TOUGH ON CRIME BUT SOFT ON JUSTICE

AN INAUGURAL LECTURE,
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UNIVERSITY OF IBADAN

TOUGH ON CRIME BUT SOFT ON JUSTICE

An inaugural lecture delivered at the University of Ibadan

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By

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The Vice-Chancellor, Deputy Vice-Chancellor (Administration), Deputy Vice-Chancellor (Academic), The Registrar and other Principal Officers, Provost of the College of Medicine, Dean of the Faculty of Law, Deans of other Faculties and Postgraduate School, Dean of Students, Distinguished Ladies and Gentlemen.

Preamble

It is a singular honour and privilege by the divine grace of the Almighty God, the Creator of the universe and the All-knowing to stand before this distinguished audience to present a research focus of twenty years of intellectual sojourn in the ivory tower as an academic and a testimonial of 25 years of career in public service (then a beginner as a state counsel in the Oyo State Ministry of Justice, Ibadan). This is a short resume of my work experience, the early beginnings of a relatively obscured civil service career with an expected prospect of becoming a Director of Public Prosecutions, Solicitor-General or a Judge of the High Court. As destiny will have it, none of these was actualised due to my personal instinct to acquire a PhD degree in Law and the penchant desire to become a Law lecturer of which many of my then senior colleagues advised otherwise. Many could not imagine how I could voluntarily withdraw from the line, on which if I had stayed, I would probably have become a Judge of the High Court in 2006. The seemingly snail speed of promotion in the Law Faculty of Obafemi Awolowo University, and the near improbability of acquiring a PhD in Law especially from "Ife" were weighty warning points that kept flashing on my mind and reverberating in my ears throughout my exactly 19 years stay in Ife. Against all odds, the promotion(s) came albeit fairly long overdue up to the stage of senior lectureship. The PhD came after a period of 12 years. Though there were delays, I kept the faith that delay is not denial. Here I am today, a Professor of Law in the Department of Public and International Law, a product of "Great Ife" and a pride of the Premier University in Nigeria.

Mr. Vice-Chancellor Sir, significantly on the 31st of May, 2013, under your leadership, I was pronounced Professor of Law. I am enarmoured and remained appreciative of the opportunity bestowed on me by the Appointments and Promotions Committee of Senate of this Noble, Premier University and Pride of Africa which confirmed my elevation to the professorial chair. It is with all modesty and humility that I deliver this inaugural lecture barely a year and six months from the date my appointment to the rank of Professor was officially announced. As an academic, I have nurtured the hope and dreamt of this event many years ago, but to deliver it in the University of Ibadan is beyond my imagination. Nevertheless, it is a living testimony of the wholesomeness of God, the only One who knows the beginning from the end and the end from the beginning.

Coming from the background sketched above, a former prosecutor in the public service, it is with ease that I ventured into criminal jurisprudence, with research interest in private international law, labour law, environmental law and energy law. Not wishing predictions of my senior colleagues to come into manifestation, I straightway began a steady exploits into the realm of intense legal research culminating in two theses, Administration of Criminal Justice, Death Penalty in Nigeria at MPhil and PhD levels. I later discovered that a study of criminal justice traverses all broad aspects of legal studies. I make bold to say today that there is virtually no aspect of legal discipline that an element of criminal law will not manifest. This lecture will establish this assertion. It is the aggregate of my research in that field that I am able to stand before this great and wonderful audience this evening to profess public law and jurisprudence within the context of international law.

My inaugural lecture is the sixth of its series from Faculty of Law since its establishment in 1984 though the programme commenced in 1981 of which this is the third from the Department of Public and International Law. The first was delivered by Professor Folarin Shyllon, the Foundation Dean

of Law in 1986 titled: *Freedom, Justice and the Due Process of Law,* followed by Professor J.D. Ojo in 2001 titled: *Democracy within and outside the Ivory Tower;* Professor J.A. Yakubu in 2003 titled: *Within and Without: The Relevance and Potency of the Law beyond our Frontiers;* Professor J.A. Anifalaje's inaugural lecture was titled: *The Modern Legal Analyst;* and Professor Oluyemisi A. Bamgbose's lecture was titled: *The Sentence, the Sentencer and the Sentenced: Towards Prison Reforms.*

It is remarkable to state that it is neither by design nor by arrangement but by coincidence that all the previous lecturers but one delivered their lectures as Dean of Law at the time of their presentations. The same applies to the present lecturer. Incidentally, the Ibadan Faculty of Law has weathered through the turbulent waters of academic intrigues of fireworks with pleasant and unpleasant experiences of major senior stakeholders and the aftermath effects on the rank and file of other stakeholders in the Faculty. The coming on board of the immediate Dean, Professor Oluyemisi Bamgbose has relatively charted a new legal order in the Faculty. As she passed the baton unto me, I am committed with the support of my colleagues to further take the status of Faculty of Law to greater heights by entrenching academic culture that is elastic, enriching but devoid of rancour and fostering friendship and heralding a congenial academic environment.

Let me hasten to reveal what informed the choice of my topic and the content of this lecture. By tradition, many professors have in the course of delivering their inaugural lectures reiterated the overall aims of the exercise. I cannot but follow the same trend. An inaugural lecture as the name implies is supposed to be the first academic public lecture delivered by a newly elevated scholar as a Professor. It is to state clearly the aggregate research focus, to generate ideas and dissemination of research findings in the lecturer's discipline and to summarize and bring into limelight the professor's work which may be hidden in academic publications possibly well known to him and few of his

colleagues and students but may never be available to his colleagues in the same ivory tower and other institutions and the general public. The valued point is that having attained the apex of his career, the lecturer should set out to amplify the relevance of his discipline and showcase his areas of contributions to knowledge to the admiration of his well-wishers and to the bewilderment of his critics, what he has been doing with his time and God-given intellect.

Like many presenters over the years since the first by Professor P. Christopherson titled, *Bilingualism* in 1948 so many thoughts and topics came to my mind, from my teaching experience, publications and research, and practice, my endeavours have been in the area of criminal jurisprudence, public/private international law, industrial/ energy law and environmental law.

Size and Shape of Crimes

In one of many versions of Aesop's tale about the three blind men and the elephant, when the blind men were invited to experience an elephant, one blind man (visually impaired) touched the beast's legs, the second man touched the tail and the third man felt the trunk. Back at their residence they hotly argued about the nature of the beast. The first man said, "an elephant is obviously like the trunk of a tree". "No" said the second, "it's like a rope". "You're both wrong", said the third. "An elephant is like a big snake". What is our verdict? All three men are partly right, for each man described the part of the beast he had touched.

The assessment of the nature and extent of crime often suffer from the same divergent discourse as the three blind men's assessments of the elephant. A researcher in the field of criminal justice may make assessments on the basis of commission of crimes and of arrest records. Another researcher may focus on conviction rates to describe crime, while other researcher may use the number of convicts serving prison sentences.

Issues about how we measure crime and what those measurements reveal about the nature and extent of crime are among the most important issues of contemporary criminal jurisprudence. For an effective criminal policy to evolve in Nigeria, we need to explore the measurement of the characteristics of crimes, criminals and victims.

Relevance of Crime and Justice

Very little happens on earth without criminological implications. This explains why jurisprudence, as a scientific study of law has a strong bearing on criminology. Sutherland provided the most widely accepted definition of criminology; the body of knowledge regarding crime as a social phenomenon. It includes within its scope the process of making laws, breaking laws, and reacting towards the breaking of laws.

Nigeria is a nation wallowing in crime and yearning for justice. The crime situation in the country has gone beyond the breaking of law, which is merely a formal act that may lead to arrest and prosecution; it is rather an intricate process by which some people violate some laws under some circumstances. Many disciplines are now contributing to an understanding of the process of breaking laws with a view to controlling its spread, curtailing its impact and achieving justice for the society. But yet, there is no consensus on why people become criminals. In spite of the fact that our society has always reacted to law breaking with outright condemnation, the reality of today is that such traditional reaction is no longer an appropriate therapy for crime prevention and control.

Today, the scientific study of law breaking is imperative, the current challenges necessitate us to propose more effective and humane ways of controlling crime. Compelling circumstances demand that the various bodies set up by the government to deal with law breaking constitute a system, which ought to be made more efficient. Like every aspect of humanity that has become increasingly globalized in recent

years due to rapid advances in technology, crime likewise has become globalised. Criminals have become, in fact, global entrepreneurs, and crime respects no international borders, any longer.

Evolution of Crime and Justice

Crime and justice are concepts and curiosities that have been a part of human history for so many centuries that their roots are buried in antiquity[1] (Inciardi). Cicero spoke of crime and justice during the first century B.C., as did Aristotle and numerous others many years later. As such, crime and justice are as old as civilization. Although, the early Greek and Roman scholars studied the philosophy of justice and its application, modern scholars focus on the structure, function and decision making processes of agencies dealing with the management and control of crime and criminal offenders. The Police, Courts, Correctional Systems and Regulatory Agencies are dealing with vast number of other aspects of law of which criminal sanctions are required for their effectiveness and impact to be felt. Examples of such other related aspects cut across civil matters; law of torts, environmental law, energy law, product liability, consumer protection law, quality control, maritime, international law, law and medicine, medical jurisprudence, and legal theory etc., the list is endless and ever increasing as the frontier of human endeavour increases.

Nigeria's pattern of crimes has moved from the common law definition of murder or manslaughter to mass murder or suicide killing arising from the "Boko Haram" insurgency, terrorism, bombings, kidnapping, hostage takings, sabotage, militancy and vandalism and hate crimes. Rape and abduction have metamorphosed to ethnic cleansing, as an instrument of war, gang rape, rape of babies, incest and rape leading to the mutilation of sensitive organs of the victims and so on. Armed robberies and politically-motivated assassinations are recurrent phenomena in the country. More worrisome is the accusation and allegation of government's involvement in the

killing of some high profile personalities. Arguably, there are situations when the state kills; then can law really play any role in giving justice?

Cross-Cultural and International Perspective of Crimes

International and cross-culture crimes are emerging nowadays. Crimes against humanity ranging from aggravated murder, genocide, rape etc., have assumed global dimension across the continents necessitating the extra-territorial application of crime bordering on impunity of heads of states that culminate in mass deaths of their subjects (Olatunbosun 2001-223)[2]. Honour killings by members, of female infidels who get pregnant, without being betrothed in some Asian countries are justified (Olatunbosun 2001-163)[3], while some countries initially criminalized homosexuality between consenting adults in public places, it is now legalized in some jurisdictions as a recognized form of marriage or same sex union or civil partnerships (Olatunbosun 2010–229)[4]. Religious riots resulting in murder, arson and loss of property are countless incidents in the country, in spite of the secularity nature of the country and freedom of association and expression of thought and faith (Olatunbosun, A. 2007-395)[5]. The indigene/settler imbroglio has featured frequently in Jos, Plateau State with attendant loss of human lives and property.

Criminal Jurisprudence as it Transcends Elements of other Disciplines

From a multi-disciplinary angle, criminology is related to political science, it takes into consideration the roles of organs of government in crime prevention, detection and control and from the viewpoint of sociology, it examines the structures of certain social institutions and how they affect the administration of justice. Criminal justice also uses research from psychology, history, public administration, anthropology, economics and many other disciplines. Like a mustard seed, the transformation of criminality has grown

from petty cases of stealing and assault to monumental corruption by individual, corporate organs and violent crimes resulting in callous, horrendous loss of lives and property. Early research work in Nigeria focused on crime and the criminal while interest in criminal justice was spurned by the "war on crime" occasioned by the fact that crime pervades all aspects of human endeavours in recent times. As criminal justice research has evolved and expanded in recent years, so too has knowledge on the various processes of justice[6].

Nigeria: A Nation Entangled in the Web of Crime

When a field changes rapidly, so must the thought of a scholar reflects new discoveries, new statistics, research findings, and landmark court decisions change. Furthermore, the major issues in criminal justice have changed, new policies, procedures and viewpoints have developed. The conventional structures of crime control and offenders—police, courts and prison systems can no longer control the rate of crime in the country (Olatunbosun 2011)[7]. The task of crime control now involves the federal government, national assembly, the military, the State Security Service (SSS) and the public domain. Further forays in the field of criminal justice have dovetailed into the realm of criminology, penology and police science. The study of criminology focuses on the role of crime in organized society, the nature and causes of crime and criminal behaviour and the relationships between crime and social behaviour. Penology is a term used in the nineteenth century and the first half of the twentieth century to designate the science of applying punishment for social or utilitarian purposes. The term has become virtually obsolete. Today criminologists speak of corrections when they refer to the implementation and execution of sentences imposed by the courts, and to the system that administer those sentences. The switch from "penology" to "corrections" is more than change of name. It is a change of outlook and approach, from punitive to a rehabilitative philosophy (Olatunbosun 2002)[8].

The meaning of "corrections" varies with the context. Professors make corrections on academic writings. Eye glasses or contact lenses make corrections in vision. Ignorance may be corrected by education. In each of these contexts, correction implies some form of improvement. The true position is that after centuries of exploiting and punishing criminals, the penologists of the nineteenth century (Olatunbosun 2002) concluded that criminals were imperfect and therefore needed correction more than punishment[9].

Problem of Definition

Nowadays, it is rather unfashionable to begin legal discourse with definitions. This is because of the difficulty frequently encountered in defining the subject matter of a particular branch of the law. The topic of this lecture is not an exception as well. In this era of global networking, the topic will not be of particular interest to lawyers alone but also to the general public. For example, no social scientist will consider his treatise complete unless he tinkered with a definition of the subject. Not that the lawyers have not attempted the definition of the creator of their trade, they have. But in an attempt to do so, they have remained as divided as pigeons suddenly invaded at midnight by a cat. Anyebe (1985) has described this as flirting with definitions. According to him, what law is, has attracted the attention of other disciplines more than it has attracted the infinite disputation of lawyers themselves. But in defining what law is, members of the legal profession have been behaving like the needle, which undertakes tailoring for all and sundry but it remains naked.

Meaning of Law

What is the meaning of law or what is law? Simple as it apparently appears, defining law involves dissipation of much energy in an attempt to find a satisfactory answer. Much often, the question of definition may not be of considerable significance in the determination of rights and the settling of disputes. For example, a suit in tort will require the claimant to show constituent elements of an alleged tort than the

definition of law that would have little or no bearing to his action. Thus, the concept of law may mean different things to different people. According to Okunniga (1982):

> Nobody, including the lawyer has offered, nobody, including the lawyer, is offering, nobody, including the lawyer, will ever be able to offer a definition of law to end all definitions.

In his own words, Adeyemi (1977–28) states that though criminal law has been in operation in human communities for several centuries, yet lawyers have so far never agreed on any satisfactory definition of the world crime[10]. The title of this lecture reassures everyone that the community has the potentials to reduce the socio-economic damage being caused by all forms of crime in the society, albeit the judicial process to achieve this set goal exists with circumspection, a situation which ought not to be in an ideal society.

Crime and the Law

In spite of the fact that there is no universally acceptable definition of 'crime' yet several learned authors and jurists, Cross and Jones (1988)[11], Mr. Justice Litledate (1829)[12], Stephen (1883)[13], L.B. Curzon (1984)[14], Terrence Morris (1966)[15], Okonkwo and Naish[16] (1980–21) and Mr. Justice Fakayode (1977)[17] to mention a few have put forward working definitions. The scope of what should be the framework of any attempt at defining 'Crime' given by Lord Atkin as far back as 1931 still remains applicable today:

> The domain of criminal jurisprudence can only be ascertained by examining what acts at any particular period are declared by the state to be crimes, and the only common nature they will be found to possess is that they are prohibited by the state and that those who commit them are punished.[18]

The focus of this lecture is not just an exercise in getting the facts of crime straight. The starting point is to recognize that the formal idea of crime is an inherently unstable and shifting index of fear and insecurity. A working definition of crime refers to behaviours that are a violation of the criminal (Pound)[19] but the law and issues surrounding it is continually under contestation and review. The formulation of a satisfactory and universally accepted definition of the word crime has been and still is one of the most difficult tasks for writers in criminal law. Glanville Williams has described the effort as one of the thorny intellectual problems of the law[20]. This difficulty probably stems out of the fact that the concept is in itself complex and the word itself elusive. Suffice to say here that there is no unanimously accepted definition of the word 'crime' as most definitions proffered simply describe 'crime' and most of the jurists have confused the idea of description with that of definition. Whatever else crime may be, either behaviourally, symbolically, or socially, it is first and foremost a violation of one or more specific codes or statutes. On the other hand, the differential association theory explains that people engage in criminal behaviour because their predominant intimate contacts have been with criminal behaviour patterns. Sutherland maintains that the ratio or differential at which people interact with criminal to non-criminal associations make it more probable that such people will commit crime, as such associations shape or control their perception. Sutherland (1939:5) states 'the principles of the process of association by which criminal behaviour develops are the same as the principles of the process by which lawful behaviour develops'[21].

The applicable primary laws in Nigeria are criminal code and penal code for the southern and northern states respectively. Section 2 of the Criminal Code (CC) defines offence as

> An act or omission which renders the person doing the act or making the omission liable to punishment under this code.

This statutory definition fails among others to indicate those criteria or peculiar characteristics which must determine the inclusion of any particular act or omission in the list of each prohibition contained in the code. Thus, it has been suggested that an *apriori* approach to the definition of crime and crime behaviour should be adopted. The idea behind this is that it is not enough for the state out of its own whims and caprices, to simply declare what is criminal behaviour. Rather, what amounts to criminal behaviour should be properly outlined for the benefit of the society in general. Apparently, the weakness of this definition under the criminal justice system has been taken care of under the constitution. Section 36 of the Constitution of Federal Republic of Nigeria, 1999 provides:

> … a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law …

By virtue of this provision, it will be illegal and unconstitutional for any organ of the state, out of its own volition, to prosecute or convict a person for an offence that is not written in the statute book *(Aoko v. Fagbemi)*[22].

Proclamation of Law and Order

It may be correct to describe law as an all-pervading subject. There is hardly anyone or discipline, so independent as not to be touched by law. Even where a person decides to mind his own business, the law will not leave him to himself, it does not matter whether it is invited or welcomed, it will register its presence. Suffice to say that law is a science, a social science and a part of humanities. The physicist speaks of the law of gravity or Newton's law of motion and the economist states the law of demand and supply. These are usages of the word "law" to denote a rule of action expressing a verified regular pattern of behaviours or consequence in a given circumstance. But a lawyer is more concerned in the narrow and guarded meaning of law:

as a rule of human conduct tacitly or formally accepted by the people as binding and backed up by some mechanism for the sustenance of its binding nature.

Purpose of Criminal Law

Crime has a popular usage and it also has a legal meaning. In the former, the word 'crime' connotes any anti-social behaviour, and in the legal parlance, it is a conduct punishable by law. This is not to say that there is a real difference between the lay conception of crime and the lawyers understanding of the word. Perhaps, the only difference between the two is that while the public regards immoral acts as crimes within the purview of law, not all immoral acts constitute crime. To criminal law lawyers, issue of immorality is a private affair of individual and that should not be the concern of criminal law, rather, crime is a public wrong. Thus, the underlying philosophy behind the functions of criminal law is of three-fold: preserving public order and decency; protecting the citizen from what is offensive and injurious; and providing sufficient safeguards against the exploitation and corruption of the most vulnerable members of society (e.g. the young, the weak in mind or body; the inexperienced).

Crime Prevention and Control

When a crime persistently occurs in a society, people expect certain things will happen:

- We expect the legislative authorities to enact new law or revise existing one with tougher sanctions;
- We expect the law enforcement agents to take charge of the process of administering justice;
- We assume that, if possible, the perpetrator will be tried in a law court and if found guilty;
- We presume that the offender will be subjected to some form of punishment, their fate will also be determined in a court by a judge dispensing justice.

These assumptions depict the understanding of criminal justice. Although, there is much debate about the precise form which criminal justice should take, and about how its interventions can be justified, such debate tends to take place amongst people who share these basic assumptions. Today, crime cuts across all levels of the society as well as national and international boundaries. The rapid developmental changes in technology (Olatunbosun 2004), the sporadic speed of industrialization, the spreading wind of civilization and the outburst of urbanization growth in major cities in Europe, America, Asia and Africa have created situations which have desecrated valued norms and standards of behaviour in these societies[23]. Crime is not a unique feature peculiar to a particular community, it is present in all societies; only its form changes, the criminal behaviour of persons labelled by the society as pathological require repression. A society exempt from crime is utterly impossible (Durkheim 1858-1917)[24]. Since all life experiences are not homogenous, all societal members do not undergo identical socialization. There must of necessity be some deviants, neither would a crimeless society necessarily be a desirable situation. Crime, as an avenue of change, can rightly be the harbinger of a new morality. Crime has been a problem of major concern since the beginning of civilization. The causes of crime are many, and virtually all categories of crime are still on the increase in many parts of the world. Crime is present not only in the majority of societies of particular species but in all societies of all types. There is no society that is not confronted with the problem of criminality. The only difference is that its form changes; the acts classified as crimes are not the same everywhere, but, everywhere and always, there have been men who have behaved in such a way as to draw upon themselves penal repression. If, in proportion as societies advance, the rate of criminality tended to decline it might be believed that crime while still normal, is tending to lose this character of normality, but far from it, rather than recording retrogression in crime rate, many facts

indicate a movement in upward direction. This is not just an assumption, from the beginning of computer age (Dunne 2009)[25] and the Internet (Rustard 2009)[26] available statistics enable us to monitor the course of criminality.

The advent of computer and internet applications has its own contributions to the expanding of the frontiers of criminality in modern states. The impacts of cybercrimes and data security constitute another aspect of crime problem. Cybercrime respects no national borders and is often difficult to detect because criminals leave no traditional crime scene. The Internet is a cross-border medium for interstate and transnational transactions and activities capable of raising critical issues of private international law–jurisdiction and choice of law (Olatunbosun 2004)[27]. It is an indisputable assertion that cyber crime has increased everywhere[28]. The seriousness of the crime problem hardly needs description. Of all the social and economic problems confronting a range of contemporary developed and developing societies, crime has been noted as *the most significant problem* exceeding national security, employment, cost of living, health and poverty (Munice, ed. 2001)[29]. The general belief of the people is that crime is rising, especially violent crimes. In spite of the bold attempts by different governments worldwide at confronting it, public perception of crime is that of fear and anxiety, imaging crime makes the public afraid of victimization, afraid of strangers and has well-honed notions of risk, trepidation, danger and safety.

Cost of Crime

Each day the citizens of various nations count their losses in terms of monetary value and property lost to criminals. Another substantial part of the resources of governments of various countries goes each year to crime prevention, police, courts, and corrections. The cost of crime cannot actually be measured in monetary terms alone. As no price tag can be placed on lost or damaged lives, fear of suffering, or frustration arising from an inability to control critical events.

A victim who loses a specified amount of money to a thief or bag snatcher loses much more than the contents of her bag. She loses, in her mind, the freedom to walk the streets in safety. The victim of rape incident is likely going to lose status and dignity in the community; same goes for those who are not even victims of crime but stand in a filial relationship with the offenders, examples are the relatives of the murderer, the embezzler, or that of the thief. Although, the criminal law changes slowly, the administration of criminal justice is much more flexible by permitting prosecutors, judges, and correctional personnel to adjust the 'law in the books' to the 'law on the street' (Cressey, ed. 1971-10)[30]. Many have lost faith in the ability of the police to protect them (Olatunbosun 2008)[31] and they believe that the criminal justice system prioritizes the rights of offenders over victims.

Where Identity of a known Personality is deemed to be an Unknown Personality

In *Ibori V Agbi & 5 ors*[32], the facts of the case are to effect that the 5th defendant, Chief James Onanefe Ibori is an ex-convict by virtue of CR/81/95 decided by Upper Area Court Bwari on 28/9/95 and that under section 182 (i) (e) of the 1999 constitution, he is disqualified from contesting 2003 election to the office of a governor.

At the trial court, Yusuf J held *inter alia* that though the accused in Exhibit A, at the Upper Area Court pleaded guilty and the Court proceeded to impose a sentence. The procedure adopted by that upper Area court did not observe the essential prerequisites as laid down under section 157(1) of the Criminal Procedure Code before convicting the accused.

At the Court of Appeal, the decision was set aside. In the words of Oguntade JCA, then

> It is in my view clearly unarguable to say that there was no conviction. The procedure leading to the conviction may be deficient and liable to be set aside by an appellate court upon a proper appeal against the judgment of the Upper Area

> Court, but is nonetheless still a conviction. I am therefore unable to agree with the conclusion of the lower court (High Court) that no conviction was recorded. That approach snacks in my view of undue legalism and irrelevant hair splitting in a case where the purpose of tendering exhibit A, was merely to show that the accused therein was convicted. It was not tendered to show that his Upper Area Court erred in its decision.

The Court of Appeal ordered that the case be heard *de novo* by another judge of the High Court of the Federal Capital Territory, Abuja. On appeal and cross-appeal to the Supreme Court, it was held *inter alia* that:

(1) Exhibit A showed that a James Onanefe Ibori was convicted by the Upper Area Court.
(2) That the trial court did not consider any evidence to identify who in fact was convicted by Exh. A.
(3) That the Court of Appeal could not have pronounced upon what was not decided by the trial court.
(4) That it was not established by the trial court as to whether it was the 5th defendant/appellant who was the person convicted by the Bwari Upper Area Court, per Exh.A and that the matter is remitted to the High Court for trial *de novo* before another judge of the court.

Curiously, the Supreme Court affirmed and reiterated the line of argument of a party in the case that it is not enough to prove that a person by certain name has been convicted, that, that person must specifically be shown to be the party to the suit before a case can be proved against the defendant.

Many have resorted to self-help mechanism to protect their lives and property; many are indifferent to the likely vicissitudes of dangers lurking ahead. The Federal Government in the last 5 years has earmarked massive funding through budgetary allocation on security[33] for the upgrading

of law enforcement agents personnel in terms of training and retraining, provision of weapons and kits for agencies, acquisition of equipment and modern technology devices, and programme. Currently, government has pumped more money into the security units to tackle the menace and havoc being wreaked by criminals on a daily basis with heavy casualties recorded in the police stations and military formations in the northeast of Nigeria, northwest, part of north central and Abuja FCT. Nevertheless, the level of security challenge is on the upward trend. The Senate had just approved the request of *Mr. President to borrow $1billion to fight terrorism in* Nigeria.

Psychology of Litigation

An understanding of the law is much felt in the court room. As earlier stated, law as a multi-disciplinary subject, relies on the inputs of other relevant specialists such as the sociologist, psychologist, psychiatrist, and medical doctor, to mention a few. Therefore, a lawyer aspiring to be a foremost jurist and legal practitioner requires to have modicum knowledge of the above backgrounds of training(s). In the present case, there is the link between psychology and criminal procedure in every trial. The judges need to acquire psychological know-how to enable them determine the guilt of an accused person through the demeanour in the court room. Also, judges are expected to have a psychological assessment of witnesses and their candour in every trial. That is why in a bid to reform the nation's justice system, it has been suggested that the judiciary needs to employ services of trained psychologists as part of officers of the court, in order to improve on the quality and standard of justice system in Nigeria.

Classification of Criminological Thoughts

Advancement in technology has further expanded the forms of crimes in our society. Thus, the problem of lumping together statistically and, even, criminologically incomparable offences need to be readdressed as some of these offences do not behave similarly in pattern and trends. There are changes in classification of these offences now,

apparently due to emergence of new dimensions into the commission of these offences. For obvious reasons, it would be right to say that categories of crimes are never closed.

The study on types of criminals is a bye-product of efforts of criminologists and penologists. Notable in this field were Cesare de Beccaria, Jeremy Bentham and Cesare Lombroso[34]. Two renowned schools of thought; the utilitarian/classical school led by Jeremy Bentham and the positive school led by Cesare Lombroso have contributed immensely to the study of criminals. The utilitarian school anchored its view on the doctrine of 'Pleasure and Pain' i.e. the greatest possible happiness of the greatest number.

Some years later, Jeremy Bentham (1748-1832), also produced a treatise on criminal behaviour, criminal law, and legal reform[35]. He was concerned with the development of a just legal structure and viewed people as possessing a free will. Bentham is more remembered for his concern with the criminal behaviour and its control. He recommended that a set of penalties be developed to control criminal behaviour. This idea, which he called the *principle of utility*, though often referred to as *hedonistic calculus,* is that the criminal laws should prescribe punishment just severe enough to offset the pleasure people receive from committing a given criminal act. Despite certain criticisms against his theory, Bentham's general concept is still being used by government officials and the general public to justify extreme penalties for what they consider serious crimes.

Another group of scholars developed the positivism theory, though heterogeneous in their ideas yet, they share common concepts about crimes. The central theme of their beliefs is the assumption that people are controlled in some specifiable manner by their biological, psychological or social characteristics. Cesare Lombroso (1835-1909) emphasized the role of biological factors in criminal behaviour. Lombroso stressed that his early research convinced him that convicted criminals in set of numbers evidenced physical characteristics of man's less evolved apelike ancestors. This accounted for why criminals cannot adjust to the new notion of the civilized society.

According to Lombroso, through the use of scientific measurements he found that many convicted criminals are literally forced by their physical characteristics to commit crimes. Some of the sampled specimens of Lombroso findings among convicted criminals are:

> Unusually large ears, or occasionally very small, or standing out from the head as in the chimpanzee; Fleshy, swollen, and protruding lips; Pouches in the cheek like those of lower animals; Receding chin, or excessively long, or short, or flat, as in apes; and Excessive long arms.[36]

Lombroso later discarded this biological trait as determinant for criminality tendencies, when he found similar biological characteristics among a non-criminal group of Italian soldiers[37]. Nevertheless, his early work is of lasting significance since his findings are now reflected in contemporary biological positivism approach to the study of crime.

The attention that has been directed to genetic, chromosomal linkages with crime with several scientific discoveries establishing a causal link between the presence in some males of an extra Y; leading to (XYY) as against the male producing chromosome (XY normal) has been described as subnormal traits found in institutionalized populations especially in prisons and mental hospitals, though arguable among scientists and experts in the field as establishing a causal link, yet it has been found by these experts as probable, creating the relationship between the alleged biological pathologies and criminal behaviour in statistical associations[38]. Despite the ranging controversy as to the causal link between biological traits and criminal tendency, what remains clear is that mental deficiency or feeblemindedness has been proved as a veritable explanation for criminal behaviour, as mental defectives have more difficulty than others in adjusting to society[39].

According to them, there are certain types of physical irregularities or stigmata regarded as being characteristic of

the criminal. That the criminals are born, not made and that they conform to certain physical characteristics which make them (criminals), look different and easily distinguishable from ordinary human beings. They further argue that there is a connection between crime and human physique to the anatomy of the skull and the brain and other parts of the body[40]. The prominent features of the criminal is characterized by certain malformation of the skeleton and the skull such as 'oversized brain', 'a receding forehead', high cheek bones, squinting eyes, bushy and prominent eye-brows, a twisted nose, big ears etc.[41] This belief is strongly reflected in popular writings and several well-known figures in great works of world literature such as Homer's Thersites or Shakespeare's Richard III or in part also in Julius Caesar:

> Let me have men about me that are fat, sleek-headed men, and such as sleep o'nights; Yond Cassius has a lean and hungry look, He thinks too much; such men are dangerous.[42]

Furthermore, an English judge had once remarked thus:

> The fats do not write anonymous letters. It is the lean bodies that sit at writing tables and bony fingers that dip pens in vitriol and build up bomb-shells for harmless postmen to deliver.[43]

Lombroso finally postulated the following categories of criminals:

(1) The born criminal: derived from birth and in most cases hereditary from his parents and often have little resistance to criminal stimuli and high degree of propensity to commit crime.
(2) The insane criminal: affected by a clinically diagnosed mental disease of psychoses[44] and neuroses.

(3) The passion criminal: the criminal through passion either chronic mental state or through emotion and in most cases such a criminal is nervously excitable.
(4) The occasional criminal: constitutes the majority of law breakers, a bye product of family and social problems[45].
(5) The habitual criminal: a product of the social environment caused by abandonment by his family[46].

Crime and Morals

If millions of people in Nigeria have to live together, their lives will be more pleasant and peaceful if some measures are taken to prevent people from killing or physically attacking others, walking into their houses and taking away valuables. These types of behaviour are anti-social and must be controlled. But it is not the function of criminal law to interfere in the private lives of citizens or to seek to enforce any particular pattern of behaviour. It has been propounded that there must remain a realm of private morality and immorality, which is not a business of the law. One school of thought is of the view that public morality is essential for the stability and continuance of society and that to permit private acts of gross immorality is to undermine the foundations of that society (Wolfenden 1957- (Cmnd. 247).[47] Another school of thought is of the opposing view that society ought to be able to tolerate acts, which are harmful only to the individual who commits them, however outrageous they may appear to the rest of the community (Devlin 1959) (cf Hart 1959) and (Rostwo 1960)[48].

There is a perennial controversy on how to distinguish between acts that are criminal and those that are merely immoral. While, it is true that many if not most acts, which are regarded as immoral, are also illegal, yet the spheres of crime and morals do no more than intersect. Thus, there is not always an agreement on what kind of conduct should be considered criminal for example, smoking in public places is considered anti-social by many, along with eating smelly fast

food on public transport, or putting on too much perfume or after shave lotion and except of course, smoking which can even harm others who passively inhale the smoke. Yet, none of these is a crime and very few people would wish them to be. On the other hand, there are types of behaviour, which may affect nobody, but the people involved—smoking cannabis, failing to wear a seat belt, or helmet by a cyclist, hooting of a car horn, in some situations, can harm other people in the sense of constituting a nuisance are examples—which are nevertheless criminal acts.

Thus, the content of criminal law may vary not only from age to age, and country to country, it may also vary within the same country at the same period in history. Perhaps this explains why slave trade two hundred years ago was a recognized activity; but now it is a serious international crime which violates the rule of *jus cogens*; so also are the cases of twin-killing, and some cultural practices such as the *Osu* caste system among the Igbo people of eastern Nigeria.

It is respectfully submitted that the types of conduct, which are considered criminal, vary from society to society. Under the English legal system, e.g. homosexuality was once a crime, it is no longer so. Until a few years ago, it was not a crime for a man to rape his wife. A husband can now rape his wife in some countries. Also, under rules of Private International Law for example, a marriage between a widower and his deceased wife's sister in Denmark was held legal under Danish Law but treated as illegal in England being a union which is contrary to God's law on the ground of incest.[49]

Nigeria's Criminal Justice: Current Challenges, Future Directions

In Nigeria, there are two systems of criminal law, conduct such as adultery and drinking alcohol are offences only in the northern states but they are not offences in the southern states. In certain situations, the same conduct may be criminal when committed by one person and legal when committed by

another (e.g. marriage by a man to another woman during the lifetime of his spouse)[50]. That is why bigamy is a crime even in a predominantly polygynous society as it is a question of choice on the form of marriage by the parties concerned. Since the golden principle of law reiterates that law is an instrument for social change in a given society[51], as the general attitudes of people change over time, so do attitudes to the kind of behaviour, we label as criminal. This should be the objective of lawmakers in every democratic society. A democratic law needs to be in constant touch with the needs of the community, for it to be honoured by the people, this underscores the point for the laws enacted by the colonialists for now independent nations worldwide require to be filtered in the respective societies for them to continue to command fairly widespread acceptance and relevance to their contemporary challenges.

The reason why 'crime' is punished at any given time is because it is thought to be a serious threat to society at the time when the legislation on the subject matter was passed. This situation is an example of how public opinion might be in advance of the law. Whatever the legal machinery used for making a certain type of conduct criminal, the subject must be considered from three different perspectives:

> the attitude of the legislature when it creates offences (behind which usually stands public opinion); the attitude of the administration which enforces the law; and of the courts which interpret it.

It is therefore desirable that criminal law must be kept in pace with public opinion especially in the administration of the law by the law-enforcing agencies. It is one thing for parliament to forbid a conduct, but is quite another thing to enforce that prohibition. The police and the state counsel wield a considerable discretion in the prosecution of crimes, and in the course of exercising this power the fact that a particular crime is obsolete, or is not in accord with general

opinion or is difficult to enforce may at times influence them against enforcement. This position has been pointed out and rightly too, by Ijalaye (1992) that some provisions of criminal code and other statutes have gathered dust over the years and need to be detached and thrown into the dustbin.[52] Ijalaye drew examples from the Sociological School of Jurisprudence and the Nigerian Legal Order on the following laws: Laws of Bigamy, Section 370 Criminal Code. Bush Burning Ondo State Edict No. 4 of 1989; Slaughtering of Animals – Public Health Act. Cap. 165 (1958) Laws of the Federation of Nigeria; Burial in Houses S.246 Criminal Code; the Land Use Decree (now Act) 1978; the Principle of Federal Character and "The Constitution of the Federal Republic of Nigeria, 1979; Lynching: Mob Justice versus Right to Life under the Nigerian Constitution 1979; and the prohibition of public spraying of money at ceremonies and public events. Yet, many important dignitaries do spray money in the presence of their police orderlies providing security for them though they are empowered by the law to arrest offenders, in such instances how practicable would it be to effect such arrests? Apart from criminal law, there are other laws that are not meeting the needs of the society under the Nigerian Legal System.

Federal Government to Reform a 121-year-old Sale of Goods Law

The Federal Government has embarked on the reform of about 121-year-old Sale of Goods Act, which was introduced to Nigeria by the British Colonial Administration in 1893. The reform of the law, which regulates the sale of goods transaction in the country, is being undertaken by the Law Reform Commission of the Federal Ministry of Justice as part of stakeholders' efforts towards putting in place a statute that conformed to the reality of modern changes in the society. The Act still operates in Nigeria as a statute of general application, even after our independence in 1960 up till today. It has neither been domesticated nor undergone any form of reform since its introduction into the country over 100 years

ago. It is not in doubt that such a law needs a reform in order to bring it into conformity with modern changes in the society[53]. While the Nigerian legal system still retains a 121-year-old law received from the British colonial government, the donor has repealed it from her legal system in the United Kingdom where it was first enacted in 1979. The Sale of Goods Act, 1979, which is operational in the United Kingdom, has introduced amendments, including the regulation of the English Contract Law and United Kingdom Commercial Law.

Sociology of Crime

Criminologists are concerned with the ways that social conditions and institutions produce or construct crime and deviance. Many argue that psychological, psychiatric, legal, medical, and other perspectives based upon the individual as the root cause of social phenomena are not the best ones for an understanding of crime and deviance. Also, criminologists are concerned with explanation rather than detection or treatment tends to take the view that collective phenomena are the result of collective conditions. Durkheim saw consistent suicide rates over time as a direct index of persistent social realities. In his contribution to general understanding of deviant behaviour, he showed how suicide is related to an individual's integration or lack of integration into social groups. According to him, one cause of suicide results from a condition of 'anomie'—a situation in which persons lack integration in stable groups, resulting in a condition of 'rootlessness' and 'normlessness'[54]. Or just as Marx (1968) saw forms of law as a reflection of predominant social relationships[55]; Mannheim (1965) talked about the crisis in values which confronts the criminal law and described criminal law as a petrified body unable to cope with the endless variety of problems created by an ever-changing world and kept alive mainly by tradition, habit, and inertia[56].

Realizing the problems likely to arise from this generalization of the determining factor to criminalize acts, he warned that not all anti-social behaviour should be

criminalized and that many of such behaviours were better regulated outside of the penal system[57]. This is where religion and cultural norms and values come to play a significant role[58]. The concept of social ideal or a planned collective development of communities, according to Sumner (2004-45),[59] had emerged earlier in the seventeenth century. Hobbes had propounded the social contract theory, whereby the people collectively surrender their powers to the state as a collective compromise of interests for the common good. He argued that if the society is left in the primitive stage of nature, life will be short, nasty and brutish. As the greedy and powerful will marginalize and dispose the weak of their possessions and entitlements. It needs to be pointed out that before 1914, most writers did not see crime as a social form, although some like Quetelet, Dickens, Marx, Mayhew, and Booth saw social conditions causing crime[60]. Early criminologists, such as Goring and Lombroso, viewed criminals as having some biological deformities as manifested in their physical features and were likened to a 'zoology of social sub-species'[61]. It should be noted however that biological explanations of crime have repeatedly failed to withstand critical examination. Most criminologists today believe that in the light of the available empirical data on criminals from various countries, such explanations are of little manifestation regarding the identities of criminals and of little assistance in understanding criminal behaviour[62].

Need for Global Criminal Justice Approach

The control of crime of recent traverses beyond legal and institutional bodies set up by the government to secure or restore social control. It requires extra legal methods and military actions to bring about tougher direct impact on crime prevention and control in the country. Adopting comparative pedagogy will help in resolving inherent dangers that generalizations of meaning and scope of criminal justice will pose in different jurisdictions. For example, Germany, The Netherlands and Nigeria operate criminal justice system

without a jury, while Britain upholds tenaciously the right to trial by jury.

The British society beliefs the jury represents a strong pillar and bastion of English criminal justice system, symbolizes fairness and impartiality. As such, any attempt to tamper with the right to trial by jury is much likely to be met with stiff protest and outcry by the public[63]. This arrangement offers an opportunity of analysing and contextualizing criminal justice processes and institutions of countries with a view to providing a broader understanding and knowledge of criminal justice across transnational borders.

Criminal Justice Values and Global Perspectives

Specific insights into selected jurisdictions enable us to acquire better understanding of the arrangements in other systems and thereby provide opportunity for rethinking on the scope of crime, the criminal, the victim and the criminal justice in Nigeria. Criminology therefore, in the views of its promoters is an academic discipline that is rich in its content, an involving body of empirical knowledge and ideals which could become of some use in the practical business of enforcing the criminal law in any given society. Thus, in the search for crime control, we must take into consideration the historical, cultural, social and political values of the particular environment and of the nature of criminal justice being considered. For example, the sentencing approach by judges in Saudi Arabia and China on ordinary crimes and capital crimes respectively gives a general impression that these countries' laws are harsh and inhuman with frequent reports of amputations of hands for stealing peoples' laundry in China and death executions for violating capital crimes. Beyond lay sentiments from the media outfits and straight way stand of Amnesty International on these methods of punishment, one needs to understand more about these systems before reaching a balanced judgment[64].

Criminal Jurisprudence: Expounding the Elements and Expanding the Boundaries

For a proper understanding of crime and criminal justice, knowledge of criminal justice process is not enough, it requires understanding or studying of the actors involved and the society where these processes operate. This further entails how criminal justice process fit a country, its culture and legal traditions. Therefore, the fact remains that a nation's way of administering justice usually reflects deep-seated cultural, religious, economic, political and historical heritages. Learning about the reasons for these different practices provide an insight into the values, traditions and cultures of other systems thereby forestalling ethnocentrism perception that one's domestic system is "normal" and "right" and that other culture or custom is 'weird' or "wrong". It is by so doing that we can, through cooperation of policy makers and officials of states of the federation, achieve a certain level of harmonization of laws and procedures nationwide.

Is the Case of Olowu v. Olowu[65] *- A Fair or Flawed Judgment?*

The parties are the children and beneficiaries of one Adeyinka Ayinde Olowu, whose parents were Yoruba indigenes from Ilesha. He lived from childhood until his death in Benin City. He had considerable business interests in Benin City and acquired landed properties as any indigene of that city. He married Benin women and all the parties in this case are children born by his Benin wives. It was established and evidence was led that during his lifetime, he applied to the Oba of Benin to be "naturalized" as a Benin indigene, a status which conferred on him the right to acquire absolute title to the considerable landed properties in Benin City as any native of that city.

At the High Court, the plaintiffs claimed for themselves and other issues of the deceased sued the two defendants, who were their brothers and administrators of the estate of the

deceased. During the trial, the plaintiffs and the 2nd defendant claimed that their late father culturally remained a Yoruba man until his death and that his estate ought to have been distributed in accordance with Yoruba native law and custom and not according to Bini native law and custom as the 1st defendant purported to have done. Both parties agreed that the real issue in the case centred on whether the estate should be distributed according to Bini or Yoruba native law and custom. In other words, which of the two is the proper personal law of the deceased? The learned trial judge dismissed the Plaintiffs' Claims. They appealed to the Court of Appeal, the appeal was dismissed. The plaintiffs further appealed to the Supreme Court, which was unanimously dismissed.

The Supreme Court held *inter alia* that where the deceased had voluntarily chosen to become a Bini, his personal law had changed by choice, he had "naturalized" and there is no law which forbids this. That the deceased had assimilated into Benin cultural group, the deceased applied to the Oba of Benin to become a Bini indigene. The Oba in an open ceremony in the presence of his Chiefs granted the deceased's request and conferred on him his status of Bini indigene as a result of which he was entitled to acquire most of the properties comprised in his estate.

In this case a question of conflict of laws arose. The issues of law such as *lex patriae,* which is known as the personal law, the *lex situs or lex loci* of the property involved, the *lex domicilii* of the deceased, the *lex fori* of the forum competence were fully analysed by Oputa JSC. In his characteristic manner, the learned Justice of the Supreme Court opined that perhaps the word 'naturalized' was loosely used by the trial judge but not as understood within the context of international law or constitutional law. The proper expression in this situation is acculturation. This implies that a person of one tribe or of one culture group may adopt the culture of another and different group.

Each cultural group in Nigeria has its own customary canons of distribution of property. Generally, testamentary

disposition is alien to customary law. It is an innovation introduced by the received English Law and the Wills Act. The rule of intestacy applies in virtually all communities in Africa. The position had been earlier settled by the then Privy council of England in 1962 the case of *Dawodu v. Danmole*[66], Suberu Dawodu, deceased died in September 1940 leaving behind five children who had died during his lifetime. He had four wives, all of whom died before him. The respondents in this appeal are two of the deceased's children and the three children of a pre-deceased child, while the appellants are three of the deceased's children and nine children of pre-deceased children. The respondents sought for the properties in Lagos should be divided into fourths, per stripes of each of the wives of the deceased in accordance with an alleged will. The appellants denied the existence of any will and claimed a division into ninths according to the number of the deceased's children on the basis of '*Ori Ojori*' which according to them was the proper and appropriate native law and custom of Lagos. At the trial, the respondents failed to prove the existence of a will.

The trial judge held that the division into fourths was in accordance with the native law and custom '*idi igi*' which was relevant, and had not been abrogated but held that the method was repugnant to natural justice, equity and good conscience, he ordered the properties to be divided in accordance with '*Ori Ojori*' into ninths. On appeal to the Federal Supreme Court, it was found that the relevant custom was '*idi igi*' and that it was not contrary to natural justice, equity and good conscience. The Federal Supreme Court reversed the judgment of the trial court and made an order for the division of the rents into fourths. A further appeal to the Privy Council was dismissed and the Privy Council held that while both methods could be found to be proper, valid, and subsisting in the distribution of estate of a deceased person in Yoruba land, '*idi igi*' is not contrary to natural justice, equity and good conscience. The Supreme Court in *Adesubokan v. Yinusa*[67] *inter alia* that a Muslim from Omuaran in Kwara

State who had lived in Lagos is entitled to make a will in accordance with the Wills Act 1837 of England is a statute of general application and by interpretation of section 33 and 34(1) of the High Court Law of northern Nigeria.

Crime Prevention and Safety of the People

Thus, crime is not just the responsibility of the police, the courts and the prisons alone. For effective control of crime in the society, the active support of individual, private groups, schools, business organizations, labour unions and the citizens are needed. This is because, crime has its effect on everyone, not just the criminal and his victim. The reality of crime problem in modern times is that there is much crime in the society, more than ever is reported, far more than ever is detected, and far too much to be prevented. For example, every Nigerian is in a sense, a victim of crime because crime is a broad concept covering an enormous range of human behaviours. It may be associated with traditional crimes such as misdemeanours, stealing, burglaries, violent crimes such as assaults, riots, murders, assassinations, armed robberies, rape; or business crimes like corruption, bank frauds, economic crimes, organized crimes, corporate crimes, oil pipeline vandalism, environmental crimes or cultism among students and other anti-social conducts.

It is therefore, practically impossible to find a single comprehensive answer to the crime problem; doing so is like trying to lump together measles and schizophrenia or lung cancer and a broken leg. The phenomenon of crime occurs in every part of the country and in every stratum of the society. Its operators and its victims are people of all ages, incomes and backgrounds. Its trends and patterns are difficult to ascertain. Its causes are legion, while its cures are speculative and subject of relativity of time. The reality of today is that we now live in an age of intense criminality on a daily basis under the system which has become insensitive to the victim's plight thereby necessitating an appraisal of the most undeveloped area of criminal policy. Therefore, in a bid to curtail the recurrence of crime or at least to try to restrain the

likelihood of it, an individual victim can hardly be compensated by mere satisfaction exacted by punishment. The offender should be made to recompense his victim by encouraging more use of financial penalties, in terms of compensation, restitution and damages to victims taking from the offender's means[68]. Thus, an examination of crime in any country raises a myriad of issues of the utmost complexity. The most prevailing understanding by the Nigerian people is that of extreme frustration and bewilderment.

Crime prevention therefore, involves deliberate but continuous and progressive set of activities designed and employed in the suppression of crime and criminality within any community, town or region. Crime prevention refers to a situation where crimes are detected and prevented before it was committed. It also involves the application of all necessary and deliberate measures for the suppression and countering of incidence of crime, or to contain or keep minor incidence of crime under control; and to prevent them from escalating.[69]

According to the European Crime Prevention Network (EUCPN) (2001):

> ....crime prevention shall cover all measures that are intended to reduce or otherwise contribute to reducing crime and citizen's feeling of insecurity, both quantitatively and qualitatively, either through directly deterring criminal activities or through policies and interventions designed to reduce the potential for crime and the causes of crime. It includes work by government, component authorities, criminal justice agencies, local authorities, specialist associations, the private and voluntary sectors, researchers and the public, supported by the media[70].

The preventive measures not only address crime *stricto senso*, but also cover 'anti-social behaviour,' which forms a sort of 'pre-stage' of crime. Examples of such behaviours are noisy

neighbourhoods', deteriorated environments and housing, rubbish or litter lying around. Such conditions can affect the regeneration of disadvantaged areas, creating an environment in which crime can take hold.

The Concept of Punishment and the Unmet Promise of its Alternatives

The idea of preventing crime should be translated to expedite action aimed at stemming the tide of crime when it is still controllable. This invariably borders on punishment, the concept which according to Nietzsche 1887, 1989:80-81), like law and crime possesses not one meaning but a whole synthesis of meanings[71]. Therefore, punishment is the act of a legitimate authority depriving an offender of a good of which he is no longer worthy. Why punish? Four purposes traditionally justify any punishment, not just capital punishment. They include protection from the criminal, deterrence, rehabilitation and retributive justice. According to H.L.A. Hart (1968: 4-8)[72] the first three purposes are widely accepted. Almost everyone agrees that the society must be able to defend itself against convicted murderers, rapists, thieves and the like. The protection of the common good justifies removing criminals from situations in which they pose a threat. That such punishment deters others who may be tempted to act criminally likewise helps preserve and protect the tranquility of society. Criminals serving their sentences should also be provided opportunities, or may even be forced to take advantage of opportunities for rehabilitation so that they may re-enter the society as productive citizens.

Thus, in assessing the crime rate in Nigeria, one posits the views of the generality of Nigerians that our prisons have been turned into country clubs for offenders and that correctional bodies have been restrained by the supreme court relying on the technicality of law and extreme interpretations of citizens' constitutional rights.

Is the Case of Olabode George v The State[73] *A Questionable Ratio Decidendi*

The Nigerian Port Authority (NPA) directors, Alhaji Aminu Dabo, Captain Oluwasegun Abidoye, Alhaji Abdulahi Aminu Tafida, Alhaji Zanna Maidaribe and Mr. Sule Aliyu, were tried and convicted by the Economic and Financial Crimes Commission alongside Appellant over offences bordering on corruption, inflation of contracts and contracts splitting. Chief Olabode was the Chairman of the NPA between 2001 and 2003, when the alleged offences were said to have occurred. However, delivering judgment on separate appeals filed by the Appellant and the others to challenge their conviction, the Supreme Court held that the allegation of contract splitting over which the accused persons were convicted, had not become a criminal offence as at the time the alleged incident took place.

The Supreme Court maintained that, from its findings, the convictions were based on the alleged failure of the then NPA officials to obey the provisions of a circular on the award of contracts. That the said failure to obey the provisions of the circular was not a criminal offence as at the time the appellants were charged to court, and subsequently convicted. The Public Procurement Act, which was to criminalize the offence of contract splitting, for which the appellants were convicted, was enacted in 2007. The apex court held that the appellants were wrongfully convicted and sentenced by the trial court.

It is recommended that if our society really gets tough with criminals through longer sentences and if they can show less concern about suspects' interest, a sense of safety now lacking can be restored to the Nigerian society. Events in the past decade have revealed some of the most costly and damaging crimes perpetrated by upper-class bank executives, stockbrokers, corporate officials and top businessmen. Political office holders and government officials were rarely prosecuted due to the adoption of plea bargaining approach in such criminal proceedings and the consequential light

punishment arising thereof (Olatunbosun and Alayinde 2010). The magnitude of these crimes and the caliber of persons involved have been devastating considering the amount involved and the trends of looting within the last period of five years. The owners and chief executive officers of some of the leading commercial banks perceived by the public to be thriving in terms of its continuous spreading of branches eventually turned out not to be thriving financially by the Central Bank of Nigeria, the regulatory body for the banking and financial sector of the economy. As it turned out to be, there were series of monumental frauds involving the chief executives of these banks granting unsecured huge loans running to billions of naira to certain influential businessmen and corporations with violation of banking rules and regulations. These bank executives also diverted large chunk of public deposits in their various banks for their personal use, over bloated grant of loans and advances for themselves, cronies, friends and business associates.

Patterns and Trends of Organized Crimes

During the consolidation exercise carried out by the Central Bank of Nigeria, it was conservatively estimated that over 400 billion dollars was misappropriated, a number too staggering to imagine in a fledging economy of a developing country like Nigeria. According to the Central Bank of Nigeria, almost 15 per cent of the banks may eventually collapse if there is no intervention. This regulatory body stated that wide criminal activity is a central factor responsible in over 70 per cent of all the cases.

Another scandal that shocked many Nigerians making them to lose their faith and confidence in business institutions is the illegal insider trading, which rocked the Abuja and Lagos stock houses. Consequently, many investors in capital markets loaded their investments as a result of downward fall in the value of shares, stocks and bonds in the capital market. In spite of these revelations, there has never been a concerted step taken by the government to prosecute these personalities for their various criminal actions.

A more shocking and disturbing trend to Nigerians is the serial revelations that civil servants use their positions to loot billions of public funds they are entrusted with for personal use. One of the most disgusting and mind-boggling scandals is the channelling and diverting of ₦32 billion pension fraud, being pension fund of policemen. The Economic and Financial Crimes Commission (EFCC) on March 29, 2012 arraigned six persons namely: Esai Dangabar, Atiku Abubakar Kigo, Ahmed Inuwa Wada, John Yakubu Yusuf, Mrs. Veronica Uloma Onyegbula and Sani Habila Zira on sixteen criminal charges covering conspiracy and criminal breach of trust before Justice Mohammed Talba of the High Court of the Federal Capital Territory, Gudu Abuja.

An interim order was obtained on the 16th July, 2012 from the Chef Judge of the Federal Capital Territory (FCT) Justice Lawal H. Gumi to take possession of 45 assets of all the six persons arraigned for defrauding the Police Pension Office of ₦32.8 billion. The anti-graft agency also obtained the court's order to freeze the six secured persons' bank accounts. This trial is one out of the numerous cases pending against many government officials involved in such forms of scandal nationwide. This act of looting public funds by public officials can be aptly described as breach of fiduciary duty by officers who became unjustly rich and wealthy by subverting programmes intended to help the poor, the aged and most vulnerable people in the society.

Clogs in the Wheel of Administration of Justice

The brunt of criminal justice system is more felt by the defence than any other person involved in the administration of criminal justice. Thus, counsel representing an accused person must exhibit high sense of responsibility, dedication and hard-work to present every defence that the law of the land permits for the accused. The attorneys for accused persons must be in the forefront of timely dispensation of criminal justice, except in unavoidable circumstances. Adjournment should be the last option to be sought for by the defence counsel. Counsel defending accused persons should

bear in mind always that the effect of delay in the dispensation of criminal proceedings falls on the clients. These invariably have adverse effects in terms of finance energy and time waste both for the accused and counsel as well.

The Case of *M.K.O. Abiola v. Federal Republic of Nigeria*[74] - *as Trials or Travails*

The Appellant was facing a charge of treason at the Federal High Court, Abuja. He was refused bail at the trial court but bail was upon appeal granted by the Court of Appeal. The state appealed against the order of bail made by the Court of Appeal and applied for a stay of execution. The appellant appealed against the order staying execution of bail. When the appeal came before the Supreme Court for hearing, the appellant's counsel raised objection that some of the justices that were sitting on the panel were disqualified from hearing the appeal. The reason being that eight of the justices of the court had instituted an action in libel against Concord Newspapers Limited substantially owned by the appellant and as such, it would be wise to avoid the notion of likelihood of bias for the eight named justices to disengage themselves from having anything judicially to do with the case wherever it comes to court. The court upheld the preliminary objection and discontinued hearing the matter. Incidentally, the Supreme Court as at then comprised of eleven justices of whom eight had been disqualified, the remaining three justices could not constitute a panel of five members to consider the issue of bail, and hence the application was adjourned *sine die* (indefinitely). What followed is now history. Had it been that the learned counsel for the appellant had not been too rigid in his approach to handling the matter, to be less technical but sought for the justice required in getting the bail of his client probably the Supreme Court could have granted the bail and perhaps Abiola would not have died in custody.

In another sister case, ***FRN v. Bashorun MKO Abiola***[75] where the Respondent facing trial for offence of treason,

treasonable felony and false assumption of authority contrary to sections 37, 41 and 107 of the Criminal Code (Cap. 77) Laws of Federation of Nigeria, 1990. He was arrested in Lagos on 23 June 1994 and placed in protective custody. He had been represented in Court by Chief G.O.K Ajayi SAN. At a stage, one of the children of the respondent L.K.O. Abiola wrote a letter to Chief G.O.K. Ajayi purporting to act on the authority of his father to withdraw the matter from the Lawyer and that Chief F.R.A. Williams and Chief Afe Babalola had taken over the case. This generated a big issue at the next hearing date. The best person to decide who represents him as counsel is the appellant, but both counsel arguing over representation claimed that access is not easy to the appellant and the court admonished the Attorney-General of the Federation to afford counsel counter claiming authority to represent the appellant the means of knowing what the appellant wants.

In the words of Ogundare JSC,

> I hope and believe that the Federal Attorney-General will, in the best tradition of his office, prevail on the Executive authorities in whose custody the appellant presently is, to allow access, by counsel, to the appellant with a view not only to resolving soonest this controversy over his legal representation but also the preparation of his defence.
>
> The ends of justice require no less. And the image of this country deserves not less.

More instructive and inspirational is the view expressed by Iguh JSC,

> My only regret, speaking for myself, is that this entire controversy surrounding the appellant's legal representation has served in no small way in prolonging the determination of the charges preferred against the appellant. I sincerely hope

that the issue should be resolved without further delay to assist in the expeditious and judicious determination of the main case in the interest of all concerned.

Transnational and International Border Crimes

Nigeria's attitude towards organized crimes at national and international levels has always been total condemnation through the enactment of stringent laws and formulating of stern policies. The dimensions of transnational and international border crimes range from kidnapping, abduction, robbery, computer/internet-aided financial frauds, to smuggling, drug trafficking, hijacking, terrorism, crimes of aggression and other organized crimes. From one government to another since independence in 1960 to the present times, concerted and consistent efforts have been made to combat the menace of these heinous crimes and to ensure that perpetrators of the offences do not use the country as sanctuary for their illegal and criminal conducts[76]. Towards the implementation and enforcement of legal instruments to control these criminal activities in Nigeria, successive governments have entered into a number of bilateral treaties and international agreements. For instance within the regional level, some agreements have been concluded with her neighbours such as the Republic of Benin, Togo, Ghana, Cameroon as well as the Republic of Chad and Niger. In the same vein, similar cooperation had been sought with Sao Tome and Principe especially during the military coup d'état that took place few years ago in that country.

Nigeria now shares marine boundary with this country following the decision of the International Court of Justice in the case of *Cameroon v. Nigeria*[77] over the ownership of Bakassi Pennisula. At the international level, Nigeria has entered into a number of international agreements for mutual assistance and cooperation in the prevention of certain crimes with the United States of America and the United Kingdom on drug and narcotic offences, environmental crimes and

terrorism[78]. The overall objective behind this support is aimed at eradicating emerging crimes that are of international flavour by putting in place effective laws and institutional bodies as means of finding solutions to these reprehensible crimes in the society. The dimensions of transnational border crimes are faced with the problems of interpretation of activities that can be rightly categorized as transnational crimes and the extent to which these activities should be penalized[79].

Dimension of Crime Problem

Modern criminologists were well aware of the difficulties in conceptualizing crime,[80] and did not simply take for granted the categories of criminal law. According to them, legal definitions of crime embodied power rather than morality, so they inadequately reflected the gravity of different forms of anti-social or harmful behaviour.[81] Mannheim's Criminal Justice and Social Reconstruction[82], for example, offered a critical analysis of criminal law, assessing its appropriateness for curbing the most harmful forms of anti-social behaviour in modern times.

A motivating factor in the shift of focus from the offender to the offence is the growing manifestation among stake holders that crime cannot be controlled exclusively through the action of the police and criminal justice administrators. This reality has brought about the idea of new forms of approach on crime prevention against the backdrop of the apparent failure of the police, courts and prisons to stem the rising crime rates in many societies. Crime problems have impelled some people to relocate from their desired homes to new places not planned for, some have been made afraid to walk on the streets unescorted by private security guards. Some have come to doubt the worth of living in a society in which untimely death from the hands of hoodlums lurks around the corner. Others have been distrustful of the government's ability or even sincerity to protect them. Some have completely lost faith in the crime prosecution process,

many are indifferent to crime reporting as they perceive incapability of the police to properly investigate crimes, and the courts that pass lenient sentences or discharge those the public perceive are responsible for crime on technical grounds of lack of sufficient evidence or failure to prove beyond reasonable doubt. In response to crime problems, people have advocated measures to deter the offenders, including stiffer penalties for them. However, legal conceptions of crime offer only a partial representation of the misfortunes, dangers, harms, risks and injuries that are a routine part of everyday life. The risk of suffering those misfortunes defined as 'crime' is often negligible compared to the risks associated with workplace injury and avoidable disease.

Equally, we are more likely to suffer accidental injury than theft, yet only the latter is likely to engender insecurity. Hence, crime holds a pivotal position in assessments of personal safety. Thus, in Nigeria, in a desperate effort to combat crime, capital punishment has been placed on some crimes such as armed robbery and acts of economic sabotage in addition to the traditional offences, which carried the death penalty such as murder and treason. There has been increase in the number of people advocating the liberalization of firearms laws to enable individuals possess and carry firearms for self-defense. Also, private efforts to control crime include the installation of burglar alarms, security lights, high fences with glass shards, strong gates, the employment of private (day and night) security guards, use of guard dogs, and the use of charms.

Delay in the Law Courts

The problem of delay in the law courts has assumed a wider dimension in recent times in Nigeria. It has shaken the confidence of the public in the capacity of the courts to redress their grievance and to grant adequate and timely relief. In criminal cases, it is particularly necessary that delay be eliminated, since the decision depends upon oral rather than documentary evidence, it follows that with the passage

of time, the memory of witnesses fades. Towards achieving purposeful criminal justice policy, every criminal court should keep a register showing the number of witnesses summoned for a date, the number examined, the number sent back and reasons for sending back without examination. The practice of sending back witnesses by some courts, without examining them must be discouraged as some investigating police officers often take undue advantage of this by tutoring remaining witnesses that are yet to be called to fill areas of discrepancies arising from the course of examination-in-chief and cross-examination of those witnesses that have been called. Entire evidence should, as far as possible, be recorded at a stretch. In spite of the fact that we have adopted the accusatorial system, the trial judge should not play an altogether passive role, but must take greater interest and elicit such information as may be helpful in finding the truth. In the course of examination-in-chief, examination of witnesses should be done within a reasonable time.

Inordinate Delay likely to Occasion Miscarriage of Justice
Ariori & ors v. Elemo & ors*[83] - *Plights and Perils of Litigants

The case has a chequered history. The case was filed in High Court of Lagos State on 15th October, 1960. It suffered series of preliminaries such as filing of processes, settling of pleadings and substitution of parties for those that died whilst the case was on. Hearing in the matter started before Kester J. on 18th November, 1964 when he took some evidence in the case. After this, the pleadings were amended and the case adjourned till 10th June, 1966. The case did not come up until 8th March, 1968 when it was mentioned *de novo* before Beckley J. who eventually tried the case. From March 1968 to March 1972, the case dragged on based on one application or another. The case further recorded series of adjournments mostly at the instance of parties and/or their counsel who came up with various applications. In all, twenty witnesses gave evidence before the learned trial judge and final addresses of learned counsel were taken on 18th July, 1974 and adjourned judgment *sine die*.

On 3rd October, 1975 fifteen months after the close of the case and three years and seven months after the court took the first evidence in the case, the trial judge delivered his judgment. He dismissed the plaintiff's claim. On appeal, the Court of Appeal allowed the appeal and held that the inordinate delay by the trial judge defeated the course of justice. The Court went further to state that none of the defences could be sustained, the Court of Appeal considered the evidence before the trial court and further held that the plaintiffs' case ought to have succeeded and proceeded to make orders entering judgment in favour of the plaintiffs. On appeal to Supreme Court, the appeal succeeded. The judgment of Lagos High Court (Beckley, J) given on 3rd October, 1975 was set aside. The judgment of Court of Appeal dated 26th September, 1979 was also set aside.

The Supreme Court ordered a retrial of the case before another judge. The Supreme Court vide Sowemimo JSC remarked that when the Court of Appeal which heard the appeal rightly found that there was such miscarriage of justice should have set aside the judgment and ordered a retrial. Rather than do that, it went on and tried the issues which could only be tried by a court that has heard evidence and seen the witnesses. In his words, with great respect to their lordships in that court, rather than help, they have compounded the issue. The court fell into a deep error. The Court of Appeal misdirected themselves by falling into the same error of making findings on the evidence of the witnesses they neither saw nor heard. In the final analysis, the Supreme Court noted that:

> It is most unfortunate that a case that has been litigated through a space of twenty two years is still not brought to an end and has to be reopened again due to avoidance fault of the trial judge especially when some of the witnesses might have died or perhaps cannot now be traced.

In the same vein, in the case of ***Mrs. Alero Jadesimi v. Mrs. Victoria Okotie-Eboh***[84], the deceased, Chief Festus Samuel Okotie-Eboh was a son to an Itsekiri father and an Urhobo mother. In 1942, he got married to the 1st respondent according to Itsekiri native law and custom. The appellant as well as the 2nd respondent are the children of the marriage. There are other offsprings of the deceased, of whom the 3rd respondent is one, who were born by women that were not married to the deceased.

In 1947 the deceased made a will at Sapele (Exhibit P1) which was signed by Chief Egboro (P.W.2) and Mr. Okitikpi (P.W.3) as witnesses. The will was dated the 21st day of August, 1947 and was deposited at the Probate Registry of the High Court of Lagos State since, as at that date, that was the only Probate Registry existing in Nigeria. In March, 1961, whilst the customary marriage was still subsisting, the deceased and the 1st respondent decided to re-marry or rather re-affirmed their marriage by going to a Marriage Registry in Lagos where they got married under the Marriage Act, Cap.115 of the Laws of the Federation of Nigeria, 1958.

On 15th January, 1966, the deceased, who had been a Minister of the Federal Government of Nigeria, was killed during a military coup d'état which overthrew the Government. Sometime in 1971, the appellant together with the 1st, 2nd and 3rd respondents applied to the High Court of the then Bendel State for the grant of Letters of Administration to enable them administer the properties of the deceased in that State. The Letters of Administration were granted. In order that they might be able to administer the estate of the deceased in Lagos State, they got the Letters of Administration issued by the High Court of Bendel State, resealed sometime in 1972 at the High Court of Lagos State. By agreement between them, the appellant and the 1st respondent were to administer the estate in Bendel State. All the children of the deceased, who were known to the appellant, were maintained by the administratrixes and administrator from funds received from the estate of the deceased.

At the time of applying for Letters of Administration, the parties to this case were not aware that the deceased had made a will. According to the evidence adduced by the appellant and 1st respondent, sometime in 1974 it was discovered that the deceased made a will and that the will was deposited at the Probate Registry of the High Court of Lagos State. Whilst accepting that a will was made in 1947 by the deceased, 2nd respondent called evidence to show that there was another will made by the deceased in 1964 and that both the 1947 and 1964 wills were discovered in a safe kept in the room of the deceased at Sapele.

At the conclusion of the trial, the learned trial Judge gave judgment in favour of the appellant and granted all the reliefs sought by her. The respondents' appeal to the Court of Appeal was however allowed. The Court of Appeal held that the subsequent marriage between the testator and the 1st respondent revoked the 1947 Will. The appellant was dissatisfied with the judgment and appealed to the Supreme Court. In determining the appeal, the Supreme Court considered the relevant statutory provisions of Section 18 Wills Act of 1837, Marriage Act, Cap.115 Laws of the Federation of Nigeria, 1990, Sections 11(1) (d) & 47 and Wills Law Cap.133 Laws of Western Nigeria, 1959, Section 15 and unanimously allowed the Appeal, *inter alia.*

The circumstances of Nigeria militate against the application of section 18 of the Wills Act, 1837 to nullify a will made prior to contracting a marriage under the Marriage Act. From the provisions of Section 45 of the Interpretation Act, Cap. 89 Laws of the Federation of Nigeria, 1958, although statutes of general application are applicable, nevertheless their applicability is not without limitations. It is clear from the provisions of subsection (2) that the application of the statutes could be curtailed by local circumstances as well as local jurisdictions. In the instant case, if it had been the intention of the deceased after contracting the 1961 marriage under the Marriage Act, that he would vary or even revoke the 1947 Will, he would have taken such step

long before he was killed in 1966. However, he did nothing of the sort. It must, therefore, be taken that he had intended that the Will should remain in force irrespective of the 1961 marriage.

It is important to give a background analysis of the facts and the subject matter of this case to enable us appreciate consequential effects of litigation. The Testator in this case made a will in 1947, he died in 1966. A will is testamentary and ambulatory i.e. it must be made in accordance to law and takes effect from the time of death, the law upon which the will was made was 100 years old as at the time, the testator made his will in 1947. By the time, the will took effect it was 19 years. The process for implementation of the wishes of the Testator began in 1971. Arguments and counter arguments ensued which culminated in a court action in 1984 at the Lagos High Court to Court of Appeal and Supreme Court, where it was finally decided in 1996. Invariably, the dependants of late Okotie-Eboh who died in 1966 could not benefit from his estate until 30 years thereafter.

Death Penalty and its Relevance under the Nigeria's Criminal Policy

Death penalty is a global issue that has generated so much controversy over the years. Different groups and persons have considered the subject from different perspectives. The attitude of nations varies from one to the other. A survey of state practices shows that the crimes that attract the death penalty differ. In some countries the list is short while, in other countries, it is long. Thus, there is no universal yardstick to classify which crime will attract the death penalty. But the two sets of crimes that usually attract the penalty of death in many countries are murder and treason.

In Nigeria, death penalty is retained in the statute books; the constitution prescribes death penalty as a legal form of punishment when it is carried out in the execution of the sentence of a court in respect of a criminal offence of which a person has been found guilty. The criminal code and penal

code applying in the southern and northern states of Nigeria respectively prescribe the death sentence for a murder, treason and armed robbery. The emergence of the Sharia penal codes in some states of northern Nigeria further prescribe death penalty for a range of offences like intentional murder, rape, adultery, incest, sodomy and robbery.

Apart from Nigeria, African states have taken divergent positions on death penalty. Countries that still retain the punishment include Guinea, Liberia, Sierra Leone and Nigeria. The countries that have totally abolished the death penalty are Angola, Cape-Verde, Cote D'Ivoire, Djibouti, Guinea Bissau, Mauritius, Mozambique, Namibia, Sao Tome and Principle and South Africa. While some other countries have not carried out any execution in the last ten years. These are Benin, Burkina Faso, Republic of Congo, the Central Africa Republic, Senegal and Togo. Also, some countries have adopted a moratorium policy, which is a self-imposed suspension by a country from carrying out any execution of a condemned person while the country is still considering the position to take on the death penalty. The issues and trends on death penalty have been increasing and expanding in recent times. Also, the debates for and against death penalty have been seemingly unending worldwide.

Administration of Death Penalty

The issues of merits and demerits of death penalty have been highlighted by organizations and groups at international levels, like the Amnesty International that has been monitoring and compiling records of countries that have abolished death penalty in law and practice and countries that still retain or re-introduce death penalty in their laws. Several issues such as degrading and inhuman treatment of convicts, abuse of due process, and judicial errors among others have been highlighted as militating factors against the application of death penalty thereby deserving its abolition in jurisdictions that still retain it. Indeed, the subject has been diverse and contending views have been expressed

worldwide. The incident of violent crimes is increasing on a daily basis in Nigeria and as such the contending issues on death penalty must be painstakingly considered before the government adopts a policy position on it.

Death-row Phenomenon and the Administration of Justice

The inevitable long wait between the imposition of the death sentence and the actual infliction of death, usually referred to as the death-row phenomenon has become an emerging issue of concern to stakeholders in the administration of criminal justice not only in Nigeria but in many jurisdictions operating death penalty[85]. A condemned person is kept at a designated prison yard for a period of time before his execution is carried out. This waiting period is known as the Death-row phenomenon. Section 371B Criminal Procedure provides:

> Any judge who pronounces a sentence of death shall issue under his hand and the seal of the court a certificate to the effect that sentence of death has been pronounced upon the person named in the certificate, and such certificate shall be sufficient and full authority in law for the detention of the offender in safe custody until the sentence of death pronounced upon him can be carried into effect and for carrying such sentence of death into effect in accordance with and subject to the provisions of this Part.

In Nigeria, death-row prisoners spend on average, more than 10 years in prison following the confirmation of their conviction and sentencing. This development arguably makes characterization of the death penalty as a cruel, inhuman and degrading treatment. Indeed, the decision in the U.S. case of *District Attorney for the Suffolk District v. Watson & Others*[86] debunked the proprietary of death penalty by the cursory remarks of Hennessey, C.J. thus:

> The death penalty is unacceptable under contemporary standards of decency in its unique and inherent capacity to inflict pain. The mental

> agony is, simply beyond question, a horror . . . we conclude . . . that the death penalty, with its full panoply of concomitant physical and mental tortures, is impermissibly cruel . . . when judged by contemporary standards of decency.

Frankly speaking, 'the death-row phenomenon' is a reality within the context of the Nigerian legal system. It is a product arising from compliance with due process and according the convict the opportunity to explore his constitutional right of appeal with a view to ensuring ideals of criminal justice is attained. Death penalty advocates believes that the potential for recidivism is a serious enough threat to require that murderers be denied further access to the public. In USA, some states and federal laws permit the use of death penalty. In Huntsville, State of Texas, believed to be the United States of America's busiest death penalty State, a confessed killer, Elroy Chester, was executed on June 13, 2013. Chester, convicted for being responsible for 1988 shooting of Port Arthur firefighter Willie Ryman III, was the 449th prisoner to be executed in Texas since 1982.

The State also had another solemn moment in criminal justice in June 2013 with the execution of another convicted killer, Kimberly McCarthy. She was the 500th person executed. The 52 year old also would be the first woman to be executed in the US since 2010. Critics of death penalty believe it has no place in a mature democratic society. They have pointed to the finality of the act and the real possibility that innocent person can be executed.

The facts of some cases of death-row phenomenon better explain the gravity and in-depth of consequences of administration of death penalty in countries like the United States of America, Nigeria, Trinidad and Tobago, Jamaica, Zimbabwe and South Africa. In Clarence Lackey v. Texas[87], the Supreme Court of the United States denied a petition for writ of certiorari to the court of Criminal Appeals of Texas. The question raised in the petition was whether executing a prisoner who has already spent 17 years on death-row

violated the Eight Amendment's Prohibition against cruel and unusual punishment. Justices Stevens and Bryer while refusing to grant Order of Certiorari held inter alia that acknowledging the importance and novelty of the question presented by this Certiorari petition are sufficient to warrant review by the court. Those factors also provide a principled basis for postponing consideration of the issue until after it has been addressed by other court[88]. Similarly, in Nigeria the Supreme Court has held in the following cases Peter Nnemi v. Attorney-General of Lagos State[89] Ogugu & Ors. v. The State[90] Effiom v. The State, Kalu v. The State that the provision of S.34 (1) (a) of the 1999 Constitution which states:

> Every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subjected to torture or to inhuman or degrading treatment.

This does not however amount to exculpation of condemned prisoners from penalty as a result of prolonged administrative procedure involved in the carrying out of the execution. The common basis upon which each of the above cited cases came before the Supreme Court is influenced by the decisions of the United Nations Human Rights Committee and the European Court of Human Rights which adopted a view that prolonged judicial proceedings involving capital punishment could constitute "cruel, inhuman or degrading treatment or punishment". Similar arguments have been raised before Supreme Court—that long incarceration in death-row conditions violates fundamental rights against torture, inhuman and degrading treatment protected by Section 31(1)(a) of the 1979 Nigerian Constitution (now Section 34(1)(a) of the 1999 Constitution).

The practice of death-row which arose from administrative constraints in the implementation of judicial pronouncement of death sentence by the executive arm serves as an avenue to correct certain fundamental anomalies,

mistakes or errors of constitutional dimensions which did not emerge or could not have been ascertained during the length of trial and appeals. For example, in the United States it has been reported that over the past twenty-three years, a large number of persons awaiting execution on death-row have ultimately been set free because they were proven to be innocent. According to the findings in a staff report issued on 21st October, 1993, by the Sub-Committee on Civil and Constitutional Rights Committee on the Judiciary (103rd congress, first session), 48 people have been released from prison after serving time on death-row since 1973 with significant evidence of their innocence. In 43 of these cases, the defendant was subsequently acquitted, pardoned or charges were dropped. In few other cases, defendants were acquitted at retrials but convicted to lesser related charges.

DNA frees North Carolina's Longest-serving Death-row Resident

A pair of siblings who served decades behind bars in the rape and murder of a North Carolina child will walk out of prison free men after DNA evidence implicated someone else as reported on 5 September, 2014. Henry McCollum and Leon Brown were just teenagers when they were arrested in 1983 and charged with the rape and murder of 11-year-old Sabrina Buie in Red Springs, about 30 miles southeast of Fayetteville in rural Robeson County. Buie's body was found in an area of Red Springs known as something of a "lovers' lane", according to Joe Freeman Britt, the district attorney who prosecuted them in the '80s. The ground was littered with "beer cans, condoms and cigarettes". It was one of those cigarette butts that ultimately set them free. DNA found on a cigarette" matched another individual named Roscoe Artis, a convicted rapist and murderer who lived less than 100 yards from where the victim's body was found". Artis is serving a life sentence in a North Carolina prison on a separate conviction.[91] McCollum, 50, was 19 at the time of his arrest. He was sentenced to death in 1984 and is North Carolina's longest-serving death row inmate. Brown, who is four years

younger than his half-brother, was initially sentenced to death as well but later had it reduced to life in prison. It is terrifying that the criminal justice system allowed two intellectually disabled children to go to prison for a crime they had nothing to do with, and then to suffer there for 30 years, it is equally unimaginable to put into words what these men have been through and how much they have lost.

This fact justifies the need for retaining the ample system of judicial review (in capital cases), and underscores the danger of "tinkering with the machinery of death"[92]. The prevalence of death-row phenomenon in virtually all jurisdictions where death penalty exists such as in America, China and Nigeria to mention a few is an indication of the principle of criminal jurisprudence. Murder being a heinous crime, the punishment highest known to law must be cautiously implemented. Suffice to say that while the post-conviction periods of condemned prisoners have served as an important mechanism in correcting constitutional errors that occur during the trial and appeal process. For example, it was not allowing Ken Saro Wiwa and others their right of appeal before the process of their execution was carried out during late General Abacha regime that led to universal condemnation of the Federal Military Government's implementation of death sentence passed by the Military Tribunal set up to try the condemned persons for offence of murder[93].

In a nutshell, death-row is a phenomenon that is bound to feature prominently in all countries recognizing the validity of death penalty as maximum punishment for heinous crimes like murder[94] as to warrant the right of a condemned prisoner to commence legal proceedings for the enforcement of his fundamental rights. In the case *of Nosiru Bello v. Attorney-General (AG) of Oyo State*[95] the Supreme Court condemned the government of Oyo State for executing a convicted armed robber whose appeal was pending at an appellate court. In the clear words of Aniagolu, JSC,

> This is the first case in this country, of which I am aware, in which a legitimate government of this country –past or present, colonial or indigenous- hastily and illegally snuffed off the life of an appellant whose appeal had vested and was pending, with no order of court upon the appeal, and with a reckless disregard for the life and liberty of the subject and the principles of the rule of law. The brutal incident has bespattered the face of the Oyo State Government with the paintbrush of shame.

As pointed out by the sub-committee on C.C.R.C. on the Judiciary in its staff report in America, the reversal of convictions of death sentence on the innocence of condemned persons "illustrate the inherent fallibility of the criminal justice system" and "convey a reassuring impression that although mistakes are made, the system of appeals will ferret out such cases prior to execution".

In Nigeria, it is submitted that following continued concern about delays in the finality of death penalty sentencing and the strain on the courts from the increasing number of enforcement of human rights petitions, the applicant must note that at the post-conviction stage, the offender can no longer rely on the presumption of innocence. For such applications, there is a strong presumption of guilt and that the sentence of death was properly imposed. The relevant issue for determination will then be whether the convict's confinement under sentence of death for an alleged unnecessarily prolonged length of time from the date of his conviction amounts to cruelty, inhuman and degrading treatment thereby warranting the quashing of his death sentence and substituting the same with life imprisonment.[96] As at 2012, the Supreme Court still held in *Amoshima vs. State* that the death penalty is constitutional.[97] Recently, the Supreme Court of Nigeria affirmed a death sentence imposed by a High Court and also upheld by the Court of Appeal decision in the case of Usman Maigari v. The State, of a

former policeman for killing his wife, Sa"adatu[98] and confirmed the conviction and sentence of the appellant for culpable homicide punishable by death under the penal code.

Extending the Frontiers of Capital Crimes—Kidnapping and Terrorism

The proprietary of death penalty under the Nigerian legal system remains topical and appropriate in view of the emerging trends of violent crimes and the orgies of deaths and wanton destructions of property in many parts of Nigeria. The spate of kidnappings being recorded on a daily basis in the last 5 years have assumed a worrisome dimension with grave security implications to many citizens especially political office holders, members of the federal, state and local government councils, the legislature, the judiciary, including their relations. There are incidents of the kidnapping of high profile personalities, artists, celebrities, the clergy, the Muslim clerics and the expatriates. The kidnappers often demand for huge ransom from the relatives of the captives before their release and when it is paid the victims are released, but in some extreme situations the captives are killed in the process. Invariably, the legislatures in some of the states that predominantly record kidnappings have reviewed their laws by increasing the punishment from 10 years imprisonment to life imprisonment or even death sentence. Thus, going by the rampancy at which kidnappings and hostages occur in southeast and southsouth has invariably expanded the categories of capital offence in Nigeria.

Nigeria's Multitude of Crimes: Can Law really Curtail it?

Of significant importance is the scaffold experience, during public executions when large crowds would press together providing for pickpockets to steal others' belongings unnoticed. This was in deviant to the implementation of death sentence going on, similar occurrences were recorded in the early 1970s at the bar beach shows in Lagos. The aftermath of civil war that took place from 1967-1970 brought about

increasing rate of armed robbery that was perpetrated by Ishola Oyenusi, D. Pedro and so on. In spite of death penalty sometimes imposed for armed robbery that was carried out by public firing squad at open places and community central locations, the civil war generated criminal gangs and also produced widespread business crime. The great robber Anini in the 80s bribed government officials and the head of police unit, Iyamu or squad in his area, Benin City, to perpetrate killings, lootings, stealing in many parts of the country. In fact, the pattern of robbery attacks as at then was transnational and across states of the federation. From 1980 to late 1990, the nation experienced a persistent increase in criminal activity. This period recorded havoc wreaked on Nigerian citizens by Shina Rambo and Ahmadu Tijjani that were responsible for many car thefts, bank robberies and violent acts. These relatively individual characters and mobile outlaw gangs were operating in the south; there were few isolated robbery attacks in the north.

These similar features are anecdotal evidence indicating that the public execution may not necessarily deter born criminals[99]. The American position, though is the only western democracy that still have death penalty in its legal system is unreservedly shared by this lecturer as an effective therapy for control of organized crimes, high profile corruption charges and high rising hate crimes in Nigeria[100]. The application of death penalty which provides for death-row phenomenon delays execution with attendant agony to the condemned persons awaiting execution but invariably is to provide for all possible court appeals (Olatunbosun 2013-219, 243)[101].

Statistical Evaluation of Criminal Justice System

Crime statistics are probably the most difficult of all social statistics, as they are subject to political manipulations and by honest variations in recording practices. Reliance on crime statistics must be done with circumspection. As rightly observed by Justice Stone:

> The statistical method of dealing with social problems often cannot be relied on as a mathematical demonstration leading to specific conclusions, but it may be used to indicate tendencies to mark out the boundaries of a problem, and to point out the direction which should be given to a particular investigation of a non-statistical character[102].

Until very recently that the use of computer has made statistics accessible to a much larger group of criminal justice researchers and students, hitherto much reliance had to be placed on data from the police. As at then, it seemed as if police authorities see statistical data as a kind of secret or classified state document making it extremely difficult to access primary data on crime rate. In criminal justice, statistics are used in three ways: descriptive statistics which helps in the summary and description of research findings; inferential or inductive statistics which allows us to make inferences or statements about large groups from studies of smaller groups, or samples, drawn from them; and multi-variate statistics towards the end of the text which allows us to examine a series of variables at one time[103].

Therefore, statistics in criminal justice will help to approach the subject in a familiar context and assist us to approach the study of crime and justice from the scientific world. As everyone agrees that there is a difference between the amounts of crime tabulated in any set of crime figures. Many crimes are committed but never reported to the police, while of those reported, many are not recorded, and of those recorded, many are not summarized or reflected in statistical tables. In police parlance, there is a significant distinction between reporting and complaining of crime, though this is of little importance to the victim of crime[104]. The initial stages of the criminalization process depend heavily upon the victims commitment to "making a complaint" which entails their acceptance of the burdens that may follow, with a preparedness to take the matter all the way to court and, if

necessary, to give evidence. Apart from police hurdle in crime reporting, the victims' attitudes atimes affect the figures generated for crime statistics. In certain situations, when crimes are committed, they are not reported for several reasons such as the victims' belief that the police are not likely to make any headway in unraveling the mystery surrounding the crime.

The Mysterious Gunman's Case

Inspector-General of Police v. Wole Soyinka[105]

On October 15, 1965, the Premier of Western Nigeria, Chief Samuel Ladoke Akintola was to address the people on the ominous state of affairs. The speech had been pre-recorded in a tape and the time for it to be relayed was 7 p.m. and the speech was to appear as having been broadcast live from the station. The venue, the Nigeria Broadcasting Corporation building has been fortified than ever, it was a near-fortress, there was armed police presence at every point. In the newsroom was a cubicle where the speech will be played. That evening, the occupants of the cubicle were led by Akinwande Oshin, Lajide Ishola, Stephen Oyewole and John Okungbina. They had in their possession, the recording of the speech of the Premier of Western Region of Nigeria, Chief Samuel Ladoke Akintola, which in fact, had earlier been recorded in a tape in his lodge. The time was a quarter past seven in the evening. Just as Oshin was about to slot in the tape, there was a hold-up—a bearded man appeared at the door as if from nowhere, produced a gun and held it to Oshin's head. There was complete silence. The gunman absolutely unmasked demanded from Oshin the tapes (English and Yoruba versions) which he handed over. The gunman gave another tape to Oshin and ordered him to play it with the gun pointed at his head. Oshin slotted the gunman's tape in and played it. The gunman listened to part of the contents, and quietly disappeared as mysteriously as he had come in. Pandemonium broke out as soon as members of the public heard the recording on air.

Subsequently, Wole Soyinka was arraigned on November 3, 1965 at High Court No 6 before Kayode Eso J. as he then was; S.O. Ige with him Bola Ige and Omotayo Onolaja appeared for the accused. The Director of Public Prosecutions, T.A.B. Oki, with him Thomas Gomez appeared for the prosecution. At the commencement of the proceedings, bail was refused and accused was detained in police custody. All the eyewitnesses including Oshin, were positive that the man who held them up was not masked. The place was well lit and the man was bearded. Two identification parades were conducted during investigation. All the eyewitnesses could not identify the gunman. Wole Soyinka was among the suspects paraded. It was only Oshin, who later turned around after the initial dropped of the charge against him at the magistrate court that claimed that Wole Soyinka, the accused, was the gunman. But his earlier statements at the police station and interrogation by his boss the following day of the incident did not mention or refer to the accused.

The case for the accused in the statement he made at the police station was to the effect that on the day of the incident he was in Enugu. However, Professor Axworthy a witness for the Prosecution testified that the accused was a senior lecturer in his Department and that they held meeting together on the 15th October at about 5.00 p.m. when he was further examined by the DPP to describe how the accused was, he described him as a *clean shaven man.* The trial judge held *inter alia* that on a charge of stealing of two tapes and robbery, the prosecution must prove that there was a forcible taking of the tapes and that the taking was without the consent of the owner; that the robbery was committed by the accused, Wole Soyinka.

The court stated that while he could understand a bearded man at five o'clock in the evening becoming clean-shaven at 7 p.m., he could not unravel the mystery of a clean shaven man at 5 p.m., becoming bearded at 7 p.m. except he is somehow masked. And the overwhelming evidence placed before the court by the prosecution itself, was that the gunman, who held up the cubicle that night was not masked.

Accordingly, the court found sharp contradiction in the evidence of the prosecution and found the accused not guilty and was discharged and acquitted.

Is Abacha v.State[106]- A Furry or Flurry Judgment?

The appellant Alhaji Mohammed Sanni Abacha was jointly charged along with three others before the High Court of Lagos State sitting at Ikeja on a four-count information wherein it was alleged that they conspired between 1995/96 at Ikeja to murder one Kudirat Abiola contrary to section 322 cc cap. 32, Laws of Lagos State. The 2nd count charged the appellant alone and accused him of assisting 2 persons, Mohammed Abdul and Mohammed Aminu to murder Kudirat Abiola, and later providing them with various sums of money with intent to facilitate their escape from justice contrary to section 322 CC, volume 2, Laws of Lagos State. Annexed to the information was the proof of evidence which contained copies of the statements of some of the witnesses intended to be called by the prosecution and on which the information was hinged.

The appellant filed an application to quash the said information against him on the ground that there was no link between the charges and him. The learned trial judge Kekere-Ekun refused the application. The appellant unsuccessfully appealed against the ruling of the trial judge to the Court of Appeal. Dissatisfied with the decision of the Court of Appeal, the appellant appealed to the Supreme Court. The Supreme Court allowing the appeal by a majority decision held *inter alia* that, there is nothing linking the appellant with the crimes on the indictment than suspicion. The Supreme Court *suo motu* observed that to face a trial is not a matter to be treated with levity, a trial somehow infringes on the liberty of the subject most especially when it involves a serious offence punishable by death or life imprisonment. However, the dissenting judgment of Ejiwunmi, JSC dismissing the appeal held that the appellant from the annexure of proofs of evidence, a *prima facie* case has been established necessitating the appellant to face the trial. In his words:

> to hold otherwise, is in my respectful view, to submit to the tyranny of the majority in its capricious interpretation of settled principles laid down in Ikomi v. The State (1986)3 NWLR (Pt 28) 340.

With due respect to the majority view of the Supreme Court, the decision is tested with sentiments and likely to occasion miscarriage of justice. The learned Justices of the Supreme Court, Belgore, Kutigi, Onu and Katsina-Alu delved extensively into the proof of evidence to extraneously dissected statements the prosecution intended to rely upon in the substantive trial. The Supreme Court by the majority failed to appreciate that what the information must disclose is certainly not the guilt of the accused but a prima facie case for the accused to answer. The Supreme Court curiously departed from Ikomi's case, where the Supreme Court refused to quash the information and ruled that Ikomi, a High Court judge must face his trial.

Self-help and Jungle Justice

People react to crimes differently. In certain situations, criminals who are caught in the *"act"* or suspected to have committed crimes are often given instant justice by beating them, stripping them of their clothes, and sometimes burning them alive without recourse to the law enforcement agencies. Most times, the people burnt are suspected of kidnapping[107] or robbery offences. This act indicates lack of confidence and trust in the police, which are believed to be inefficient and corrupt,[108] and the judicial process that is believed to be long, slow, tedious, expensive and corrupt[109]. But the implication of this act of total breakdown of law and order cannot be ignored. This trend is a great concern; it is dehumanizing and reprehensible, lynching of suspects would not stop the crime from re-occurring. In the last one year, it has been reported in many parts of Nigeria, especially in Lagos where irate mob torture and burn suspected kidnappers without convincing facts.[110] These extra-judicial killings are illegal and condemnable.

Crime and Environmental Impact

The totality of the criminality, the level and trend of criminal activities are the expressions of a people's environmental and social orientation of the level and circumstances of their moral rectitude, attitude of mind towards the law and legal justifications. This shows how much they accept the law as binding on them, self-discipline, sense and proper identification of values at any material time. In a system where government has either overtly or covertly legalized illegal acquisition of wealth[111] in terms of its silence and double standard approach in the prosecution of those who corruptly enrich themselves or misappropriate public funds. This attitude gives a wrong impression in the minds of the public and the youth in particular—that acquisition of wealth is an end in itself. Such a situation portends danger to the future of the nation and it is inimical as well to the sustainability of accountability, probity and transparency in public service and administration. Presently, the means of enforcing white collar crimes in Nigeria have proved inadequate and where available they are congested and not well-funded. The reformatory role of the prison is neglected, while rehabilitation of discharged prisoners is nobody's business. The system has made hardened criminals out of otherwise small-time scoundrels. A good number of the violent criminals become so in the prisons.

Justification for Crime Victim's Rights Policy

The emphasis of criminal justice systems all over the world has always been on the offender from the time of arrest to the time of sentencing. The law is concerned mainly for the offender, even though the trial is initiated by the victim and relies on the victim's participation for its success, it offers little direct relief to the victim. It is therefore a matter of great disappointment that courts have not paid enough attention in criminal proceedings to the distress of the victim[112]. An accused convicted is sentenced as of routine, while the victim and his dependants get nothing. A situation under which the

victim becomes the Cinderella of the criminal trial no longer accords with the tripartite notion of social justice viz: justice to the accused, the society and the victim.

Wrongful Prosecution of Accused Persons
In the Case of Bodunrin Baruwa v. The State: How can such Accused get Compensated?

The problem becomes so compelling in view of the fact that more crimes are committed now in the society by a mistrial resulting in an order for retrials, or where the first trial is declared a nullity upon an appeal. There is that possibility (and it has happened in a number of cases) where the victim is not only wrongly arrested but prosecuted and convicted.

The irony is that there are times when an appellant has spent a greater part of his sentence before the determination of his appeal, and he may eventually be discharged and acquitted. Such was the pathetic facts revealed by the Court of Appeal in the landmark judgment delivered by Hon. Justice Uwaifo J.C.A. in the case of *Bodunrin Baruwa v. The State*[113], on January 20, 1982. Baruwa drew the attention of the police in Lagos to the plight of a fellow citizen who he saw vomiting, smelling of alcohol and not looking very well. By the time a policeman accompanied him to the scene, he had died. Baruwa was arrested so also another person was arrested. They were jointly charged for murder and consequently convicted on June 24, 1985 and sentenced to death. Baruwa appealed against his sentence. The processing of papers to the Appellate Court, hearing of the appeal and the delivery of judgment took 11 years after the Appellant was sentenced (and 14 years from the date of his arrest). It should be noted that Appellant was arrested on January 20, 1982 sentenced on June 24, 1985 and pathetically, judgment on appeal was delivered in 1996. Because the other accused could not engage the service of a counsel, he died in custody while on the death-row. It is interesting to note that Justice Uwaifo found that the evidence adduced at the trial was "grossly insufficient, tendentious, suspect and contradictory"

and that the finding of guilt by the High Court was perverse and speculative. The appellant was discharged and acquitted.

Theoretically, murder by whoever commits it, is perfidious but the Court can only convict someone who is proved to have actually committed the offence. Evidently, the cause of death could not be pinned on the accused persons in Baruwa's case thereby creating a doubt which was resolved in his favour but not after the role of "good Samaritan" played, by reporting to the police that an unknown man had lain dead or dying unattended to in a public place, earned him his long incarceration and agony. What is more disturbing is the fact that there are thousands of other unfortunate citizens undergoing harrowing experience of torture, trauma, inhuman treatment and prolonged incarceration in our prison yards either as awaiting trial persons or convicts pursuing appeal process. But, most of those convicts on the death-row are unable to pursue their fundamental rights of appeal.

Observing in effect that the appellant had spent over 14 years in prison custody, 11 of which were on death-row, he set aside the conviction and entered a verdict of discharge and acquittal. The enduring statement of the learned judge is apposite as follows: "How does a person, who was struck with the wrong side of the law, as the appellant was, get compensated in our society under the present state of our criminal justice system? He goes home broken, may be thankful to Almighty God, with no hope of redress but with regret that he played the good citizen to his undoing?"

It is with utmost respect that one commends the courage and humane approach of the court of appeal on this epoch making and landmark judgment which defines the jurisprudential norms and expands the scope of justice and fairness been broken by the failure of the police to properly investigate his story. Worse still, there are hundreds of Baruwas whose plights have not come into limelight probably because they could not afford to engage the services of a counsel to take up their cases or probably because they die in custody while awaiting trials.

Can we then blame Nigerians for their unwillingness to give information in the public interest to the police? After all, to say "I was not there" such a person will not stay long in the witness box and will escape the rigour of police hassles. One other notable and remarkable observation here is that as at the time Baruwa was arrested, he was 50 years old and was wrongly incarcerated for 14 years. By the time he was discharged and acquitted he was 64 years old, a good 14 years of his life had been wasted. Perhaps, the only consolation he had then was that he was still alive, the other co-accused died while in custody during the pending of the appeal. The hard lesson for him was that he played a part of Good Samaritan to his own peril.

Restitution

If one looks at the legal systems of different countries, one seeks in vain a country where a victim of crime enjoys a certain expectation of full remedies for his injury. The punishment of crime is regarded as the concern of the state, while the injurious result of the crime is regarded almost as a private matter. For example, the Nigerian criminal law accepted and recognized remedies such as restitution, compensation and damages for victims of crime but in an unsatisfactory manner as emphasis is placed on punishment of the offender for various crimes committed against the victim as the most appropriate justice[114]. Restitution relates to the return or restoration of movable property either stolen or otherwise dishonestly acquired, or taken without permission, or property innocently obtained from such successor[115] Invariably, the task of attaining speedy administration of justice will be further achieved, as this approach is considerably less expensive and brings justice within the reach of the poor who would not have been able to afford the cost of filing civil actions to uphold their rights. However, in order to circumvent the technical point that the victim is not a party, it is suggested that the victim should become a party, by operation of law, upon the conviction of

the accused person so that he may be able to put his claims before the court properly for appropriate restitution[116]. The present position of law and practice that a victim who has been injured is a compellable witness who can be subpoenaed to testify in court even against his wish on the basis that the state is the complainant on criminal proceedings at the High Courts can no longer meet up with the new patterns and trends now prevailing in modern societies towards functional approach to social justice in criminal proceedings.

Compensation for Victims of Crimes

Consequently, as a result of drastic change in the jurisprudential approach, social circumstances of civilized countries of the world coupled with a change in concept from police state to a welfare state in Nigeria, it has become essential to reconsider the position of the victim in criminal case. In the present dispensation, to adhere strictly to the traditional philosophy that crime is a legal wrong and the offender is liable to be prosecuted, convicted and punished by state because the criminal proceedings are entirely at the initiation of the state and as such they do not depend upon the sweet will of the victim, therefore, they cannot be dispensed with as the initiation of the victim is no longer in consonance with the modern concept of effective and functional administration of criminal justice. Accordingly, it is desirable that the ambit of criminal justice be expanded, keeping in view the overall change in the approaches, thinking and circumstances prevailing in most advanced countries of the world, of which Nigeria ought not to lag behind. The victim should not be forgotten while administering justice. He should be compensated as much as possible for the injury caused by the act of the offender. In matters of violation of fundamental rights, the technical procedure should be whittled down considerably and compensation, damages, restitution and or reparation be awarded to the victim even without specific prayer from him. This will further prove to be an effective means to achieve the ends of justice in

compliance with the jurisprudential school of thought that crime, against which the state undertakes and endeavours to protect the public is a disturbance of some legally protected interest which are worthy of protection and that crime gives rise to legal nexus between the violator and society, but between the violator and his victim, it upsets the balance not only between the criminal and society but between the criminal and the individual victims[117].

In cases of assaults, defamation and bigamy of which have been proved against an accused person, it is desirable for the victim to be restored. This becomes more appropriate than fines or imprisonment made against the accused person in the sense that monetary indemnification by the accused for the benefits of the victim that has been unlawfully and unreasonably assaulted or defamed serves the end of justice and the quantum of financial award by the court should take into consideration the age, physical and mental condition of the person on whom it is inflicted. As regards bigamy, restitution is not out of place in view of the position under family law which permits financial compensation in divorce petition brought on the ground of adultery. Perhaps, it is in respect of offence of rape that restitution rather than imprisonment of the accused is more satisfactory to the victim (Olatunbosun 2004)[118]. For example, where a woman has been raped, sentencing the accused to imprisonment for life with or without whipping under Section 358 Criminal Code or to life imprisonment and fine under section 283 Penal Code is of little relevance to the victim. In fact, punishment cannot fully compensate for the injury, which may be physical, emotional and psychological, suffered by a victim of rape. Though, the evaluation of the injury is particularly difficult in the case of moral damage, but it is more reassuring to the psychology of the victim, if she gets financial reliefs. A clamour for this position was emphasized by the witnesses who testified at the Hon. Justice Oputa Panel on Human Rights violation sitting at Port Harcourt on complaints of assault and rape of women testifying as victims of various indecent assaults by the soldiers.

Perjury and Corruption

Perjury and corrupt practices no doubt demand indemnification by the culprits concerned as punitive sentence of an accused alone will not deter others from engaging in this acts (Olatunbosun and Kuteyi 2008)[119]. Perhaps, it is in realization of the danger portending by corrupt activities both in the private and public sectors that the federal government laundered campaigns on anti-graft activities through the passing of Corrupt Practices Act by the National Assembly[120] Indeed, the Northern Criminal procedure Code makes provision for a kind of novel arrangement—*Compounding of Certain Minor Offences*. A situation whereby the offender and the victim may, by mutual agreement, sort out their problem in circumstances in which the person that is hurt (victim) can obtain some sort of compensation which could make him satisfied. Over twenty minor criminal offences can be compounded under the provisions of Section 339 of the Criminal Procedure Code. Though this provision seems strange in the South, nevertheless it is desirable from the point of view of the victim who might have to go without compensation or financial benefit and even have to incur expenses of instituting a fresh civil action against the offender before he can get compensation. This approach promotes or encourages true reconciliation or payment of compensation to the victims of such crimes. For centuries in Europe, for example in the Dutch Republic, a considerable number of cases were settled by composite or extra-judicial agreement. In England, settlement out of court were known, for minor matters, a fact attested to by the renowned jurist, Blackstone in his Commentaries on the laws of England as follows:

> It is not uncommon, when a person is convicted of a misdemeanour … for the court to permit the defendant to speak with the prosecutor (sic) before any judgment is pronounced, and if the prosecutor declares himself satisfied, to inflict but a trivial punishment. This is done to reimburse the prosecutor his expenses and to make him some private amends, without the trouble and circuitry of a civil action.

In the light of the foregoing, compounding of minor offences is more convenient and appropriate for certain offences (Ogungbe and Olatunbosun 2002)[121]. As far as most Nigerians are concerned, if the injury which they suffer is not grave they will prefer to forget everything about it rather than be involved in court proceedings which are often protracted and prolonged. In other words, most of them are reluctant litigants or witnesses. Also, a similar practice is often allowed in the Magistrate Courts whereby a complainant or Principal witness seeks to withdraw his complaint against the accused or his relations outside the province of the courts. Under the Constitution of Federal Republic of Nigeria, 1999 the provisions of fundamental rights and the special procedure for the enforcement of these rights include restitution, restoration, reparation, compensation and damages among other remedies upon infringement of fundamental human rights in appropriate cases.

The Multitude of Crime that Threatens Nigeria's Territorial Integrity

In his work, No Excuse for Crime, Ernest Van Den Haag, posited that the peoples view that society is the root of all evil and that if society is organized on normal lines, all crimes will vanish at once, for there will be nothing to protest against and all men will become righteous in the twinkling of an eye is an utopian belief. Except in narrowly specifiable conditions, criminal law does not see offenders as victims of circumstances beyond their control. But criminologists often do.

Crime could have various effects on the victims, the society and the criminal justice system (Olatunbosun 2007). The effects may be physical or emotional, material or immaterial, direct or indirect. The economic effects of crime include the value of the property that may be stolen or damaged, as well as incident expenses that may be incurred to prevent re-victimization, such expenses include installing more security gadgets, changing locks, replacing or repairing

damaged property. A high crime rate can also have negative effects on the national economy by inhibiting both foreign and local investment in the economy (Olatunbosun 2004)[122].

This may also have negative effects on the country's international image and relationship with other sovereign nations (Olatunbosun 2009)[123]. The health implications of crime on victims include stress, and depression, resulting in high medical and therapy expenses (Olatunbosun 2001)[124]. The physical effects of victimization may result in grievous bodily harm (in various forms) or even death. The emotional effects include anxiety, nervousness, self-blame, anger, sleeplessness and nightmares. Furthermore, crimes could have negative effects on the social life and social relations among people. The fear of crime can force people to alter their lifestyles through the option of avoidance strategies, e.g. not going out at night. Some people hesitate to buy new cars, or move to new personal houses for fear of crime. Another effect of crime is the avoidance of strangers. This apart from leading to strained relations among people has often led to denial of assistance to people in dire need, due to suspicion and distrust. However, it is not only the direct victims of crime who suffer in these ways; other people who may not be direct victims, including relatives, colleagues, friends and the general public also suffer. The most frequently cited effect of fear according to various empirical studies is 'the fear of crime'; the fear of crime causes more far-reaching effects on the society than actual victimization.

In actual fact, the number of victims is relatively small compared to the total population, but the fear of crime radiates to the whole society. However, it has been observed that 'the fear of crime' actually keeps many people imprisoned in their homes. The bandits have struck terror in the minds of noble men of the society, while they operate freely both in the day or night. The Honourable Justice Oputa, JSC in *Josiah v State*[125] examined and considered the instructive ramification of the adverse effect of crime on the interest of (a) the accused person (b) the victim and (c) the society in general.

Punishment not Commensurate with Crime Committed

The commission of crimes could also affect the justice system. Criminals may not be affected by the criminal policies. The legislation put in place to regulate the society may be insufficient to deter crimes. The punishment may be just a few months imprisonment in relation to the gravity of crime, and there may be an option of paying fine, which may be as low as 100 naira.

In the *case of* ***Ibinabo Fibersima***[126], who was sentenced to seven years imprisonment with an option of fine of hundred thousand naira in Igbosere Magistrate court after standing trial for seventeen months. While she was driving under the influence of alcohol along Lekki-Epe expressway, the car skidded off the road and rammed into a medical doctor that was coming from the opposite direction, killing him instantly. The court ruled that she was guilty of careless driving and willful damage to property, but the option of 100,000 thousand naira negates the effect, which the seven years imprisonment would have had on the relatives of the victim and the society at large that indeed, justice has been done. The effect may also be felt by the courts, by having to deal with criminal cases most times, and this may put a strain on the judges. The effect of punishment is important in the justice system, in order to curb crime. The long judicial processes also witness many criminals in the police custody during the trial, and the prison becoming filled after sentencing.

The Role of Police in Crime Prevention

The Nigeria Police is established under Section 214 (1), Constitution of the Federal Republic of Nigeria 1999, which states:

> There shall be a Police for Nigeria, which shall be known as the Nigeria Police, and subject to the provision of this Section no other Police shall be established for the Federation or any part thereof.

Section 4 of the Police Act 2004 enumerated the duties of the Police to include the following[127]:

(i) prevention and detection of crime;
(ii) apprehension of offenders,
(iii) preservation of law and order;
(iv) protection of life and property;
(v) due enforcement of laws and regulations with which they are directly charged; and
(vi) performance of such military duties within or without Nigeria as may be required by them, of them under the authority of this or any other Act[128].

With strength of over 312, 223 officers and men, the Nigeria Police is reputedly Africa's largest single police organization though the extent to which it has been able to effectively perform its duties remains unsatisfactory to the majority of the citizens. Nevertheless, it provides policing services to an array of interest groups and communities, including the international community. It is important to recognize that this single system of policing is unique for a federal state; it was designed in 1958 to ensure 'unity-in diversity' (Olatunbosun 2008)[129], a concept that has been endorsed by subsequent Constitutional and Political Conferences in 1976, 1979, 1989, 1995, 1999 and 2005. Albeit, at the just concluded 2014 National Conference, delegates raised and discussed the issue of state police and its imperativeness in the contemporary Nigerian society.

Public Complaints Against the Police

Members of the public make complaints against the police in two ways: when the police abuse their powers and when the quality of service provided falls short of their expectations. Even though torture is outlawed by both the Nigerian Constitution and other international treaties ratified by the country, it is still practised by some members of the Nigeria police. This is condemnable as it amount to incompetence in the performance of their duties, these incidents have attracted

much public apathy toward the police. The current police authority put strategies in place to ensure that both of these shortfalls in service delivery are tackled head-on. It must however be pointed out rightly that law enforcement authorities are granted a monopoly of the legitimate use of force within their domain of operations, and this power often extends to matters of life and death.

Contrary to public outcry when it happens, the policeman is entitled or expected to kill the fleeing offender when all other means of preventing the escape of a felon have failed. This is justified and occupationally permissible of the policeman. In view of this power, and in addition to the high degree of violent crime, threat to lives especially on the highways, the public should realize the onerous important work of the police and difficulty and danger commonly associated as being part of their job to accord them some degree of regard when they have dealings with them on the high risk areas.

Concept of Community Therapy

The governments set up prison system as a proportionate policy of the principle, 'let the punishment fit the crime' as an effective yardstick for controlling crime in the society and a way of measuring vindictive retribution. Experience from prisons' reports in Nigeria at the end of 2009 showed that more than 65 percent of persons in prisons were repeaters, of which about 25 percent were persons awaiting trials. The various states prison visitation committees headed by the chief judges of the states in Nigeria released some inmates detained for simple offences, while the various state governments exercised prerogative of mercy powers on specific national events to pardon and release some convicted persons. In spite of these statutory prison regulatory means of reducing population rate, which in any way is disproportional to the prison growth in the country, the prison therapy has not really addressed crime problem, as a deterrent form of punishment, neither has it rehabilitated convicted offenders.

So far as the aim of punishment is to prevent crime and remould criminals, our prison system is serving the opposite. Although, one is not advocating elimination of prisons because of the likelihood of resulting in an invitation to crime, as the fear of imprisonment is believed to work as a deterrent upon potential criminals. But, a modification in the sentencing system, whereby, casual, accidental and simple offenders are treated outside the walls of prison is desirable and helps to regulate prison explosion, prevents jail breaks and gives first offenders of not too serious crimes who have been impelled into a misdeed by force of circumstances beyond reasonable control or by some pathological complexity in their emotional make-up the feeling of been humanly treated, as the experience of imprisonment, of being caged like an animal, may have a deeply damaging psychological effect. Studies have shown that the prison in recent times constitutes a constant threat to everyone's security. It is often described as an anachronistic relic of medieval concepts of crime and punishment that has not really cured crime problem, rather it perpetuates and multiplies it[130]. Prisons breed and harbour time-bombs in the personalities of the men and women caged therein. That these bombs will explode is manifested in occasional jail breakings and attempted jail breakings in different prison yards with attendant destruction of properties and loss of many lives. The time is now ripe for the society to give more thought to keeping people from going in to prison in the first place and to prevent their going back, by adopting and exploring a substitute, a new kind of institution that would release offenders for service to the community rather than for rebellion against it.

Terrorism and the Nigerian Experience

On the front burner of national discourse today is the incendiary activities of Boko Haram. Both from within the Government and without there have been this mis-understanding and politicization of terrorism. This sect which

has killed about 12,500 Nigerians since 2002 has been linked with the main *al-Qaeda, al-Slabaab* and other terrorist groups worldwide. It would then be a pedestrian approach to underestimate its scope of operations. Remarkably, many Islamic organizations and leaders have openly come out to condemn the evil acts of Boko Haram and have debunked certain pristine Islamic concepts as tools used for their illusory goals.

Nigeria can be said to be drifting towards a state of anomy and perfidy. The federal and state governments having been entrusted with powers must brace up to fend off this movement that preached loyalty to all that follow their ways and hatred to all that oppose them. The insurgents are specially breed of offenders having imbibed the philosophy of consent to death; by exploring suicide bombing option to achieve their goals they cannot in anyway be repelled by any of the theories of punishment. The authorities must do all within its powers to cut down the sect before it takes firm root in other parts of the country. Believing that Boko Haram terror will be limited to the northern part of the country is wishful thinking. We must not seem blind to the enormous cultural and global impact the teaching of the insurgents has had and is having on some Nigerian people. We must therefore do all that is necessary now to fight with all our might to wage war against a minion tyranny that has unleashed catalogue of heinous crime on the Nigerian people. The battle may take far longer than we would wish; it will entail military, law enforcement and diplomatic approaches. With foreign assistance, Nigeria should prepare for a long, tough fight. This is because the same ideology that drove Abdulmutallab to attempt to detonate plastic explosives hidden in his underwear while on board Northwest Airlines Flight 253 en route from Amsterdam to Detroit, Michigan, on Christmas day, 2009, must have inspired hundreds of youths that are getting radicalized in the country, though we continue to live in denial of this uncomfortable truth.

Understanding Nigeria's Soft Approach to Countering Terrorism

The conflict in the northeast, which has spread to the northcentral states, including the Federal Capital Territory, Abuja, has posed a fundamental domestic challenge to the country's security for nearly five years. Despite the official pledges and an array of initiatives to address the continued instability, these efforts have largely failed to yield desired outcome. In the last few months, several bomb explosions have rocked Nyanya, an Abuja suburb, Jos, Kano and Kaduna raising questions about the effectiveness of security apparatus and intelligence agencies.

In March 2014, the National Security Adviser, Sambo Dasuki, rolled out the soft approach to countering terrorism which comprehensively weaves multi-stakeholders engagement strategies with human rights complaint approaches of responding to, preventing and dealing with extremism and radicalization that deal terrorism. The latest counter-terror approach espouses very sound, practicable ideas for building robust partnership with states, local governments, including the civil society nationwide. Remarkably, the new counter-terror regime assigns roles to every citizen and institution to play in the fight against terrorism in the sense that it advocates individual responsibility, collective vigilance, creates opportunities for interfaith and cross-cultural conversation, establishes non-violent conflict resolution mechanisms while expanding access to the youth to find answers to the questions that bother them the most. Section 1(A) of the Terrorism Prevention Act 2011 further amended by the Terrorism Prevention (Amendment) Act 2013 mandates the Office of the National Security Adviser to:

> ensure the formulation and implementation of a comprehensive counter-terrorism strategy, build capacity for the effective discharge of the functions of relevant security, intelligence, law enforcement and military services under the act and do such other acts or things that are necessary

for the effective performance of the function of the relevant security and enforcement agencies under the Act." And do such other acts or things that are necessary for the effective performance of the function of the relevant security and enforcement agencies under the act.

The NSA derives the power to initiate regulatory reforms for countering terrorism under this section. Pursuant to this mandate, a Counter Terrorism Centre which houses the Joint Terrorism Analysis Branch and the Behavioural Analysis and Strategic Communication Unit was established under the office of the NSA. Guided by the findings of a strategic study that investigated the root causes of terrorism and youth vulnerability to radicalization, the CTC developed a counter-terrorism strategy called NACTEST which defines roles and responsibilities of ministries, departments and agencies, as well as the role that the civil society has to play in the fight against violent extremism.

One unique feature of the soft approach to countering terrorism is the development of a Countering Violent Extremism Programme "that is both vertical involving three tiers of government, federal, state and local and horizontal involving civil society, academics, traditional, religious and community leaders. It consists of three streams with different layers of partners: MDAs, including the civil society". The CVE capitalizes on existing structures within and outside government to deliver targeted programmes and activities aimed at curtailing radicalization and violent extremism through families, communities and faith-based organizations.

The first stream, de-radicalization is prison-based and targets convicted terrorists, suspects awaiting trial and those released through court orders or such other government decision to free repentant suspects. It is led by the Ministry of Interior and the Nigeria Prisons Service, and supported with a two-year exit strategy during which the "prisons service would have developed its administrative infrastructural and

functional capability to run a full-fledged de-radicalization programme". Under this phase, substantial capacity building of prisons staff in select areas such as psychology, sport and art therapy, faith-based instruction and vocational training would be undertaken in order to equip them with the skills to engage violent extremist convicts/suspects in theological, ideological, physical and entrepreneurial value change that leads to a change in their behaviour. Two prisons have been refurbished for this purpose while 60 prisons psychologists will undergo specialized training in handling of terror suspects.

The second stream, a citizen/NGO-driven phase, focuses on winning the war against terror "by mobilizing family, cultural, religious and national values". Through partnerships with faith-based organizations, community-based organizations, NGOs, it seeks to build structures for engaging communities, build trust, and create awareness and resilience. It emphasizes citizen security-consciousness steered by the civil society actors especially those who are already intervening in conflict resolution, peace building and inter-faith advocacy. In this regard, an education summit is being planned under the auspices of the CVE programme, so as to explore ways of using education as a tool to counter violent extremism. The education component proffers youth mentoring programmes using multiple platforms such as sports, arts, music, literature, history, leadership, service and including learning exchanges about diversity, tolerance, citizenship and inter-faith/ethnic relationships.

From the above, every citizen, sector of the economy, social organization, including the private sector and all tiers of governments are horizontally and vertically involved in the efforts to confront violent extremism in the country. To get everybody involved, access to information about state security protocol is the key. Without sufficient information on the basis of which they can take strong citizen action, their ability to defend themselves, fulfil their collective surveillance and countering terrorism responsibility in a

meaningful way is hindered. Therefore, the NSA needs to raise the bar in both executing its strategic communication goals and entrenching accountability as it works towards realizing the objectives outlined in the framework.

The Paris Meeting

The French President, Francois Hollande's sympathy for Nigeria over Boko Haram's abduction of Chibok girls found strong expression in May 17 Security meeting in Paris. It was held to ramp up West African support for the girls' rescue. Although the representatives of the United States, Britain and European Union attended, the summit was essentially a gathering of Nigeria and her immediate neighbours: Chad, Niger, Cameroun and Benin Republic. The Hollande's initiative is a welcome development. However, that it took such a conclave in faraway France for Nigeria to forge a strong coalition with these Francophone countries against Boko Haram's terrorism underscores the low level of our diplomacy.

The Paris meeting decided on a set of bilateral and multi-lateral measures, ranging from the need for Nigeria to share intelligence with her neighbours and establish border surveillance and patrols, to raising a team to work out how to implement the agreed action plan. A second phase of this Marshal Plan will create regional counter-terrorism strategy in the mound of Lake Chad Basin Commission, with the US, United Kingdom, France and EU acting as coordinators. Since independence, Nigeria has been a respected voice in African affairs as shown in her role in the Congo crisis of the 1960's, the independence struggles in Angola and Zimbabwe, and South Africa's anti-apartheid movement. Also, she was the fulcrum in ending instabilities in Liberia, Sierra Leone, Sudan and Rwanda a few years ago. The Economic Community of West African States, a platform to integrate the sub-region economically, founded in 1975, was a Nigerian initiative. And this explains why the ECOWAS headquarters is in Abuja. Records of its operations indicate its

heavy dependence on Nigeria's financial contributions for survival. As the "big brother," Nigeria acts as the navel of the economies of most member-states.

Ordinarily, a country with these credentials should be able to exert her influence either in Africa or the sub-region; or effortlessly get whatever assistance she needs from neighbours in times of need. At a period like this, the nation ought to have initiated a security meeting of ECOWAS heads of state in Abuja, and put in place a regional response mechanism to the terrorism challenge. Since 2012, defeated insurgents in Somalia, Mali and Libya and others in the Islamic Maghreb have been finding their way into Nigeria with arms, passing through a long chain of countries transnational bulwark. A few meetings of ECOWAS had ended in Abuja, with the country merely warning members to be wary of the activities of Boko Haram because of its international networks. According to Kadre Desire Ouedraogo, Head of ECOWAS Commission, the West African body has a terrorism strategy. It is against this backdrop that security chiefs and intelligence czars met in Accra, Ghana, middle of this year to agree on a regional master plan to assist Nigeria. Why this move is made now when the arrow has already left the bow is because of complacency in leadership. The Nigerian government should get it right: modern day diplomacy and leadership are driven by swift and sagacious impulses.

It was for security threats such as Boko Haram that Nigeria, Benin, Ghana and Togo, entered into a security protocol in December 1984. Again, why this treaty was never activated is beyond common understanding. What is clear, however, is that the same laxity usually evinced at home in implementing internal policies and extant laws, which has led to a total breakdown of law and order, has unabashedly been extended to our foreign policy frontiers. Chad has suddenly become a major reconnaissance base for the US and French military. Their jets and soldiers have been stationed there as part of the growing global efforts to free the abducted girls. If

Nigeria's diplomatic machinery had been effective, Chad's role now, which is very strategic, ought to have been maximized before the crisis got out of control.

London Summit on Boko Haram

The London summit on Boko Haram is a continuation of the May 17 Nigeria security summit in Paris. The United States Secretary of State, John Kerry stated that peace and security in Nigeria is one of the highest foreign policy of the United States priorities in Africa. The Summit underscores the need for a comprehensive, regional approach to terrorism in the country, emphasizing civilian security and upholding human rights.

Insurgency, Amnesty and Prisoners Swap Offer

Since the emergence of Boko Haram's asymmetrical warfare against government agencies and its people, government has been adopting all options in dealing with the security challenge. Several stakeholders have suggested different options to control its escalation. Dialogue has been put forward as a key therapy to resolving the imbroglio, especially with repentant insurgents and those with open identities. The soft approach in the nations counter terrorism strategy has placed the task on the standing Presidential Committee that is saddled with the responsibility of looking into the acts of terrorism in the northeast.

Corruption

Corruption has been identified as one of the problems dragging back the anti-terrorism war in Nigeria. Pervasive corruption undermines the government's fight against Boko Haram. The Nigeria government has one of the largest security budgets, in sub-Saharan Africa, with $5.8 billion allotted to security—for the supplies of basics such as bullets and transport vehicles, but corruption has prevented these provisions from reaching the front-lines of the struggle against Boko Haram.

Abducted Girls and Offer of Foreign Assistance

The offer by the international community to help locate and bring back over 200 schoolgirls from Boko Haram's captivity is a development that calls for the full support and cooperation of Nigerians. After much dithering, occasioned by unnecessary self-pride, the Nigerian government caved in to pressure and reluctantly, decided to avail itself of the wealth of experience and recourses of the United States of America, Britain, France, China and Israel to combat the terrorists and bring back the abducted girls.

In practically all the major cities of the world, there have been calls for the liberation of the abducted girls, personalities such as President Barrack Obama of the US; his wife, Michelle; David Cameron, the British Prime Minister; John Mecain, an American Senator; Hollywood actors and sports personalities, among others, have all risen to identify with efforts to bring back the girls.

The one year of emergency rule in three states of Borno, Adamawa and Yobe has failed to stem the alarming rate of bombings, looting, killings, and destruction of settlements and kidnapping of innocent school girls. What is becoming increasingly evident is the very strong possibility that the security agencies are being bogged down by the presence of an enemy within, which has been thwarting their bid to root out the terrorists. There are reasonable grounds to believe that moles, sympathizers and leaks in our security system are collaborating with the terrorists. The issue of fifth columnists in the war against terror has continued to feature prominently in recent media reports, but our government continues to live in denial.

Is Revolution an Option?

Revolting against a system that pummels and pulverizes the masses always costs lives. In 1787, America's Thomas Jefferson spoke thus: "A little rebellion now and then is a good thing for America". Jefferson felt that the angry farmers in Massachusetts' Shays' Rebellion of 1786 had a right to

express their grievances against the government, even if those grievances might take the form of violent action. The 2011 Egyptian revolution in Cairo, Alexandra, and other Egyptian cities cost 846 lives. The Jasmine Revolution in Tunisia, December 2010, was an intensive campaign of civil resistance that ousted long-time President Zine el Abidine Ben Ali in January 2011. The Orange Revolution in Ukraine that ended in January 2005 also has a record of lost lives. Suffice to say that violence as a means of addressing Nigeria's many ills is not the right approach; but it is important for all of us to learn from history. Revolution may bring about a lasting change; the flip side is that people die in the process. But who wants to die for Nigeria?

Recommendations

It is crystal clear that Nigeria is a nation infested with multiple crimes with dire consequences on the lives and property of the people. In a bid to tackle the challenges confronting the nation I make the following recommendations:

Invest in Digital Mapping

To solve some of the challenges posed by insecurity, government at all levels should invest in proper delineation of local boundaries and national borders through surveying and digital mapping of the country perimeters. The dimensional trend of criminality in the country necessitates creating awareness for spatial connectivity, integration and collaboration. Nigeria is a nation that lacked maps on road, power and transport network among others. The security challenges recorded by the abduction of Chibok girls and the problem of locating where they are kept could be better resolved using high equipment like Geo-eye, quick bird or digital globe to locate exact place of entrapment and reduce suspicion of Sambisa forest. Nigeria has two satellites, Nigeria stat-2 and Nigeria sat-X. The two satellites have been used to acquire data over this country. Nigeria's satellites have its own

challenges on the issue of security but its operational mechanism is not a video hanging in the orbit. It cannot be used to track terrorists or criminals, especially migrant militants.

Control of Arms

One noticeable trend in Nigeria from early 2000 is the proliferation of arms in the country, smuggled in across Nigeria's porous 4,000-mile-stretch of borders with Benin, Niger, Chad and Cameroon. In response, the then President Olusegun Obasanjo in 2005 set up a Presidential Action Committee on Control of Violent Crimes and Illegal Weapons, which reportedly raised fears that , extremist sets were gaining ground in the country. There is no evidence that any action was taken at that time, to address what were very credible threats.

Need to Trace the Crime Problem

An excursion into the evolution of crime problem in Nigeria is like an attempt to understand today what happened yesterday. Crime problem is becoming more difficult by the day and its analysis often raises the question that at what point precisely will the nation break from its downward journey into an endless abyss? Some have traced the starting point of the problem to the amalgamation (the fusion of about 250 ethnic nationalities into one single unit). Nigeria is at a crossroad. We have reached a point in history where we can no longer live in denial of the severe challenges confronting us on a daily basis. We live today as if there will be no tomorrow. The fundamentals of the Nigeria state are extremely weak. The reality is that, there is no national consensus on issues that would make us live in peace and harmony.

Avoid Playing Politics with Crime Control

The policy of government tilts towards the repression of crimes in the society, particularly on insurgency with

proclamation that normalcy will soon return. The political class is pre-occupied with 2015 general elections rather than reviewing the conditions that led us to this gory situation. However, security must be guaranteed for voters to cast their votes. The basic reality is that some groups are angry with the country and they are set out to destroy it. What exactly is making them angry? Is it something we can redress? While they have not come out openly to catalogue their complaints; core issues such as corruption, mal-administration and under-development are key points to be addressed. In fact, the list is endless but includes structures of government, wealth creation and distribution, residency, rights, land use, farming and grazing rights, and the role of religion in politics.

Waging Total War on Corruption

Nigeria is being described as an extremely corrupt country. Corruption has permeated and pervaded every Nigerian institution and every spectrum of social life has been infested with the virus of corruption. This has rendered everyone of Nigeria's institutions dysfunctional and it is unravelling the social fabric of the society. The anti-corruption watchdog Transparency International rates Nigeria one of the most corrupt countries in the world. To what extent is the statement correct?

In 1995 the distinguished American public servant, Colin Powel, while commenting on the state of corruption in Nigeria remarked that the Nigeria scam (419) is part of national culture. Britain's Department of Foreign and International Development (DFID) reported that more than 55 per cent of the corruption in Nigeria is perpetrated in high offices. While one is not being vitriolic and not armed with legal proofs, we are routinely with gaudy evidence and proofs of such sets of corruption. What kind of proof of corruption is further needed in an economy where $20bn disappeared from the public treasury and all seem alright? A system in which it is alleged that a public officer spends more than ₦10bn of public funds for a private air travels. The minister having the presidency assurance that she will not be probed further

approached the court to seek for an order of injunction to restrain the National Assembly from setting up a probe panel on the activities of the minister. Of course, what moral chastity does the National Assembly have to probe the minister in view of avalanche of unresolved scandals and integrity questions of some of its leaders. Indeed, Nigeria is a nation which consists of people wallowing in crime and yearning for justice.

Nigeria, is a nation so heavily dependent on tough laws but hardly pursues justice. What evidence is needed again, going by the social indexes of the poorest and war torn country; and the country's wealth routed into private pockets instead of towards the socio-economic betterment of the people. In all ramifications, Nigeria is now a nation housing terrorism with dire consequences. In spite of condemnation and public outcry, the terrorists have shown beyond unmistakable terms that they have the capacity to strike in any state of their choice, for now, in the northern part of the country where they have wreaked unmitigated havoc on human lives and property. As regards Nigeria's porous 4,000 miles stretch of borders with Borno, Niger, Chad and Cameroon, the infiltration and proliferation of arms in the country, smuggled into parts of the country is a clear indication that the terrorists have unlimited capacity to inflict pains on our people beyond Borno, Yobe and Adamawa States where local and international attention is currently focused.

Eradication of Poverty

The state of insurgency in the northeast of Nigeria can be effectively curtailed if the poverty issue pervading the sub-geo-political zone is tackled. The World Bank described the northeast part of Nigeria, Republic of Chad, the Republic of Niger and the Darfur region of Sudan as some of the poorest places on earth. There is a correlation between poverty and the insurgency. If the poverty issue is fully addressed and the youths engaged, jobs created, it is most probable that the orgy, this nihilism will be proportionally reduced if not completely evaporated.

One is not justifying the motives behind acts of insurgency, as poverty is not a legal defence for commission of crimes particularly heinous crime of this magnitude—terrorism. From north to south of Nigeria, many families have experienced worsening economic conditions; poor infrastructure has made it difficult for an average Nigerian to live above poverty line. In spite of these harrowing challenges, why would Nigerians undergoing these unpleasant situations inflict severe pain and even bring death on other Nigerians? In as much as the agitated would not ordinarily inflict such atrocities on their own children and loved ones, there will be no moral, religious or ideological beliefs to warrant wreaking havoc on other human fellows. Faced with challenges of our times, we need to focus on common needs and rediscover our consciousness to promote respect and love for one another.

Curtailing the Terrain of Insurgency

The bombing menace being experienced recurrently in Nigeria signifies that an implosion is imminent. This state of the nation appears unsustainable. There are stark realities that are indisputable and serve as eye-opener causing for a deep reflection of all concerned citizens. The state of violence is of the highest magnitude and inexorably devastating. The insurgents have continued their exploits as if the government in power is incapable of quelling the heinous acts. The constant assurance from the government appears to be mere political statements and a diplomatic denial of outright incapacity. While the government boasts of closing up on the militia sect, the bomb attack at Nyanya motor park in Abuja, Kano bomb blast and Jos bombings which left over 118 people dead in twin blasts in April 2014 have proved an expansion of the scope and operational catchment areas thereby debunking what was thought to be a shrinking circle of violence of the sect.

The Nigerian civil societies have done their bits by demanding for the return of the girls. The international community has lent their support for the campaign, "*bring*

back our girls". The Federal Government of Nigeria has stated at a media chart that it did not know the location of the girls. The intelligence report by the America government is that the girls may have been moved out of the country. Another source of worry as to the fate of the Chibok girls is the extract from a video released about 3 weeks after the abduction where the Boko Haram leader said he had a divine duty to sell the girls. This is further coupled with the possibility that many of the girls, if not all, would have been subjected to sexual ordeals in the various camps and some would have become pregnant for their captors, while others might have been forced to marry warlords in different locations.

Undue Delays in the Disposition of Cases

Nigeria's criminal justice system has witnessed undue delays in the disposition of cases over the years to such an extent that delays have become the norm rather than the exception. Indeed, the popular maxim: justice delayed is justice denied has been honoured more in its breach than in its compliance in this country. Most of these delays occur in the lower courts, particularly at the magistrate courts where prosecution of cases are usually handled by police officers. Similarly, because of the wide powers conferred on the police to arrest or detain criminal suspects on suspicion of committing crime, the exercise of these duties are often abused resulting in the violation of the fundamental rights of the citizens. The incidents of indiscriminate and inordinate delays in the criminal process violate the constitutional and statutory provisions that criminals should be brought before a court of law within a reasonable time. The police has no power to detain a suspect beyond 24 hours except by the order of a court whether or not investigations are completed. The presumption of innocence in favour of a suspect which is an expressly recognized fundamental principle unfortunately remains as unfulfilled dream for the suspect awaiting trial in prison or police custody nationwide.

Indeed, the incidents of undue delays in the criminal justice system in Nigeria are neither new nor unfamiliar from the facts of cases considered above. The circumstances of many detentions become more worrisome as there are examples of suspects who have spent between five and ten years in detention while awaiting trial. The present state of affairs is deplorable. Many others are known to have died under the most inhuman conditions in the prisons and police cells nationwide. Obviously, the general condition of suspects in custody is perhaps a replica of a living hell. The administration of justice demands parity of treatment which invariably demands the maintenance of a complete balance in the scale of justice. The degree of its attendant consequences in the society is of the highest magnitude and as such concerted efforts must be made on the part of everyone connected with the administration of criminal justice in particular and the public in general to minimize (if it cannot completely eliminate) these delays in the wheel of criminal justice system in Nigeria.

The Case of Major Hamza Al-Mustapha v. The State – An Outlandish Trial and Obtuse Judgment

Al-Mustapha, a former Chief Security Officer (CSO) to the late Head of State, General Sani Abacha, and Shofolahan, a former Personal Assistant to late Kudirat, were both convicted by the lower court for the conspiracy and murder preferred against them by Lagos State. The duo separately filed their appeals 24-hours after they were convicted, contending that the death sentence handed them was unwarranted, unreasonable and a manifest miscarriage of justice. After about 12 years of gruelling criminal proceeding against the accused persons for the assassination of late Kudirat, wife of the acclaimed winner of the June 12, 1993 presidential election, late Chief MKO Abiola, Justice Mojisola Dada of Lagos High Court delivered a 326-page judgment on January 30, 2012. Justice Dada held *inter alia* that:

> Evidence proves Al-Mustapha, Shofolahan killed Kudirat Abiola. Evidence was manifestly heavy that they killed Kudirat Abiola. In view of this, they are guilty of conspiracy and murder. The prosecution has proved its case beyond all reasonable doubt. In view of this, they should be hanged.
>
> The learned judge described Shofolahan as a viper, saying "he acted like Judas Iscariot. He was friend to the Abiola family in the open and enemy in secret. He sacrificed his master (Abiola) because of his personal greed. He was a viper.

The Court of Appeal discharged and acquitted the duo of conspiracy and murder of Alhaja Kudirat Abiola. It is remarkable to know that appellate panel consisted of three female justices. They are Justice Rita Pemu (presiding), Justice Amina Adamu Augie and Justice F.O. Akinbami. Justice Augie was drafted into the panel following the decision of Justice Ibrahim Saulawa who disqualified himself from hearing the appeal. According to the presiding judge, Justice Rita Pemu:

> The lower court stroked to secure a conviction by all means. In a criminal trial, the burden is to prove beyond reasonable doubt and this is a chain that cannot be broken. PW 2 (Sgt. Barnabas Jabila Mshelia, a.k.a. Sgt. Rogers) and PW 3 (Mohammed Abdul) in their confessional statements to the Police said they were enjoined by the first appellant, (Al-Mustapha) to murder Kudirat, but this statement was later retracted by them in court. PW 2 and 3 in retracting their earlier statements to the Police told the court that they were cajoled by the prosecution to indict the appellant, with a promise to give them monetary compensation. This is a contradiction in the testimonies of the witnesses; it raises doubt in the

> case of the prosecution, and it is unimaginable that the lower court did not expunge it. For an offence like murder, I wonder why the Nigerian Police did not do a proper investigation. Once there is doubt in the case of the prosecution, as in the instant case, it must be resolved in favour of the accused, and this doubt is accordingly resolved in favour of the appellants. One thing is clear, Kudirat was shot, but the big question is: who pulled the trigger? I find nothing in this case which sufficiently links the appellants with the commission of the offence. It is preposterous that, the lower court was only concerned with securing a conviction at all costs. Just as God is no respecter of persons, so also is this court. I hereby order that the appellants be discharged and acquitted while the conviction and sentence of the lower court, is hereby discharged.[131]

This judgment had a protracted history of proceedings, the trial at the court initially took about 13 years with change of the trial judges on about three occasions until the judgment of 326 pages delivered, sentencing the accused to death but was upturned by the Court of Appeal's decision with arguable reasons which the prosecution/respondent claiming it will appeal to the Supreme Court.

Oil Theft and Pipeline Vandalism

The dimension of violent crimes have been on the increase in other climes such as oil theft and pipeline vandalism incidents with high degree of loss of lives and property (Olatunbosun 2013) that has made agitations for imposition of death penalty for those engaged in the acts. Recently, the President of Senate, David Mark insisted on death penalty for oil thieves. He said persistent crude oil theft would have a devastating effect on the economy if not checked[132]. Similarly, other criminal acts that have become a recurrent activity include

corrupt practices and fake drug dealings and these have been condemned by the public with a clamour for the review of the punishments to attract death sentences.

Criminal Procedure Act

A trial court itself can refer a case to the governor under the Criminal Procedure Act; different considerations arise under this situation. For example, where the convict has been found to be of unsound mind, the trial judge would report his finding upon judgment delivered that the convict be kept in custody during the governor's pleasure. The office of the governor upon the receipt of this report sends the file to the Solicitor-General and Permanent Secretary, Ministry of Justice for necessary action. Section 371D provides:

> The judge who passed sentence shall as soon as practicable after sentence has been pronounced, transmit to the Minister designated to advise the President on the exercise of the prerogative of mercy (hereafter in this part referred to as the Minister) a certified copy of the record of the proceedings at the trial, together with a copy of the certificate issued by him under the provisions of section 371B, and a report in writing signed by him containing any recommendations or observations with respect to the sentenced person and with respect to his trial that he thinks fit to make.

The latter through the Director of Legal Drafting and Ministerial Counselling with the knowledge and approval of Honourable Attorney-General would prepare the appropriate warrant which should be based on the directions of the judge. The Act also provides that where a death sentence is applied by the trial judge, he shall forward the records of proceedings and other supporting documents relating to the convict to the governor for consideration on whether the execution warrant

would be signed and carried out. The Criminal Procedure provides as follows[133]

> Section 370 (1) After the sentence of death has been pronounced the presiding judge shall, as soon as conveniently may be forward to the Governor a copy of the finding and sentence and of his notes of evidence taken on the trial together with a report in writing signed by him containing any recommendation or observations on the case which he thinks fit to make.
> (2) This section and sections 371, 372, 373, 374, 375 and 376 shall apply in respect of sentence for an offence in respect of which the power of pardon is vested in the Governor.
> (3) The presiding Judge shall forward to the State Commissioner designated for such purpose a further copy of the finding and sentence and of his evidence together with a copy of the report made by him, at the same time as such documents are forwarded to the Governor.
> Section 371 also provides that- The Governor shall, upon the recommendation of the State Commissioner designated for such purpose, order-
>
> (a) That the law shall take its course, or
> (b) That the sentence be commuted to imprisonment for life, or
> (c) That the sentence be commuted for such specific period as he may consider just.

The above quoted sections make the sentence of death passed by the trial judge not conclusive as such decision may be reviewed through administrative process by the State Executive. This also serves as checks and balances on the exercise of judicial powers of the court. However, it is recommended that the chief registrar should be saddled with that responsibility in view of the fact that judges do have

heavy workload to discharge coupled with the Chief Justice of Nigeria directive recently that an High Court judge must deliver at least four judgments in a year as part of the ongoing reforms in the judicial sector on the need to attain speedy administration of justice in the country.

Death Sentence and Amnesty International

The Amnesty International has been consistently clamouring for the abolition of death sentence worldwide and pressurizing the Nigerian government to abolish the system. The international body had further argued that convicts awaiting execution should be released or alternatively their sentences should be commuted to life imprisonment or terms of imprisonment. According to 2010 Annual Report, about 750 convicts are on death-row awaiting execution. The Amnesty International also claimed that no governor had signed execution warrant in the last twenty years, using this fact to further advance their position for total abolition of death penalty from the statutes in Nigeria. On the contrary, the findings of the National Study Group on Death Penalty revealed that about 500 Nigerians are on death-row waiting for the hangman. The report further confirmed that many of those on death-row had spent between 10 – 25 years awaiting their execution.

Moratorium on Executions

The administration of former President Olusegun Obasanjo brought the country back into the fold of the commonwealth countries, from which it was suspended in 1995, following the execution of Mr. Ken Saro-Wiwa by the late Military Head of State, General Sani Abacha. President Obasanjo set up two groups to look into how the prison system could be reformed and decongested. The National Study Group on death Penalty, established in 2004, and the presidential Commission on Reform of the Administration of justice, established in 2007, recommended a moratorium on executions because the criminal justice system could not guarantee fair trial. Until June 2013, Nigeria had maintained a self-

imposed moratorium on death sentence. This is apparently in conformity with the resolution of African Commission on Human and Peoples Rights calling for a moratorium on executions, though, the issue of moratorium still remains an unofficial policy in Nigeria. In the same vein, the United Nations General Assembly Resolutions 62 149 and 63 148 of 2007 place a moratorium on the implementation of death penalty on member states but this is not automatically binding on Nigeria. Strictly speaking, it is not legally accorded the status of operating statute in Nigeria unless its details are enacted into law by the National Assembly. The moratorium is not binding and enforceable in the same manner as a treaty would be under international law, until it is domesticated into our national laws[134]. Though the terms of the supposedly agreed UN moratorium and the extent of Nigeria's commitment is not in public domain, nevertheless, a moratorium in legal parlance is suspension of action for a period of time to enable the authority to appraise its impact on a subject matter, it cannot be permanent. For instance, Texas in the United States implements the death penalty in spite of the 2006 UN moratorium and the fact that the US has a seat on the UN Security Council. Also a 58-year old Black American was executed in the USA in compliance with a court judgment.

Non-execution of Warrants

As at December 2012, there were about 970 inmates on death row. The figure comprises 951 males and 19 females. They are alive because of the refusal of past governors to sign their execution orders. This non-signing of death warrants have translated into increasing number of prisoners awaiting execution in all designated condemned prisons nationwide. According to official figures from the Nigeria Prisons Service, there were 1,039 inmates on death-row as at June, 2014. Many of them had been sentenced for over 10 years, but governors have not been too keen to have them executed. Their reason was reinforced by the civil societies and non-governmental organizations (NGOs), who have remained at the vanguard of life of condemned prisoners. Under the

Criminal Procedure, the president and the governors are saddled with the functions of execution of death warrants of condemned persons in respect of federal and state offences. The federal and state attorneys-generals usually advise the president or governors on whether or not to execute death warrants. The Criminal Procedure laws of states provide that governors should sign death sentences of condemned criminals before execution. Of the 36 governors, only two, the former Governor of Kano State, Ibrahim Shekarau and Adams Oshiomole of Edo State, have confirmed the sentences passed by the court on some convicts, since 1999. The appeals of the condemned prisoners were said to have gone through the Court of Appeal and the Supreme Court of Nigeria before the Edo State Governor, Comrade Oshiomole signed their death warrants. The international human rights group, in a statement, had called for restraint on the part of the Nigerian government in carrying out the exercise.

European Union and Use of Death Penalty

Noted for its long standing rejection of the EU to the use of death penalty and reiterating the UN resolutions calling for the establishment of a moratorium as a first step towards abolishing death penalty in retentionist states. The High Representative in Nigeria, Catherine Ashton admonished Nigeria to join the majority abolitionist trend now prevailing in the African continent. According to her, executions can never be justified. She expressed her sadness that Nigeria had broken its seven years moratorium on death penalty. She advised the country to amend its laws with a view to abolishing the application of death penalty. In the same vein, the United Kingdom's Minister for Africa, Mark Simmonds condemned the recent executions in Edo State against the backdrop of the Universal Periodic Review of Nigeria by the UN Human Rights Council coming up in the 3rd quarter of 2013.

Mr. Vice-Chancellor Sir, death penalty usually generates important questions for the general or specific support for/or opposition for its application in jurisdictions where it is

operational, Nigeria inclusive. A number of questions deal with the public opinion on the appropriateness of its continuing application in view of the clamour for its abrogation by international organizations like the United Nations, the European Union, the Amnesty International and national non-governmental organizations. However, one significant aspect of administration of death penalty in Nigeria is the constitutional rights of appeal guaranteed condemned prisoners to explore the process which checkmates the frequency of its application that invariably accounted for the death-row situation.

The phenomenon arising from due compliance with the rule of law cannot be totally discarded in spite of long standing pressure from international organizations on Nigeria to adopt international norms on basic human rights. In actual fact, Section 33 of the Nigerian Constitution clearly permits death sentence. Without amending these provisions, we cannot start following the superpowers willy-nilly; to do otherwise is to promote neo-colonialism.

Conclusion

The subject of crime is an important sensitive issue, widely discussed, but its mode of treatment often ignored. It is meant to stimulate continued dialogue and debate among legislators, policy makers, law enforcement officials, judges, lawyers, and mental health professionals performing evaluation and treatment in this area. The challenge is for those interested in the study of crime to continue to investigate crime problems and to come up with functional ideas with a view to controlling crime in the society. The parting conclusion is that crimes are inevitable in any society, they are real problems we have to live with. Attempt has been made in this lecture to present answers to crime problems and to evaluate possible solutions within the framework of global approach as contemporary means of curbing the venoms of criminality. But suffice to say at this juncture that deviant behaviour in all its dimensions and manifestations, beginning from how it is controlled to how it is perceived, requires adoption of the

notion of a collective approach, acceptable as an alternative to the all-pervading prison punishment which is often less than satisfactory. Much creative efforts and programmes have to be put in place if we are to succeed in protecting our society from crime. The courts are therefore enjoined to see that justice is never defeated by technical rules of procedure. These rules should be treated as subservient handmaids to justice not as omnipotent masters at war with justice. There have been complaints in many quarters about delays in trial of cases in the courts with dire adverse consequences on the society at large resulting in increased lack of public confidence in the criminal process. This invariably creates a situation where citizens resort to taking laws into their own hands to redress one form of grievance or another.

The Vice-Chancellor Sir, tougher laws have failed to stem the tide of categories of crime ranging from offence of misdemeanours, stealing, burglaries, to violent crimes such as assaults, riots, murders, assassinations, armed robberies, rape, or business crimes like corruption, bank frauds, economic crimes, organized crimes, corporate crimes, oil pipeline vandalism, environmental crimes or cultism among students and other anti-social conducts. The courts have not been dispensing justice to the satisfaction of the public; there are instances of delayed justice, non-completion of high profile cases of corrupt practices and prolonged trials. The problem of crime especially the insecurity of lives and property, corruption, embezzlement poses a threat to the political stability of a nation.

Attempt in this lecture Mr. Vice-Chancellor is an academic exercise to improve the justice sector. It is not to disparage the judiciary. It is meant to gear up the legislature in its legislative acts as well as in the process of making law that is humane, functional and fair. The independence of the judiciary should remain unassailable and the court must be impartial in the performance of its functions. Matters or cases should be heard publicly and every party given a chance to have a say and the court should be allowed to give its judgment. It is too delicate for any other arm of government to undermine the judiciary; this is against the backdrop of

high profile cases in courts, the gale of impeachments and undue interference on judges in the exercise of their constitutional roles.

The idea of toughness of crime legislation is fascinating in the sense that it signifies an impression that the citizenry is protected from the ravages of human predation by a vigilant and efficient system of legal control. But this is like a utopian dream, in the sense that crime seems to be a normal aspect of human life. Out of control, crime could possibly overcome life, and this portends danger as it is inimical to the survival of the society. Therefore, the state needs to explore all means to control the wave of criminality in its environment, this control could never succeed in more than keeping them to a level appropriate to the prevailing form of human life. Interestingly, crime is found in all nations, be it developed or developing, although in varying dimensions. It is a universal problem justifying global control mechanism.

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[89] (1996) 6 NWLR 42
[90] (1994) 9 N.W.L.R. (pt. 366) p 1-47.
[91] CNN Original Series: "Death Row Stories' "This is the most blessed day", Brown kept repeating Tuesday, according to his attorney Ann Kirby.
"It was an amazing moment for everyone", added Vernetta Alston, an attorney for McCollum. Only not everyone thought it was so amazing. "This is a tragic day for justice in Robeson County", said Britt. When asked whether Britt still believes he got the conviction right, without hesitation, he said, "absolutely". "These guys got three trials. Thirty-six people reviewed it and thought the confessions were correct', Britt told CNN. "You know how hard it is to get a conviction in a capital cases?" Kirby and Alston said that their clients' confessions were coerced and that both were "severely intellectually disabled".

[92] See *The Report of International Commission of Jurists Administration of the Death Penalty in the United States,* June 1996 at page 64.

[93] Their Rights to Appeal to the PRC was scuttled by the sudden implementation of the death sentence.

[94] See *Nosiru Bello v. Attorney –General of Oyo State (1986) 2 N.S.C.C 1257.*

[95] ibid

[96] Through the length and breadth of the Constitution there is no single section thereof which abolished or outlawed the death penalty. But in the past, the then President Olusegun Obasanjo granted an amnesty to all Prisoners who have been on the death row over the last 20 years. He also commuted to life imprisonment, the conviction of others who have been on the death row for over 10 years. See *Vanguard*, Wednesday January 5, 2000, Vol. 16, No. 4399.

[97] It is pertinent to draw the attention of the public to the case of *James Ajulu and others V. Attorney-General of Lagos State* (Unreported Suit No. ID/76M/2008) where the Lagos High Court, Per Olokoba J. held that while the execution of the applicant (condemned prisoners) by firing squad or hanging is unconstitutional as it violates the fundamental right of the applicants to dignity guaranteed by Section 34 of the Constitution.

[98] This was reported in the Nation Newspaper of Thursday, July 4, 2013.

[99] Assassination of the former Attorney-General, Chief Bola Ige, and the assassinations of Chief Funso Williams, the People's Democratic Party, Governorship aspirant of Lagos state and his counterpart from Ekiti Ayo Daramola[78] Dr. Omololu Soyombo *"Trend and Pattern of Crime in Nigeria" Law Enforcement Review*, October- December 1999, p.34.

[100] Senator Segun Oladimeji, Dr. Daramola were assassinated for political reasons. Also on the 21 April, 2010, Mr. Adebayo Timothy-Oduyigbo was brutally murdered in his sleep at his residence in Ikorodu, Lagos state by unknown assassins.

Chief Bola Ige, the former Attorney –General of the Federation, Senator Layi Balogun, Alhaja Kudirat Abiola, Alhaja Sulia Adedeji,Chief Alfred Rewane, Chief Funso Williams, Dipo Dina, Abubakar Rimi and a host of others.

[101] Olatunbosun, A.I. (2001/02): "Are Condemned Persons Entitled to Enforce their Fundamental Rights?" Vols.19-20 in *Ahmadu Bello University Law Journal* (A.B.U.L.J.) Zaria pp. 77-91.

[102] The late Justice H.F. Stone quoted by Walter A. Lunden. op. cit. vii.

Omololu Soyombo *"Trend and Pattern of Crime in Nigeria" Law Enforcement Review*, October- December 1999, p.34

[103] See David Weisburd, Chester L.Britt, Statistics in Criminal Justice (2nd ed. Thomson Wadsworth, USA.2003) pp 2-12.; (3rd. ed. Springer, 2007) pp2-12. see also crime and justice in the United States and in England andWales,1981-1986,in Bureau of Justice Statistics, US department of justice, office of justice programs.; Study Guide for Weisburd and Britt's Statistics in Criminal Justice, Pamela. M. Diamond (2nd ed. Thomson and Wadsworth, 2003)

[104] See the sociology of crime and deviance: selected issues (ed. Susan Caffery with Gary Mundy; Greenwich Readers 6, 1995 at pp 7 -see also Adeniyi Olatunbosun, "Public Attitudes towards Reporting Crimes in Nigeria", in *Nigerian Law and Practice Journal* Vol. 2 No. 2 (Council of Legal Education Nigerian Law School) (1998) pp. 105 – 111.

[105] *HC/1/1965 unreported*

[106] (2000) 32 WRN

[107] See the Nation, Wednesday, May 21, 2014 p 29, Tuesday, January 28, 2014, Return of jungle justice, pg26

[108] Olatunbosun, A.I. (2008): Nigeria's Police Role in Public Administration and Governance in *Police Behaviour: A Reform Approach* Icfai University Press, *www.amicus.uipindia.org.*

[109] Olatunbosun, A.I. (2002): "A Call for Shorter Criminal Trials" in *Ibadan Bar Journal*, Vol. 1 No. 1. pp. 91 – 102

[110] Kidnappers sometimes act like mad men in order to move freely among unsuspecting citizens. Some of them were caught in the past e.g. Clifford Orji, some were severely beaten before they are handed over to the police. Some of the suspects handed over to the police are later released after they had bribed officers.

[111] For example in Nigeria, corruption and abuse of office is a plague in public and private sectors of the society, many people see access to public funds as an opportunity to corruptly enrich themselves at the expense of the public interest

[112] See Abraham S, Goldestrain 'Defining the role of the victim in Criminal Prosecution',52 Mississippi Law Journal, 1982 515, 518: F.O.B. Babafemi, Restitution and Compensation in the

Administration of Criminal Justice, in Adeyemi, ed. Nigerian Criminal Process, 1977 p 251: M.A. Owoade, Legal Aspects of Compensation and Restitution in the Science of Victimology in Nigeria in Modern thoughts on Victimology and Crimes-A Comparative Study, eds. Agrawal, K.B. & Raizada, R.K. University Book House Pvt. Ltd. Jaipur, 1997 pp 15-16.

Olatunbosun, Adeniyi "Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal Victim Relationship" in Journal of the Indian Law Institute (2002): pp 205-224.

Ian Freckelton, 'Compensationfor victims of crime' in Crime, Victims and Justice, Kaptein et. al. op.cit. pp 31-33.

See Modern Thoughts on Victimology and Crimes, A Comparative Study (eds. Agrawal, K.B. & Raizada, University Book House Pvt. Ltd., Jaipur, 1997): See also Rajah VN, Victimology in India, (SB Nangia New Delhi, 1995).

See Compensation and Remedies for Victims of Crime (ed. Sade Adetiba vol .5 Federal Ministry of Justice, Nigeria, 1990) pp 1-12.

Daily Times, *"The Essence of Criminology"* Friday November 27, 1992. See Adeniyi Olatunbosun "Compensation to Victims of Crime in Nigeria: A Critical Assessment of Criminal-Victim Relationship" in *Journal of the Indian Law Institute* India. *2002* pp. 205 – 224.

See The Report of The National Committee on Remedies for Victims of Crime, 23rd August, 1991 published by Federal Ministry of Justice Law Review Series in Restitution Compensation and Remedies for Victims of Crimes (1989) ed. Sade Adetiba. See A. A. Adeyemi, Criminology in Contemporary Africa" Nigerian Journal of Criminology Vol. 2, No.1, pp.1-22.

See M. A. Owoade, Reform of Sentencing in Nigeria: A note on Compensation Restitution and Probation in Restitution, Compensation etc. published by Fed. Min. of Justice Law Review Series [1989] *op.cit.*

[113] 1999 N.W.L.R. (pt.) 9.

[114] See "Compensation for Victims of Criminal Violence, A Round Table" (Journal of Public Law, Vol. 8, No. 1, Atlanta, 1959).

[115] Second Seminar for Heads of Penitentiary Administration in African Countries, Report, Harare, Zimbabwe 29 February – 6 March 1988 (hereinafter referred to as "The Harare Report"), p.2.

[116] In England victims of rape receive handsome compensation from the Public Fund. See THE TIMES, 15th December, 1993, p.1.

[117] Olatunbosun, A.I. (2004): "The Socio-Legal Analysis of Sexual Harassment and Kindred Offences in Ife Psychologia, an International Journal Vol. 12, No.1. pp. 112-125 (in *Legal Electronic Publications (Online Journals) info@sabinet.co.za*

[118] Olatunbosun, A.I. (2004): "Double-Decker Marriage in Private International Law: A Dialectical Appraisal", in *Indian Society of International Law* New Delhi Vol. 4, No. 1 Jan – March 2004, pp. 139-159.

[119] Reflections on the offences of Perjury and False Confession under the Nigerian law in *Prosecutorial Misconduct-Problems and Perspectives* (ed. Dr. Kalyani,) (Amicus Books, ICFAI University Press. Hyderabad, India) pp.155-173.

[120] The Economic and Financial Crimes Commission (EFCC), and Independent Corrupt Practice Commission, ICPC were created by the Obasanjo administration to help in controlling and to prosecute those that are engaged in fraud and other corrupt practices

[121] Olatunbosun, A.I., Ogungbe, M.O. (Mrs.) (2002) "Alternatives to Dispute Resolution and its Relevance in Criminal Trial *in Journal* of Finance and Investment Law (Learned Publishments) Vol. 6, pp. 360-375.

[122] Olatunbosun, A.I. (2002): "Reflections on Procedural Pitfalls of Business Crimes" in Management and Industrial Law Journal Vol. 1, pp. 9-20.

[123] Olatunbosun, A.I. (2009): The Application of Foreign Revenue Law and its Legal Implications in Nigeria in *Advocate-Journal*, Obafemi Awolowo University, Ile-Ife, pp 54-69.

[124] Olatunbosun, A.I. (2011): Crime and Criminological Studies from African Traditional Perspectives: A Case Study on Nigeria in *US-CHINA Law Review,* Vol. 8, No. 7, pp. 690-699

[125] (1985) S.C 406

[126] Saturday Punch, August 25, 2007, p.4

[127] Police Act Cap P.19, Vol. 13, Laws of Federation of Nigeria (LFN) 2004

[128] Regulation 273 of the Nigerian Police Regulation, Cap C.19 LFN 2004

[129] C.F.L. Membere, *Police and Law Enforcement, Standard Police Studies Manual* (Nigeria) (1982, Koda) Vol.1, p.163-164

[130] Olatunbosun, A.I. (2000): "The Plight of Awaiting Trial Persons under the Criminal Justice System in Nigeria", Chapter 8 in *Topical Issues in Nigerian Law Essays in Honour of Hon. Justice N. O. Adekola* (Zenith Publishers, Ibadan), pp. 123-134.

[131] See more at: *http://www.vanguardngr.com/2013/07/kudirat-abiolas-murder-appeal-court-frees-mustapha-shofolahan/#sthash.lQcOCyz0.dpuf*

[132] Mark spoke in Abuja when he welcomed the senators back from their one month break. According to him, we must, therefore, address it squarely. I still maintain my earlier stand that oil theft should attract capital punishment.

Pipeline vandalism as a threat to economic sustainability in the petroleum industry in Nigeria, paper presented at First European Environmental Law Forum Conference, at, Groningen Centre of Energy Law, the University of Groningen on the 4, 5 and 6 of September 2013 The Netherlands.

[133] Cap 39 Laws of Oyo State of Nigeria, 2000

[134] See Section 12, Constitution of Federal Republic of Nigeria, 1999.

BIODATA OF
PROFESSOR A.I. OLATUNBOSUN

Professor Adeniyi Israel Olatunbosun was born at N3/286B St. Stephen Road Inalende, Ibadan. He had his primary education at Salvation Army Primary School, Oke Agala Ibadan from 1971-1976. His secondary education was at Oluyole Estate Grammar School, Bodija Ibadan from 1978-1983 where he obtained his school certificate in 1983. He thereafter proceeded to Osogbo Grammar School, Osogbo for his Higher School Certificate, in Government, Economics and Christian Religious Studies and obtained the grades A, B, C (13 points) in 1985. He was admitted to the University of Ife (now Obafemi Awolowo University) in 1985 and graduated in 1988 with a Second Class Honours Upper Division. He later proceeded to the Nigerian Law School, Lagos and was called to Bar in December 1989. He was posted to the Nigerian Military Police, 2nd Mechanized Division, Kaduna for National Youth Service scheme. He joined the Oyo State Ministry of Justice, Secretariat Ibadan in 1990 as a state counsel and rose to the rank of Principal State Counsel, before he joined the services of the Obafemi Awolowo University as Lecturer II in the Department of International Law, Faculty of Law in 1994. He was promoted to the position of Lecturer Grade I in 1998, Senior Lecturer in 2004 until May 31, 2013 when he was appointed a Professor of Law in the University of Ibadan. While in the services of Obafemi Awolowo University, he obtained his PhD in 2007 and served in many capacities as Acting Head, Jurisprudence and Private Law 2006-2012, Vice-Dean of Law 2008-2011, Faculty Representative at Postgraduate College and Senate from 2007-2012. At the University of Ibadan, he was appointed Head of Department of Public and International Law, August 1, 2013.

Professor Olatunbosun belongs to academic and professional bodies. He is a member of the Nigerian Association of Law Teachers (NALT); Nigerian Bar Association; Member, African Regional Institute Africa Borderland Studies-German Technical Cooperation, Nigeria-Benin Republic, Member, International Society of Nigeria, Member, European Society of Criminology; American Society of International Law; IUCN

Academy of Environmental Law; European Energy Law Forum; and Society for International Relations Affairs (SIRA). He has won many academic fellowships, and visiting positions which include, Visiting Fellow, British Institute of International and Comparative Law, London in 2006; Visiting Fellow British Institute of Advance Legal Studies in 2006; and Visiting Post-doctoral Research Scholarship at Max-Planck Institute, Freiburg Germany, April-June 2010. He was invited as an international expert to give expert opinion in British High Court, Family Division, London on Double-Decker Marriage and Nigerian law of Evidence.

Professor Olatunbosun has been an external examiner and assessor of PhD and professorial promotions to the University of Lagos, Olabisi Onabanjo University, Ago-Iwoye, Adekunle Ajasin University, Akungba Akoko, University of Ado-Ekiti, Ado-Ekiti, Igbinedion University Okada, and Ghent University, Belgium. He was an expert to the High Court of England on comparative Family Law in 2006.

In the month of September, 2014 he was appointed as Expert to International Criminal Court, ICC, in The Netherlands for 5 years from 2014-2019. He has attended international conferences in centres such as China, Germany, France, Belgium, The Netherlands and South Africa.

Professor Olatunbosun has supervised over 100 Masters' students both in OAU, Ife and in the University of Ibadan. Two PhD candidates in Ife and Okada and currently supervising 5 PhD candidates in the Faculty of Law, and CEPEEL. He has over 70 publications in reputable outlets apart from papers presented at national and international conferences.

Professor Olatunbosun is presently the Dean, Faculty of Law. He is married to Deaconess Oluwayemisi Oladunni Olatunbosun and the marriage is blessed with four children, Olalekan, Olabisi, Olayinka and Oladipo.

NATIONAL ANTHEM

Arise, O compatriots
Nigeria's call obey
To serve our fatherland
With love and strength and faith
The labour of our heroes' past
Shall never be in vain
To serve with heart and might
One nation bound in freedom
Peace and unity

O God of creation
Direct our noble cause
Guide thou our leaders right
Help our youths the truth to know
In love and honesty to grow
And living just and true
Great lofty heights attain
To build a nation where peace
And justice shall reign

UNIVERSITY OF IBADAN ANTHEM

Unibadan, Fountainhead
Of true learning, deep and sound
Soothing spring for all who thirst
Bounds of knowledge to advance
Pledge to serve our cherished goals!
Self-reliance, unity
That our nation may with pride
Help to build a world that is truly free

Unibadan, first and best
Raise true minds for a noble cause
Social justice, equal chance
Greatness won with honest toil
Guide our people this to know
Wisdom's best to service turned
Help enshrine the right to learn
For a mind that knows is a mind that's free