police

The Nigeria Police bears the burdens of ensuring that delinquent children do not associate with adults charged with or convicted of any offence other than an offence with which the child or young person is jointly charged. This should be the order while the delinquent is in custody or child being conveyed to or from the court.

a. Police Juvenile Welfare Branch

The Police has a Juvenile Welfare Branch for prevention of youthful offences and treatment of juvenile delinquents. The Branch is made up mostly of Women Police Officers. Is this adequate? Would you recommend a full fledge special Police command responsible for Juvenile Justice Administration?

b. Detention of Juvenile Delinquents

A Juvenile Delinquent is not to be detained by the Police unless

1. The charge is one of homicide or other grave crime
2. It is necessary in the interest of the delinquent to remove him/her from association with a reputed criminal or prostitute or
3. The Police officer has reasons to believe that the release of such a delinquent would defeat the ends of justice.

Often the Delinquent is released on self recognizance or to his parent or guardian with or without surety. Otherwise, he is detained. Detention must be in a place approved for detention under the Children and Young Persons Act unless:

- it is impracticable to do so
- the delinquent is so unruly or depraved a character that he cannot safely be detained or
- by reason of his state of health or his mental or bodily condition, it is inadvisable so to detain him.

A certificate to the above effect shall be produced to the court before which the juvenile is brought. Perhaps it may be important to distinguish between children and young persons who;

a. violate the criminal law
b. are maladjusted, anti-social or rebellious
c. are orphans, deserted by relations, persons wandering, having no settled home or visible means of subsistence
d. Beggars

It cannot be sufficiently stressed that in matters affecting children and young persons, the paramount consideration is the welfare, reformation, and rehabilitation of the juvenile.

Self Assessment Exercise 2

What is the place of National Open University of Nigeria in the Scheme of Juvenile Criminal Justice Administration?

The sentence of court may be one or more of the following;

- Death sentence (under 17 or pregnant women cannot be sentenced to death)
- Imprisonment
- Flogging (i.e. caning)
- Fines
- Forfeiture
- Seizure
- Disqualification
- Probation
- Discharge (absolute or conditional)
- Compensation
- Restitution
- Costs
- Damages
- Reconciliation
- Deportation
- Binding over
- Destruction

Except where it is mandatory, the choice and question of sentence is discretionary. In theory, the objective of sentence ranges from retribution, deterrence, to reformation and rehabilitation, or reparation. In practice the magistrate or judge considers such factors as;

- Where the crime was planned
- Whether offender is an habitual criminal
- Prevalence of the particular form of crime
- Whether violence was employed
- Public interest
- Nature of the crime
- Previous conviction for similar offence (if any).

The sentence is the gist of criminal proceedings and *Stephen **(19…)*** tells us “it is to a trial what the bullet is to a gun”. *Smith* and *Hogan **(19…)*** have advised that any court dealing with an offender in respect of an offence must have regard to the following:

a. The punishment of offenders
b. The reduction of crime (including its reduction by deterrent).
c. The reform and rehabilitation of offenders
d. The protection of the public, and
e. The making of reparation by offenders to persons affected by the offence(s)

The court will not impose a heavier penalty than one that was applicable at the time the crime was committed.

Activity
As a Judge, consider critically, how you can have in mind all of the purposes of sentencing in any one case; and apply each appropriately and consistently.

3.4 Fundamental Principles in the Administration of Justice

A few of the fundamental principles in the administration of criminal justice need to be mentioned:

1. The court must consider every defence open to an accused person on the evidence
2. The whole account which a person gives of the transaction must be taken and considered as a whole. The Magistrate or Judge cannot take the unfavourable parts of the case and refuse to consider the defence raised by him in the same statement and other defences which surface in the evidence before the court however slight or minor.
3. The burden of proving a fact, which if proved would lead to the conviction of the accused is on the prosecution who should prove such fact beyond reasonable doubt.
4. Any doubt as to the guilt of the accused person, arising from the contradictions in the prosecution's evidence of vital issues must be resolved in favour of the accused
5. The findings of facts and conclusions from facts of a trial court should be based on evidence adduced before the court and not on speculations or possibilities. No court of law is entitled to draw conclusion of a fact outside the available legal evidence before it.

The appraisal of oral evidence and the ascription of probative values to evidence is the primary duty of a trial court. The Court of Appeal would interfere only in the following situations:

1 Where the trial court made imperfect or improper use of the opportunities of hearing and seeing the witnesses

2 Where the trial court has drawn wrong conclusions from accepted or proved facts which those facts do not support

This is a reasonable expectation; for where a trial Judge draws mistaken conclusions from indisputable facts or wrongly arranges or presents the facts on which the foundation of the case rests, the appeal court would not abdicate its responsibility and rubber-stamp the error, but would intervene and do what justice demands.
See *Lawal v Dawodu (1972); Omoregbe v Ehigiator* and *Fatoyinbo v Williams (1956)*

3.4.1 Limitation on the Role of the Prosecutor

*Herbert Stephen **(19…)*** emphasized that the object of the prosecutor is "not to get a conviction, without qualification, but to get a conviction only if justice requires it".

Ideally, the Prosecutor takes no part or takes only a minimum part in the sentencing process. His proper role is to see that the prosecution case is fairly presented and that all weaknesses in the defence case are identified and fairly exposed to court".

The Prosecutor is to state all the relevant facts of the case dispassionately, whether they tell in favour of a severe sentence or otherwise. *Crompton **(19…)*** likened the proper motivation of a prosecution to that of a Minister of Justice. Nonetheless, the Prosecutor is entitled to present a strong case, to hit hard, but with blows that are scrupulously fair. Note the difference between the two sides:
1. The state (represented by the Prosecutor) is interested is justice.
2. The defence is interested in obtaining an acquittal within the limit of lawful procedure.

3.4.2 Holding Charge

When a person is accused of committing an indictable offence, he may be arraigned upon a "holding charge" before a magistrate court for the purpose of remanding him to custody pending his appearance before a High Court which has jurisdiction to try the offence.

An illustration is where a person is accused of robbery, the Police investigation may have been concluded or on-going, it may be pending DPP's legal advice or other. Meanwhile the prosecutor prefers a charge, and arraigns the suspect before a Magistrate. The Magistrate Court has no jurisdiction to try the offence charged. All it does is to remand the accused.

In the opinion of the Court of Appeal, 'holding charge' is unknown to the Nigerian Law. *(Enwere v Cor (1993)).*

The Court has said:
Where the jurisdiction to try offenders is exclusively vested by law in the High Court, the arraignment before a Magistrate Court is tantamount to a holding charge, which has been described as unconstitutional and illegal".

Holding charge may be or may not be Constitutional or legal in legal theory. But it is there and it accounts for a sizeable number of persons incarcerated in the prisons.

4.0 CONCLUSION

A Criminal process may be initiated by arrest, complaint, information or first information Report depending on statute, convenience, expedition, public interest and proper administration of criminal justice. A summary offence is tried summarily, and an indictable offence either summarily or on indictment. Appearance in court of parties is indispensable. So also is the observance of certain rights conferred on an accused person.

5.0 SUMMARY

We have discussed the process of Criminal Justice Administration. You now know the different ways in which a person charged with a crime may be brought before the court, his pleas and his rights. The trial process must lead the court to enter a verdict of either acquittal if he is not guilty or a sentence if he is.

6.0 TUTOR MARKED ASSIGNMENT

1.) What are the rights of a person charged before the court for an offence?

2.) Write a critique of the administration of criminal justice in Nigeria.

7.0 REFERENCES/FURTHER READINGS

Slapper, G. (2004): *English Legal System*, Cavendish, London.

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MODULE 6 MISCELLANEOUS

UNIT1 VICTIMS OF CRIME

CONTENTS

1.0 INTRODUCTION

Victims have constituted a neglected side of the criminal justice Administration. Much of the available literature on the subject and even the Constitution of Nigeria and the principal laws on crime bear scanty references and have shown little consideration for victims of crimes. The reason perhaps is that the outcome of crime has been considered solely in terms of the punishment of the offender. To a student of law, an understanding of the relationships between all the parties to crimes and their roles is of tremendous assistance in identifying the criminal properly so called, bearing in mind that crimes are responses to specific situations.

2.0 OBJECTIVES

When you have studied this Unit, you should be able to:

1. define the term "Victim" of crime
2. describe or explain the position of crime victims in the administration of criminal justice system
3. show the neglected side of the criminal justice system
4. critique the criminal justice system as it relates to Victims of Crimes.

3.0 MAIN CONTENT

3.1 Crime and Punishment

In the Criminal Justice System, a victim of crime is a person harmed by crime. Incidentally crime has often been defined in terms of punishment of the offender; which also is public initiated.

(a) *The Constitution:* The Constitution provides that a person shall not be convicted of a crime unless it is defined and its 'punishment' is prescribed in a written law.

(b) *Statutes:* The Criminal Code defines crime as an act or omission which renders the person doing the act or making the omission liable to punishment under the code, or under any order in council, ordinance, law or statute. A criminal liability is also described as liability as to punishment. Criminal law is assumed to be a set of prohibition and duties coupled with penalties.

(c) *Legal Writers:* Legal philosophies have referred to crime as:

- violations of public rights and duties, (Blackstone), or
- an act subversive to the society (Driberg).

According to Beccaria the aim of the Criminal Law is to punish offenders and to curb passions excited by vivid impression of present objects. One may add that it is also and to protect the deposit of public security. All these have greatly influenced public outlook and orientation and acceptance that punishment is the major (if not the sole factor) in the characteristic of crime and criminality.

Development of Crime

The development of crime itself is instructive. In the earliest time, all wrongs were civil, first redressible by vengeance, then by extraction of 'Bot' as a form of compensation. Subsequently some wrongs became "botless" and those who committed such offence were not merely fined but were punished severely by the state. In place of private vengeance, the king exacted royal vengeance, in place of exaction of compensation as in other wrongs like tort, the crown confiscated the felon's property and exacted outrageous fines to enrich the treasury (crime). Thus in criminal proceedings, parties became the state and the offender, to the exclusion of other crime victims.

The trend was fortified by the social contract theory as enunciated by Hobbes, Lockle, and Rousseau. The king, on behalf of the people extended his "peace" to all and sundry. The generality of people were, in return, obliged to observe the

peace. Its breach by any individual entitled the king, on behalf of the people, to use state power to restore the equilibrium.

You will recall also that the objective of the customary justice administration is reconciliatory and restitutive. Following the introduction of the British type of police and prisons, the British Colonial Administration warned the Native Courts that it was no longer sufficient to order that stolen property be restored to its owner but that the offender should additionally be punished. There was a shift to punishment as the object of Criminal Justice System. In other parts of Africa, it was not different. Blood money which provided a little 143ictim to victims of murder or manslaughter gave way to imprisonment which only provided labour for the state with no benefit to the crime victims.

3.2 DEFINITION OF VICTIMS

The term victim, means any person who, individually or collectively with another person or other persons, has suffered injury, loss, or damage in consequence of a criminal offence, regardless of his/her relationship with the offender, and including filial, parental, spousal or other relationship.

The term includes, where appropriate, any other lawful complainant by reason of his/her familiar relationship, dependency or the relationship of guardian and ward.

3.2.1 Classes of Victims of Crime

There are direct and indirect crime victims.

A. Direct Victims of Crime

This refers to persons immediately 143ictimize143 by the conduct of the offender. If Audu slaps Abubakar or injures, or robs him, or steals his property or breaks into his home at night, Audu is an active offender. Abubakar is a direct victim of Audu's criminal conduct.

B. Indirect Crime Victim

This is a person other than the direct victim who suffers some loss or pain as a result of crime. In the hypothetical cases above, the relatives of Abubakar are indirect victims of crimes. So also is the state as a whole because she suffers "shock" whenever any of her citizens is traumatized. In the instant case, the pains of the indirect victims are often psychological.

3.2.2 Intermixture of Direct and Indirect Victimisation

Often, it is not clear cut who a victim is:

Example:

Abdullahi drives his car without due care and attention. He knocks down Uzodinma a Traffic Police Officer on duty. He is seriously injured and rushed to the Hospital. Mary his pregnant wife is informed. She runs to the hospital, meets her husband in a comma. She suffers severe nervous shock, and threatened abortion resulting in an immature delivery of their only baby who turns out to be an idiot. Mary is also declared medically unfit to bear any child any longer in consequence of the shock and treatment. Here, the dichotomy between the offender and the victims (direct and Indirect) are fairly determinable.

In many cases, however, the dividing line between the victims and active offenders may be blurred. The reason is that the parties to crimes do at times react and cooperate with one another; the complaining party may have the major characteristics of the offender, having precipitated the crimes, by **eking** the potential offender.

Activity

Examine the following situations and identify who the victim of crime really is:

a). Ngozi taunts Chukwu with impotency. Chukwu is at his wits end; he slaps Ngozi. Chukwu is arrested.

b). Juliet and Romeo fiddle and curdle intimately. Romeo makes advances; Juliet declines abruptly; and was forced into carnal connection. Juliet is aggrieved.

c). Ada grabs Husaini, her husband, by the neck, because she fears he was going out for a girl friend. Husaini pulls her off; Ada gets up rushes at Husaini ferociously. He pushes her off. Ada falls, hitting her head on the edge of a table and dies on the way to the Hospital.

In many cases too, the external precipitate factors and excruciating circumstances, if properly analysed, may even bring about a complete acquittal of the accused persons or at worst a finding of partial liability. Unfortunately, unlike in tort, contributory negligence is not a valid defence per se, although it may provide the basis for the partial defences of accident, self-defence and provocation in Criminal Justice Administration.

3.2.3 International Crime Victims

A crime committed in one country can victimise people in other countries at the same or at different times. Examples are:

1. victims of computer fraud and money laundering.

2. crimes against natural environment like illicit disposal of nuclear and other forms of toxic waste or negligence in large scale transoceanic transport of petroleum
3. theft of cultural patrimony e.g. object of historical, religious or artistic value).
4. trafficking in persons including adult and child prostitution.

3.3 Crime Victims and Criminal Administration of Justice

Crimes offenders and victims known to the police represent a mere tip of the iceberg. The Police or other investigating agencies obtain statements from the aggrieved victims, and also summon them to testify as prosecution witnesses. That completes the role of crime victims in the criminal justice continuum.

In the pre-trial, trial and post trial process, the rights of the offender are strictly enforced. Appeal against conviction may be allowed if the prisoner's rights are violated. Conversely, the rights of the victim to protection of law, redress, or restitution receive little consideration if at all. This is not peculiar to the Nigerian Legal System and its criminal justice administrative machinery. It is universal. Yet a Criminal Justice System and law enforcement mechanism can only be fair and effective where they are able to protect the rights of people (offenders and Crime Victim) to a secure existence and to develop their economic and social potential without discrimination.

It is important therefore to strike a balance between the rights of crime victims on the one hand and the rights of the offender on the other.

3.4 Victims' Remedy

Some of the characteristics of the Modern Criminal Justice administration may be stated as follows:

- It apportions blame to a party
- It involves punishment
- It leads to strained relationship and bitterness since the belief is strong that parties do not take themselves to court and become friends again.
- It is a European conception of criminal justice.
- It denies the victims of crimes any remedy or compensation

3.4.1 Victim Remedy approach

a. Dichotomy approach

The theory of dichotomy of the parties denies victim remedy, identifies the state and the offender as the only parties in a criminal justice administration.

3.4.2 Victim Impart Statement Approach

This is a counterpoise to the theory of dichotomy of parties. It demands that criminal proceedings should contain "Victim Impact Statements"

3.5 Milan Plan of Action, 1985

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of offenders held in Milan, Italy in 1985, considered among other things the issues of Criminal Justice Process and Perspectives in a changing world and Victims of Crime.

The congress addressed the rights of the Victims of Crime and abuse of powers; and unanimously adopted the Resolution (GA/Res/40/34) on 'The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Powers'. The declaration recommends measures to be taken at the International and regional levels to improve access to justice and fair treatment, restitution, compensation and social assistance for victims of crime.

This Resolution was approved by the United Nations General Assembly. The highlights of the Resolutions are: as follows:

1. Victims should be treated with compassion and respect for their dignity and are entitled to prompt redress for harm caused.
2. Judicial and Administrative mechanisms should be established and strengthened to enable victims to obtain redress.
3. Victims should be informed of their role and timing and progress of their cases.
4. The views and concerns of victims should be presented and considered at appropriate stages of the process.
5. Steps should be taken to minimize delay and inconvenience to victims, ensure their privacy and protect them from intimidation and retaliation.
6. Offenders should, where appropriate make restitution to victims or their families or dependants. Where public officials have violated criminal laws, victims should receive restitution from the state
7. When compensation is not fully available from the offender, states should provide compensation to victims or their families in cases of significant physical or mental injury.
8. Victims should receive the necessary material, medical, psychological, and social assistance through governmental and voluntary means
9. Police, justice, social and other personnel concerned should receive training to sensitise them to the needs of victims.

10. States should consider incorporating into national law, norms proscribing abuses of power, including political and economic powers. They should also provide remedies to victims of such abuses, including restitution and compensation.

Self Assessment Exercise 1

To what extent has Nigeria entrenched the 'Declaration of the Basic Principles of Justice for Victims of Crime and the Abuse of Power' in the Nigerian Criminal Justice System?

Courts of Criminal Jurisdictions

You have learnt about courts hierarchy generally. Since our course focuses on Criminal Justice Administration, we shall now direct our attention to the courts which exercise criminal jurisdictions. These courts include:

1. Customary Courts
2. Area Courts
3. Magistrate Courts(Including Juvenile Courts and Coroners Court)
4. High Court of the State
5. Federal High Court
6. Court Martial
7. Court of Appeal
8. Supreme Court of Nigeria.

Since the year 2002, there has been an International Criminal Court, which as the name suggests, hears and determines limited criminal matters.

Doctrine of *Stare Decisis*

The Doctrine of Stare *decisis* (ie "to stand by things decided") or "keep to the *rationes* decidendi of past cases" is that when a principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination or to a new ruling by the same tribunal or by those which are bound to follow its adjudication, unless it be for urgent reasons and in exceptional cases.

Ratio Decidendi

Granville Williams ***(19,,,)*** explained that English Courts (and Nigeria Courts also) are obliged to your previous decision within more or less widely defined limits. This is what is referred to as the doctrine of precedent or *stare decisis*. The part of a case that is said to possess authority is the *ratio decidendi* that is to say, the rule of law upon which the decision is funded – the reason for deciding.

Finding the *ratio decidendi* of a case is an important aspect of legal training. It is not a mechanical process but an art gradually acquired through practice and learning. For this reason, no further details is attempted here. However, one may add that legal writers have identified two steps that may lead to ascertaining a *ratio decidendi*;

1. the first step is to determine all the facts of the case as seen by the presiding Judge
2. the second step is to discover which of those facts are treated by the judge as material.

In some cases the only authority you may find in what they actually decide and all that is binding is the decision. Examples are cases where the *ratio decidendi* of the previous case is:

- obscure
- out of accord with authority or established principle
- too broadly expressed.

Obiter Dictum

Obiter Dictum (by the way) may be described as:

- 'chance of remark' (Glanville William)
- Rule of law stated merely by way of analogy or illustration or a suggested rule upon which the decision is not finally rested.
- What is left after a *ratio decidendi* has been extracted.

Obiter dictum is not binding upon future courts though it may be respected according to the reputation of the judge, the eminence of the courts and the circumstances in which it came to be pronounced. What was an obiter dictum in a previous case may grow into a *ratio decidendi* in a later case.

Law Reports

A System of Law Reporting is essential to judicial precedent and the hierarchy of the courts. Cases are reported, for example in:

- Nigerian Law Reports
- Selected Judgment of the West African Court of Appeal
- Selected Judgments of the Federal Supreme Court of Nigeria
- Judgments of the Supreme Court of Nigeria
- Nigerian Weekly Law Report
- Law Reports of Court of Nigeria
- Federation of Nigeria Law Report
- Human Rights Law Report of Africa

These are examples only.

Some states have their Law Reporting System. Examples are found in

- Edo State Law Reports
- Law Reports of Northern Nigeria
- Law Report of East Central State.
- Western Nigeria Law Reports etc.

Some Newspapers also report cases
Examples are:

- The Vanguard Newspaper
- The Guardian Newspaper
- This Day Newspaper

Hierarchy of Authority

The rank of each of the Courts is important in judicial precedence and hierarchy of the Courts, and authority. The general rule is that every court binds lower courts in the same hierarchy. For examples, the Supreme Court is the highest court in Nigeria; all its decisions enjoy peculiar sanctity and authority and bind all other courts in Nigeria. The Court of Appeal binds all courts except the Supreme Court.

There may be no difficulty where the judgment of the Supreme Court is unanimous or is by an overwhelming majority or in the court of Appeal that delivers on judgment as the judgment of court. There may be a problem where, for instance, the justices of the Supreme Court express different opinions, showing a great diversity; and there is no majority for any particular view. Such cases are exceptions rather than the rule.

4.0 CONCLUSION

Traditional criminal justice system accorded due consideration to the rights of all the parties to crime. It tried to restore parties as far as practicable to the original positions they were before the crime took place. The offenders were fined and the fine or part of it given to the victims. The offender might be required to work for the victims for specified days. Where murder has occurred, the murderer would be fined, and the fine distributed among the deceased family. If the deceased is a young girl, bride price might be paid. In appropriate cases a marriage might be contracted between both families to save the victimized family from extinction. There was community support for the right to life, and security of person for all. Under the Modern Criminal Justice System, customary criminal law system has ceased to exist. Punishment and imprisonment are predominant and these are contrary to custom and only the state benefits to the exclusion of the direct crime victims.

5.0 SUMMARY

The Victims of Crime are a wide category. There are direct and indirect victims. There is a dichotomy between the rights of an offender and those of the victims and this has begun to attract global attention.

6.0 TUTOR MARKED ASSIGNMENT

Evaluate the position of Criminal Justice Administration as a course in the CSS Programme.

7.0 REFERENCES/FURTHER READINGS

Kasumu A. (1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G. (2004): The English Legal System, Cavenish.

FGN: Children and Young Persons Legislations

Glanville Williams

UNIT 2 WOMEN: VICTIMS AND AGENTS OF THE CIRMINAL JUSTICE SYSTEM

CONTENTS

1.0 INTRODUCTION

Women's involvement in crimes whether as offenders or victims is a recent phenomenon in Nigeria. The information on sex distribution of offenders and crime victims is scanty. Statistics from Europe may not be of much help because of the differences in terminology, definitions, and classification of crime types, reporting and recording practices and operations of the criminal justice system from time to time. You may be consoled by *Clifford* who says that in the light of little knowledge of crime including (women offenders and women victims) at this time, even simple observation have some value.

The categories of offenders and crime victims cut across sex barriers. Both men and women have been disgraced at probes and tribunals; arrested at home or abroad for fraud or for pushing and trafficking dangerous drugs. More perplexing has been the growing involvement of women in drug offences, robbery and other serious crimes of violence and financial fraud, which have until quite lately been the prerogative of adult males.

2.0 OBJECTIVES

When you have studied this Unit, you should be able to:

1. analyse feminine involvement in crime
2. examine women victimization
3. explain the role of women generally in the criminal justice system

3.0 MAIN CONTENT

In his study of prison population, *Oyakhiromen(2008)* found that the ratio of female to male convicts has been 1:5. The ratio of convicts to arrests among male offenders is 1:7. That of women is 1:6. Prison population percentage distribution is 96.4 (male) 3.6 (female). The implications are as follows:

1. women enjoy more leniency in the court,
2. women are protected more readily from prosecution,
3. women are less likely to earn custodial sentences than men are,
4. male suspects are still more likely to be arrested, charged and prosecuted than female suspects,
5. female suspects are relatively easier convinced than males, implying perhaps higher morality, and
6. males are predominantly the delinquent sex

The ages of convicts were as follows:

Age	***Male%***	***Female%***
Under 20 years	25.3	14.3
21 – 25 years	23.7	21.9
26 – 50 years	48.1	61.3
51 and above	2.9	2.5

This is consistent with the characteristics of male convicts except that the data show that females retire much earlier from crimes. Scholars have explained that as they approach 40 years, females tend to concentrate more on family living or in crimes of cunning e.g. unlawful possession, cheating etc.

Oyakhiromen's (1999) analysis of suspects in all the police stations in Lagos State on one weekend is as follow:

Offence Category	**Total No. (M & F)**	**Male %**		**Female %**	
		Total	**Male**	**Total**	**female**
Offences against property	281	43.8	47.5	3.2	40.4
Offences against persons	211	32.6	35.4	2.7	34.1
Other offences	106	15.7	17.1	2.0	25.5
Total	**598**	**92.1**	**100.0**	**7.9**	**100.0**

The ratio of Male: Female suspects found in the Police custody were 12:1 (total offenders), 14:1 (Property offenders), and 13:1 (personal offences). Female suspects appear to enjoy bail while the males are more likely to be remanded. Both

in aggregate number and proportion, both sexes are frequently in trouble with the police with regard to the laws governing property than any other.

The preponderance of property offenders in Police and Prison custody have been explained in terms of differential attitude, policies and official responses.

Some Scholars have argued that one might be nearer to comprehending the cause of crimes and therefore able to proffer effective control if only one can discover whey there are so few female offenders and overwhelming number of male offenders.

Some have countered, arguing that the greater conformity among women is a myth. The reason are that:

a. women's participation in crime is not less significant , but the double standards in law enforcement is
b. women criminality wears a masked character and defy reportability and detection

Causes of feminine criminality are beyond the scope of this course. You will learn more of that in the manual on criminology proper. It is significant to point out that female criminality has the potentiality to generate juvenile delinquency because children and young persons are closest to their mothers. This raises the hazards of female convicts with their children in the prisons. The Nigeria Prison Services Annual Report, 1984 recorded 240 children with their mothers in Prisons and 75 babies, were, in fact, born in the prisons.

3.1 Victimisation of Women

Women have been victims of crimes also. Examples are;
b. state violence
c. domestic violence
d. female crimes (e.g. rape etc)

Off springs of female convicts and even of female victims suffer outright rejection and hostility. *Esemede* in his study of off-springs of female convicts found as follows:

Hostility and rejection by families		53.6	per cent
”	Teachers	43.0	“
”	Friends	56.0	“
”	Other Children	32.0	“

This kind of victimization has a multiplier effect in criminality rate among children and young persons. The trauma of maternal deprivation at the critical age and during incarceration is capable of hardening the minds of the vulnerable age group as they grow and inflict pains of retardation of a healthy emotional and moral development.

3.2 Arrest and Investigation Process

There are no special laws or privileges for women suspects unlike the case of juvenile offenders. Female juvenile delinquents are subjected to the same treatment as male juveniles just like female and male adults.

However, as a matter of practice, the cases involving females are often assigned to female law enforcement officers. Female suspects under arrest are not detained in the police cells where male suspects are. They are usually found behind the counters at police stations.

Women convicts have separate Prisons. Where there is only one prison, female convicts are kept in one wing separate from other wings for male convicts. Women convicts cannot be flogged. Pregnant ones cannot be sentenced to death.

4.0 CONCLUSION

Clifford is nearly right when he says that in the light of little knowledge about crimes in Africa (Nigeria inclusive) even simple observations have some value; number of offenders/victim, and even simple accumulations of evidence in known cases all are useful. This is particularly true of feminine criminality. Women involvement in crimes has been unknown in Nigeria until quite recently and since it was noticed, the momentum had accelerated crucially. To a large extent, the criminal justice system has had little gender consideration in processing offenders and crime victims.

5.0 SUMMARY

Women participation in crimes, women victims and responses of the criminal justice system are green field. As women get emancipated, and take up what was formerly men’s work position, they have also become exposed to criminogenic situations also exercising the choices in diverse ways.

6.0 TUTOR MARKED ASSIGNMENT

1. Account for Female involvement in Crimes and Criminality in Nigeria.

2. The Criminal Justice Administration in Nigeria does not adequately protect the interest of Nigerian women. *Discuss*.

7.0 REFERENCES/FURTHER READINGS

Kasumu A.(1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G.(2004): The English Legal System, Cavenish.

FGN: Children and Young Persons Legislations

Clifford (19..)

UNIT 3 WOMEN AND OTHER SPECIAL GROUPS: CRIME AND JUSTICE

CONTENTS

1.0 INTRODUCTION

In the classical age, man was responsible for all the consequences of his conduct. It was believed that he had free choice and he exercised it. The neo-classicist departed from this stand point. They recognised certain circumstances which could deprive a man of freewill. An example is insanity; immature age. This represents the modern trend, such that in Modern Nigeria certain groups of people are treated specially and differently from others because of their peculiarity. Examples of these groups are:

- Children and Young Persons
- Mental Defectives
- Women
- Prisoners
- The Poor Class

This class of people is the focus of this Unit.

2.0 OBJECTIVES

When you have read this Unit, you should be able to;

1. Identify the special groups.

2. Explain the reaction of the Criminal Justice Administration System to each group.
3. Critique the treatment of the Group.

3.0 MAIN CONTENT

You have learnt about some of the special groups. We are not going to repeat them here and it would suffice to add a few things.

3.1 The Women

The Women groups are treated like children and young persons in some cases and like male adults in other cases. We shall be concerned with the modern law.

3.1.1 Right of freedom from discrimination:

Under the CFRN, 1999 no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his/her birth, ethnic group, place of origin, sex, religion or political opinion. (s.42)

3.1.2 Criminal Responsibility

Modern statutes make no distinction between a married woman and any other adult with regard to criminal responsibility. Note the following exceptions;

a.) Accessory after the fact
The criminal code provides that a wife of Christian marriage does not become an accessory after the fact to an offence to which her husband is guilty by receiving or assisting him in order to enable him to escape punishment, nor by receiving or assisting, in her husband's presence and by his authority another person who is guilty of an offence in the commission of which her husband has taken part in order to enable that other person to escape punishment; nor does a husband become an accessory after the fact to an offence to which his wife is guilty by receiving or assisting her in order to enable her to escape punishment. *(s.10)* But a wife commits a crime if she shields her husband who has deserted from the Armed forces.

b.) Compulsion of Husband
A married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband. But a wife of a Christian marriage is not criminally responsible for doing or omitting to do an act which she is actually compelled by her husband to so or

omit to do, and which is done or omitted to be done in his presence, except in the case of an act or omission which would constitute an offence punishable with death; or an offence of which grievous harm to the person of another, or an intention to cause such harm, is an element, in which case the presence of her husband is immaterial. *(s.33)*

c.) No Conspiracy between Married Couple

A husband and wife of a Christian marriage are not criminally responsible for a conspiracy between themselves alone. *(s.34)* the reason is that the husband and wife are one in law and conspiracy can only be committed if there are at least two independent persons.

d.) Crimes between Husband and Wife

When a husband and a wife of a Christian marriage are living together, neither of them incurs any criminal responsibility for doing or omitting to do any act with respect to the property of the other, except in the case of an act or omission of which an intention to injure or defraud some other person is an element and except in the case of an act done by either of them when leaving or deserting or when about to leave or desert the other.

Subject to the foregoing provisions, a husband and wife are, each of them, criminally responsible for an act done by him or her with respect to the property of the other, which would be an offence if they were not husband and wife, and to the same extent as if they were not husband and wife. In essence it is a crime for a spouse to take the others property if they are living apart or if the property is taken with the intention of leaving the other. But in the case of the Christian marriage, neither of them can institute criminal proceedings against the other while they are living together. Hence there is no criminal label between spouses concerning each other.

e.) Rules of Evidence

The *several rule* is that every person charged with an offence is a competent witness for the defence at every stage of the proceedings whether he/she is charged solely or jointly with other person. Examples,

- A spouse is competent to give evidence if the accused so applies;
- A statute stipulates that a spouse shall be competent to give evidence for the prosecution or the defence. E.g. Child destruction; Bigamy; Sexual offences other than battery, indecent assault or a man assault with intent to commit battery;

In exceptional cases however, a witnesses is competent and compellable both for the prosecution and for the defence in criminal matters. For example; spouses of parties are competent and compellable to give evidence in a relatively few cases.

E.g. Offences against the spouses property, and offences of violence against the spouse.

3.2 Children and Young Persons

Please read over the earlier unit on the subject. What we need to add are the following matters of:

- Juvenile 'at social risk': They are handled by a specialist arm of the Nigeria Police Force called the Juvenile Welfare Branch, comprising mainly specially trained female Police Officers

Having fully investigated the complaints, and in appropriate cases, the Juvenile in trouble are not also taken to the ordinary courts but to the Juvenile Welfare Court, also a specialized court.
Juvenile in trouble or at social risks include:

- Juvenile delinquents
- Juveniles who are not in conflict with the law but are:
  - in moral danger
  - in need of care and protection
  - abandoned, abused, neglected, homeless, or marginal and vulnerable circumstances
  - beyond parental control.

Beijing Rules
Issue of abolition of Canning has been revived in recent time. The Beijing Rules recommend that "Juvenile shall not be subjected to corporal punishment". In its place, the following are being advocated:

- deprivation of privileges
- withdrawal of love and affection
- engagement in productive community service
- order to participate in groups counseling and seminar activities
- other intervention strategies.

Argument in favour of Canning:

- it is a form of judicial benching
- culturally it is not seen as an abuse
- it is preferred to institutionalization
- it is still in use etc.
- it instils fear and so it deters
- it is swift
- it costs less to the state etc

There are also arguments against corporal punishment

- It is primitive, inhuman, most depraved
- it inflicts pain
- It makes the juvenile bitter and callous towards parents, guardians and society
- It is harmful to children's life and makes them incorrigible and revengeful.
- It has potentials of making the subjects hardened criminals
- It has not achieved its aims
- It does not attempt to and cannot remove the root cause of the juvenile delinquencies.

The reasons for or against may or may not be valid. However, the main advantage seems to be that it does not, waste time and it costs less. Its main disadvantage is that it does not remove the root cause of juvenile delinquency. It may stigmatize

Self Assessment Exercise 1

1. 'Juvenile shall not be subjected to corporal punishment (Beijing Rule). *Discuss exhaustively*.
2. What do you understand by "Other intervention strategies"? Mention any five.

Activity

Discuss the essence of contributions and challenges of:

- Juvenile detention centre
- Approved School
- Borstal Institution
- Motherless Babies Homes

3.3 Mental Defectiveness

These are a special group and are recognized as such at law. The early notions of, causes of crimes and criminals were based on;

- Prepotency of biological factors
- Concept of freewill, rationality of man and equality of sanctions regardless of age, sanity position and circumstances

Modern philosophers have rejected the former and modified the latter, having recognized special groups who lack free will. Examples are psychopath, lunatics and children; and by reason of their excruciating circumstances, enjoy certain concession in criminal justice administration.

3.3.1 Insanity

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions or of capacity to know that he ought not to do the act or make the omission. *(Criminal Code s.28)*

In Some delusion/Diminished Responsibility
A person whose mind at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters but who is not otherwise entitled to the benefit of the foregoing provisions of this section is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist. *(s.28, cc)*

Criminal Justice Administration gives due insanity, anything bordering on insanity, or inability to form a rational judgment or exercise will-power to control one's actions. This insanity is a general defence to criminal responsibility. Diminished responsibility may reduce responsibility for murder to that of manslaughter.

3.4 The Prisons

The Persons in prison are a special group. Their freedoms are restricted. Prisons exist among other things, to identify the reasons for the anti-social behaviour of offenders, teach and train them to become useful citizens in a free society after discharge.

The Government of Nigeria is nearer achieving this objective with the establishment of the following:

1. Open Prison System
2. National Open University of Nigeria (Prisons Special Center)

The objectives of the National Open University of Nigeria (NOUN), Prisons Special Centre may be subsumed as follows:

1. To encourage the advancement of learning and to hold out to all persons without discriminating the opportunity of acquiring a higher and liberal education.
2. To provide courses of instruction and other facilities for the pursuit of learning especially to those who may not, by nature of their circumstances, enroll for residential full time university education.

3. To relate the activities to the social, cultural and economic needs of the citizenry.

In his study of Capacity Building and Rehabilitation of Prison inmates and crime control through Open and Distance Learning (2008), Oyakhiromen found from a sample of 390 male and 114 female prison inmates that the programmes which appeal most to prison inmates (male and Female) in order of preference are:

Computer literacy	12.8%
Enterpreneurship/small scale business management	21.8%
Cell phone repairs and maintenance (male)	8.7%
Source and Agro based Food Technology(female)	12.3%

All were unanimous in their first or second choice but differ in their third preferences. Given the necessary official political will, public and family support, it is believed that the NOUN has the potential of being able to train, teach and empower prison inmates to be useful citizens and afford them the chance of putting their acquired skills into the services of the society.

3.5 The Poor

The criminal Justice System recognizes the Poor as a special group and has the Legal Aid Scheme to their rescue.
The CFRN, 1999 Section 46 provides special jurisdiction of High Court and Legal Aid. Subsection 4 provides as follows:

The National Assembly shall make provision;

i. for the rendering of financial assistance to any indigent citizen of Nigeria where his right under chapter IV of the Constitution (fundamental Rights) has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim and;
ii. for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

4.0 CONCLUSION

The Children and Young Persons Legislations apply equally to both male and female delinquents. The adult male and adult female are both subject to the Criminal and Penal Codes. The major difference is that they are kept in separate cells or prisons if they are to be detained. Women who are married under the Act enjoy partial defences to criminal liability for specified crimes. Persons under incarceration are special groups. So also are the poor, and mental defectives. The

state provides Legal aid for the poor and in appropriate case to deserving members of the public.

5.0 SUMMARY

You have learned about the favourable disposition of the state towards the vulnerable members of the public. Examples of such special groups are: the children and Young Persons, mental defectives, women, prisoners and the poor.

6.0 TUTOR MARKED ASSIGNMENT

Compare and Contrast the criminal justice administration of adult offenders/offences and the special groups offenders/offences.

7.0 REFERENCES/FURTHER READINGS

Kasumu A.(1977): The Supreme Court of Nigeria, Keinemann, Ibadan.

Slappper, G.(2004): The English Legal System, Cavenish.

FGN: Children and Young Persons Legislations