



**NATIONAL OPEN UNIVERSITY OF NIGERIA**

**COURSE CODE : CSS 371**

**COURSE TITLE: COURTS AND JUSTICE  
ADMINISTRATION IN NIGERIA**

**COURSE  
GUIDE**

**CSS 371  
COURTS AND JUSTICE ADMINISTRATION IN  
NIGERIA**

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## **Introduction**

This course is known as COURTS AND JUSTICE ADMINISTRATION IN NIGERIA: Course code: CSS 371. This course is a three unit course.

It generally introduces you to the basic concepts in courts, and Criminal Justice Administration. The course is designed to provide a comprehensive understanding of the major perspectives and historical developments of some of the active participants in the criminal justice system, the interplay of these main organs of the system and critique of their functions.

## **Course Aims**

The aims of the course are to:

- i. Introduce you to the various aspects of the Criminal Justice Administration system in Nigeria.
- ii. Help you to understand the important organs of the Criminal Justice Administration system by starting from the historical development of the organs and gradually helping you to understand the current position of the law.
- iii. Provide you with an in dept appraisal of the court system.
- iv. Systematic introduction to the enabling laws on the administration of justice.
- v. Analysis of the constitutional provisions on administration of justice.

## **Course Objective**

1. Identify the important organs of the administration of criminal justice in Nigeria.
2. Demonstrate the inter-relationship of the various organs.
3. To assess the role of the Police in law enforcement administration.
4. The use of sentencing both as treatment of offenders and as a form of punishment.

## **Working through the Course**

This course is divided into modules (sections) and units. There are Self Assessment Exercises within each unit and a Tutor Marked Assignment (TMA) at the end of each unit. You are expected to answer these self review questions unaided. Additional requirements for the course will include an appraisal and a final examination.

This course guide tells you briefly what the course is all about, what you are expected to know in each unit, what course materials you need to use and how you can work your way through these materials.

## **Course Materials**

The main components of the course are:

1. The course guide
2. Study units
3. References
4. Assignments
5. Presentation Schedule

## **Study Units**

There are Twenty-one study units in this course spread through five modules. These are as follows:

### **Module 1 Machinery of Justice**

- |        |                                 |
|--------|---------------------------------|
| Unit 1 | Development of the Court System |
| Unit 2 | Inferior Courts in Nigeria      |
| Unit 3 | Inferior Courts in Nigeria 2    |
| Unit 4 | Appellate Courts in Nigeria     |
| Unit 5 | High Courts in Nigeria          |
| Unit 6 | Administration of Courts System |

### **Module 2 Police in Criminal Justice Administration**

- |        |   |
|--------|---|
| Unit 1 | Evolution of the Nigeria Police           |
| Unit 2 | Structure of the Nigerian Police          |
| Unit 3 | Powers and Responsibilities of the Police |
| Unit 4 | Abuse of Power                            |

### **Module 3 Sentencing and Treatment of Offenders**

- |        |                                |
|--------|--------------------------------|
| Unit 1 | Sentencing Procedure           |
| Unit 2 | Sentencer's Aims               |
| Unit 3 | Non – Custodial Measures       |
| Unit 4 | Other Non – Custodial Measures |
| Unit 5 | Ancillary Orders               |

**Module 4 Prisons**

- Unit 1 Purpose of Imprisonment
- Unit 2 Imprisonment Intended and Unintended Effects
- Unit 3 Prisoners Rights
- Unit 4 Other Correctional Measures

**Module 5 Administration of Criminal Justice System in Nigeria**

- Unit 1 Administration of Criminal Justice System in Nigeria
- Unit 2 Mode of Criminal Trials

**General Introduction**

In this module you will be exposed to the court and its importance in the criminal Justice System in Nigeria. The human society is dynamic, interrelated and ever growing and advancing in every ramification. The rule of the Jungle where the fittest and the strongest is in charge cannot be tolerated if there is going to be anything like civilization. Yet human nature breeds oppression of the weak by the strong - while evolution of the state itself has to do with protection of the weak from the oppressive tendencies of the strong. The quest for justice and protection brought the law and the law itself is a sure safeguard and handmaiden for Justice. Yet persons who are trained to administer Justice must administer justice according to a set of roles and laws.

The machinery of Justice, and the law itself, because it forms the basis for the dispensation of justice, where the machinery is faulty, the dispensation of justice itself will not be entirely free from fault. The ultimate aim of every good government and in fact a veritable test of good governance is the faith people repose in the administration of justice, and satisfaction in the system believing that the judicial is system is free from fraud and is fundamentally positioned to dispense justice in all issues. Failure of the machinery of justice therefore is an invitation to anarchy, when people lose faith in the system. The law of the jungle will take over.

In this cause the student will be exposed to the Nigerian Legal system generally and as it relates to the criminal justice system. The student will learn that there is no special court in Nigeria specifically designated as criminal courts, but there is a quite distinct and separate criminal justice system though interwoven with the civil system but quiet distinguishable and interconnected; court system as a complete machinery of justice.

Module 2 will examine law enforcement administration. Module 3 will discuss the issue of sentencing and treatment of offenders, module 4 will look at the prison / correctional institutions and Module 5 examines general principles of administration of criminal justice in Nigeria. Each module is divided into appropriate units, and the student is expected to answer the self assessment exercises and also the tutor marked assignment to test their understanding of the each Unit.

### **Textbooks and References**

The following books are suggested for further reading.

- Children and Young Persons Law cap. 25, Laws of Lagos State.
- Magistrate Courts Law cap. 127 Lagos State.
- Customary Courts Law cap. 34, Lagos State.
- Coroners Law cap. 31, Law of Lagos State.
- Constitution of Federal Republic of Nigeria 1999.
- Akande (2000); Introduction to the Constitution of Nigeria 1999;
- Legal Education Act 1962.
- Tamuno, 'The Police in modern Nigeria, University Press Ibadan 1971.
- Nwankwo, Human Rights Practices in the Nigerian police, CRP 1993.
- Police Act cap. P.19 2004 LFN
- Nigeria Police Regulations.
- Gibbons, (1968) society crime and criminal corners U.S.A.
- Police Act.
- Nwankwo, Mbachu, Ugochukwu (1993) Human Rights Practices in the Nigerian Police; C.R.P., Lagos.
- Walker, (1985) Sentencing. Theory, Law and Practice, Butter Worth's.
- Walker (1985) sentencing theory and practice: Butter worth's.
- Sutherland E. (1947) principles of criminology, Philadelphia, Lippincolt.
- Thomas D.A. (1979) Principles of sentencing in the court of appeal. Heireman London.
- Fair head, s. and Wilkison – Grey (1981), Day centers and probation (Home office Research unit Reper 4) London, Home office.
- Zellick, G. (1980) "Prison Offences" in British Journal of Criminology 20.
- Inigo Bing (1999) Criminal Proceeding and Sentencing in the magistrates court; 5<sup>th</sup> ed sneel & Maxwell.

- Walker Nigel, (1985) Sentencing theory law and practice. Butterworth's
- Walker (1985), Sentencing Theory, law and Practice London
- Shaws, S. (1982) The peoples Justice prison reform trust London.
- Sykes G. (1958) the society of captives, Princeton, University Press.
- Prison Regulations
- Worker (1987) Sentence, Theory and practice London.
- Thomas, (1979) principles of sentencing Heinemann Books London.
- Criminal Procedure Act, S413 – S434.
- Criminal Prodedure Act LFN 2004

### **Assignment File**

In your assignment file, you will find all the details of the works you must submit to your tutor for making. The marks you obtain for these assignments will count towards the final mark you obtain for this course. Further information on assignments will be found in the Assignment File itself, and later in this Course guide in the section on assessment.

There are many assignments for this course, with each unit having at least one assignment. These assignments are basically meant to assist you to understand the course.

### **Assessment**

There are two aspects to the assessment of this course. First, are the Tutor-Marked Assignments; second, is a written examination.

In tackling these assignments, you are expected to apply the information, knowledge and experience acquired during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the Assignment File. The work you submit to your tutor for assessment will account for 30 percent of your total course mark.

### **Tutor-Marked Assignment (TMAs)**

There are 21 tutor-marked assignments in this course. The best four (that is, the highest four of the 20 marks) will be counted. Each assignment counts for 20 marks but on the average when the four assignments are put together, then each assignment will count 10% towards your total course mark. This implies that the total marks for the best four (4) assignments, will constitute 30% of your total course mark.

The Assignments for the units in this course are contained in the Assignment File. You will be able to complete your assignments from the information and materials contained in your references, reading and study units. However, it is always desirable at this level of your education to research more widely, and demonstrate that you have a very broad and in-dept knowledge of the subject matter.

When each assignment is completed, send it together with a TMA (tutor-marked assignment) form to your tutor. Ensure that each assignment reaches your tutor on or before the deadline given in the Assignment File. If, for any reason you cannot complete your work on time, contact your tutor before the assignment is due to discuss the possibility of an extension. Extensions will not be granted after the due date unless there are exceptional circumstances warranting such.

### **Presentation Schedule**

Your course materials give you important dates for the early and timely completion and submission of your TMAs and attending tutorials. You should remember that you are required to submit all your assignments by the stipulated time and date. You should guard against lagging behind in your work.

### **Final Examination and Grading**

The final examination for to **CSS 371: Court and Justice Administration in Nigeria** will be of three hours' duration and have a value of 70% of the total course grade. The examination will consist of questions, which reflect the practice exercises and tutor-marked assignments, you have previously encountered. All areas of the course will be assessed.

Use the time between the completion of the last unit and sitting for the examination, to revise the entire course. You may find it useful to review your tutor-marked assignments and comment on them before the examination. The final examination covers information from all aspects of the course.

### **Course Marking Scheme**

**Table 1: Course Marking scheme**

<b>ASSIGNMENT</b>	<b>MARKS</b>
Assignments	Best four marks of the Assignments @ 10% each (on the average) = 30% of course marks
Final Examination	70% of overall course marks
Total	100% of course marks

## How to Get Most from this Course

1. In distance learning, the study units replace the university lecture. This is the one of the great advantages of distance learning, you can read and work through specially designed study materials at your own pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way a lecturer might give you some reading to do, the study units tell you when to read, and which are your text materials or recommended books. You are provided exercises, to do at appropriate points, just as a lecturer might give you an in-class exercise.
2. Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives.

These objectives let you know what you should be able to do, by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your chances of passing the course.

3. The main body of the unit guides you through the required reading from other sources. This will usually be either from your references or from a reading section.
4. The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutor or visit the study centre nearest to you. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.
5. Read this Course Guide thoroughly, it is your first assignment.
6. Organise a Study Schedule – Design a 'Course Overview' to guide you through the Course. Note the time you are expected to spend on each unit and how the assignments relate to the units. Important information, e.g. details of your tutorials, and the date of the first day of the Semester is available at the study centre. You need to gather all the information into one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates and schedule of work for each unit.

7. Once you have created your own study schedule, do everything to stay faithful to it. The major reason that students fail is that they get behind with their course work. If you get into difficulties with your schedule, please, let your tutor know before it is too late for help.
8. Turn to unit 1, and read the introduction and the objectives for the unit.
9. Assemble the study materials. You will need your references and the unit you are studying at any point in time.
10. As you work through the unit, you will know what sources to consult for further information.
11. Visit your study centre whenever you need up to date information.
12. Well before the relevant due dates (about 4 weeks before the dates), visit your study centre for your next required assignment. Keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due date.
13. Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study materials or consult your tutor. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to space your study so that you can keep yourself on schedule.
14. When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the Assignment is returned, pay particular attention to your tutor's comments, both on the tutor-marked assignment form and also the written comments on the ordinary assignments.
15. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the Course Guide).

## **Facilitators/Tutor and Tutorials**

There are 15 hours of tutorials provided in support of this course. However, tutorials are not compulsory, demand driven, and are meant to be problem – solving sessions. You will need to contact your tutor for more information of these tutorials, together with the name and phone number of your tutor.

Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and provide assistance to you during the course. You must mail your tutor-marked assignments to your tutor well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor by telephone, e-mail, or discussion board. The following might be circumstances in which you will find help necessary. Contact your tutor if: -

- You do not understand any part of the study units or the assigned readings.
- You have difficulties within the exercises.
- You have a question or problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials if you have problems. This is the only chance to have face-to-face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefits from course tutorials, prepare a question list before attending them. You will learn quite a lot from participating in the discussions

## **Summary**

CSS 371 aims at equipping you with deep understanding of the courts system, the role of the court and judiciary in the administration of criminal Justice, we also studied the role of the Police, and the constraints of the Police in performing their constitutional duties. The sentencing of offenders and aims of sentencing and treatment of offenders as well as a general overview of the mode of criminal trials.

If you follow the above advice you are sure to be successful in this course.

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## **GENERAL INTRODUCTION**

In this module you will be exposed to the court and its importance in the criminal Justice System in Nigeria. The human society is dynamic, interrelated and ever growing and advancing in every ramification. The rule of the Jungle where the fittest and the strongest is in charge cannot be tolerated if there is going to be anything like civilization. Yet human nature breeds oppression of the weak by the strong - while evolution of the state itself has to do with protection of the weak from the oppressive tendencies of the strong. The quest for justice and protection brought the law and the law itself is a sure safeguard and handmaiden for Justice. Yet persons who are trained to administer Justice must administer justice according to a set of roles and laws.

The machinery of Justice, and the law itself, because it forms the basis for the dispensation of justice, where the machinery is faulty, the dispensation of justice itself will not be entirely free from fault. The ultimate aim of every good government and in fact a veritable test of good governance is the faith people repose in the administration of justice, and satisfaction in the system believing that the judicial system is free from fraud and is fundamentally positioned to dispense justice in all issues. Failure of the machinery of justice therefore is an invitation to anarchy, when people lose faith in the system. The law of the jungle will take over.

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Module 2 will examine law enforcement administration. Module 3 will discuss the issue of sentencing and treatment of offenders, module 4 will look at the prison / correctional institutions and Module 5 examines general principles of administration of criminal justice in Nigeria Each module is divided into appropriate units, and the student is expected to answer the self assessment exercises and also the tutor marked assignment to test their understanding of the each unit.

## **MODULE 1      MACHINERY OF JUSTICE**

Unit 1	Development of the Court System
Unit 2	Inferior Courts in Nigeria
Unit 3	Inferior Courts in Nigeria 2
Unit 4	Appellate Courts in Nigeria
Unit 5	High Courts in Nigeria
Unit 6	Administration of Courts System

### **UNIT 1      DEVELOPMENT OF THE COURT SYSTEM**

#### **CONTENTS**

1.0	Introduction
2.0	Objectives
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3.1	Judicial System before Colonization
3.2	Customary Law
3.3	Colonial Era
3.4	Development of Court after Colonization Court System under the Federal Constitution
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
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#### **1.0      INTRODUCTION**

The primary and basic ingredient of the criminal justice system is the law setting up the courts without the law there will be no definitive system of criminal justice, in any query about the criminal justice system we must start with the enabling law. We must understand that the law or the courts as we have it today evolved over a period of time, and therefore it is appropriate to go into history and learn how these laws evolve, how the courts and the machinery of justice developed in Nigeria, this will give us a deeper and quicker understanding of the current status of the system. Secondly we must appreciate the fact that the court system and the entire machinery of justice is not only complex but it is quite intricately interwoven and the ordinary man on the street may find it most difficult to understand its workings and interdependence. The difference between the Customary Law and the criminal justice system, and how the law declares the well known rules of customary law as void and unenforceable may be beyond the understanding of a layman.

Thirdly, most of the current institutions and the entire judicial system not only evolve from the received English laws adopted by Nigeria or indirectly imposed by the colonial masters, there has been the use of Customary Laws of the people which were not entirely discarded but allowed to be a part of the laws of Nigeria, here we must try to grasp some of these very interesting developments in the legal system for a thorough and deeper understanding of its intricacies.

## **2.0 OBJECTIVES**

By the end of this Unit you will be able to understand.

- The nature of the law before advent of colonialism.
- The type of judicial system if any in existence before colonization.
- The influence of colonization on the Customary Judicial System.
- The court system in Nigeria, today
- The different courts
- The hierarchy of courts today.

## **3.0 MAIN CONTENT**

### **3.1 Judicial System before Colonization**

Before the introduction of the British system of government and its courts in Nigeria, each tribe had developed their separate Customary Law that binds the people. In the northern States, the Emir as the Supreme Ruler with his advisers constitutes the Supreme Court of the land. They resolve land, family and inheritance disputes. In most cases, these cases are referred to the Alkalis, who are teachers on Islamic law. In the west, the Oba in council adjudicates on all issues brought before them, and they applied strict Customary Law in resolving the disputes. While in the East, the Elders in Council and the age grades help very much in settling disputes and in the application of Customary Law. All the tribes in Nigeria also have a set of Customary laws regulating criminal conducts in the society, known as customary criminal law which covers all known crimes in the society, like theft, rape, murder, manslaughter etc. and they all have powers within their communities to impose fines, imprisonment, banishment from the community, death etc; they also impose punishments like, public caning, public apology, offering of sacrifices or appeasing the gods.

The Customary System of both civil and criminal adjudication are very well known to the whole community and observed.

## **SELF ASSESSMENT EXERCISE 1**

Describe the customary system of criminal Adjudication in your community?

### **3.2 Customary Law**

Though much of our laws today come under the influence of English law brought into Nigeria as a result of colonization. Before the advent of colonization there is what we call customary law. (As we learnt above). Customary law has been described as body of law that evolved from the custom of the native people. As opposed to the so called civilized countries, whose laws are normally erected by a sovereign or supreme legislature, customary law simply evolved from a pattern of behavior of the people, (accepted norms of behavior) As soon as the people accept a particular norm it is clothed in legal validity, while those that have not been adopted or once adopted but has been abandoned will no longer qualify as a customary law.

The next question is the issue of sanction, all civilized laws are backed by sanctions, where there is a breach of customary law, the people themselves normally will collectively determine the appropriate sanction. In some societies in pre – colonial Nigeria, there are Chiefs and Obas, both in the North and Western Nigeria, who have been authorized by the people to serve as Judges, in most cases the Obas or Chiefs will normally sit in Council and hardly ever determine any issue without consultations with the elders within the community, in effect all sanctions are collectively determined and the type and gravity of the sanctions for particular offence is carefully noted, as a guide in case of future breach. The sanction for an offence is therefore uniform and regular, though each case is examined and determined on its own merit.

Customary law has a distinctive characteristic of being totally unwritten and only known to its subjects. It is not all the practices and customs that have the force of law, many practices are merely complied with without any fear of being sanctioned when there is a breach, while some that touches the life and well being of the community or affects the well being of the community is normally backed with sanctions. The court system though seemingly rudimentary is quite effective, and there are also local police attached to the kings court to enforce the decisions of the courts, while the council of elders and other family heads also cooperate to ensure strict observance to the sanctions.

## **SELF ASSESSMENT EXERCISE 2**

Discuss the customary criminal justice system in any indigenous community in Nigeria?

### **3.3 The Courts in the Colonial Era**

In the year 1900 there was a change of sovereignty in the territory now called Nigeria. Hitherto, the societies are governed by themselves and their customs. But colonization brought the British in Nigeria as the supreme power having complete jurisdiction over the country. The obvious result is that the English laws were imported and applied in Nigeria, while simultaneously the British engaged in making laws for the good governance of Nigeria. The result is drastic, in the words of Lord Dunedin, "in all cases (of change of sovereignty) the result is the same. Any inhabitant of the territory can make good in municipal courts established by the new sovereign only such rights as that sovereign has, through his officers, recognized such rights as he had under the rule of predecessors avail him nothing".

The effect of the above is tremendous on the customary law. In the first instance, Native law and custom is recognized as an established law, though the law must be differentiated from the mere practice having no legal status. It also follows that upon being established as the law of the people, the whole apparatus of Coercion of the state is made available to enforce the law. The fresh problem is proof of the relevant customary law and its establishment.

The Native courts established by the English colonial masters were enjoined to apply native law and customs and to put the laws into writing. This power was transferred to native Authorities in 1945. Such rules once made and approved have the force of law.

Though the British colonialists allow application of the customary law, the law must still have to pass certain tests before it could be applied, it was these tests that conclusively changed the form and content of customary law. The tests are;

Repugnancy to natural justice, equity and good conscience  
Incompatibility with local enactments.

In the field of criminal law, initially the native courts were allowed to administer the customary criminal law alongside the criminal code in 1959, the Western and Northern Regional Governments in Nigeria abolished all criminal jurisdiction under customary law unless the customary offence

may have been embodied in a law made by a local council or a native authority.

In 1960, the Nigerian Constitution put the final nail on the coffin of customary criminal law, when it declares that, no person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is presented in a written law.

### 3.4 British Courts

In Southern Nigeria before the amalgamation of the country, a single court named Supreme Court served the region. The Supreme Court consisted of the Chief Justice and a small number of pursue judges.

The court operated as a court of law and it sometimes apply the doctrines of equity. As a court of law, its powers are unlimited. It operates as 3 organs:

**Full Court:** Appeals from the divisional courts normally go to the full court, sitting with the Chief Justice as the presiding judge, with at least two other judges of the Divisional courts.

**Divisional Court:** Southern Nigeria was then divided into divisions, and each operates with a judge of the supreme court exercising the original jurisdiction of the supreme court of and also serves as court of Appeal for native and District Courts.

**District Courts:** The Administrative Officer of each district is the ex-officio commissioner of the Supreme Court, in that capacity, he constituted a court called the District court charged with limited jurisdiction. It was an inferior court.

After amalgamation of the country, there was established 3 main types of court,

- (1) The Supreme Court
- Provincial Courts and
- Native courts

From 1933 – 1944, after reforms carried out by Sir Donald Cameron the then Governor of Nigeria, the following courts was established in Nigeria:  
The Native Courts

The protectorate courts later replaced by the High Courts and amalgamation court.

The Supreme Court

The West African Court of Appeal

### **3.5 Court System under the Federal Constitution**

Upon coming into force of the 1954 Federal Constitution, each region (Western, Northern and Eastern Regions of Nigeria) was empowered to establish its own court. By virtue of the Regional Constitutions, each established its High Court, Magistrate court, customary or Native courts as the case may be. Appeals lie from the High Court of a Region to the Supreme Court.

The Privy Council still remained the highest court in the land until 1963 when the constitution of that year was enacted and Nigeria became a Republic.

From the history of the court system in Nigeria and the development of our laws, it is noteworthy that the Regional Laws draw their source from the same received laws and the Federal enactments, most of the laws were re-named as state laws. The decisions of the Regional High Courts are entitled the greatest weight in other regions especially where the law remains the same. In criminal procedure, there is almost uniformity in the South, while in the North, criminal procedure code 1960 has been enacted to replace the criminal procedure code for that region, which in some respect differ from the Southern criminal procedure Act.

### **SELF ASSESSMENT EXERCISE 3**

Trace the origin of the courts system in Nigeria from the colonial era to date.

### **4.0 CONCLUSION**

It is essential to realize that the present court system and the entire legal system developed over time and several factors have impacted on its development, these include our customary law, the received English laws and the constitutions, as the machinery of justice in Nigeria develops so also the political development in the polity encourage the expansion of the legal system.

### **5.0 SUMMARY**

We have traced the evolution of the legal system and have seen that our current courts system originate from the customary system but gradually replaced by the colonial imported laws to enable a proper functioning of their own perception of law and subject the customary law of the people to tests of repugnancy in order to be acceptable in the English introduced courts.

## **6.0 TUTOR-MARKED ASSIGNMENT**

1. Discuss the evolution of the court system in Nigeria?
2. Explain the repugnancy test on customary law?

## **7.0 REFERENCES/FURTHER READING**

Park A.E.W. (1963) - The Sources of Nigerian Law

Dr. Mojeed O.A. Alabi (2002) - The Supreme Court

Femi Soyaju (2005) Rudiments of Nigerian Law

## **UNIT 2     INFERIOR COURTS IN NIGERIA**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Inferior / Superior Courts
  - 3.2 Area and Customary Courts
  - 3.3 Magistrate Courts / District Courts
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References / Further Reading

### **1.0 INTRODUCTION**

It is of great importance to closely examine the court system with a view to know exactly the constitutional and other legal provisions of these courts. Here we must learn that courts differ both in structure, purpose, jurisdiction, personnel, and powers. Court classifications are generally made along these lines. Whether they are inferior or superior, or whether they are courts of Record or not. You would have noticed that lawyers do wear only suits in some courts and wear wig and gowns in others. In this unit we shall examine the class of courts better known as inferior courts.

### **2.0 OBJECTIVES**

It is hoped that at the end of this unit you should be able to

- Mention all inferior courts.
- Discuss and explain customary courts.
- Discuss the jurisdiction and powers of the magistrate courts.

### **3.0 MAIN CONTENT**

#### **3.1 Inferior Courts**

There are four types of courts that could be regarded in Nigeria as inferior courts, while two, though strictly could not be regarded as a court but play important role in the administration of Justice in Nigeria.

We may hasten to explain from the onset, in Nigeria, we have superior and inferior courts of Record. Court of Record simply means courts that record its judicial acts and proceedings in writing or record book for permanent preservation and memorial.

We must note however that all courts in Nigeria must record their proceedings in the Record Book of the court. The inferior courts of Record are therefore courts that are established by laws other than the constitution of the Federal Republic of Nigeria. They are inferior because their judgments or decisions are not binding on any court, and is not binding on the court itself, its decisions are not reported in any law reports, and its proceedings are described as “summary”, and so also its jurisdiction is also described as summary jurisdiction. It is regarded as summary because it may adopt its own procedure to come to a very quick decision and with limited or abridged procedural rules. For instance the litigants need not file any pleadings.

While superior courts of Record are courts established under the Nigerian constitution and they have unlimited jurisdiction in terms of awards they can make. They also have the power to commit anybody for contempt committed either in the face of the court or out of the court. While the inferior courts of record are limited in terms of awards and types of matters they can handle. They are very important in our judicial system as they handle a substantial portion of disputes locally, and about 75% of the matters both civil and criminal matters are settled at this level.

### **3.2 Area Courts/Customary Courts**

Closely related to this is the issue of service of processes the Federal Legislature has enacted a uniform regulations on service of processes. The Sheriffs and Civil Process Act allows the Order of judgment of High Court of a state to be registered in the High Court of another State and so executed by the bailiffs of that state. Though the Customary Courts judgments are exempted from the Sheriffs and Civil Process Act, yet there is a reciprocal enforcement of Customary Courts judgment in each State. From the foregoing it is clear that though there are State Courts in Nigeria, they are merely for easy administrative purpose, the State Courts still exists within a united hierarchy of court in Nigeria.

## **THE STRUCTURE SINCE THE SECOND REPUBLIC TO DATE**

In this section of this paper it is intended to examine the present Court structure, by examine the courts within the context of Machinery of justice in Nigeria.

### **THE INFERIOR COURTS**

#### **1. Native (Area) and Customary Courts**

The Native and Customary Courts in respective states are established under the Customary Courts Law for the respective States. Each Court is

established not directly by the enabling Statute but by Warrants issued by the enabling authority. In the Eastern States the Commissioner for Justice and in Lagos State the Attorney-General and Commissioner for Justice and in the Northern States by Warrant by the Chief Judge of the State.

The warrant defines the jurisdiction, powers, and quorum of the court, it established, and its provisions in that behalf are conclusive.

Area and Customary Courts are the responsibility of the Local Government Council. Customary courts members including the Presidents are appointed by the Customary Courts Judicial Service Committee for the State.

Qualification for appointment are as follows:

- i. He is literate in English Language
- ii. He possess at least the Primary School Leaving Certificate or its Equivalent and suitable experience and
- iii. He is a native of the area of jurisdiction of the Customary Court.

A Customary Court has both civil and criminal jurisdiction. In certain civil matters the Customary court has unlimited jurisdiction i.e.

- a. Matrimonial cases and other matters between persons married under Customary law, that is matrimonial causes and related matters under customary law; and
- b. Suits relating to the guardianship and custody of children under customary law.

It has limited jurisdiction in (1) causes and matters relating to inheritance upon intestacy and the administration of intestate estates under customary law, and (2) other cases under customary law – provided the subject matter of the case does not exceed N100.00.

The Customary Court would exercise criminal jurisdiction in the following cases:

- a. Any offence against the provisions of an enactment, which expressly confers jurisdiction on the court.
- b. Offences against rules and bye-laws made by Local Government Council or having effect as if so made under the provisions of any enactment and in force in the area of jurisdiction of the court.
- c. Contempt of court committed in the face of the court.

### **SELF ASSESSMENT EXERCISE 1**

Discuss the civil and criminal jurisdiction of the Customary Court?

### 3.3 Magistrate Courts

Magistrate Courts are established and governed by the laws of the various States.

In this paper, we will use Lagos State Magistrate Courts Law (cap 127) which fairly represents all the others as a case study. (Amended as Lagos State Magistrate Courts Law 2009).

#### COMPOSITION

In Lagos State the Chief Magistrates Court are graded, Chief Magistrate Grade 1,2; Senior Magistrate Grade 1,2; Magistrate Grade 1,2 and 3. A Court Registrar with the following duties serves every Magistrate.

- a. To attend at such sittings of the court as the Magistrate shall direct.
- b. To prepare or cause to be prepared Summons, Warrants, Orders, convictions, recognises, writs of execution and other documents and submit the same for the signature of the magistrate.
- c. To make or cause to be made copies of proceedings when required to do so by the magistrate and to record the judgments, convictions and orders of the court;
- d. To receive or cause to be received all fees, fines, and penalties, and all other moneys paid or deposited in respect of proceedings in the court and to keep or cause to be kept accounts of the same, and
- e. To perform or cause to be performed such other duties connected with the court as may be assigned to him by the Magistrate.

Every Magistrate is *ex-officio* Justice of the Peace in Lagos State and exercises all the powers of a Justice of the Peace. The Judicial Service Commission is empowered to appoint a justice of the peace as a Magistrate by a Notice Published in the State Gazette.

The Magistrate or Justice of the Peace has powers to:

1. Issue summons and warrants for the purpose of compelling the attendance of accused persons or persons as witnesses before the court;
2. Issue summons and other process in civil causes and matters;
3. Remand to the court persons who are accused but not convicted of crime; or admit them to bail,
4. Issue search warrants,
5. Take solemn Affidavits and Statutory declaration and
6. Administer any oath which may be required to be taken before him in the exercise of any of the jurisdiction and powers conferred upon him by law.

## **ORGANIZATION**

The whole State is divided into districts called Magisterial Districts. The Chief Judge of the State pursuant to powers conferred upon him to divide the state into Districts has by Lagos State Magistrate District Directions divided the whole State into 10 Magistrate Districts. These are:

1. Lagos Magisterial District.
2. Surulere Magisterial District.
3. Yaba Magisterial District.
4. Apapa Magisterial District.
5. Mushin Magisterial District.
6. Ikeja Magisterial District.
7. Badagry Magisterial District.
8. Ikorodu Magisterial District.
9. Epe Magisterial District.
10. Agege Magisterial District.

In practice today, Mushin and Agege Magisterial District are yet to be fully operational, and are still under Ikeja Magisterial District, while Surulere is still under Yaba Magisterial District.

## **JURISDICTION**

Every Magistrate shall have jurisdiction throughout Lagos State. A magistrate's civil and criminal jurisdiction shall extend over any territorial water adjacent to the district in which for the time being he is exercising jurisdiction as well as over inland waters whether within or adjacent to such district. The Chief Magistrate Grade 1 shall have and exercise jurisdiction in civil causes or matters in all personal actions whether arising from contract or from tort, or from both where the Debt or Damage claimed is not more than N25, 000.00. The Magistrate has until the Recovery of Residential Premises Edict, power over landlord and tenant matters. However, they could still adjudicate on landlord and tenant matters where the tenancy is over commercial premises only subject to the N250, 000.00 limits. This has been discovered lately to be too low and has divested the Magistrate Court of jurisdiction in a lot of minor cases that could easily have been handled by them, thus leading to congestion of the High Courts.

However, by virtue of a new Law, Lagos State Magistrates Court (Increase in Civil jurisdiction Amendment Notice) 2001 the monetary jurisdiction of the various cadres of magistrates courts in Lagos State has been increased to amounts ranging from N25, 000.00 in the case of Magistrate grade 2 to N250, 000.00 in the case of Chief Magistrate grade1, the commencement date is 1st May 2001. Furthermore, this position had to the uprading of the jurisdiction of the magistrate court in Lagos State to N10,000,000.00 (Ten

million naira) only. See the Lagos State magistrate courts Law 2009. By virtue of this law, S.6 provides that all magistrates have equal powers, authority and jurisdiction under the law in effect the former categorisation has been repealed. The criminal jurisdiction of the magistrate is only limited by the law that imposed the minimum and maximum punishment for the offence. The magistrate cannot sentence a person to a prison term of more than fourteen(14) years. (See S.29M.C.L 2009). The Magistrate shall observe and enforce the observance of every Customary Law which is applicable and is not repugnant to natural justice, equity and good conscience or incompatible either directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of customary law. It should be noted that all residents of Lagos State are subject to the jurisdiction of Magistrate Courts.

A magistrate is vested with powers to try criminal and civil cases summarily. Summary trial means with dispatch with minimum of formalities. Apart from capital offences, the magistrate may try any criminal matter provided the accused is properly given the option to choose summary trial before the magistrate or prefer his matter before the High Court.

The magistrate court lacks jurisdiction over land, matrimonial and succession matters.

The Magistrate Court entertains appeals from the Customary Courts, and the Magistrate sits as an appellate court over appeals from the customary courts of the State.

### **THE ROLE OF MAGISTRATES IN THE JUDICIAL SYSTEM**

They act as the bridge between the Customary Courts and the High Court; the Customary Courts are concerned essentially with the administration of customary law and local enactments. Their personnel are untrained, and are generally non suitable for the enforcement or interpretation of serious laws but inconsequential enactments. The High Courts on the other hand are manned by lawyers and the procedure very elaborate, strict and formal. The personnel are highly trained individuals both in law and procedure. Thus, there is an obvious gap that must be filled by an intermediate court having a personnel neither completely untrained nor over-exalted, and a procedure which would be both simple and fast. Magistrate, also play very important role in maintaining peace and order in the society; as a peace officer, they also have powers to prevent breakdown of and order in the society; they also administer oaths and take affirmations and declarations. Their role is so vital to the administration of justice considering the fact that majority of the criminal cases going before the High Courts are first charged before the magistrate court on a holding charge while proper charges are being

preferred for the High Court. The police has no right of audience in the High Courts, the intermediate period, between the arrest and investigation and arraignment before the High Court which is normally proceeded by the D.P.P.'s report, is taken care of by the matter being taken before the magistrate on a holding charge.

## **DISTRICT COURTS**

The District Courts are magistrate courts exercising only civil jurisdiction in the Northern Nigeria. They are graded Senior District judge, District Judges grade I, II and III corresponding to the grades of magistrates. They have the same organization, and the magisterial districts serve as he districts for the district courts. The jurisdiction of the district courts is the same as the civil jurisdiction of magistrates in the rest of the country.

## **SELF ASSESSMENT EXERCISE 2**

Examine the role of magistrates in the judicial system.

## **4.0 CONCLUSION**

Clearly, the inferior courts are very important courts in the judicial system as they are not only specialized, but they do handle the bulk of the matters affecting the citizen, as all minor issues are resolved at this stage. They also assist in decongesting the superior courts of record, and serve as court of first instance to the courts of record.

## **5.0 SUMMARY**

We have examined the inferior courts of record; we have five main courts, they are;

1. Area / Customary Courts
2. Magistrate Courts
3. District Courts
4. Juvenile Courts
5. Coroners Courts and;
6. Justice of the Peace, though not strictly a court, but plays a very important role in administration of justice. We have seen that each was established under a specific law, having its own personnel, role, duties and limited jurisdiction.

## **6.0 TUTOR - MARKED ASSIGNMENT**

1. What do you understand by the term inferior and superior courts of Record?
2. Discuss the essential difference between a customary court and magistrate court.

## **7.0 REFERENCES/FURTHER READING**

Children and Young Persons Law cap. 25, Laws of Lagos State.

Magistrate Courts Law cap. 127 Lagos State.

Lagos State Magistrate Courts Law Notice No. 51 vol. 42 of 2009

Customary Courts Law cap. 34, Lagos State.

Coroners Law cap. 31, Law of Lagos State.

## **UNIT 3      INFERIOR COURTS IN NIGERIA 2**

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- 1.0 Introduction
- 2.0 Objectives
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### **1.0 INTRODUCTION**

In this unit we shall look into the legal importance of three main inferior courts in Nigeria, they are Juvenile courts, coroner's inquest and Justice of the peace. They are specialized courts within the machinery of justice, with specific legally recognized specialized areas of jurisdiction.

The only common denominator is that they are moved by magistrates. They cater for a large number of cases that if allowed to be merged with the regular magistrate court will overwhelm the court that is already congested

### **2.0 OBJECTIVES**

At end of this unit you will understand the following: -

- The importance, jurisdiction and powers of the Juvenile court.
- The specific role and duties of coroner's court.
- The importance and duties of Justice of the Peace.

### **3.0 MAIN CONTENT**

#### **3.1 Justice of The Peace**

There are two classes of justices of the Peace viz. ex.-officio and ordinary justices of the peace. The justice of the peace need not be a magistrate in the first instance, he may be appointed as justice of the peace by publication in the state Gazette by the Attorney-General of the state. No qualification is legally required for appointment, but in practice a person to be appointed must reside in the area to which he is to be appointed and be worthy. The justices of the peace, are mostly Chiefs, retired top administrative officers and police officers considered capable enough to be entrusted with some of

the judicial powers of a magistrate. A justice of the peace has the powers, rights and duties of a magistrate to:

- i. Issue summons and warrants for the purpose of compelling the attendance.
- ii. Issue writs of summons and summonses in civil cases.

Remand to a magistrate's court persons who are accused, but not convicted to crime, or to admit them to bail.

Issue search warrants.

Take solemn affirmations and statutory declarations.

Administer any oath, which may be required to be taken before him in the exercise of any of the jurisdiction and power confirmed upon him by law.

Power to preserve peace, to suppress riots and affrays, and to disperse all disorderly and tumultuous assemblies, and for any of these purposes call in the aid and assistance of police officers and others, who shall solely be bound to obey all such lawful commands.

Their main concern is with conservation of peace. In doing this he is entitled to call in the aid of the assistance of police officers. And who shall be bound to obey all such lawful commands. A justice of the peace does not act as a court and do not conduct trials.

### **SELF ASSESSMENT EXERCISE 1**

Mention 5 duties of the Justice of the peace.

### **JUVENILE COURTS**

The first enactment of Juvenile Courts in Nigeria is the Children and Young Persons Ordinance 1943. This has been re-enacted and modified by the different States. A Juvenile court is established in every magisterial district in each state. The court is constituted by a magistrate sitting with such other persons as the Chief Judge of the state may appoint. The Magistrate is the Chairman of the panel, with at least two other persons selected by the magistrate from time to time. The magistrate may sit alone where no panel members have been appointed or where no member of the panel turned up at any sitting of the court and the magistrate thinks it inexpedient to adjourn the proceedings.

Though the Juvenile Court is part of the magistrate court, in order to avoid contamination, it must sit in a separate place or at different times from those in or at which the ordinary sittings of the magistrate courts are held.

A Juvenile Court has jurisdiction to try all types of offences committed by the child i.e. children under the age of 14 and young persons i.e. persons between the age of 14 and 18 years of age. If jurisdiction has been assumed on the basis of the age, the trial may go on, even if it was later discovered

otherwise. A juvenile court cannot convict or use the word convict in its sentence and no child shall be ordered to be imprisoned. A juvenile court has power to commit a juvenile, by means of a corrective order, to approved institution, or a remand home, or to the care of any fit person who is willing to undertake his care, or to the supervision of a probation officer for a period not exceeding 3 years, or order his parents or guardian to pay a fine or enter into recognizance to exercise proper care and guardianship, or to order the juvenile to be caned. But a juvenile court must not sentence a juvenile to death or imprisonment, though a young person may be imprisoned if he cannot be suitably dealt with in any other way.

## **SELF ASSESSMENT EXERCISE 2**

Discuss the importance of Juvenile court in the judicial system.

## **CORONERS COURTS**

The first law on coroners' court was the Coroners Ordinance 1944. Subsequently each region in Nigeria re-enacted their own law, and presently each state of the Federation has its own Coroners law. A coroner's inquest may not strictly be called a court of law but every magistrate is permitted by law to hold inquests under the coroner's law.

It is the duty of a coroner to hold an inquest whenever there is lying in his district the body of a deceased person who died a violent or unnatural death or a sudden death of which the cause is unknown or in a place or under circumstances which in the opinion of the coroner makes the holding of an inquest necessary and desirable.

An inquest must likewise be held in all cases of death in a lunatic asylum or of prisoners or persons in police custody.

A coroner's court is merely a fact-finding body, concerned with the ascertainment of the identity of the deceased and of how, when and under what circumstances he met with his death. A coroner does not commit anyone to trial even where it is discovered that such a person caused the death of the deceased. However, the coroner must stay his inquest, if he finds that criminal proceedings have been or about to be instituted against any person in respect of the death in question; or he comes to the conclusion that criminal proceedings ought to be instituted against such persons.

The coroners inquisition including the depositions and the recognizance's of the witnesses, if any, shall be transmitted by the coroner with all convenient dispatch to the judicial division of the High Court in which the inquisition took place and the registrar of such division shall take charge of such proceedings.

Where the High Court upon examining the coroner's inquest proceedings, in order to satisfy itself of the correctness, legality or propriety of any finding or verdict and as to the regularity of such proceedings where it is not satisfied may

Direct the inquest to be reopened for the taking of further evidence, or for the inclusion in the proceedings thereof and consideration with the evidence already taken, if any evidence taken in any judicial proceedings which may be relevant to any issue determinable at the inquest, and the recording of a fresh verdict upon the proceedings as a whole;

Quash the verdict in any inquest substituting therefore some other verdict which appears to be lawful and in accordance with the evidence mentioned above.

3. Quash the whole inquest, with or without ordering a new inquest.

### **SELF ASSESSMENT EXERCISE 3**

When may the High Court reverse the findings of the coroner's court.

## **4.0 CONCLUSION**

Evidently, the Juvenile courts is a court that caters for the specific need of the juvenile offender, whose aims are totally different from the regular courts.

The attitude of the court is to strive as much as possible to treat the Juvenile offender with a view of assist him in his rehabilitation and reintegration into the society.

The procedure is largely summary and informal, and all concerned are notified including the parents and guardian and all efforts are made to ensure that the juvenile is not lost into the world of crime. The coroner's inquest also serves to investigate and determine the cause of death of people suspected to have died mysteriously. No other court has this function, and the justice of the peace is also empowered to assist in the maintenance of peace and order in the society.

## **5.0 SUMMARY**

The Juvenile court is administered by the magistrate to cater for the specific needs of the Juvenile offender. The coroner's inquest is to look into the cause of deaths of people who died in circumstances that the cause of death create to be inquired into, while the justice of the peace are empowered to help in the maintenance of peace in the society.

## **6.0 TUTOR – MARKED ASSIGNMENT**

1. Discuss the role and jurisdiction of the Juvenile courts.
2. Compare and contrast, the role and duties of the coroner's inquest and justice of the peace.

## **7.0 REFERENCES/FURTHER READING**

## **UNIT 4 APPELLATE COURTS IN NIGERIA**

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### **1.0 INTRODUCTION**

The superior courts of record in Nigeria could be classified into Federal and State courts. The Federal courts consist of the following:

1. The Supreme Court of Nigeria
2. The Court of Appeal
3. The Federal High Court
4. The High Court of Federal Capital Territory
5. The Sharia Court of Appeal of Federal Capital Territory Abuja.

The state courts consist of the following:

1. The High Court of a State
2. Customary Court of Appeal of a State.

In this unit we shall examine the courts in the hierarchy of courts in Nigeria starting from the highest.

### **2.0 OBJECTIVES**

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

- Explain the jurisdiction, role, importance of the Supreme Court.
- The jurisdiction, appellate powers and structure of the court of Appeal.
- The different types of High Court and their powers.
- The role of the Sharia Court of Appeal and Customary Court of Appeal.

### **3.0 MAIN CONTENT**

#### **3.1 SUPREME COURT OF NIGERIA**

The law governing the Supreme Court derives from the following sources:  
The Constitution of the Federal Republic of Nigeria 1999. Which establishes the court, and prescribes the bulk of its jurisdiction and the method for the appointment and dismissal of judges?

The Supreme Court Act.

The Supreme Court rules made by the court.

#### **COMPOSITION AND ORGANIZATION OF THE COURT**

The constitution of the Federal Republic of Nigeria provided for a Court consisting of the Chief Justices of Nigeria, and such number of justices of the Supreme Court not exceeding twenty-one as may be prescribed by an Act of the National Assembly.

The number of Justices of the Supreme Court had been increased from the former limit of 10 to 19 the Chief Justice of Nigeria shall be appointed by the President on the recommendation of the national Judicial Service Commission subject to confirmation by the Senate. The appointment to the office of Chief Justice of Nigeria is therefore not at the discretion of the President, but is based on the recommendation of the National Judicial Service Commission subject to the confirmatory power of the Senate. The minimum qualification of the Justice of the Supreme Court is fifteen-year post call as a legal practitioner. The Supreme Court for the purpose of exercising jurisdiction over any matter shall be duly constituted if it consists of not less than five Justices of the Court, while for the purpose of exercising jurisdiction over appeals under the Fundamental Human Rights Provisions or in the exercise of its original jurisdiction the court shall be properly constituted when Seven Justices sit.

The Supreme Court now sits at Abuja the Nations Federal Capital. The court is served by Registrars and other administrative personnel; the head of the administrative section is the Registrar of the Supreme Court.

#### **JURISDICTION**

The Supreme Court is the final court of Appeal in Nigeria and the decision of the court is final and is binding on all parties. In effect, there is no appeal from the decision of the court. The court has both original and appellate jurisdiction. As we have discussed above, the Supreme Court has original jurisdiction over any dispute between the Federation and a state, or between the federation and a state, or between states if and in so far as that dispute involves any question (whether law or fact) on which the existence or extent

of a legal right depends. In addition, the National Assembly may add, not detract from the original jurisdiction of the court, where the dispute is between the Chief executive of a government and another, or between the Arm of Federal Government and a State. Adefarasin J, in the case of Governor of Kaduna State v the President of Nigeria. In trying to answer the above stated as follows:

“It seems to me that S 212 is designed as well to cover only dispute between one government and government. I consider also that any dispute raises question of law or fact touching upon a legal right”.

The Supreme Court can not exercise original jurisdiction over criminal matters.

### **APPELLATE JURISDICTION**

The Supreme Court, to the exclusive of any other court in Nigeria has jurisdiction to hear and determine appeals from the Court of Appeal. Appeals lie as of right from the decisions of the Court of Appeal to the Supreme Court in the following cases: -

- a. Where the ground of appeal involves questions of law alone, decision in any civil or criminal proceedings
- b. Decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;
- c. Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of chapter iv of the Constitution has been is being or is likely to be, contravened in relation to any person;
- d. Decisions in any criminal proceedings in which any person the Court of Appeal have confirmed a sentence of death imposed by any other court.
- e. Decisions on any question: -
  - i. Whether any person has been validly elected to the office of President or Vice-President under the Constitution.
  - ii. Whether the term of office of President or Vice-President has ceased. Whether the office of President or Vice-President has become vacant and
- f. Such other cases as may be presented by an Act of the National Assembly.

In all other cases, appeal from the decision of the Court of Appeal to the Supreme Court shall be with the leave of the Court of Appeal or the Supreme Court.

Appeals can only lie from decisions of the Court of Appeal to the Supreme Court. And from no other Court in Nigeria. The law after specifying the cases where appeals may lie to the court as of right in S 233 (2) went on to state that all other cases must obtain leave of Court, before appeal may be entertained, the leave must first be sought from the Court of Appeal before the party may apply to the Supreme Court. All interlocutory appeals fall within this category. Appeals must also be by the parties to the appeal or at the instance of any other person interested in the matter.

And in the case of criminal proceedings at the instance of an accused person or the Attorney-General of the Federal or state.

It is noteworthy, that only the National Assembly may extend the cases where appeals may lie as of right to the Supreme Court.

No State may extend the appellate jurisdiction of the Supreme Court, and there is nothing in S 233 (2) (f) that suggests such.

## **PRACTICE AND PROCEDURE**

S236 empowers the Chief Justice of Nigeria to make rules for regulating the practice and procedure of the Supreme Court. Pursuant to this, the Supreme Court rules had been made to aid the internal organization of the machinery of justice at the Supreme Court.

## **SELF ASSESSMENT EXERCISE 1**

Examine the appellate jurisdiction of the Supreme Court.

### **3.2 The Court of Appeal**

The court of Appeal is established under S237 of the 1999 Constitution and is the next Court in the hierarchy of Courts in Nigeria. Other laws are the Court of Appeal Act and Court of Appeal Rules.

## **COMPOSITION AND ORGANIZATION OF THE COURT**

The Court of Appeal consists of the:

President of the Court of Appeal

Such number of Justices of Court of Appeal not less than forty: - nine of which not less than three shall be learned in Islamic Personal Law, and not less than three shall be learned in customary law, as may be prescribed by an Act of the National Assembly.

At the level of the Court of Appeal, the Justices of the Court of Appeal must include at least three Justices learned in Islamic law and three in Customary

Law. This will take care of appeals coming from Customary Court of Appeal of State or Sharia Court of Appeal as the case may be.

The President of the Court of Appeal is appointed by the President of Nigeria on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the Senate while appointment of the Justice of the Court of Appeal is made by the President on the recommendation of the National Judicial Council. The constitutionally recognized qualification for a Justice of the Court of Appeal is twelve-year post qualification as a legal practitioner. The qualification of the President of the Court is not stated in the Constitution though it may be argued that the same qualification as applies to the Justice of the Supreme Court should apply to the President of the Court of Appeal, as they are rated in most cases equal. For ease of administration, the Court of Appeal is divided into divisions, spread throughout Nigeria. Today there are 10 divisions of the court each division serving one or more state as follows: -

<b>JUDICIAL DIVISIONS</b>	<b>STATES</b>
1. Abuja	- Abuja, Kogi, Niger
2. Lagos	- Lagos
3. Kaduna	- Jigawa, Kaduna, Sokoto, Kano, Katsina, Yola, Kebbi, Sokoto, Zamfara.
4. Enugu	- Anambra, Ebonyi, Enugu
5. Ibadan	- Ogun, Osun, Oyo
6. Benin	- Delta, Edo, Ondo
7. Jos	- Adamawa, Bauchi, Benue, Borno, Gombe, Nasarawa, Plateau, Taraba, Yobe.
8. Port Harcourt-	Abia, Bayelsa, Imo, Rivers
9. Ilorin	- Kwara, Ekiti.
10. Calabar	- Cross-River, Akwa Ibom.

The court will be duly constituted to hear and determine appeal if it consists of not less than three Justices of the court. Where the appeals originate from a Sharia Court of appeal, the Justices must be learned in Islamic Law.

### **JURISDICTION**

The Court of Appeal is principally an Appellate Court and exercise Jurisdiction over appeals from the Sharia Court of Appeal, Federal High Court and High Court of a State. However, S 239 now confers on the court original jurisdiction in respect of Election petitions arising from election to the office of President or Vice-President, their term of office and vacancy of the office. The court was established under Constitution (Amendment) No. 2 Decree 1976 exclusively as an appellate court, but the position has been thus altered.

## APPEALS

Appeals to the Court of Appeal may be classified into two, Appeals as of right and Appeals by leave of the court or the lower court.

### APPEALS AS OF RIGHT

S 241 of the Constitution of Nigeria 1999 specifies circumstances when appeals shall lie as of right from the decision of the High Court and the Federal High Court, High Court of Federal Capital Territory, Abuja, as follows:

- a. Final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance.
- b. Where the ground of appeal involves questions of law alone, decision in any civil or criminal proceedings.
- c. Decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution.
- d. Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of chapter IV of this Constitution has been, is being or is likely to be contravened in relation to any person.
- e. Decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death.
- f. Decisions made or given by the Federal High Court or High Court.
  - a. Where the liberty of a person or the custody of an infant is concerned.
  - b. Where an injunction or the appointment of a receiver is granted or refused.
  - c. In the case of a decision determining the case of a creditor or the liability of a contributory or other officer under any enactment relating to companies in respect of misfeasance or otherwise.
  - d. In the case of a decree nisi in respect of misfeasance or otherwise.
  - e. In such other cases as may be prescribed by any law in force in Nigeria.
- g. There is absolutely no right of appeal where (a) the High Court has granted an unconditional leave to defend an action.
- h. Where a Decree absolute of a divorce or nullity has been granted in favour of a party and the other party did not appeal while the order was still a decree nisi
- i. Decisions based on the consent of the parties cannot be challenged on appeal except with the leave of either the High Court or Court of Appeal, or appeals as to costs only.

Appeals with leave: - like the Supreme Court, appeals lie to the Court of Appeal from the High Courts, with the leave of either the High Court or the Court of Appeal, in all other cases. The practice is to first seek the leave of

the High Court, to appeal, and when such is refused, the appellate may then apply to the Court of Appeal for leave to Appeal.

It is important to state that only parties to suit may appeal or in cases where there are interested parties, then they must first apply for leave to appeal to the High Court or the Court of Appeal.

### **APPEALS FROM SHARIA COURT OF APPEAL AND CUSTOMARY COURT OF APPEAL**

Appeal lie from the Sharia Court of Appeal of a State to the Court of Appeal in any civil proceedings before the Sharia Court of Appeal the respect to any question on Islamic personal law, which the Sharia Court of Appeal is competent to decide. The Sharia law is essentially Islamic Civil Law, the Court of Appeal will therefore not be competent to entertain any appeal on Islamic Criminal Law like the one now introduced.

### **APPEALS FROM CODE OF CONDUCT TRIBUNAL AND OTHER COURTS OR TRIBUNALS**

Appeals shall lie as of right from the decisions of the Code of Conduct Tribunal to the Court of Appeal, appeals shall also lie to the Court of Appeal from the decisions of National Assembly Election Tribunals, Governorship and legislative Election Tribunals.

The National Assembly is also conferred with powers to extend the jurisdiction of the court of appeal to determine appeals from decisions of any other Court of law or Tribunal established by the National Assembly.

### **SELF ASSESSMENT EXERCISE 2**

Discuss the structure of the Customary Court of Appeal.

### **IMPORTANCE OF THE COURT OF APPEAL**

The Court of Appeal is a very important Court in the machinery of justice in Nigeria, unlike the Supreme Court that sits only in Abuja, the Court of Appeal has its divisions closer to the states and thus affords more citizens the opportunity to appeal when aggrieved against any decision of the High Courts. Being a Federal Court, and or an appellate one at that, the allegations of corruption is non-existent there, and many litigants are satisfied with the decisions. It also helps to limit the number of cases going to the Supreme Court, as majority of the cases terminate at the Court of Appeal.

That unlike the Supreme Court, the Court of Appeal has experts in both Sharia and Customary law for proper adjudication on matter arising from the Sharia Court of Appeal of state and Customary Court of Appeal of the states.

### **SELF ASSESSMENT EXERCISE 3**

Discuss when there is Appeal as of right to the Court of Appeal

## **4.0 CONCLUSION**

The constitution not only established the superior courts of record but also made extensive provisions on the jurisdiction and specific provisions on the personnel and structures of the courts, we will discover that though the courts operate independently of each other, yet they are hierarchy and interrelated, and the extensive provisions only help to guarantee the proper dispensation of justice.

## **5.0 SUMMARY**

All the courts in Nigeria belong to only one hierarchy of courts, whether referred to as state or Federal is of little consequence. Appeals lie from High Courts to the court of Appeal to the Supreme Court.

The court of Appeal is strictly an appeal court, while the High Court is not only a court of first instance but also sits on appeal on judgments from the magistrate courts and Area courts.

The High Courts also have unlimited jurisdiction in their civil and criminal jurisdiction. The Supreme Court also in limited circumstance also entertain matters at first instance, these are instances of disputes between states, and between Federal Government.

## **6.0 TUTOR-MARKED ASSIGNMENT**

1. Discuss the jurisdiction of the Federal High Court
2. Explain the Hierarchy of courts in Nigeria.

## **7.0 REFERENCES/FURTHER READING**

Constitution of Federal Republic of Nigeria 1999.

## **UNIT 5 STATE COURTS IN NIGERIA**

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- 4.0 Conclusion
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### **1.0 INTRODUCTION**

The High court is a Superior Court of Record with unlimited jurisdiction. It has original jurisdiction and also appellate jurisdiction over the decisions of the magistrate Courts, Juvenile courts and any other jurisdiction assigned under any other law. The Federal High courts and the State High Courts are of coordinate jurisdiction but having different spores of responsibility, both recognized under the constitution.

Both, have jurisdiction over enforcement of Fundamental Human Rights, and are administered by a judge of the High Court we shall examine the High Court, the High Court of the Federal Capital Territory, and the customary court if Appeal in this unit.

### **2.0 OBJECTIVES**

At the end of this unit you are expected to understand the following: -

- The role, duties, jurisdiction, and importance of the High Court.
- The jurisdiction of the Federal High Court.
- The difference between the two High Courts.

### **3.0 MAIN CONTENT**

#### **3.1 The High Courts**

In this section, we shall examine the Federal High Court, The High Court of the States and the High Court of Federal Capital Territory.

### **3.2 The Federal High Court**

The Federal High Court took its origin from the then Federal Revenue Court Established by Federal Revenue Court Act, 1973, in order to simplify the machinery of Justice in Nigeria, the Constitution Drafting Committee of the 1979 Constitution simply renamed the Federal Revenue Court as Federal High Court with its jurisdiction and powers unaltered. It was thus a court of limited jurisdiction. A complication was introduced by Decree 107 of 1993 which seems to enlarge the jurisdiction of the Federal High Court and also stated that all 'Matters involving the Federal Government and its agencies must to the exclusion of any other court be determined by the Federal High Court.

However, under the 1999 constitution which we now examine the position seems to have been corrected and streamlined.

#### **CONSTITUTION AND ORGANIZATION**

The Court is constituted by a Chief Judge of the Federal High Court and other Judges of the court appointed by the President, in the case of the Chief Judge on recommendation of the National Judicial Council subject to the confirmation of the Senate, while others do not need Senate confirmation, the minimum qualification of the Chief Judge and other Judges of the Court is Ten years post call as a legal practitioner.

There is established in each State of the Federation a division of the Federal High Court. The court is properly constituted, if it consists of at least one Judge of the Court.

#### **JURISDICTION**

S.251 of the Constitution spell out the civil and criminal jurisdiction of the court, they include the following causes and matters.

- a. Relating to the revenue of the Federal Government
- b. Taxation of companies and persons subject to Federal Taxation.
- c. Customs and excise duties, claims against customs service.
- d. Borrowing and other financial institutions actions between two banks, or Central Bank of Nigeria and matters arising out of Banking related issues and other fiscal measures, this does not include Banker/Customer disputes.
- e. Matters arising from the operation of Companies and Allied Matters Act and other Allied Issues.
- f. Copyright, patent designs trade marks and passing-off, Industrial designs and merchandise marks business names, commercial and

- industrial monopolies, combines and trusts standards of goods and commodities and industrial standards.
- g. Admiralty, supply and immigration matters inland waterways and the international waterways, Federal Ports, and consular trade representation.
  - h. Citizenship, naturalization and aliens, deportation, extradition immigration passports and visa matters.
  - i. Bankruptcy and insolvency
  - j. Aviation and safety of aircraft
  - k. Arms, ammunition and explosives
  - l. Drugs and poisons
  - m. Heights and measures
  - n. The administration or the management and control of the Federal Government or any of its agencies
  - o. Proceedings for injunction or declaration affecting the Federal Government or its agencies.

The Federal High Court also has exclusive jurisdiction and powers in respect of treason, treasonable felony and allied offences.

The interpretation of the jurisdiction of the Federal High Court has been the subject of a plethora of cases mainly due to the vague and ambiguous manner the jurisdiction of the court was couched.

For the purpose of exercising the jurisdiction, the Federal High Court shall have all the powers of the High Court of a State. The court also has its own rules of court made by the Chief Judge under S 254 for practice and procedure in the court.

### **SELF ASSESSMENT EXERCISE 1**

Mention at least 6 matters / causes within the jurisdiction of the Federal High Court.

### **3.3 High Court of a State and High Court of Federal Capital Territory**

The High Court is at the head of the judicial system in each state and the Federal Capital territory. Its authority derives from the Constitution and the High Court Laws setting it up.

### **CONSTITUTION**

The High Court consists of the Chief Judge of the State and each number of Judges as may be prescribed by the House of Assembly of the State. The Chief Judge is the head of the State Judiciary and he exercises administrative control over the entire system, though his judicial powers is

not greater than those of other Judges of the High Court; all of whom enjoy equal judicial power and authority.

For the exercise of its original and appellate jurisdiction, a single Judge Constitutes the High Court, except in the Northern States where the court must sit with three Judges on appeals.

Each High Court also have a Chief Registrar who consists the Chief Judge in administrative matters. He is also responsible for the organization of non-judicial matters like filling of papers in court, taxing and costs, general supervision of the staff, and holidays. The appointment to the office is a stepping-stone for appointment to a Judgeship. In some States, he is also the probate Registrar, while some appoint separate Probate Registrars.

The appointment of the Chief Judge of a State is made by the Governor of the State on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State; while the appointment of a Judge of the High Court is made by the Governor acting on the recommendation of National Judicial Council. The minimum qualification for appointment as a Judge of the High Court is Ten years post qualification as a legal practitioner in Nigeria.

## **ORGANIZATION**

High Court of a State is organized on a territorial basis, the State is divided into Judicial Division of the State High Court. There is only one High Court of a State, the Judicial Division are merely created for administrative purposes. The Courts are numbered serially, while in most States, the number 1 is preserved for the Chief Judge in terms of judicial duties and functions, the judge of the High Court in Nigeria is a special person, he is an expert in all areas of law, and must adjudicate on all matters signed to him. This has created a lot of problems and it is still a recurring problem today. In England the position is entirely different, the High Court operates through three division, these are: the Queens Bench Division which handles mainly common law matters, (contract and tort) the Chancery Division with Jurisdiction over trust, property and equity cases generally and the Probate Division, Divorce and Admiralty Division.

This has helped the Judge as well as the law in England, it has enabled the judges to deal with areas of their greatest interest, and naturally made them experts. This may not be very easy in Nigeria due to great distance between the judicial divisions, the number of judges and courts available and lack of communication facilities. In Lagos State, the court is now gradually being organized to enable its work be allocated between its Judges according to their special interests.

## **CIVIL AND CRIMINAL JURISDICTION**

S 272 (1) of the Constitution states 'subject to the provisions of this constitution, the High Court of a State shall have jurisdiction to hear and determine only civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in use or to hear and determine only criminal proceedings involving or relating to any penalty, punishment or other liability in respect of an offence committed by any person.

The high Court thus have original and appellate jurisdiction in both criminal and civil proceedings. The jurisdiction of the High Court in all matters is unlimited. This means that the court is not limited by monetary limitations unlike the Magistrate Courts, and subject to those areas specifically reserve under S 251 for the Federal High Court, and other election matters which is the exclusive preserve of Election Tribunals, the High Court has jurisdiction to try form of issue or matter so far as it relates to determination or extent of a civil right.

## **SUPERVISORY JURISDICTION OF THE HIGH COURT**

The High Court exercise supervisory jurisdiction over the lower courts to ensure not only that justice is done but is seen manifestly to have been done. A mistake as to facts or law committed by a lower court or failure to observe a fundamental rule of evidence, corruption, obvious bias, or failure to observe rule of national justice could lead to miscarriage of justice. The High Court supervises the lower courts in various ways, these are: -

1. Appeal
2. Case Stated
3. Review by means of mandamus, prohibition, certiorari and habeas corpus proceedings
4. Revision through monthly returns submitted by inferior courts.
5. Transfer of cases from one court to another.

Though, in recent times, the use of Fundamental Human Right Proceedings under the Constitution has overshadowed the use of habeas corpus proceedings.

## **SELF ASSESSMENT EXERCISE 2**

Discuss the civil and criminal jurisdiction of the High Court of a State.

### **3.4 The Sharia Court Of Appeal**

The Constitution made provisions for Sharia Court of Appeal for the Federal Capital Territory and the State, the Constitution and jurisdiction are virtually the same.

#### **CONSTITUTION**

The court is constituted by the Grand Kadi of the court and such number of kadis of the court as may be prescribed by the House of Assembly in the case of a State and National Assembly in cases of Federal Capital Territory (F.C.T).

The appointment of the Grand Kadis is made by the Governor acting on the recommendation of the National Judicial Council and confirmed by the Senate. The appointment of other kadis made by the Governor on the recommendation of the National Judicial Council in case of a State while that of the F.C.T. is made by President on the recommendation of the National Judicial Council. The minimum qualification for the appointment into the office of a kadi of the Sharia Court of Appeal is ten years post – qualification as a legal practitioner and the person must have obtained a recognized qualification in Islamic Law from an institution acceptable to the National Judicial Council, or in the alternative, the person has obtained a recognized qualification in Islamic Law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than two years, and (i) he either has considerable experience in the practice of Islamic Law, or (ii) he is a distinguished scholar of Islamic Law.

The implication is that the Kadi of the court need not be a lawyer provided he has attended an Islamic training institution approved by the National Judicial Council and has considerable experience, though the measure of this considerable experience is not specified. Islamic Law itself is regarded as Customary Law, or rules stated in the Koran guiding devoted Muslims. The rule itself only binds those people subject to it and no other person. Therefore, the Kadi need not be a lawyer, perse or trained under English law, and the Rules of Evidence may not be strictly applicable in such court. The only reason why this court was established under the Nigeria Constitution is to enable those states, who wish to practice Islamic Law take the option.

#### **JURISDICTION**

It is essentially an appellate court, and sits over appeals from inferior courts in civil proceedings involving questions of Islamic personal law, these include:

- a. Marriage concluded under Islamic Law, validity, dissolution of the Marriage, family relationship or guardianship of an infant.
- b. Succession inheritance where the deceased person is a Muslim
- c. Where all the parties to a dispute are all Muslims and have requested the lower court to determine their case according to Islamic Personal Law.

There is absolutely nothing under the Constitution that permits the Sharia Court of Appeal to hear or determine Islamic Criminal Law.

Three Kadis constitutes a court. The practice and procedure of the court is regulated by its practice and procedure rules made by the current Kadi of the State. In Nigeria today, the Sharia Court of Appeal exists in all the Northern States, and each Northern State has adopted the Sharia Court of Appeal Law 1960 of the Northern Region.

### **SELF ASSESSMENT EXERCISE 3**

What is the relevance of the Sharia court of Appeal?

### **3.4 Customary Court of Appeal of a State and Customary Court of Appeal of the Federal Capital Territory**

The Constitution also established the Customary Court of Appeal of the State and F.C.T. The judicial head of the Court is the President of the Customary Court of Appeal and other Judges of the Customary Court of Appeal as may be prescribed by the House of Assembly or National Assembly in case of FCT. The Provision for the establishing of the customary Court of Appeal in both FCT and the State are identical.

The President of the Court is appointed by the Governor of the State on the recommendation of the National Judicial Council subject to confirmation by the House of Assembly, while the Judges of the court are appointed by the governor of the State on the recommendation of the National Judicial Council.

The minimum qualification for appointment is ten years post-qualification as a Legal Practitioner and considerable knowledge and experience in the practice of customary law or any one who in the opinion of National Judicial Council has considerable knowledge of and experience in the practice of Customary Law.

### **JURISDICTION**

The court exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Customary Law. The court entertains

appeals from customary courts within the state, and it is properly constituted where three Judges of the court sit over an appeal.

#### **4.0 CONCLUSION**

The High Court of the State stand at the apex of the hierarchy of courts in the state and being a court of unlimited jurisdiction and first intence court. It is responsible for the bulk of cases entering into the judicial system in Nigeria. The importance of this court cannot be over emphasized.

#### **5.0 SUMMARY**

The High Court handles all the criminal matters emanating from the state. It is vested with jurisdiction to try matters that are above the jurisdiction of the magistrate courts. It is a court of Record, and constitutionally vested with original jurisdiction in capital offences. The current jurisdiction of the Federal High Courts is however limited to those areas recognized by the constitution and where specific laws grants such jurisdiction to the Federal High Court.

#### **6.0 TUTOR – MARKED ASSIGNMENT**

1. Discuss the jurisdiction of the State High court.
2. Examine the importance of the High Courts in administration of criminal Justice system in Nigeria.

#### **7.0 REFERENCES/FURTHER READING**

## **UNIT 6 ADMINISTRATION OF COURTS SYSTEM**

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### **1.0 INTRODUCTION**

The machinery of Justice and the administration of justice cannot be adequately discussed until we discuss the administration of the courts in the dispensation of Justice. We must agree that creating the institution of the courts alone without the corresponding competent personnel to manage it will only result in failure. The quality of the judicial output is directly dependent on the competence, incorruptibility, efficient and dependable judicial administration. We must therefore look at the different personnel and participants in the judicial system in order to effectively come to the conclusion as to the impartiality and efficiency of the judicial system.

### **2.0 OBJECTIVES**

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

- Mention the personnel responsible for the smooth administration of the judicial system.
- Role of the legal practitioners
- How independent is the judiciary
- Constraints to efficient dispensation of justice
- Give proposals for reforms

### **3.0 MAIN CONTENT**

#### **3.1 Other Important Parts of the Machinery of Justice in Nigeria**

In this section we intend to highlight in brief the roles of the legal profession, police and the judiciary in the Machinery of Justice in Nigeria.

##### **3.1.1 Legal Profession**

Lawyers are important contributors to the smooth running of the machinery of justice in any civilized nation. Law is the primary machinery; those who profess and study the law are vital part of the machinery, without the lawyer, it is absolutely impossible for the wheel of justice to run if it could ever move at all.

The lawyer functions in various ways:

1. He advises people and the Government on the making of the laws, its interpretation and application.
2. By his training, he is most suitable to appreciate a judge to adjudicate in the interpretation of law, and settling disputes between citizens as well as between Governments.
3. The lawyer represents litigants in courts and help them to present their cases in most logical manner and according to the law.
4. The lawyer also helps in educating the public on their rights, duties and privileges under the law.
5. The Bar also supplies the personnel for the Bench called the Judiciary and also many members of the Bar are now employed as legal advisers to organizations, companies and parastatals, companies and parastatals of Government.

The lawyer therefore is the soul of the whole machinery of Justice without which, Justice will breakdown.

Before 1968, only persons who practiced as barristers or solicitors in England, Scotland or Ireland were admitted to practice in Nigeria under the 1968 Legal Practitioners Act.

The qualifications for Legal Practitioner in Nigeria as a prerequisite to practice in Nigeria are: -

##### **THE CANDIDATE MUST**

1. Be a citizen of Nigeria
2. Satisfy the Chief Justice that he is of good character and

3. Produce a qualifying certificate issued by the Council of Legal Education Certifying that;
  - a. He has attended an approved course of examination taken in conjunction with the approved course of study; and
  - b. That he holds, approved qualification by virtue of study and
  - c. That he has successfully completed a course of practical training for one year of the Nigerian Law School.

The Council of Legal Education is the sole authority in Nigeria saddled with education of lawyers and maintains high standards in lawyers training in Nigeria.

### **SELF ASSESSMENT EXERCISE 1**

Discuss the role of legal practitioners in the judicial system in Nigeria.

#### **3.1.2 Judiciary**

The Judiciary refers to the whole body of lawyers who preside at the courts. The term therefore includes: Judges of the superior courts, and those of inferior courts – Magistrates and Upper Area Courts.

Judges are appointed from the Bar, it is an honor and it is believed that appointment into the Bench is seen as an acknowledgement of having achieved distinction in the profession. Appointments into the higher bench like the High Court is mainly from Magistrates, Registrar of the High Court, State Councils and practicing legal practitioners. While that of the higher bench – the Court of Appeal and Supreme Court are mainly from the High Courts; and Court of Appeal as the case may be.

In Nigeria today, all appointment into the Superior Courts are done on the recommendation of the National Judicial Council; whose duties include general scrutiny, investigation and assessment of each nominee into the Bench.

#### **3.1.3 Independence of the Judiciary**

Independence of the judiciary is necessary to safeguard the whole system from being put ridicule and disgrace. The independence of the judiciary is best safeguarded by the manner of discipline, removal of Judges and emoluments of the judicial officers.

The Constitution made specific provisions for the retirement of Judges. In the case of Supreme Court and Court of Appeal Justices the retirement age has been increased from 65 to 70 years while others are fixed at 65 years.

On removal of Judges from office, the Constitution classified them in two categories (1) Chief Justice of Nigeria, President of Court of Appeal, Chief Judge of Federal High Court, Chief Judge of High Court of F.C.T., Grand Kadi of the Sharia Court of Appeal of F.C.T., President of Customary Court of Appeal of F.C.T. could only be removed by the President acting on address supported by two – thirds majority of the Senate while those of the States by the Governor acting on address supported by two – thirds of member of the House of Assembly. While others shall be on the recommendation of the National Judicial Council that he be so removed for inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for his conduct or contravention of the Code of Conduct. Why the disparity in the cadre of Judges who could be removed through the National or State Assembly and those that will not have such privilege? It will seem to make some Judges more secure than other, misconduct is not defined here, but contravention of Code of Conduct, should mean that the judicial officer have been found guilty by the Code of Conduct Tribunal; more allegation should not suffice.

However, no Judge could appeal before a court in Nigeria after retirement. The Constitution used the phrase “for any reason whatsoever”. Does this preclude a retired Judge from defending himself in a court? He cannot practice as a legal practitioner in/before any Court in Nigeria.

The retired judicial officer is also guaranteed the payment of pension, which is equivalent to his salary till he dies if he has served for 15 years, and attained the 65 years retirement age. This also ensure peace of mind and discourages fear of poverty during retirement that could force some Judges to be corrupt in trying to save extra for their retirement.

### **SELF ASSESSMENT EXERCISE 3**

Mention at least 3 factors that may contribute to the independence of the judiciary.

#### **3.4 The Police Force**

The Nigerian Police is established by virtue of S 214 of the Constitution. It is responsible for the prevention of crime, and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of lives and property and the enforcement of all laws and regulations made by the Federal and State Government and bye laws made by the Local Government authorities.

The Police also help in the enforcement of judicial order and judgments. Their role is very crucial in the administration of criminal justice – in the

lower courts; they are the prosecutors in those courts and present criminal trials.

The police investigates allegations of crime, and submit the results of their investigations to the Ministry of Justice for advice and further action without the input of the police in criminal investigation criminal trials would have been non-existent.

### **SELF ASSESSMENT EXERCISE 3**

Criticise the role of Police in criminal trials.

### **3.5 Clogs in the Wheel of Progress**

It is most disheartening and distressful that the machinery of Justice in Nigeria is still clogged by various reasons which in most cases have nothing to do with the law itself but with the administration of Justice itself. Kayode Eso JSC (as he then was) commented on the state of the Judiciary as follows: "I think it is most disgraceful that the administration of Justice in the country should be clogged in any manner." We will in this section, examine some of the clogs in the wheel of the machinery of Justice in Nigeria. The clogs could be seen from three angles, (1) the lawyers (2) The courts (Judges and Court staff) (3) the litigants.

#### **1. THE ROLE OF LAWYERS**

The lawyers are active participants in the temple of justice, and it needs, discipline, honesty, integrity and good conduct from lawyers to make the wheel of Justice to move in Nigeria today. It is worrisome that a lot of lawyers have taken themselves to subvert the cause of justice and deliberately set out to destroy the very foundation of the profession in which they earn their living. It is unfortunate that most lawyers do not ever bother to examine the rules of professional conduct of their profession, and even when they realize the unprofessional conduct they engage themselves, they persist, as there is no serious machinery to discipline them.

Many lawyers engage in bribing the Judges to get what they want, present fake defendants in court, and refusal to serve the proper defendants. This practice led the Lagos State Judiciary to demand for passport photographs from the Defendants before they enter judgments in recovery of premises proceedings. Use of the court process to abuse the court, causing inordinate delays by the use of crass applications, filling of frivolous motions, writing letters for adjournments and lying as to their whereabouts; many are ready to disgrace their profession in order to "eat", many prefer to stand at the court premises to engage in "charge and bail" most of these "charge and bail" lawyers will even go on to connive with the Magistrates and Police to

refuse bail in order to increase their fees! Many lawyers choose their courts through the connivance of court. Registrars and even Judges!

These are attitudes and behavior that bring the profession to ridicule and make the ordinary man in the public lose confidence in the machinery of justice and tend to push people to the law of the jungle.

### **3. THE COURTS (JUDGES AND REGISTRARS)**

The courts are not left out. The Court Registrars are serious impediments in the wheel of judicial progress. Many will never file court processes unless they are bribed; there have been cases where files have disappeared after bail was granted. Many of our judges are embarrassment for the court and litigants. Many of our Judges are highly intelligent and hardworking; a few had constituted themselves into problems to the judiciary. In the Kayode Eso led panel set up to investigate the activities of Judges and Magistrates inaugurated on 29th December 1993 indicted forty-seven Judges for unethical behavior, persistent reputation for corruption, ineptitude resulting in low productivity, mal-administration and lack of leadership by example, those include, “the negative public perception of the judiciary, exemplified by complaints and allegations of polarization along tribal or political leaning, corruption, and high profile lifestyles of some Judges, long period of time in the disposition of case, high cost of obtaining Justice, mode of appointment of Judges and their terms and conditions of service etc” we need not say more on this.

### **3. LITIGANTS**

Many litigants also contribute to the clog in the wheel of progress. Some in fact approach judges to bribe them in order to obtain judgment. Many are in the habit of persuading their lawyers to help them in choosing their courts. Many, will refuse to pay their lawyers properly to enable the lawyers present their cases diligently in court preferring instead to bribe the judges and court officials. Many are in the habit of changing lawyers at will in order to delay matters in court.

### **SELF ASSESSMENT EXERCISE**

Examine clogs in the wheel of judicial progress in Nigeria.

### **3.6 Reflection for Reform**

Having identified some of the problems in the machinery of justice in Nigeria, the last part of this paper is devoted to suggestions for reforming the system. Reformation is aimed at making the machinery of justice achieve its purpose. The law, as we have seen above is not entirely the

problem, but the large number of people, both the operators (lawyers, justice, court registrars etc) and the public at large who are bent on perverting the whole system and creating a scenario of machinery of justice being used to perpetuate injustice.

The aim of reformation may not necessarily involve amending the law as such, except for those areas that has created loopholes for exploitation by agent of destruction in the society. The making of laws to block the loopholes or creating a whole machinery to check miscreants has been adopted in the past and is not only costly, but diversionary. The problem is that the same Nigerian will be called upon to effect the changes envisaged.

Reforms, must also be people and justice oriented, a system that may be put in place to check abuse of judicial process, which in itself will involve inordinate delays, bureaucracy and thereby encourage inefficiency is a problem created not solved. The cost of trying to block loopholes that allows for corruption of judicial officers is so enormous that it would have been better to leave the situation as it is, reform should be approached in three dimensions from the law point of view, the judicial officers i.e. judges and the staff of the judicial and the litigants.

The law I believe is adequate in many respects. The law as we have it today has evolved over years of use, and has been amended as occasion demands, using experience from other lands and local experience as well. However, the rules of court should be made less cumbersome, in filling of cases, and the rules regarding trials should be less stringent and should make less room for adjournments during trials.

There are cases that went on for more than 10 years while taking evidence. The use of interlocutory appeals to delay the course of justice should be discouraged or minimized. More use should be made of the Rules of court as regard summary judgments, so that issues that are not in disputes could easily be settled without going into extensive trials over non-issues.

The Judges remuneration should be increased to minimize corruption, and those found corrupt should be quickly removed to avoid the spread of the cankerworm. The Judges should also be monitored in terms of the number of cases they dispose off in a month or yearly.

The case of ex parte ruling to perpetuate injustice should also be discouraged; and injunctions should be granted on very rare occasions. Judges should respect decisions of their brother judges, even though they are of coordinate jurisdiction, but many Judges are found of giving contrary rulings all in order to embarrass the judiciary. The examples are during the political problems engendered when Gen. Babangida the former military president of Nigeria did not wish to leave office, some courts in Abuja gave

rulings stopping the publication of the results of the June 12, 1993 election while others in Lagos and Oyo State were busy giving ruling to continue the announcements. The president Babangida in his speech gave us reason for the annulment of the various rulings of court, and in order to save the judiciary the election was annulled.

Any judicial officer found demanding for bribe before doing his legitimate duties, or those who will never wish to do their duties until encouraged with monetary gifts should be removed from the office immediately.

The litigants normally will not give when there is no demand, or when the files are moved appropriately, it is when there is a problem that generally people will want to use money or other inducements to advance their causes.

There should be public enlightenment that any one caught bribing a judicial officer will be punished by the law. Generally, there should be continuous training for judges and other judicial officers, and the appointments into the Higher Bench should be by merit.

#### **4.0 CONCLUSION**

In this unit we have been able to trace the historical basis of the legal system in Nigeria up to the present day.

The machinery of justice in Nigeria is intricate and complex, yet to the operators is very simple and straight forward, and from the constitutional point of view, caters for all aspects of our society and people, either sharia, Customary or English Law no one can complain that he has not been afforded the proper judicial process to entertain his claims. It is left for all the participants in the judicial process to make sure it works. The wheel of justice may be made faster, but surely it is moving it has not broken down progress may be slow, it could be made faster, but surely it is moving, it has not broken down.

#### **5.0 SUMMARY**

The role of lawyers in the quick dispensation of justice cannot be overemphasized and the quality of the lawyers reflects on the judicial system. The role of police is also mentioned briefly, while the independence of the judiciary guarantees its efficiency and acceptance, and will reflect on the nation at large.

## **6.0 TUTOR – MARKED ASSIGNMENT**

1. Critically examine the court system in Nigeria.
2. Write an essay on the Independence of the Judiciary in Nigeria.

## **7.0 REFERENCES/FURTHER READING**

Akande (2000). Introduction to the Constitution of Nigeria 1999;

Legal Education Act 1962.

**MODULE 2 POLICE IN CRIMINAL JUSTICE ADMINISTRATION**

Unit 1	Evolution of the Nigeria Police
Unit 2	Structure of the Nigerian Police
Unit 3	Powers and Responsibilities of the Police
Unit 4	Abuse of Power

**UNIT 1 EVOLUTION OF THE NIGERIAN POLICE****CONTENTS**

1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	Police in the traditional societies
3.2	Advent of the modern police
3.3	Police: 1897 - 1930
3.4	Police: 1930 – to date
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

**1.0 INTRODUCTION**

In almost all societies in the world today we have one form or the other of ensuring that the societal rules and laws are obeyed and sanctions are enforced. The group of people engage in this activity on behalf of the society is known as the police.

The modern police have emerged from these groups many of which are vigilantes or volunteers, but have emerged as the primary means for promoting and maintaining the social order. Formalized police agencies have grown rapidly in size and number from the volunteer groups in the 1800s. The London metropolitan police force was created in 1829, while the professional police force in the United States originated in New York City in 1844.

In this unit, we shall examine the historical development of the Nigerian police, and the study of traditional system of policing; and this will enable us to understand more deeply the workings and legal status of the modern Nigerian police.

## **2.0 OBJECTIVES**

At the end of this unit each student is expected to have a better understanding of

- Evolution of modern police in Nigeria.
- Policing in traditional societies.
- Advent of the modern police.

## **3.0 MAIN CONTENT**

### **3.1 Origin of the Nigerian Police In: Traditional Societies**

Before the onset of the British Colonial rule, Nigerian traditional communities have developed peculiar societal norms and beliefs which over time have metamorphosed into customary laws; these customary laws are backed by sanctions which follow breach of these societal norms. Initially there are groups of volunteers and vigilantes who are conscripted by the community to enforce any sanction imposed by the community. For instance, if the community imposes a fine on any member of the community, and he refused to comply, they may seize any of his properties. As time goes on there emerged a group who are designated as the community police who are allowed to wear a particular uniform, or some other means of identification. They are controlled by the king, Emir or chiefs as the case may be. In Yoruba land, members of the Agemo, egungun, or other secret cults, were responsible for enforcing customary law, just as the oreku mask did among the Akpoto in the idoma division and the mumuo societies did among the Igbo; other communities in traditional Nigerian societies have similar organizations for enforcing sanctions in the community. The pre-colonial methods of policing and maintaining law is quite different from today's modern Nigeria. The traditional police never employ violence in carrying out their purpose. The aim of traditional policing was never to punish or take vengeance, but for the rehabilitation and correction of the offender, and compensate the victim.

### **SELF ASSESSMENT EXERCISE 1**

Discuss the traditional forms of Policing in your community

### **ADVENT OF MODERN POLICE**

The advent of modern police in Nigeria could be traced to the development and role of British traders at the inception of colonial rule.

After the abolition of slavery, the British maintained a squadron in West African countries which intercepted slave trading ships, serving as an early example of a maritime police.

In 1849, the British government appointed a Consul-General for the Bights of Benin and Biafra on the Atlantic Coast of West Africa in the person of John Becraft to promote the so called legitimate trade and prevent quarrels and misunderstandings, between African chiefs and British merchants operating in the area. When the resistance to British rule persisted, the Acting Consul Annesley set up the first police force in the oil Rivers protectorate in 1890. He used the small police force to attack the communities in the old calabar areas. In 1896, Moor was to be appointed a commissioner and consul-General of the protectorate, he recruited some natives to create the oil Rivers irregulars, a military force, and a semi-police force known as court messengers.

The court messengers performed the duties of “military police force executed the orders of the consular courts, arrested and escorted prisoners and protected the vice-consuls when required.

Between 1897 – 98 their total strength was 123. We must note that at this time the police force was used more for military purposes than for civil police duties. At the same time the Royal Niger Company established a constabulary in the area under its control beginning from 1886.

In Lagos, after the annexation of the territory in 1861, the Consul-General established a police force and built a jail. It was the first modern police force in the history of Lagos.

In 1895, the Police ordinance was enacted, creating what was known as Lagos police; its responsibilities included “the prevention and detection of crime, the repression of internal disturbance and the deterrence of the colony and protection against external aggression”.

By May 1906, there were three different police forces serving the British protectorates of Northern and Southern Nigeria and the Lagos colony. When Lagos merged with the protectorate of Southern Nigeria in that month, their forces came under one command, with the amalgamation of the Northern and Southern protectorates in 1914 the control government came under Governor-General. The police force did not merge immediately; however, in 1917 the government enacted the police ordinance of that year which provided uniform rules for the police force in Nigeria.

1st April – 1930 it was known as Nigerian Police Force (NPF) and the Northern and Southern protectorates police force was legally merged. By

1951, under the Macpherson constitution, the Nigerian police force was now reorganized and placed under regional commands answerable to the inspector – General.

In 1960, when Nigeria became independent with the republican constitution there was further changes in the police, and the police was only answerable to the president, though the regional police presence was still evident.

This was exemplified in the powers given to local authorities to control their own local police principally for the maintenance of law and order within the different localities.

In January 1966, the military cap suspended the constitution, and decreed that all local police forces are to be placed under the overall command of the Inspector-General of police. By the end of 1969, the military has completed the total unification of all police formations in Nigeria, and placed under the control of the Inspector-General of police considerable and controlled by the Federal Government of Nigeria.

## **SELF ASSESSMENT EXERCISE 2**

Trace the development of the Nigeria police from the advent of colonialism till date.

## **4.0 CONCLUSION**

From all indications, the present police force have evolved from a checkered history from the military police of colonialist to enforce the laws of colonialist and their rule to the current status of maintaining law and order. Clearly, the refusal to have state police today contrary to many people's expectations by Nigerian government was to avoid the mistakes of the past.

## **5.0 SUMMARY**

Nigeria police force evolved from the quest by the colonial masters first to prevent slave trade, and protect the British merchant's commercial interests. This was later to change after the protectorates were merged into Southern and Northern protectorates, and eventually the 1914 amalgamation that led to creation of one unified police force for the contrary.

The police force evolved through various reforms until the military took power and all regional local 'police' were eventually merged into one police force answerable only to the Federal Government of Nigeria.

## **6.0 TUTOR-MARKED ASSIGNMENT**

1. Examine the development of the modern Nigeria police force.
2. Discuss the developments in the Nigeria police from 1930 till date.

## **7.0 REFERENCES/FURTHER READINGS**

Tamuno, 'The Police in modern Nigeria, University Press Ibadan 1971.

Nwankwo, Human Rights Practices in the Nigerian police, CRP 1993.

## **UNIT 2     STRUCTURE OF THE NIGERIAN POLICE FORCE**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Nigeria Police Council
  - 3.2 Police Service Commission
  - 3.3 Inspector – General of Police
  - 3.4 General Administration
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

The Nigeria Police Force has come a long way from the ‘Military Police’ of the British Police to the sophisticated Police of today employing a large number of personnel with special branches and qualifications for the office in this unit we shall examine the law establishing the Nigeria Police Force, the organization and levels of command. Unlike united States of America where the police is divided into local, state and federal police, here in Nigeria there is only one police force for the whole country though there are state commands, but only controlled and mobilized centrally. We shall examine the structure and organization of the Nigerian Police under this Unit with a view to having a better understanding of their operational activities and limits of their powers.

### **2.0 OBJECTIVES**

The student is expected to learn about and should understand;

- The laws setting up the Nigeria police force (NPF).
- The powers of the Inspector General of Police (IGP).
- The organs controlling the Nigeria Police Force.
- General structure and branches of the police.

### **3.0 MAIN CONTENT**

#### **3.1 The Nigeria Police Council**

The Nigeria Police Council was established under the constitution of the Federal Republic of Nigeria 1999 as a Federal Executive body by virtue of the 3rd schedule, part 1 and S27 and 28. The Nigeria Police Council (NPC) comprise of the following members

The President who shall be the chairman.  
The Governor of each state of the Federation.  
Chairman of the Police Service commission.  
The Inspector General of Police.

The major functions of the council are three fold, these are  
The organization and administration of the Nigeria Police Force and all other matters relating thereto.  
The general supervision of the Nigeria Police Force and;  
Advising the President on the appointment of the Inspector General of Police.

The council however does not have the power over matters relating to the use and operational control of the Force or the appointment, disciplinary control and dismissal of members of the force. You may note that consultation with the council on appointment of the IGP also includes removal from office.

The constitutional provisions was also re-enacted in S 9 of the Police Act (cap. P19, laws of the Federation 2004). The Police Act further provides that the permanent secretary in the Police Affairs office in the presidency shall be the secretary to the council, while the secretariat of the council shall be in the police Affairs office in the presidency.

#### **SELF ASSESSMENT EXERCISE 1**

Critically examine the constitution and functions of the Nigeria Police Council.

#### **3.2 Police Service Commission**

The Police Service Commission (PSC) was established under the constitution by virtue of 3rd schedule, part 1, as a Federal Executive Body, S 29 thereof. The PSC is constituted by a chairman, and such number of other persons, not less than seven. The NPC is also responsible for the confirmation of officers on completion of probationary period. See S 65 of Nigeria Police Regulations.

The Nigeria Police Council is also saddled with the power to advise the President to authorize the IGP as the prescribed authority to do the following;

Setting up of new police area commands, districts and divisions, and for the closure of police area commands, districts and divisions.

Setting up new police stations, regarding of police stations and police posts.

Setting up new police formations generally and their closure,

Fixing of personnel establishments for police formations.

But not more than nine as may be prescribed by an Act of the National Assembly.

The commission is empowered to appoint persons to offices (other than the office of the IGP. When is the duty of the Council), they also have power to dismiss or exercise disciplinary control over persons holding any office within the force. They are also responsible for promotion, and general welfare of the force personnel. All establishment matters are to be referred to the commission.

### **3.3 Inspector General of Police**

The office of the IGP was established under the constitution and he shall be appointed by the President on the advise of the Nigeria Police Council..

The IGP you may note can only be appointed from among the serving members of the Nigeria Police Force, and so cannot be an outsider.

The functions and duties of the IGP are as follows: -

The entire NPF is under the command of the IGP.

Receives direct lawful instructions from the president or minister of Police Affairs with respect to the maintenance and securing of public safety and public order as he may consider necessary, and he must comply with such orders or cause them to be complied with.

The IGP is charged with the Supreme Command of the Force and with the maintenance of public safety and public order.

He gives report called the Annual Police Report to the President on activities carried out during the year, and if approved must be published in the official publication of the Nigeria Police.

The IGP prepares detailed orders governing the duties of any duty post not contained in the Police regulations.

The territorial boundaries and area of responsibility of each police station shall be determined by the IGP; he is also responsible for territorial adjustments and boundaries as the occasion demands.

The IGP subject to the approval of the president in writing may delegate any of his powers to his subordinates.

See the Police Act, and police Regulations.

## **SELF ASSESSMENT EXERCISE 2**

Discuss the duties and functions of the IGP.

### **3.4 General Administration**

For ease of Administration, the Nigeria Police Force is divided into Police Area Commands or Force territorially.

The office of the IGP is referred to as the Force Headquarters now situate at the Federal Capital Territory Abuja. The Whole country is divided into zones comprising one or more states headed by an assistant Inspector General of Police. Each State is also an area command or State Force Headquarters for the purpose of command and administration and is headed by a commissioner of police or not below Assistant Commissioner of police.

State is divided into area commands called police Area Commands headed by a superior police officer not below the rank of Assistant Commander and designated as Area Commander. Each Area Command is sub-divided territorially into police districts and police divisions headed by Divisional Police Officer (DPO) not below rank of Assistant Superintendent of Police.

Police Divisions is also sub-divided into Police stations areas. Normally police station areas may not be further sub-divided, but where this is expedient, a police post or village post may be set up as reporting and patrol centers within the police station. The D.P.O shall not be below the rank of assistant superintendent of police. A police district shall be commanded by an officer not below the rank of inspector and is designated as district police Officer. The command of the police station shall be subject to the control of officer in charge of the station who shall not be less the rank of sub inspector; while a police post is commanded by an officer not below the rank of corporal.

## **FORCE HEADQUARTERS**

Force Headquarters has been further divided into departments as follows: -

1. 'A' Department – Finance and Administration consisting;

(i) Administrative branch

- (ii) Secret Registrar Branch
- (iii) Personnel Branch and
- (iv) Welfare Branch

2. 'B' Department – Operations consisting of

- (i) Operations Branch
- (ii) Traffic Branch

Force Signals

Force Mechanical Workshops Transport Branch

Marine Branch and;

Force Animals Branch

3. 'C' Department – Logistics and Supply consisting of;

- (i) Supply Branch
- (ii) Works Branch

4. 'D' Department (Federal Bureau of Investigation and Intelligence) consisting of;

- (i) Investigations Branch
- (ii) Technical Aids to Investigation (C.I.D)

C.I.D training Branch

Interpol Branch

Fingerprints Branch

Central Registry Branch and;

Central Registry of Offenders Branch

The force training Department,

'G' Department Public Relations consisting of;

Press and Publication Branch

Employee Information Branch

Community Relations and Publicity Branch

Complaints Bureau

All the departments except the 'G' departments is headed by Deputy Inspector General of Police. Whilst the 'G' department may be headed by officer of the rank of assistant commissioner of police and above.

### **SELF ASSESSMENT EXERCISE 3**

Discuss the territorial division of the Nigeria Police Force.

## **RANKS OF THE FORCE AND PRECEDENCE**

1. Inspector General
2. Deputy Inspector General
3. Assistant Inspector General
4. Commissioner
5. Deputy Commissioner
6. Assistant Commissioner
7. Chief Superintendent
8. Superintendent
9. Deputy Superintendent
10. Assistant Superintendent (Substantive rank)
11. Assistant Superintendent (On Probation or trial)
12. Cadet Assistant Superintendent

## **FORCE INSPECTORATE RANK**

13. Chief Inspector
14. Inspector (Substantive)
15. Inspector (Probation)
16. Cadet Inspector (2nd 6 months of training)
17. Cadet Inspector (1st six months of training)
18. Sergeant
19. Corporal

## **SELF ASSESSMENT EXERCISE 4**

Criticize the ranks and precedence of the N.P.F

### **4.0 CONCLUSION**

The Nigeria Police Force being a creation of the constitution has a long history and cannot fulfill its constitutional role unless properly organized in order to meet its constitutional duties. In terms of territorial coverage, the country seems to be fully covered police wise, but in actual practice it is not, most villages hamlets and settlements do not feel any police presence at all and where they are the unnecessary long bureaucracy blocked quick response to areas where immediate actions is required.

### **5.0 SUMMARY**

In this unit we have been able to trace the general structure, organization and administration of the Nigerian Police. The powers and responsibilities of the Police Council and that of the Police Commission. The role of the Inspector General and the administration of the Force Headquarters. We have also looked at the territorial division of Nigeria into territories for easy

and efficient policing, the adequacy is another matter. The ranks and precedence of the police is also examined as part of administrative hierarchy of the Police and level of control.

## **6.0 TUTOR-MARKED ASSIGNMENT**

Discuss the role and duties of;

1. Police Service Commission
2. Nigeria Police Council
3. Critically discuss the territorial sub division of the country for efficient policing.

## **7.0 REFERENCES/FURTHER READING**

- Police Act cap. P.19 2004 LFN
- Nigeria Police Regulations.

## **UNIT 3      POWERS AND RESPONSIBILITIES OF THE POLICE**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Power of Investigation of Crime
  - 3.2 Power to arrest
  - 3.3 Power to Grant Bail
  - 3.4 Power to Search Promises
  - 3.5 Prosecution
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

The Nigerian Police Force constitutionally, is the only police force that may be established for the country, and it has vast responsibilities for maintenance of public order and safety of the citizens. Its duties also includes prevention of crime, investigation of crimes, arrest of offenders, and prosecution of offenders. In this unit we will examine these powers and responsibilities.

### **2.0 OBJECTIVES**

At the end of this unit you are expected to understand the following:

- Power of police to investigate crime.
- Power to arrest, with or without warrant.
- Power to grant bail
- Power to search, and
- Power to prosecute suspects before the court.

### **3.0 MAIN CONTENT**

#### **3.1 Power of Arrest**

The Police Officer is conferred with powers to arrest any person suspected to be committing, committed or about to commit a crime. The police officer in making an arrest has the power to touch or confine the body of the person to be arrested, unless there be a submission to the custody of the police by

word or action. Unless the person actually show intention by action or any overt act to resist arrest or escape from arrest, the police officer need not touch or use physical force in effecting arrest. The person arrested shall not be hand cuffed, or otherwise bound or be subjected to unnecessary restraint except by order of court, a magistrate or justice of the peace or unless there is reasonable apprehension or violence or of an attempt to escape or unless the restraint is considered necessary for the safety of the person arrested. The police officer may effect an arrest without an order from a magistrate and without warrant of arrest in the following circumstances: -

Where any person whom he suspect upon reasonable grounds of having committed an indictable offence against a Federal, State or any law unless the law creating the offence provides that the offender cannot be arrested without warrant. You may note that an indictable offence is one which on conviction may be punished by a term of imprisonment exceeding two years, or which on conviction may be punished by imposition of a fine exceeding four hundred naira only.

(S2 C.P.A as amended)

Where anybody commits any offence in the presence of a police officer.

Anybody who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody.

Anybody suspected to be in possession of stolen property, or who may reasonably be suspected of having committed an offence in relation to the stolen property.

Any person who is suspected of being a deserter from the armed forces.

Any person reasonably suspected of having committed any offence outside Nigeria or outside the State which if committed in Nigeria would have been punishable as an offence in Nigeria.

Anybody having in his possession without excuse any implement of house breaking, firearm or any offensive or dangerous weapon.

Anybody the officer believes that a valid warrant of arrest has been issued by a court of competent jurisdiction.

Any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself and;

Any person found within the state taking precautions to hide himself in circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence which is a felony or

misdemeanor. You may note that a felony is an offence on conviction for which a person can, without proof of his having previously been convicted of an offence, be sentenced to death or to imprisonment for three years or more or which is declared by the law to be a felony. The police officers power of arrest of persons committing an offence in his presence is not restricted law notwithstanding that the law creating the offence provides that the offender cannot be arrested without a warrant. The police officer affecting an arrest must inform the person arrested of the cause of arrest unless the person is arrested in the course of the commission of a crime or is punished immediately after the commission of a crime, or escape from lawful custody. After an arrest has been lawfully affected, the person arrested must without delay be taken to the police station, and shall without delay be informed of the charge against him. Any such person while in custody shall be given reasonable facilities for obtaining legal advice, taking steps to furnish bail, and otherwise making arrangement for his defence or release.

This is the position of the law, anything else is an abuse which is very rampant in Nigeria. This will be discussed in unit 4.

### **SELF ASSESSMENT EXERCISE 1**

Discuss the power of arrest by the police officer in Nigeria. How adequate is the law?

### **3.2 Power to Grant Bail**

Upon effecting an arrest, the next exercise of power by the police is to consider whether to release the arrested person on bail or not. This power many have thought is discretionary, and that the police officer may or may not release the person unless you are able to persuade him financially or otherwise. The law as stated both in the S17 of the Criminal procedure Act and S27 of the Police Act, does not give the police officer such discretion.

We first look at the constitution of the Federal Republic of Nigeria. S36 (5) of the constitution clearly states that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. While S40 guarantees every citizen of Nigeria freedom of movement and a citizen's movement cannot be restrained without any just cause. If this is accepted and understood, it means that after an arrest by the police officer you are entitled to be released otherwise referred to as bail.

Where the person has been taken into custody without a warrant for an offence other than an offence punishable with death, or an offence that appears to be very serious, the police officer, or senior police officer in the station, approve the release of the person on recognizance with or without

sureties for a reasonable amount to appear before a court at the time and place named in the recognizance, but where such person is retrained in custody he shall be brought before a court, or justice of the peace having jurisdiction with respect to the offence. The suspect does not pay any money for a bail, what the law requires is that the suspect is either released on his own recognition or with a surety. You have a legal and constitutional right to be released on bail provided the offence alleged is not a capital offence, i.e. offence that attracts a capital punishment. This power is also liable to be abused.

Please note, that, if it is practicable to bring him before a magistrates court within 24 hours of his being taken into custody the police are not obliged to grant bail, but if that is not practicable he must 'inquire into the case and grant bail. In practice, the police may refuse bail to habitual offender, or persons with no reasonable place of abode or where the person is unable to produce a reliable surety.

### **3.3 Prosecution**

Sections 174 and 211 of the constitution gives power to the Attorney – General of the Federation and States respectively the power to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria. The sole authority to institute or prosecute criminal cases is the Attorney – General. However, the law also permits the police officer to conduct in person all prosecution before any court whether or not the information is laid in his name. (see S 23 Police Act). Prosecution is simply to represent the Police or State to conduct a criminal trial, while the person who conducts the prosecution is referred to as the prosecutor. The person being tried or charged before the court is known as the accused person. When the police is satisfied that a suspect is guilty of an offence or a prima facie case is established against such a person or there is enough evidence against the person from their investigation. They proceed to prepare a charge against him. A charge is the paper detailing the offences committed by the accused person and is divided into counts. The count is the component of a charge, and a charge may comprise as many counts as possible depending on the number of offences committed by the accused person. You may have as many as two hundred counts in one charge and the prosecutor is expected to prove each count legally before he can secure a conviction against the accused person. While the accused person is also represented by a legal practitioner of his own choice.

The law as we have seen allows any police officer to conduct in person all prosecutions before a court. The criminal prosecution is very technical endeavor and the crime must be proved beyond all reasonable doubt. The question is whether any police officer may be allowed to conduct such

technical trial? The police are actually true to the law they are not usually lawyers, they are also mostly not graduates, majority of police prosecutors in practice are not above the rank of sergeants. They are not trained in any way, they only learn on the job, they lack any basic knowledge in law, and so they are always losing most of the cases. Another problem with police prosecution is that the prosecutor is never involved in the investigation, and so do not have a first hand knowledge of the issues involved, and only takes a file without bothering to understand the facts of the case. And so in most cases are ignorant of the basic facts to present before the court. The law by not specifying the level of or minimum rank of a police prosecutor allows the Police to send any officer who may not even be interested in prosecutions as a formal duty, or change them at will without bothering about continuity of the trial in court.

The prosecutor's duty may also include forwarding the case to the Ministry of Justice for legal advice. The truth is that if the legal advice is against the prosecution, in which case the charge must be withdrawn and struck out, and the accused person must be released and where the legal advice has been sought, the matter cannot proceed until the receipt of such advice. In effect police prosecution is subject to the legal advice from the Justice department. Because of the glaring inadequacies of the police, the complainants in the criminal matters may engage a legal practitioner to oversee, and assist the police officer prosecuting the matter; and such legal practitioner is allowed to announce his appearance in court, advise and assist the police prosecutor on serious legal questions that may arise during the trial.

## **SELF ASSESSMENT EXERCISE 2**

Discuss the problems of police prosecution, and give solutions to the problem.

## **4.0 CONCLUSION**

Police have extensive powers to investigate crimes, arrest suspects, grant bail and prosecute accused in court. The problems associated with this use of wide powers are that of abuse; and understanding of their role in order to be effective and efficient in the use of such wide powers. Without a basic understanding of their wide powers, abuse is inevitable and the all important power of arrest and detention of persons must be properly curtail both legally and in fact to prevent unjustified application of their powers.

## **5.0 SUMMARY**

We have examined some of the powers and responsibilities of the police and have seen that the police have powers to investigate and arrest persons;

we also see that the circumstances when the police may arrest a suspect are spelled out by the law. The power to grant bail, and the right to bail is also safeguarded under the law, and it is a right and not subject to discretion of the police. They are also responsible for prosecution of cases in all minor matters. The ambit of their powers and responsibilities has also been examined.

## **6.0 TUTOR – MARKED ASSIGNMENT**

1. Critically examine the power to grant bail to a suspect by the police..
2. Under what circumstances may the police arrest a suspect and law may an arrest be effected.

## **7.0 REFERENCES/FURTHER READING**

- Gibbons, (1968) society crime and criminal corners U.S.A.
- Police Act.
- Obaje Emenaku (2007) Introduction to Nigerian Criminal Law and Procedure.
- Criminal Procedure Act, Cap 3,LFN
- Chukkol K.S. (1988) The Law of Criminal in Nigeria, ABU

## **UNIT 4 ABUSE OF POWER AND CONSTRAINTS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Police Killings
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### **1.0 INTRODUCTION**

Policemen have probably been the targets of negative responses from citizens from nearly the beginning of organized law enforcement. In Nigeria, the constitution guarantees individual freedom, therefore in the eyes of many, the less the police intrude into their personal affairs, the better people have been antagonistic to the police for various justifiable reasons, may have attributed police functions to oppression of the poor by the rich with active connivance of the police. The use of the police by the strong to change the course of justice against the weak is rampant. The police are too ready to be used for various illegal or questionable enforcement procedures. The use of the police by repressive governments especially during the military era, further shows the negative use of police powers.

The law as we have seen above specifies for main responsibilities of the police, these are: -

Prevention and detection of crime.

the preservation of law and order.

The protection of life and property and

Due enforcement of all laws and regulations with which they are directly charged. They may also perform military duties within and outside Nigeria wherever they are required to do so. The pursuit of their duties and exercise of their powers have been over the years been abused so grossly that it has overshadowed their original responsibilities.

## **2.0 OBJECTIVES**

At the end of this unit you should be able to identify major areas of abuse of police powers in Nigeria, and the constraints of the police and you should be able to give good suggestions for reforms.

## **3.0 MAIN CONTENT**

### **3.1 Police Killings**

Allegations of summary killings against the police in Nigeria is widespread while some occur at police checks points and during patrol duty, others are committed in cold blood at police stations or during torture and interrogation of suspects.

There are many sensational cases like the case of Dele Udoh a popular athlete who was murdered by the police at a check point in 1981, there was the killing of six persons at Apo Village, Abuja popularly called the Apo six, University students have been killed randomly for one reason or the other, the list is unending in its 1990 report on Human Rights in Nigeria, the Civil Liberties Organization (CLO) notes that the year 'witnessed horrible cases of police abuse of citizens several reports of police killings, many of which occurred while the victims were in custody. There are also reported cases of massacre in warrior parts of the country by the police.

These killings are totally unjustified, illegal, unconstitutional and gross abuse of power. The constitution of Nigeria guarantees the right to life and nobody is allowed to take another persons life without any just cause. See S. 33(1).

### **3.2 Torture**

The police in their pursuit of so called investigation finodes it easier to employ torture as a quick way of extracting information from suspects. Those are wide ranging, from the studies and investigations of human rights groups in Nigeria, these include, beatings, hanging, applying electric shocks, corporal punishments, using hardened criminals to inflict the torture on innocent people etc. these action is unconstitutional, barbaric and ought to be stopped. S. 34(1) of the constitution provides "every individual is entitled to respect of the dignity of his person, an accordingly,

- a. No person shall be subjected to torture or to inhuman or degrading treatment. Though the use of torture to extract information from suspects by the police is illegal, yet it seems that the practice continues inedited and the only justification by the police is that there is no other means of obtaining the information and sadly, there

is no machinery in place within the police system or outside it to step the abuse of fundamental rights of citizens by the police.

### **SELF ASSESSMENT EXERCISE 1**

Is there any justification for police killings and torture of suspects in Nigeria.

#### **3.3 Unlawful Arrests**

Although the law permits the police to arrest without a warrant under specified conditions, the police enjoy abusing this power deliberately and arrest innocent people who do not fall into the categories stated under the law. In many cases the police in search of suspects arrests relatives and family of suspects and detains them until they produce the suspect. How can a person detained produce someone at large? Nigerian laws do not permit of hostage taking, but the police abuse their powers without any check or hindrance. The constitution also guarantees freedom of personal liberty, but the constitutional provision is always ignored by the police to perpetrate their illegal acts.

#### **3.4 Denial of Bail**

As we have learnt above, bail is a right and not a privilege. It is not at the discretion of the police, it is mandatory that the person arrested must be released on bail, where he could not be brought before a court within 24 hours insofar as it is not a capital offence the person arrested must be released on bail. However, the bail process by the police is terribly corrupted. Bail in Nigeria must be paid for and contrary to the police slogan that bail is free, the contrary is the practice. You are made to bargain for your release, and as soon as they impose a certain amount you are not to be released unless you pay them. People have been detained for months simply because they could not afford the bail fee. This illegal practice must be checked and halted immediately, and those policemen who indulge in this abuse of power brought to book.

### **SELF ASSESSMENT EXERCISE 2**

How free is bail in Nigeria?

#### **3.5 Police Prosecution**

The use of police power to prosecute is also a subject of abuse. In most case the police prosecutors are deeply corrupted, and believe that they are doing the complainant, some service that he should pay for they had therefore found ways of corrupting the process and collect gratifications from

complainants in order to prosecute the cases; if not the files could easily disappear, or the cases are not properly handled. They also collect gratification from accused persons and therefore handle the matter so negligently that the accused is discharged for want of diligent prosecution. Another problem is that majority are not trained, incompetent and outrightly lazy, they do not read their files, and are usually uncoordinated, to the extent that simple cases are lost on the basis of their negligence only. The only solution is to employ only lawyers by the police to prosecute cases in the courts and stop the use of any police officer.

### **3.6 Judges Rules**

The practice started in England about 1912 when some rules were formulated by Judges of the British kings. Bench as a measure of guidance for police officers taking statements from suspects especially in police custody. The rules though not specifically made applicable by statute in Nigeria but is still generally observed. Failure to comply with the rules will definitely affect the credibility and weight to be attached to the statement. Where during a trial, there is allegation that a statement obtained by the police officer was not voluntarily obtained, the court must inquire through procedure known as trial within trial. The accused person will call witnesses or give evidence do establish the fact that he was tortured before the statement made by him was obtained, or it was not made by him at all. The statement may be rejected by the court.

The first rule provides that when a police officer is trying to discover whether or by whom, an offence has been committed he may ask questions from persons whether suspect or not, and upon satisfaction that a particular person may have committed the offence, he must caution the person as follows: -

“You are not obliged to say anything unless you wish to do so but what you say, may be put in writing and given in evidence”.

The police will then continue if there is reason to do so as follows, “Do you wish to say anything? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.”

In practice, the Nigerian Police have devised a statement paper with the words of caution, which also include the statement which is first signed by the accused person that he has been cautioned, and he voluntarily opt to give the statements; he will first sign this. Then, after giving the statement, he is taken before a senior officer, who also attests to it that the statement was voluntarily made.

### **SELF ASSESSMENT EXERCISE 3**

Discuss problems associated with police prosecution.

#### **3.7 Constraints on Policing**

The police are not super human being, they are humans too, and operate within a given framework, and cannot certainly perform better than their historical structural and environmental modes. The police also have monumental constraints which if not tackled, will ensure that we continue to have the same type of policing and officers that we love to hate.

The colonial police was established principally not to combat crime but an occupation force, to protect the interest of the colonialist as against the “natives”. It was this mentality that the modern Nigeria police came to inherit, and up till now still have not completely succeeded in shaking off their imperial historical posts.

Corruption has eaten deep into the fabrics of the Nigerian police it is not a secret that if you wish to do anything with the Nigeria police, you must go with money as bribe. They collect bribes on the road, in their stations before bail is granted, etc. the general belief is that it is impossible to achieve anything in the police unless you offer gratification until this corruption is properly checked and stopped; it may be difficult to have a corrupt free society, as the police who is charged with the responsible are themselves corrupt.

The Nigeria police are not well trained, though there are police colleges in the country, the output of the college’s points only to all training and no training. They lack training in basic police investigations. Nigeria police do not have a data bank or criminals, and if they do is not useful to them. Crime fighting equipments like vehicles, communication equipments, etc are lacking, so that in cases of urgent interventions, you hardly can get through to them, when you do, they inform you that they do not have a vehicle to respond. Some State Governments have tried in the provision of some of these gadgets, and every year the Government promises to equip the police, but this is yet to make serious impact on the Nigeria police.

Many believe, due to the way and manner the police officers respond to crime especially the junior officers, that they are frustrated with their work. Their salary is very low, and almost every year the government promises to improve their condition of service. But it seems, this is yet to achieve any useful purpose. They are angry, and so see the citizens as enemies that must be exploited and dealt with. Their condition of living within their barracks is bad, they live in poorly maintained and over crowded barracks. In most cases, they spend their money to renovate the barracks, there is no water or

light, in most cases, all these have direct effect on the attitude and efficiency of the police.

The Nigeria police force is poorly funded, and when the government release money to them, the corruption within the police system itself is so bad that it is the very top eschellon of the force that embezzle the money, and so the conditions always remain the same.

While the criminals have become more daring using automatic weapons, the police are unable to match the criminals in sophistication and so gives an impression of powerlessness and frustration.

#### **4.0 CONCLUSION**

There are serious constraints in the police in Nigeria. They are not well trained, they are not properly equipped, their condition of service needs to be improved, their living conditions, etc, need to be improved, unless we wish to continue as usual, the Nigeria police is likely to degenerate further unless the basic constraints are tackled by the government.

#### **5.0 SUMMARY**

Having examined the problems and difficulties of the police in achieving their given responsibilities under the law. The constraints are all inter related, interdependent and all must be looked into as an issue for proper development and efficiency of the Nigeria police force.

#### **6.0 TUTOR–MARKED ASSIGNMENT**

1. Assess the constraints to policing in Nigeria.
2. Give suggestions for reforms of the Nigeria police.

#### **7.0 REFERENCES/FURTHER READING**

Nwankwo, Mbachu, Ugochukwu (1993) Human Rights Practices in the Nigerian Police; C.R.P., Lagos.

## **MODULE 3      SENTENCING AND TREATMENT OF OFFENDERS**

Unit 1	Sentencing Procedure
Unit 2	Sentencer's Aims
Unit 3	Non – Custodial Measures
Unit 4	Other Non – Custodial Measures
Unit 5	Ancillary Orders

### **UNIT 1      SENTENCING PROCEDURE**

#### **CONTENTS**

1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	Preliminaries
3.2	Information about the Offence
3.3	Aggravation and Mitigation
3.3.1	Aggravation
3.3.2	Mitigation
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

#### **1.0      INTRODUCTION**

The procedure adopted by the court in pronouncing judgment is very important at the trial. It marks the conclusion of the trial. It is the outcome of a long trial and the court must determine the culpability of the accused person. The court must make inquiries about the accused, words of mitigation and other aggravating and mitigating factors are taken into consideration before a convict is sentenced. In this unit we shall examine the procedure immediately after the conviction, i.e. having pronounced the accused guilty, the following steps will ultimately determine the type of sentence to be pronounced by the court.

## **2.0 OBJECTIVES**

In this unit you will learn the procedure immediately following the conviction of the accused.

- The factors to be taken into consideration before sentencing the offender.
- Permits to be taken in aggravation of sentence.
- Issues to be taken into consideration in mitigation of sentence.

## **3.0 MAIN CONTENT**

### **3.1 Preliminary Procedure**

When the case for both sides is closed, the court shall consider its verdict and for this purpose may adjourn in order to write the judgment. The judgment by the judge or magistrate shall be recorded in writing and every such judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the judge or magistrate at the time of pronouncing it. If the judge or magistrate fails to do this the judgment may be set aside on appeal as a nullity. The only exception to writing full judgment is that the magistrate is allowed to record briefly in the book his decision and his reason for the decision and delivers an oral judgment or records such information in a prescribed form. In practice, the court must deliver a full written judgment.

Where the court finds the accused not guilty, the accused is immediately discharged and an order of acquittal recorded. What a magistrate court must not do is sentence anyone to prison or a detention center or activate any form of sentence unless the accused is present in person. On the principle that justice should be administered in public, the news media and the public are not normally excluded during the sentencing stage, though the court may exclude them for some very important reason that must be clearly obvious. However, not all the facts upon which the sentenceer based his decision is disclosed to the public, though the mitigation plea are made orally and in public.

### **PLEA BARGAINING**

Sentences can be affected by what is known as plea-bargaining. Before this time plea bargain is unknown in Nigerian criminal procedure. There is no provision for it and is unknown. But, the Economic and Financial Crimes Commission (EFCC) introduced it in cases of economic crimes. The new Lagos State law on Criminal Justice Administration which replaced the Criminal procedure law in the State makes provision for plea bargain. What it means is that the prosecutor and accused or defendant in Lagos State

agrees that the defendant pays a certain amount of the alleged sum involved, and enter into recognizance to pay the rest instalmentally, where he could not pay fully, the parties then enter into agreement. This position is discussed and approved by the judge. Though the judge is not expected to reveal the type of judgment he will pronounce until he enters the open court. The "Plea Bargain Agreement" is then filed, and a plea of guilty is substituted for the accused person. The sentencer then convicts the offender and a Plea of mitigation on behalf of the accused person is heard.

Generally, the court will ask for information from the prosecutor about the convict.

### **SELF ASSESSMENT EXERCISE 1**

Discuss the preliminary procedure for sentencing or offender.

### **3.2 Information about the Offender**

The court must always have some information about the offender whom it is about to sentence. Even, when he pleads guilty, the court will as a matter of practice turn to the prosecutor to ask for information about the offender, whether he has any past records of convictions etc. the court in deciding whether there is any appropriate alternative to imposing a prison sentence or on offender for the first time the court must obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to his character and mental condition. It is also considered relevant when the court is deciding in the case of a young offender whether any non – custodial disposal would be appropriate. Where the court is considering making a probation order, it must have regard to the circumstances, including the nature of the offence and the character of the offender.

In cases of an extended sentence for a habitual offender the court must be satisfied by reason of his previous conduct and the likelihood of his committing further offences that this is expedient for the protection of the public for a substantial time". When fixing the amount of a fine, the court must take into consideration among other things the means of the person on whom the fine is imposed so far as they appear or are known to the court.

We must remember that information of previous convictions could prejudice magistrates while they are deciding on the guilt of the accused; it is given to them only when he is found or pleads guilty.

The general principle is that the offender can only be sentenced for the offences of which he has been convicted. The information about the

offender is calculated only to mitigate is aggravate, the sentence or to determine the nature method that may be adopted.

## **SELF ASSESSMENT EXERCISE 2**

Discuss the relevance of information about the offender in sentencing.

### **3.1 Aggravation and Mitigation**

Statutes give sentencers wide discretion in the choice of, measure, and the degree of severity which it will involve, that unless they operate an inflexible tariff they cannot avoid the types of reasoning known as mitigation or aggravation. Unfortunately, sentencers have very little guide in this area.

#### **3.3.1 Aggravation**

Aggravation considerations normally receive less attention than mitigating features. The reason is that sentencers are supposed to take as their starting point the sentence appropriate to the most serious type, of case, or work downwards from the maximum sentence by allowing for mitigating factors. Since there are no serious guidelines both in Nigeria and Britain, though the Court of Appeal in England has listed some aggravating factors for a few types of cases, e.g. rape (Roberts and Roberts (1982) 4 Cr. App. Rep. (S 18), issues that may be taken into consideration are as follows: -

**Previous Convictions:** In most cases in which the court is prepared to consider a non – custodial measure it is often this which turns the scale in one direction or the other, and when two or more offenders are convicted for the same offence, the one with the worst record of previous conviction will, *ceteris paribus*, receive the longest sentence.

**Exemplary Sentencing:** Another non – retributive aggravation is the exemplary sentence ‘that is, a sentence intended to be sufficiently severe to make an example of the offender, and through publicity deter potential imitators. The effectiveness of general deterrence is discussed under imprisonment.

**The Victim:** The victim may also be an aggravating factor. Where the victim is a very young person, or sexual offence against a young girl may place the offence in a different category. Offence against the elderly, handicapped or police may not be easily forgiven; and the sentencer may be ready to impose the maximum sentence for those alone.

**Abuse of Position:** Offences involving the abuse of office or breach of trust or power tend to be more severely sentenced than similar offences which lack this feature.

**Professionalism:** Where the offender is regarded as a professional or habitual offender, long prison sentences have been imposed.

**Premeditation:** A premeditated offence is usually regarded as morally worse than one committed on the spur of the moment, especially when it consists of violence to the person.

**Unnecessary Violence:** Where the violence used is excessive and unwarranted the court may be ready to impose long prison or severe sentence.

### 3.1.2 Mitigation

The court will also consider certain factors, these include: -

- a. Diminished culpability: The offenders culpability diminished by the following: -
  - i. Provocation or temptation and victim participation or encouragement.
  - ii. Offender under stress.

Acting under alcoholic influence, or drug.

Ignorance of the fact or law

The intention of the offender different from the outcome of the action.

**Necessity:** Occasionally, the courts have recognized situations where the offender acted under a necessity e.g. in order to avoid death, disaster or bodily injury, and so may be excused by the defence of necessity.

**Duress:** A plea of duress may fail during the trial but is a mitigating factor to persuade the sentencer to be lenient.

**Good Character:** Evidence of good character of the offender is a mitigating factor.

**Meritorious Conduct:** Meritorious conduct is most likely to reduce the sentence, when the conduct consist of an attempt to undo, compensate for or reduce the harm done by the offence, especially if the attempt is made before detection.

**The Effect on the Offender:** Where it is established that the offender is most likely to suffer more than the normal penalty than would most such offender, the elderly, ill, or pregnant, the sentence is likely to be reduced.

**Age:** Youth is treated as a mitigating factor all time.

Indirect effects of conviction or offence Courts may also take into account the consequences of the conviction for the offender; where the pains of the imprisonment may far outweigh the normal sentence e.g. effect on employment, family etc.

**Pleading Guilty:** A plea of guilty is sometimes interpreted as a sign of remorse or of sympathy for the victim. Such plea may earn substantially reductions.

Assisting law enforcement: Assisting the police in the detection of the crime may be a mitigating factor.

#### **4.0 CONCLUSION**

The procedure for sentencing of offenders, though largely discretionary is in fact is guided by certain guidelines and general principles. The procedure for sentencing is important, and ought to be followed. The other facts necessary for pronouncing a sentence on an offender is the background information on the offender and facts in mitigation and aggravating factors which all contribute to coming to a considerate and properly deserved sentence that will meet, the justice of the case.

#### **5.0 SUMMARY**

The procedure for sentencing starts from point where the offender either pleads guilty, or is convicted. The next duty of the sentence is to determine the appropriate sentence. The court asks for information on the offender, and allows the defense also to plea in mitigation of sentence. While the persecutor is free to supply information in aggravation.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

1. Critically examine the procedure for sentencing of offenders.
2. Advance reasons for the mitigation of sentence.

#### **7.0 REFERENCES/FURTHER READING**

Walker, (1985) Sentencing. Theory, Law and Practice, Butter Worth's.

## **UNIT 2 SENTENCERS AIMS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 General Justifying Aim
  - 3.2 Retributive Justification
  - 3.3 Negative Retribution
  - 3.4 Commensurability
  - 3.5 Proportionally
  - 3.6 The Reductive Justification
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

A sentencer may have studied the reports about the offender, be aware of all the available background information which seems relevant; be conversant with the findings of research into the corrective, deterrent or educative effectiveness of different sentences, and yet be is certain about a crucial aspect of his problem; the aim which is governing his choice. Officially there is no guidance as to the aim of each mode of sentence, and so the Judge is to use his discretion at arriving at the most appropriate, depending on the aim of such sentence. The aim of sentence will determine the sentence, though there is no statute on aims of sentence, the Judge is expected to have a definite aim in mind even he is not expected to give reasons for the sentence or his intention in the sentence, but the outcome of a sentence will sometimes justify the aim of the sentence. Here we will discuss the different aims of the Court and how effective such aims may turn out to be in the treatment of an offender.

### **2.0 OBJECTIVES**

At the conclusion of this unit, you are expected to know:

- The different aims of the sentencer
- The aims and objectives of each aim.
- How effective the aims may be.

### **3.0 MAIN CONTENT**

#### **3.1 A General Justifying Aim**

It is justification for having a system of official compulsory penalties, what Hart (1959) called general justifying aim'. In some peoples perception, penalizing offenders can be justified by arguing that they deserve a penalty for the very reason that they have offended; this is the retributive view; for others the justification is that the penalty will reduce the future incidence of such offences, whether by preventing or correcting the offender or by discouraging or educating other potential offenders, this is the reductive justification. Both have ramification.

#### **3.2 The Retributive Justification**

The retributive principle can be applied in several different ways, in its positive form it asserts that we should reward people for some acts or behavior e.g. self – sacrifice in the interest of others. But relevant are 3 retributive principles. The first is that an offender deserves punishment for his offence even if punishing him will be counter productive or does other harm.

#### **3.3 Negative Retribution**

On the other hand there are other retributive principles which even reductionisms usually accept. One is that penalties should not be applied to any one who is not guilty of an offence. This is “negative retribution or retribution in distribution”. The third retributive principle is that the severity of the penalty should not exceed a limit related to the offence crime. The rapist for instance should not go to prison more than the prescribed punishment in the law.

#### **3.4 Commensurability**

A retributive who claims to be able to make the severity of the penalty commensurate with the offenders culpability must be able to assess only culpability but also the offenders sensibility e.g. the offender who is ill, old or pregnant may likely get shorter sentence than are who is a well and normal.

#### **3.5 Proportionality**

So long as the graver crimes are penalized more severely than the trivial ones, proportionality is achieved. There is no need to worry about the precise culpability of the offender or the precise degree of suffering which

the penalty will inflict on him. In so far as the severe crimes are more severely punished proportionality is achieved.

### **3.6 The Reductive Justification**

The problems which the reductive sentencer has to face are different. His general aim is not to inflict deserve punishment for a past act but to do something that will reduce future frequency of such acts. The aim here is to achieve one of the following:

- a. deter the offender himself, by means of the experience of a penalty, from committing similar offences – individual deterrence.
- b. Influence the offender's desires or attitudes in such a way that deterrence apart, he will be less inclined to commit similar offences or more inclined to obey the law in general.
- c. Deter other people who might be tempted to do what the offender did by instilling fear of incurring a similar sentence (general deterrence).
- d. Increase other peoples moral disapproval of the offence or respect for the prohibitions of the criminal law, by means of the severity of the sentence.
- e. Make it more difficult for the offender to commit a similar offence either by physical restraint such as incarceration or by prohibitions such as disqualification from driving a motor vehicle incapacitation.

### **3.7 General Aims**

As a matter of general rules or aim, the sentence usually arrive at their decision following some a rules: these are;

- a. the need to protect members of the public against serious physical harm by an offender who seems less likely to repeat it.
- b. the victims needs for compensation.
- c. The aim of ensuring deserved punishment
- d. The aim of deterring potential offenders
- e. The aim of educating the public so as to reinforce disapproval of certain kind of offence.
- f. To ensure that the penalty is not greater than the offender in question deserves.

### **SELF ASSESSMENT EXERCISE 1**

Discuss the general aim of a Court in passing sentences on the offender.

#### **4.0 CONCLUSION**

The aim of the Court though generally not written, the two schools of thought, the retributive and reductive schools have only one aim, to impose deserved punishment but for different reasons. But the ultimate aim of the Court is only distilled from the native severity, and evolved aim of the sentencer.

#### **5.0 SUMMARY**

The sentencer's aim has been explained. They fall into 2 schools of thought the retributive sentencer who believes that the offender deserves to be punished because they have committed a crime. The reductive justification is based on reduction of future incidence of such offences. The problem of commensurability and proportionality is discussed, and the aim of the sentencer is to achieve proportionality as opposed to commensurability. We also looked at the general aims which are not likely to be influenced by the two schools of thought.

#### **6.0 TUTOR –MARKED ASSIGNMENT**

1. Discuss the general aims of sentencing
2. Examine the reductive and retributive views on sentencing and make a list of aims useful to the sentencer.

#### **7.0 REFERENCES/FURTHER READING**

Walker (1985) Sentencing Theory and Practice: Butter worth's.

Sutherland E. (1947) Principles of Criminology, Philadelphia, Lippincott

## **UNIT 3      NON CUSTODIAL SENTENCE**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Fine and Financial Orders
    - 3.1.1 Power to Impose Fine
    - 3.1.2 The Standard Scale
    - 3.1.3 Mitigating Fine
    - 3.1.4 Enforcement of Fine
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- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

Upon conviction the court has wide discretionary powers to impose fine on offender in lieu of imprisonment or coupled with imprisonment. The court may also order compensation for the victim and or restitution of the property to the victim of the offence while these orders are governed by differing statutory provisions and, to some extent by varying principles, they are generally subject (with the exception of restitution orders) to the principle that in imposing them the sentercer should have regard to the means of the offender, in respect of both the individual orders, and their total effect where two or more are combined. None custodial sentences especially fines are quite common and about 90% of the sentence imposed in the criminal courts adopt this made of sentence.

The advantages far outweigh the use of custodial sentence, apart from the corrective advantage, it certainly reduce congestion of the prisons, and is likely to serve greater purpose in the correction and treatment of the offender. In this unit we shall discuss, fines imposable by the higher and lower courts for any offence for which the sentence is not fixed by law, compensation for the victims and contributions to the cost of prosecution. Other non – custodial sentences will be discussed in the unit 4, while custodial sentence is discussed in module 4.

## **2.0 OBJECTIVES**

At the end of this unit you are expected to understand.

- How and when the court order fine as a sentence on offender
- Power of court to ensure payment.
- Compensation for the victim of the offence.

## **3.0 MAIN CONTENT**

### **3.1 Fine and Financial Orders**

#### **3.1.1 Power to Impose Fine**

Fines are by far the commonest and most popular form of penalty, and account for more than 90% in traffic offences, and more than 80% of non – indictable cases. The court has general powers to impose fines on any offender, where a court has authority under any law to impose imprisonment for any offence and has no specific penalty, the court may, in its discretion impose a fine in lieu of imprisonment. In the case of a conviction in the High court, the amount of the fine shall be in the discretion of the court and any term of imprisonment imposed in default of payment of the fine shall not exceed two years.

While, in convictions in the magistrate court (a) the amount of the fine shall also be in the discretion of the court but shall not exceed the maximum fine authorized to be imposed by the magistrate by or under the law, and (b) no term of imprisonment imposed in default of payment of the fine shall exceed the maximum fixed in relation of the amount of the fine by the criminal procedure Act. (See S. 382 CPA). While the High court has unlimited jurisdiction in criminal matters, and may at its discretion impose any amount as fine on the offender, it is guided as to the term of imprisonment in lieu of fine and ought not to impose a term of imprisonment in lieu of fine that exceeds two years. While the magistrate court is limited by its jurisdictions. For instance, the Chief Magistrate 1 in Lagos State may sentence an offender to maximum term of 7 years or N100,000.00 fine. He may therefore not impose a term of imprisonment that exceeds his jurisdiction in lieu of or default of a fine.

We must also bear it in mind that notwithstanding any discretion or jurisdiction of the court, the court is prohibited from imposing any fine or term of imprisonment in excess of the maximum term authorized as a punishment for the offence by the written law (see S. 382(4) CPA).

### **3.1.2 Scale of Imprisonment for Non-Payment of Fines**

The law by virtue of S 390 CPA provides that, subject to the provisions of any written law, or which the order is founded, the period of imprisonment whether with or without hard labor, which is imposed by the court in respect of the non-payment of any sum of money adjudged to be paid by an order shall be such period as in the opinion of the court will satisfy the justice of the case, but shall not exceed the maximum fixed by the scale. The scale itself will now seem to be outdated e.g. it provides that where the fine does not exceed N1.00, seven days; and where it does not exceed N400.00, then two years imprisonment. The Lagos State provision in S 323(2) of the criminal Justice Administration law provides that, where the fine does not exceed N5,000.00, then a term of seven days may be imposed, and where it does not exceed N12,000.00 the maximum term must not exceed two years. In any case the law puts a maximum of two years in lieu of non-payment of a fine. Unless the law under which the conviction has taken place enjoins or allows a longer period.

### **3.1.3 Mitigating Fines**

Even where a fine is clearly in a portion the court may reduce the amount of the fine by way of mitigation. The law is that a court in fixing the amount of any fine to be imposed on an offender, shall take into consideration, amongst other things, the means of the offender so far as they appear or are known to the court, and where a fine is imposed the payment of the court fees and police fees payable in the case up to and including conviction, shall not be taken into consideration in fixing the amount of the fine or be imposed in addition to the fine. (see S 391 CPA).

### **3.1.4 Ascertainment of Offenders Means**

The commonest reason for reducing fines is the offenders means. The courts are enjoined SS. 391 CPA to take into consideration among other things the means of the person to whom the fine is imposed so far as they appear or are known to the court. "In most cases, the offender will inform the court about his means, that is his income without directly being prompted or asked. He should also inform the court about his dependents, family etc. this will give the sentencer a cheer picture of the true economic status of the offender.

### **3.1.5 Relating Fines to Means**

Where the financial situation is known, there are few rules that may help the court. An important rule is that fines should be capable of being paid within 12 months (see knight (1980) cri. APP. Rep, (s) 82). Being unemployed does not mean that he cannot be fined.

**Payment by Others:** The amount should not be fixed on the assumption that some are else even a spouse or friend – will help to pay it. See Baxter (1974) Crim. L.R. 611. However, there is nothing to stop others from paying for the offender.

**Proportion of the Fine:** The rule is that the fine is not to disproportionate to the offence charged. In the case of Fairbairn (1980) 2 Cr. APP. Rep (s) 315 a fine was imposed that is 10 times the value of the goods stolen. The fine was reduced drastically on appeal because of the disproportionate nature of the sentence.

**Enforcement of Fine:** In every case where an order is made against any person for the payment of a sum of money and the person is liable to be imprisoned for a certain term unless that sum shall be sooner paid, the court may do or caused to be done certain steps towards ensuring compliance with the order,

The court may immediately, ask him to pay the fine

The court may ask that his pockets be searched and collect any money in his pocket, or even follow him to search his car if he has any, and collect the fine immediately.

The court may issue a warrant of commitment immediately.

The court may allow time for the payment of the said sum.

Direct instalmental payment

Give security, or enter into recognizance with or without sureties for the payment of the fine or any instalment that may be allowed.

Where instalmental payment of fine is allowed, default in the payment of the instalments will render all payable. The law however allows the offender to apply for extension of the time to pay the fine or instalment thereon. The court may upon default therefore issue a warrant for the arrest and imprisonment of the offender wherever he fails to pay the fine, and he will be kept in prison unless he pays the fine or serves the sentence in lieu to payment. In cases, where the offender has made part payment, the imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed as the sum so paid towards the fine bears to the amount of the fine for which such person is liable. (ss S. 397 CPA)

### 3.1.7 Discuss

The court may issue a distress warrant on any offender who default or refuse to pay the fine imposed on him. The distress warrant allows the goods and properties of the offender to be seized and sold by the sheriff of court. The realized sum of money is then used to pay the fine, where this is not sufficient, the sum is used to pay part thereof and this helps to reduce

the period of imprisonment in proportional measure. The sheriff shall not however, seize, wearing apparels, beddings, kitchen utensils while enforcing the warrant (see S 399 CPA).

#### **4.0 CONCLUSION**

Modern sentencing legislation, with few exceptions confers extensive description on the sentencing judge both in the range of punitive sentences which may be imposed and in the choice of alternative dispositions. The discretionary use of fines as an alternative to imprisonment is a fordable avenue for punishing the offender, compensating the victim and the secreting and at the same time ensuring a reformative impact on the offender. The use of instalmental payment of fines enables the offender to pay at his own convenient time and whenever he is enable or refuse to pay the, then either he is arrested and imprisoned until he is able to raise the money, and released immediately, and where he pays part thereof, his imprison not in lieu of payment, redness the outstanding balance proportionately.

#### **5.0 SUMMARY**

We may conveniently say that the use of fines as an alternative to imprisonment is still not only important but also effective in punishing the offender without having him unto the world of crime. The sentencer is allowed to fine the offender in lieu of imprisonment, or with other non – custodial measure in order to where two purposes, to punish and to compensate the victim and so crety. Imposing a fine is subject to certain rules and regulations some of which is that it must be within the jurisdictional power of the sentencer, and need not be the maximum allowed for the offence. The imprisonment in lieu of fine should not exceed two years.

#### **6.0 TUTOR – MARKED ASSIGNMENT**

1. Assess the power of the court to impose fines on a convict.
2. Discuss the mitigating factors in imposing fines on the offender.

#### **7.0 REFERENCES/FURTHER READING**

1. Criminal procedure Act
2. Thomas D.A. (1979) Principles of sentencing in the court of appeal. Heineman London.

## **UNIT 4 OTHER NON-CUSTODIAL MEASURES**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Discharge
  - 3.2 Binding Over
  - 3.3 Probation
  - 3.4 Community Service
  - 3.5 Canning
  - 3.6 Compensation
  - 3.7 One Day Detention
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

The law makes provisions in Nigeria for other non – custodial measures that is geared towards not only punishing the offender minimally but also serves to treat the offender, and to generally re-integrate the offender back to the secreting. It gives the offender of a feeling of remorse but not a feeling of grief and dehumanization, he can continue his normal life but shown that crime does not pay. In this unit we shall discuss some non-custodial measures available in Nigeria, though there are some that are discussed here that re only available in Lagos State and other advanced countries but not yet introduced and so not available in other parts of the country unit the necessary amendments to the CPR is effected.

### **2.0 OBJECTIVES**

At the end of this unit, you are expected to understand

- Non custodial measures; the range and types
- When to apply the different types of non custodial measures
- Assess the use in Nigeria of these non custodial measures discussed in this unit.

### **3.0 MAIN CONTENT**

#### **3.1 Discharge**

Where any person is charged before a court for a non – indictable offence and the court finds that the charge is proved but is of the opinion that having regard to the characted, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence or to the exterminating circumstances under which the offence was committed, it is expedient to impose any punishment other than a nominal punishment, or that it is expedient to release the offender on probation or for community service, the court shall without proceeding to conviction make an order either;

- a. dismissing the charge or
- b. discharging the offender conditionally on his entering into a recognizance with or without sureties, to be of good behavior for a period not less than one year and not exceeding three years.

A order of the discharge may be combined with order for damages for injury or compensation for loss where this is done it must not exceed N20,000.00. The court may also direct that the stolen property be restored to the rightful owner, and cost or damages or compensation paid to the victim. Where the offender is a young offender then his parent or guardian after being heard by the court be ordered to pay such compensation or damages.

See generally S345 of the C.J.A. Lagos

### **SELF ASSESSMENT EXERCISE 1**

Discuss circumstances when the offender may be discharged by the court.

**Binding Over:** Any court (both Magistrate and the High Court) has the power to bind over to keep the place, out the power to bind over to be of good behavior, provided that the person or his case is before the court. See Pawittar Singh. (1984) All E.R. 941. It is not necessary that the person should have been convicted of an offence, but he must be told by the court and give the opportunity to make a representation. A time limit of one year is racially specified. He is expected to enter into own recognizance or find someone to stand as surety on his behalf with specified sum of money. The money is not paid but may be forfeited if he fails to keep the peace.

**Probation:** Probation is a form of conditional release of an offender by the court for closer monitoring by an officer called probation officer, who is expected to be a trained social worker from the welfare department of the State, S 485 of the CRA makes provisions for the conditional release of offenders. It empowers a court before whom a person is charged with an offence punishable by such court, and the court

is of the opinion that the charge is proved; if the charge is not proved, that is the end of the matter. The charge must however be one for which the penalty is not fixed by law (i.e. in practice murder). When considering a probation order, the court must have regard to the character, antecedents, age, health or mental condition of the person charged or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed. This is done by obtaining reports on the offender. It is also quite necessary to ascertain whether the offender is suitable for a probation order from a probation officer. The court must also consider the following: in practice:

The circumstance of the offence and the offender's record are not such as to demand, in the interests of the society that some severe method be adopted.

The risk to security through setting the offender at liberty is outweighed by the moral, social and economic arguments for not depriving them of it.

The offender needs continuous attention.

The offender is capable of responding to this attention while at liberty.

It is inexpedient to inflict any punishment or any other than a nominal punishment.

Or, that it is expedient to release the offender on probation. The court is expected to without proceeding to conviction make the order of either dismissing the charge or discharge the offender conditionally on his entering into a recognizance with or without sureties, to be of good behavior and to appear at any time during such period not exceeding three years.

The offender must then be placed under the supervision of a probation officer with the consent of such officer. The order where it is subject to further conditions must state the condition in the order.

The probation officers duties include,  
to receive visits and to visit the offender under probation supervision at reasonable intervals.

To see that the offender observes his conditions of his recognizance

To report to the court as to his behavior.

To assist, advise, and befriend him and when necessary to endeavour to find him suitable employment.

Where the person under probation supervision fails to observe the condition of the order, the probation order may be revoked based on the

report of the officer, and the person may be imprisoned. However, where the probation officer reports that the conduct of the person under supervision has been such as to make it unnecessary that he be any longer under supervision, discharge the recognizance. (See S. 439 CRA). The court must endeavor to explain the implications of the order to the offender.

## **SELF ASSESSMENT EXERCISE 2**

Under what circumstances may the court order an offender to probation supervisions.

**Community Service:** This form of the sentence is not available under the CPA, but is provided for under the Lagos State Criminal Justice Administration Law 2007, and the English Powers of Criminal Courts Act S. 14-17; and schedule 12,13 of Criminal Justice Act 1982, makes provisions for the rules governing community service.

The community service order (CSO) requires the offender to perform unpaid work for a specified number of hours, at intervals over a period of time as specified in the order. The community service shall be in the nature of;

Environmental Sanitation, or

Assisting in the care of children and the elderly in Government approved homes, or

Any other type of service which in the opinion of the court would have a beneficial and salutary effect on the character of the offender.

The officer appointed by the officer to supervise the offender is known as community service officer, is expected to enter into an agreement with the offender specifying the number of hours of service that would be rendered on a daily or weekly basis. The written agreement must be filed in the court. Where the offender fails to observe the agreement, the officer is obliged to report to the court, which will issue a warrant for his arrest, and he may be sentenced for the original offence for, without further proof of guilt. (See S. 351 C.J.C)

**Caning:** Or Corporal Punishment canning is provided for under S. 384-388 of the CPA. Where the Court is of the opinion that an order of imprisonment or other custodial or non-custodial sentence may not be appropriate in the circumstances may order the offender to be canned. However, no person shall be, sentenced to be canned more than once for the same offence. And any offender female or male over the age of 45 shall not be sentenced to be canned. The canning sentence is to be applied with a light rod or cane or birch and the number of strokes shall be specified in the sentence and it must not exceed 12. in certain cases,

where the punishment for the offence is more than 6 months, if the court thinks fit, having regard to the prevalence of crime within its jurisdiction or to the antecedents of the offender sentence the offender to canning either in addition to or in lieu of any other punishment to which the offender is liable. The court must specify the venue of the corporal punishment and must be carried out as soon as possible.

### **ONE DAY DETENTION**

Where the court has the power to pass a sentence of imprisonment the court, in lieu of passing sentence of imprisonment, may order that the offender be detained within the precincts of the court or at any police station till such hour, not later than eight in the evening on the day or which he is convicted, as the court as the court may direct. The court in making the order must also ascertain the distance from the place of detention to the offenders abode, in order that such order of court will not deprive the offender a reasonable opportunity of returning to his home on the day or which such order of detention is made. (See S. 379 CRA).

### **SELF ASSESSMENT EXERCISE 3**

Assess the case of non – custodial measures in sentencing of offenders in Nigeria.

## **4.0 CONCLUSION**

Given the range of non-custodial measures available to the sentencer it is clear that term of imprisonment ought to be the very last resort to the sentencer. The use of non custodial sentence will help to decongest the courts, offer a better treatment of the offender, remove the negative effects of imprisonment (like stigma) and other unwanted effects. The use of compensation order, and restitution of stolen property order ensured that the victim goes home smiling and forgiving with the feeling of having reclaimed justice, unlike where the offender is merely sentenced to a term of imprisonment, and the offender comes out to enjoy the fruits of his crime. One can only hope that the centers in Nigeria should use the non – custodial measures more often than before.

## **5.0 SUMMARY**

We have looked into some of the options available to the sentencer apart from imprisonment, known as non – custodial measures or punishment may of he non-custodial measures can be combined as fine with community service, or a compensation with probation. In Nigeria, many

of the non – custodial measures are rarely utilized even though it is specifically provided for in our laws.

## **6.0 TUTOR – MARKED ASSIGNMENT**

1. Discuss the range of available non – custodial measures available to the sentencer in Nigeria.
2. Discuss the advantages of non – custodial sentences over the custodial sentence.

## **7.0 REFERENCES/FURTHER READING**

Fair head, s. and Wilkison – Grey (1981), Day centers and probation (Home office Research unit Reper 4) London, Home office.

Zellick, G. (1980) “Prison Offences” in British Journal of Criminology 20.

## **UNIT 5      ANCILLIARY ORDERS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Compensation Orders
  - 3.2 Restitution 269 – 270
  - 3.3 Confusion of Property and Forfeiture (264)
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References /Further Reading

### **INTRODUCTION**

In this unit, we will examine the problems associated with the proceeds of crime, is it proper to merely sentence the offender to a term of imprisonment without going further to deal with the proceeds of the crime? Where the object of crime had been to deprive the owner of his or her property, is it proper to allow the offender to go to a term of imprisonment only without further making orders as to the proper disposal of the proceeds of the crime? The innocent victim of the crime may quite truly embark on a civil action to recover his property or money from the offender; but this is a long wounded procedure, and the criminal court ought to use its powers under the law to not only order compensation for the victim of crime but also restitution of property where it would still be traced or recovered. The court also has power to confiscate property especially those used by the offender in the perpetrated of the crime.

### **2.0 OBJECTIVES**

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

- Understand when and how the victim should be compensated.
- Restitution of property
- Confiscation of property

### **3.0 MAIN CONTENT**

#### **3.1 Compensation Order**

The court may considering the age, of the offender, the charge itself, especially where it involves stealing, and the stolen property be returned

to the rightful owner, and also order compensation or damages to the victim in order to restore the victim to his position before the crime was committed. (See S.267-270 CRP).

Compensation orders in effect direct an offender to pay money to the court for transmission to a victim who has suffered personal injury, loss or damage as a result of an offence. The offence must be one of which the offender has just been convicted, or which has been taken into consideration by the sentencing court. The order may be made as a result of an application by the victim, or without one, although victims cannot safely assume that the court will always remember to consider compensation. A compensation order can be made either in addition to or instead of any other sentence or disposal, so that it be the only sentence imposed. The court of Appeal in England in the case of *R vs Miller* (1976) crime L.R. 694 gave some condition for the award of compensation by the criminal court, these are

They are not alternative to a sentence, in other words, the order of compensation is generally made with and in addition to other sentences mainly custodial and fine.

They should be made when the legal position is clear. The court for instance in the case of *Kneelsaw* (1974) 58 cr. App. Rep. 439, the court ruled that compensation order through extremely beneficial so long as it is confined to simple, straightforward cases and generally cases where no great amount is at stake.

Regard must be had to the offender's means.

The order must be precise, relate to an offence, specify the amount, and the instalments if there is to be payment by instalments;

The order must not be oppressive,

The order may be made on good moral grounds to remind the offender that crime is not good.

An order must be realistic where instalmental payment is allowed, if ought not to be for a long period.

Where the offer for payment of compensation proceeded from the offender, the counsel must ascertain the capability of his client before he makes the offer.

Where the offender is to be sentenced to a term of imprisonment this should be done notwithstanding that the offender is in a position to pay compensation.

A compensation order may be made against an offender even when the offender would not be held liable for compensation in civil law.

The value to be set for the victim loss must be properly proved.

### **SELF ASSESSMENT EXERCISE 1**

Examine when compensation order may be made by court in sentencing an offender.

### **3.2 Restitution Order**

A Court can order anyone having possession or control of stolen goods to restore them to any person entitled to recover them. Alternatively, it can on an application by a person entitled to recover goods from the convicted person, order goods to be delivered or transferred to the applicant.

Another alternative open to the court if money was taken from the convicted person when he was apprehended, is to order a sum to be paid out of it, not greater than the value of the stolen goods, to the person who is entitled to them. The goods must have been stolen, and the person who is made the subject of the order must either have been convicted of the theft or had it taken into consideration in the determination of his sentence.

The court must ensure that the proper party that is, the rightful owner gets the property to avoid unnecessary complications or further court actions. The criminal court, will not however begin to call evidence to ascertain the rightful owner of property, but may allow the owner present valid documents or evidence to prove ownership (See Ferguson) (1970) 54 Cr. App. Rep. 410. The court should ensure that the victim do not gain more than he has lost (See S.267-268 CRA).

Where, the property is in the possession of a third party who may have acquired it without any notice that it was stolen, the court is empowered under S.270 CRA to order restitution to the rightful owner with or without payment of compensation by the owner to such third party in whose possession the property is found. This does not apply to negotiable instrument which shall have been bona fide received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that it has been stolen. See S.270 (2)(b).

## **SELF ASSESSMENT EXERCISE 2**

Discuss the use of restitution order in sentencing.

### **3.3 Confiscation of Property**

The court has the general power to order the confiscation of property used by or intended by the convicted person to be used for the purpose of committing or facilitating any offence. See S.264 CRA

The property must have been in the possession or under the control of the offender at the time of his apprehension. The property must have been used in the commission of the offence. In making the order for confiscation of the property, the court may order that the property be kept with the police, or sold and the proceeds be held as it directs until some person establishes to the court's satisfaction a right thereto; and if no person establishes such a right within six months from the date of forfeiture or confiscation such property or the proceeds therefore shall be paid into the court. Where an appeal has been lodged against the order, the order for confiscation will stay until the determination of the appeal unless the property is a perishable one.

### **4.0 CONCLUSION**

The power of the criminal court to order compensation for the victim of a crime is a veritable power that enables the victim to go home satisfied without any further expense by him. It helps quite well to deprive the offender of the proceeds and profit if crime and also shows that crime do not pay. It is very good machinery for deterrence and helps to restore the parties to status quo.

### **5.0 SUMMARY**

We have examined compensation order, and when it could be made by the court. The order is always generally useful with other custodial or non-custodial sentences. It may be combined with fine or prison terms, or community service. The court may also order confiscation of the property used in the commission of an offence. Restitution of property like compensation restores the owner to the status prior to the offence and is also additional to other sentences that may be imposed.

### **6.0 TUTOR-MARKED ASSIGNMENT**

1. Discuss compensation of the victim as a sentence in criminal proceedings.
2. Examine the importance and use of restitution order in sentencing.

## **7.0 REFERENCES/FURTHER READING**

Inigo Bing (1999) *Criminal Proceeding and Sentencing in the magistrates court*; 5th ed sneel & Maxwell.

Walker Nigel, (1985) *Sentencing theory law and practice*. Butterworth's

## **MODULE 4      PRISONS**

- Unit 1      Purpose of Imprisonment
- Unit 2      Imprisonment Intended and Unintended Effect
- Unit 3      Prisoners Rights
- Unit 4      Other Correctional Measures

### **UNIT 1      PURPOSES OF IMPRISONMENT**

#### **CONTENTS**

- 1.0    Introduction
- 2.0    Objectives
- 3.0    Main Content
  - 3.1    Remand
  - 3.2    For Treatment of the Offender
  - 3.3    Deterrence
  - 3.4    General Deterrence
  - 3.5    Dissapproval of the Offence
  - 3.6    Retributive Punishment
  - 3.7    Protection of the Offender
- 4.0    Conclusion
- 5.0    Summary
- 6.0    Tutor Marked Assignment
- 7.0    References/Further Reading

#### **1.0    INTRODUCTION**

A term of imprisonment is only one of the punishments that is imposed on an offender and generally more offenders do not actually serve prison terms wherever there is an options of fine. But because of the stigmatizing effect of prison on any body who had gone through the experience which is not that palatable. In this unit we shall examine the main purposes of imprisonment.

#### **2.0    OBJECTIVES**

At the end of this unit the student is expected to know the nine purposes of imprisonment rather than other forms of punishment.

### **3.0 MAIN CONTENT**

#### **3.1 Remand**

Imprisonment is used for Nine Major Purposes

- a. To hold people until they can be tried, sentenced or taken to the place to which they have been sentenced; or until they can be extradited or deported. This is a function of performs with low escape mate, but with the infliction of service inconvenience and hardship on the people of whom some are eventually acquitted. In most cases, the courts refuse to grant bail or fix very stringent conditions that will entail the accused being detained in prison unnecessary, and eventually released or acquitted. Some are imprisoned to a term of years, and appeals, in the meantime he has to spend the time until his appeal succeeds, if this happen, he is not compensated. Recently, a forms clef of any staff in Nigeria was acquitted after spending eight years in prison. The major purpose of prison is to keep offenders and convicts.
- b. To coerce people into compliance with the orders of a court. The commonest example is its use for non-payment of fines, and in a substantial number of cases the sight of the warrant of imprisonment or the experience of entering. Sometimes to force people to obey court orders, or to punish them for disobedience to court orders e.g. orders of injunction.
- c. To protect members of the public from offenders by taking them out of circulation. Since escapes rates are low, this purpose is achieved for the duration at least of the detention, if this reason is valid, then it is only a postponement until the next offence. In fact, not all offenders or convicts are habitual offenders, and so will not strictly fall into this category. In some cases, may prisoners are in fact valuable assets to the society or their families, and the loss even for a momentary period is a loss to the society or their family.

#### **SELF ASSESSMENT EXERCISE 1**

Critically examine the purpose of imprisonment stated above.

#### **3.2 For Treatment Purposes**

As a sentence, to hold a person long enough to make possible a prolonged course of treatment. There is a possibility that this purpose may achieve this purpose depending on the therapeutic facilities,

including counseling and training facilities available in the particular prison. However, in Nigerian prisons, the opposite may be the case as all prisoners are often lumped together so that the hardened criminals may exercise severe negative influence on the very mild as to change the perception of the mild convict and destroy the very purpose intended.

The harsh conditions of the prison may in fact turn the offender against the society, and the ultimate and is to train and reinforce societal enemies instead of reforms and treatment.

### **3.3 Deterrence**

A sentence may have a purpose of deterrence; that is, in the hope that temerity of the past experience may discourage the ex-prisoner from taking risking another sentences. This is quite possible in most cases. The fear of a repeat experience may in fact deer the ex-prisoner from going ahead to commit the offence. But in a lot of cases, it in fact gives them a broader perspective of the crime and a feeling of expertise of some sort, and attitude that they had learnt from their past mistakes, and they can now perfect their acts.

### **3.4 General Deterrence**

As a sentence, imprisonment may act as a general deterrence to others in the public who may be involved in the same type of crime, or who are preparing to enter into the inglorious trade, that it does not pay, and that the cost far out weights the risk. We may argue that this is not always the case, if not capital punishment alone for armed robbery should have put a stop to this crime, instead armed robbery is still on the increase.

The truth is that the effect of a sentence on individuals is subjective and not objective. Though the fear of being caught may be deterrent generally, but the fact still stands that some people are undeterrable so far as some kinds of offence are concerned, so that even a very high subjective probability of detection does not restrain them.

### **SELF ASSESSMENT EXERCISE 2**

Discuss deterrence as a purpose of imprisonment.

### **3.5 Disapproval of the Offence**

It shows societal disapproval of the offence; this may be the justification when the judge says after pronouncing a sentence that it will serve as a warning to others at large, and goes on to express statements that show the severely of the crime as a justification for the severe punishment.

Unfortunately there is no evidence that the view of the court represents the totality of the public, while reporting of sentences by the news media has ever had much impact – or ever could have. In any case the achievement of this aim is a mere hope, not an independent justification.

### **3.6 Retributive Punishment**

The retributive view is that every offender deserves to be punished for the very reason that they have offended, broken the law and caused damage to someone or the society. The justification for the imprisonment is that it will reduce the future incidence of such offences, whether by preventing or correcting the offender or by discouraging or educating other potential offenders.

### **3.7 Protection of the Offender**

In some very unusual cases, to protect a very unpopular offender from being attacked by his victims. But in some cases the possibility of his being attacked in the prison by other inmates is very possible.

### **SELF ASSESSMENT EXERCISE 3**

Assess retributive punishment as a purpose of imprisonment.

## **4.0 CONCLUSION**

The rationale for imprisonment of offenders must be clearly understood and applied as a background information for all person involved in the sentencing of an offender where the aim is only to punish or take vengeance may at the end not be able to achieve any useful purpose for the society and even the victim. The other aims of justice for the victims may be all too good a reason but the aims of justice in criminal law is not only for the victim but to ensure a balanced society where the rights of all members of the society is protected, the security of life and property is of utmost importance as well to the Government. The nine reasons for imprisonment explained above is not exhaustive and as researchers come up with others the list will certainly be explained.

## **5.0 SUMMARY**

In this unit we have tried to explain the nine major reasons for sentencing an offender to be term of imprisonment rather than other forms of punishment. We discovered that the purpose for imprisonment range from keeping the offender until he can berate to face the law and his trial, it also includes protection of the society and himself, to avoid repetition of the crime, to deter him from further crime and also a general warning

to all others who may be interested in engaging in such crimes that it does not pay and society will not tolerate such behaviour.

## **6.0 TUTOR-MARKED ASSIGNMENT**

1. Advance reasons for imprisonment of an offender.
2. Make a case against imprisonment of an offender.

## **7.0 REFERENCES/FURTHER READING**

Walker (1985), Sentencing Theory, law and Practice London

Shaws, S. (1982) The peoples Justice prison reform trust London.

## **UNIT 2 IMPRISONMENTS' INTENDED AND UNINTENDED EFFECTS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Teaching
  - 3.1 Intended Effect of Imprisonment
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### **1.0 INTRODUCTION**

Although most prison sentences are imposed either routinely or because they are regarded as the offenders deserts, the sentences sometimes has hopes that incarceration will have a beneficial effect. On the other side of the coin, are the unwanted effects of imprisonment, the prison officials may make efforts to reduce the unwanted foreseeable but have mostly permanent impact on the life of the prisoner.

### **2.0 OBJECTIVES**

It is hoped that at the end of this unit you should be able to discuss

- The intended effect of imprisonment, on the prisoners.
- The unintended unfortunate effect of imprisonment.

### 3.0 MAIN CONTENT

#### 3.1 Imprisonment's Intended Effect

##### 3.1.1 Individual Deterrence

The usual hope is that the experience of imprisonment will be so unpleasant a memory that it will be an effective individual deterrent. *Prima facie*, this seems quite likely. For most offenders their first prison experience is humiliating, frustrating, depressing and boring; and while they may learn how to cope with it psychologically they nevertheless fear a repetition of it. It is only hardened criminals that will not care about it. It seems that only those who have just experienced their first conviction would seem to have in some way been encouraged to avoid another conviction, at least for some period of time, compulsive or habitual hardened criminals are not expected to be deterred or scared of a conviction or imprisonment, and so it does not deter the habitual offender, for those category of people something else ought to be done for them. However in practice, sentences feel obliged to impose yet another prison term, sometimes in order to maintain the credibility of prison as a general deterrent, sometimes to protect others, sometimes because they regard it as deserved or because there is no other option available to them.

##### 3.1.2 The Pains of Imprisonment

The major and very important reason for ascribing imprisonment as a deterrent is what Sykes (1958) referred to as "pains of imprisonment" these are: -

- i. **Deprivation of Freedom** – the freedom of the offender is immediately curtailed within the far walls of a prison, he is mostly confined within a small space called cell. His visits to the open air are restricted by the minutes. These internal restrictions are not intentional but to prevent escape from the prison.
- ii. **Restriction and Drinks** – The food and drinks taken in prison is different from what the prisoner would prefer to eat and certainly provided in approved rations and quality, no special drink or beverage is served, and the pains of these deprivation will affect the new inmates in very great measure, but he may adopt as time goes on.
- iii. **His Purchasing Power is Limited** – even if the prisoner has money to spend, the list of what he may buy are limited within the prison, and may certainly not be able to enjoy all the luxurious items he is used to.

- iv. He is not allowed to keep drugs even analgesic, laxative or sleeping pill for fear of its being misused.

His contact with family and friends outside is very limited. Initially, the friends and family may wish to visit quite often, but by the time they are subjected to series of formalities e.g. writing of application, approval, interview etc before they can see their imprisoned family, they will be discouraged

- vi. He is forced to associate with other prisoners, whose tastes and values may be very different from his. Some of them will be dangerous, some violent some wicked, he may become target of homosexual attacks. His choice of friends is curtailed.
- vii. He loses what Sykes called “autonomy”, the power of choice in every day matters. He must get up, wash, eat, work, exercise etc at times fixed by the regulations not at his own option and time. Lack of choice may be damaging psychologically that the ex-prisoner may find it difficult to make choices again when he is free.

### **SELF ASSESSMENT EXERCISE 1**

Examine the pains of imprisonment on the prisoner.

#### **3.1.3 Prison Work**

Much research has been conducted to ascertain the usefulness of the prison work. Compulsory labour is banned in most advanced countries, but prison labour is exempted. Sentences are permitted to go with hard labour, but the labour being referred to here is not the type where the prisoner is subjected to punitive labour but a form of activity that is mostly productive and fills the idle time experienced in the prison. The prisoners are mostly engaged in cleaning, washing, cooking, painting etc. many are also involved in craftsmanship and some prisons encourage the training and production of various items like bags, decorative items etc. which can be sold if the proceeds are given to the inmates. The places of the prison while has been find to be places of serious conflicts and fights, but prisons without work would became frustrating and restless.

#### **3.1.4 Re-Religious Influence**

It is now a prevalent result of imprisonment that more inmates are turning to the Lord. Many found the time to reflect on their way of life; and repent to follow the Lord. Many become pastors in the prison, and

eventually change into dignified citizens, some enroll in Bible Colleges from the prisons, while those that are Muslim also move closer to their God. Prison life sometimes has the religious changing effect on many even after prison experience.

### **3.1.5 Behaviour Modification**

Sometimes depending on the prison and the period spent, it is found that most ex-prisoners hardly ever are the same; they are either changed for the better or worse. In most cases, the behaviour is permanently modified, their psychological intention and makeup will be affected by many factors in the prison and many cause irreparable damage to the psyche of the ex-prisoner. It is important that there should be regular psychological checks on all prisoners at regular intervals. There have been cases of attempted suicide, and mental breakdowns in the prisons which indicates series mental disturbances due to the prisoner status being experienced by the inmates.

### **3.1.6 Social Skills and Recreation**

Most prisoners have a spare-time activity in which they invest a lot of interest and even much of their earring. This is most evident amongst youth prisoners and in prisons where medium and long sentences are served. In the training recreations. There are playing fields, educational opportunities, and technical training which help motivate and encourage the prisoners, keep them from mischief's, fills the idle time and generally enable the prisoners acquire new skills.

## **SELF ASSESSMENT EXERCISE 2**

Discuss the positive aspects of imprisonment.

## **3.2 Unwanted Effects**

### **3.1.2 Damage to Physical Health**

This happens and is very prevalent in Nigeria Prison System as a result of malnutrition in sanitary conditions, cold heat, excessively hard labour or inhuman disciplinary measures. In most Nigeria Prison there is serious overcrowding to an extent that the prisons are holding more six times the under of inmate they are built to accommodate; in this condition the prisoners are subjected to extreme conditions that are not only health threatening but also life threatening.

Another associated problem is that the inmates are easily exposed to attacks from other inmates for space and air, and may die for suffocation and failing health. There are no adequate health facilities and personnel

in the prisons heading to permanent health problems even post prison life.

The very harsh conditions often lead to breakdown in mental stability, and may do go totally insane and has to be taken to asylums.

### **3.2.2 Problems**

From studies carried out in some British Prisons by Richards (1978), he itemized some common problems prevalent in the life of the inmates of a prison, these are:

missing somebody,  
 Feeling that your life is being wasted  
 Feeling sexually frustrated  
 Missing little luxuries  
 Losing your self – confidence  
 Feeling angry with the world,  
 Being afraid of dying before you get out,  
 Being afraid of going mad,  
 Feeling suicidal.  
 Fear of losing loved ones.

### **SELF ASSESSMENT EXERCISE 3**

Discuss some problems being encountered by inmates of Nigeria prison.

### **3.2.3 Schools for Crime**

Many researchers have come up with the findings that prisons are merely schools for perfecting and breeding criminals and enemies of the society.

This may be true in some cases, but in most cases it may not be the factual situation. Clearly it is possible that prisoners acquire from each other ideas, techniques and personnel contacts which lead them into subsequent offences but quite plural, these ideas if it had worked could not have handed them in the prison; invariably majority of the prisoners are less likely to be influenced by such ideas.

### **3.2.4 Marital Relations**

The general impression had been that imprisonment always invariably lead to marital breakdown. But recent studies have revealed that on the contrary in most cases, it has drawn the couple closer and the marriage stronger. It is discovered that the wives always have the hope that their husbands will soon come back to them. On the other hand many men worry about

the fidelity of their wives and are valuable to machineries gossip. Both husbands and wives, being young, suffer from sexual deprivation during the sentence. The only positive aspect is that it makes both appreciate themselves sexually when united.

### **3.2.5 Families**

What must not be ignored is the hardship often experienced by prisoners families. The absence of some fathers can be a relief, but in most cases wives and in most cases too financially.

## **4.0 CONCLUSION**

From all indications it is easy to exaggerate the unwanted effect of prisons and to be tempted to assume that the harm far outweighs the positive effects on the prisoner. Much of the unwanted effect may not actually be of a permanent nature and the ex-convict may quickly overcome it and continue his normal life. But where the effect is deep like mental breakdown, it may not be possible to conclude that the term of imprisonment is of more beneficial effect on the prisoner.

## **5.0 SUMMARY**

We have been able to examine the effect of imprisonment on the offender, both the negative and positive aspect of it, and from the works of researchers, the positive aspects of imprisonment may in the long run out though its negative aspects.

## **6.0 TUTOR-MARKED ASSIGNMENT**

1. Examine the negative effects of imprisonment on the offender.
2. Suggest reforms in the prison system to reduce the negative unwanted effects of imprisonment on the offender.

## **7.0 REFERENCES/FURTHER READING**

Sykes G. (1958) *the society of captives*, Princeton, University Press.

## **UNIT 3 PRISONERS RIGHTS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Discipline and punishment
  - 3.2 Prison Adjudication
  - 3.3 Prisoners Complaints
  - 3.4 Medical Welfare
  - 3.5 Right to Visitors/Communication
  - 3.6 Health and Cleanliness
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- 4.0 Conclusion
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### **1.0 INTRODUCTION**

For the provision and management of prisons the principal statute is the Prison Act, an Act of the National Assembly. It is only the Federal Government that can legislate on the prison and the states or local Government do not have any such powers. There is also the prison Regulations made pursuant to the Prison Act which may be amended by the Minister for the regulation of the prisons in Nigeria. Each prison also has its own standing orders made by the Minister of internal Affairs regulating the day to day affairs in the prison. The prisoner like any other citizen enjoys certain rights guaranteed by the law and regulations, that an offender has been kept in Prison does not result in absolute denial of all his fundamental rights, as well as his rights guaranteed under the Police Act and the regulations. Here we shall endeavor to examine these rights. These rules are of different kinds, (1) Some expressing general police, (2) those roles conferring discretionary power on administration or staff, (3) those intended to safeguard the health and welfare of inmates, (4) those rules providing prisoners with specific protection against abuses and those prohibiting certain conduct.

### **2.0 OBJECTIVES**

The candidate at the end of this unit should know the rules and provisions of the law regulating the rights of each.

### 3.0 MAIN CONTENT

#### 3.1 Discipline and Punishment

The prison regulations (first made in 1955) specify in its Rule 48 certain offences against discipline. These rules are formulated to prevent escapes and harm to prisons and staff alike. Most prisoners are people who have often demonstrated their disrespect for the law and its penalties. In many cases, it will be most cumbersome to bring a prisoner to trial for an offence committed in the prison. Prisoners are not co-operative witnesses, partly through distrust of agencies of the law, partly through fear of retaliation by co-prisoners or staff. Prison justice is rough and ready, and there must be practicable ways of resolving the issues of discipline. The offence may be divided into very grave and grave.

The offences stated in regulation 48 (w) and (x) are of very grave nature and the punishment is also very grave.

Mutiny or incitement to mutiny

Personal violence against any officer or servant of the prison.

Both offences attracts any of the following punishment and in some cases the prisoner may be subjected to two.

- (i) Solitary confinement in a refractory or solitary cell for a term not exceeding six days or
- (ii) To be kept on reduced diet, not exceeding six days.

To forfeit remission of sentence or

To be whipped with a cane. Only in aggravated cases may the prisoner be made to undergo two of the punishment above.

The prison authorities is allowed in cases of escaping from lawful custody and coupled with previous offences to charge the matter before a competent court to be dealt with under the criminal code. One of the specified offence that has been a target of criticism is reg. 48 (1) "making any frivolous or groundless complaints". The target of the complaint of cause is any officer. While the officers argue that this rule safeguards them from frivolous attack and complaints, the prisoner may be discouraged from making genuine complaints against an officer. The aim of the rule is however to discourage prisoners from retaliating against unpopular officers by accusing them of improprieties. Many have called for the abolition of this rule e.g. zellick (1981), while its abolition is strongly opposed by prison officials.

A charge may be heard and decided by any of the following: -

- (a) Superintendent or an assistant superintendent in charge of prison,
- (b) Director, deputy director,
- (c) Controller or deputy controller,
- (d) Inspector of prisons or by
- (e) One or more visitors of prisons.

The prisoner must be allowed a fair hearing with ample opportunity to defend himself and call his witnesses.

The superintendent shall also enter in the record of punishments a statement of the date and nature of every offence punished under the Regulations, with the name of the offender and the punishment afflicted. The superintendent considering the state of the prison and character of the prisoner and for the safe custody of any prisoner that should be confined to chains, he may confine him, and record this in the his journal.

ADJUDICATION: There has been serious of attacks on the mode of adjudication in the prison; and the method of imparting discipline suspect, when an officer decides that a prisoner be charged, the prisoner is simply notified and detained. He is then brought before an officer as stated above the senior officer hears the complaints and listens to the prisoner, through he is allowed to call witnesses, but he rarely does, because majority of the inmates may decline for dear of attack from the officer. Where the Senior Officer believes the officer he goes ahead to make an award.

He may do any of the following: -

Caution

He may lose his remission or part thereof.

To be whipped with a cane

Reduced diet.

Solitary confinement

There is no possibility of appeal against the award, and this has worked grave injustice in practice. Also, to be noted is that the prisoner is not entitled to legal representation, and most usually, the officer is not a lawyer or has any legal training in law or judicial process, they mostly will rather support their own officer and keep the ranks than a prisoner. The adjudicator is not bond by any technical rule of evidence and may in most cases rely on his own personal judgment and experience as opposed to the evidence and facts before him. There had been calls for reforms in the adjudicating process in the prison but the government is yet to take any positive step.

## SELF ASSESSMENT EXERCISE 1

Discuss the mode of enforcing discipline in the Nigeria prison.

### 3.3 Complaints

The prison Act allows prisoners to make complaints to a prison Visitor or to the superintendent but not to any subordinate officer. The prisoner, who wish to complain must first inform the warder in charge of his gang that he wishes to make a complaint to the superintendent.

The regulation, by virtue of rule 47, stipulates that it is after the calls are locked that the warder will approach the chief warder and mention the name and number of the prisoner who wishes to see the superintendent, and the chief warder shall arrange to parade the prisoner before the superintendent the following naming, where the day falls on a Sunday, then if will wait till following Monday. Complaints may only be made to the superintendent when he is inspecting the prison yard .Regulation 42 (2) however warns the prisoner against frivolous complaints which will be dealt with under regulation 48 (1).

Clearly, the regulation discourages any prisoner from making any complaints whatsoever. The regulation do not go on to specify what to do in cases where the superintendent finds the complaint very genuine, why must the prisoner wait till the next day and why should it be done during inspection tour. What does the prisoner do, where the warder refuse to pass on his request to see the superintendent. There is no provision for a legal practitioner to step into the matter and complain on behalf of the prisoner, though in practice this may be possible, but the outcome of such complaint is doubtful if it will not be classified as frivolous. In cases where the prisoner is awaiting trial, the lawyer may complain to the court, who may issue an order to protect the offender. In cases of convicted prisoners, the arena of complaint is so limited under the regulations that it is almost non existent.

In England, there are complaint cards in each call, and where a prisoner complaints, the card is handled by independent group, who may forward the complaint to the governor or the Board of the prisons at its meetings. He is permitted to write petitions to the Home Secretary. He may also write to the members of parliament of his choice. Under English law, the prisoner may file an action in court against any officer of the prison, though as a public officer, we must inform him, and give him opportunity to respond. However, if it involves disciplinary proceedings, the courts may not be inclined to look into the proceedings or intervene because if is not exercise of judicial function. He may if dissatisfied, actually petition the European commission on Human Rights (ECHR)

and seek a remedy for relation of his rights guaranteed under the convention.

### **3.4 Medical Welfare**

The law recognized two main types of sickness, mental sickness and others. Where the prisoner appears to be of unsound mind, the issue must be referred to the Minister who shall appoint two or more qualified medical practitioners to inquire into the prisoner; soundness of mind and he if he thinks necessary order the removal of the prisoner from the prison to another prison or do an hospital, where the prisoner is certified to be of sound mind, the relevant authority may order in writing that the prisoner be removed to prison to be dealt with according to law.

Where the prisoner is found to be suffering from mental problems, he shall be detained in a mental home, until he is of sound mind or the expiration of his prison sentence.

In cases of serious illness of a prisoner confined in a prison where there is not suitable accommodation for him, the comptroller General or Superintendent direct the removal of the prisoner to a hospital. The medical superintendent of the prison must monitor the prisoner and issue a monthly report on the health of the prisoner, and wherever it is appropriate issue a report that the prisoner be returned to the prison. If a prisoner escapes from hospital, no prison official shall be held responsible unless he is in his personal custody. In Nigeria, it is quite disheartening that the medical attention in the prisons are grossly inadequate, and personnel are not usually qualified, and where they are; there is no adequate provision of drugs in the clinics even to treat minor ailments.

The prisoners themselves must provide their drugs, and those on drugs are required to buy their own drugs. Quite many of the prisoners are denied quick attention until the situation becomes very serious, mostly neglect and careless on the part of the prison officials.

### **3.5 Right to Visitors/Communication**

A prisoner and others awaiting trial is entitled to receive visitors in prison and also entitled to receive and write letters under some specified conditions. Regulation 42 – 46 of the prison regulation makes provision (though seemingly inadequate) on law, when and type of visitors that may visit an inmate of a prison in Nigeria.

Every convicted prisoner is allowed to receive a visit from friends in the presence of prison officer, in practice, the visitor must first apply to the

comptroller of prisons asking for permission to visit a relative, friend or client (if the visitor is the legal adviser to the prisoner), he must state the reason for the visit, or else, the application may not be approved. Where the visitor is an illiterate, the prison officer may assist on writing the letter. The letter is then submitted for approval, and once approved the name of the visitor is called and he is first permitted to enter the reception hall; he then registers his name, and taken to a room to wait. The prisoner is then brought in, and all discussions is done with an officer in attendance. Where the visitor wish to give the prisoner food, or any other item, the officer first receive it and check it, if it is food, the visitor is asked to taste the food before it is handed over to the prisoner. The visitor is free to give the prisoner money, drugs, cloths, food (both cooked and raw). Visits are allowed everyday, between the hours of 9am and 6am.

The prisoner is also allowed to write and receive letters though at the discretion of the superintendent. In practice, there is generally no restriction to writing and recovering letters by the prisoner unless there is a ground for suspicious, or it is being used for a criminal purpose or intention.

The regulation provides that where a prisoner is “dangerously sick” and desires to be visited by any “near relation or friend, the medical officer may give an order in writing for the admission of such relation or friend if he considers it advisable. Why the regulation provides that a prisoner must be “dangerously sick” before he could be permitted to see a near relation, and this will depend on the discretion of the medical officer. Regulation 42 approves unrestricted access to a prisoner by his relatives and friends, while Regulation 43 restricted access to a prisoner who is “dangerously sick”, and makes the visit subject to the discretion of the medical officer. In practice it is quite improbable that the medical officer will deny the request of a dangerously sick person for a visit by his relative or friend. The dangerously sick prisoner must be attended to by his relative and friends, as the prison is not a friendly place where people go out of their way to take care of others the need for money, drugs, and other essentials for living may actually make it imperative that people be allowed unrestricted access to their relatives in prisons whether dangerously sick or not.

However, the prisoner awaiting trial is allowed more freedom, he is allowed all reasonable opportunities daily of communicating with their friends or legal adviser. They are also allowed to write and receive letters. This is important because a person is presumed innocent until proved guilty.

The position is that he is an innocent person only being restricted before one matter of his guilt or innocent is being determined. This is why he is also allowed to wear his cloths, and also allowed greater rights to his legal adviser for preparation for his defence in the court. This is the internationally accepted practice.

The use of cellular phones in the prisons, or computers with the internet facilities and other modern communication gadgets are not provided for in the regulations; and may be left to the discretion of the prison officers to determine what to permit and what not. However, in practice the Nigerian Prison forbids the use of phones and computers in the prison; but where the prisoner is of good behaviour if is permitted, and those awaiting their trial are given much more freedom in the use of phones and computers.

### **3.6 Health and Cleanliness**

Every Prisoner is entitled to be kept in a homely, clean and comfortable environment to safeguard his health and well being. The regulation provides that the prison and every room, and part thereof, and the furniture therein, shall be kept clean and shall, as often as necessary washed or white-washed with time. The prisoner is entitled to be provided with suitable bedding. While strongly, the regulation provides that convicted prisoners are not entitled to receive any food, clothing, bedding or any other prison allowance unless by order of the medical officer. The prisoners are entitled to take exercises in the open air. They are also required to keep themselves clean and discount in their persons.

Every prisoner is required to take their bath daily. Whenever, a prisoner is sick, he might be exempted from labour, and taken to the clinic for proper care and attention. In spite of these lefty provisions, you still discover that the prisoners still sleep on bare floors, and they are never freely given bathing soap and other disinfectants, and this is the reason why many develop skin problems, and other ailments.

### **SELF ASSESSMENT EXERCISE 2**

Examine the prisoner's right to visitors and communication in Nigeria.

### **3.7 Food**

The Braden Regulations made copilots regulations and rules concerning food, in terms of type, quantity and diet of the prisoners. The prison discriminates between the prisoners awaiting trial, juveniles under 16 years and also debtors and non-criminal prisoners from other criminal prisoners.

The prison forbids the drinking of alcohol and tobacco expressly except with the written permission of the medical officer. While this is done, it has to specify the quantity to be allowed, and the name of the prisoner must be recorded in the medical journal. A debtor or other non-criminal prisoner is allowed to procure or receive at proper hours moderate quantities of food wine, malt liquor, clothes, bedding or other necessaries subject to examination. A criminal prisoner awaiting trial may also provide himself with food and other necessaries in the same way as a debtor, and if he does not do so, he shall receive the regular prison allowance of food. These category of prisoners are allowed to bring their own food into the prison, and also allowed special diets, liquor, tobacco, and other special provisions they can afford. In practice every prisoner whether awaiting trial or not has this privilege; the reason is that even though the law makes provision for adequate diet and rations, the food served is always tasteless, cold, not well cooked, and uninviting, and if one can afford it, much preferable to bring ones food. The prison officials therefore do not interfere in the provision of food by private arrangement by each prisoner.

### **SELF ASSESSMENT EXERCISE 3**

Assess the right of a prisoner to health care in Nigerian prison.

## **4.0 CONCLUSION**

Imprisonment not only exposes prisoners to the influence of other prisoners but also places them to some extent at the mercy of staff. The rules and standing orders which restrict or prohibit activities that would be unhindered outside can be applied generously or with bureaucratic strictness, they may even be used to inconvenience someone who has incurred dislike. It is very difficult for officers to steer a middle course between laxity and excessive strictness, although many have acquired the knack; the prisoners see the use of unnecessary force as vindictive and wicked. The officers in most cases understand their role too well, and where there is no threat to their work or life, allows the prisoners as much laxity as possible, within the rules. The rights as spelled out in the regulations are the minimum required standard, the practice is a different matter.

## **5.0 SUMMARY**

We have tried to work at the rights of a prisoner in Nigerian prison. We have discovered that though they are kept in prison they still have certain rights and privileges that could be enforced and protected. The rights we discussed are basic, to keep them alive and health.

## **6.0 TUTOR-MARKED ASSIGNMENT**

1. Examine the problem of discipline in the prisons.
2. How may prisoners right be protected and enforced.

## **7.0 REFERENCES/FURTHER READING**

Prison Regulations

Worker (1987) Sentence, Theory and practice London.

## **UNIT 4 JUVENILE CRIMINAL SENTENCE AND TREATMENT**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Trial of Juvenile Offenders
  - 3.2 Bail of Children and Young Persons Arrested
  - 3.3 Custody of Young Person and Discharged on Bail after Arrest
  - 3.4 Remand or Committal to Custody in Place Of Detention.
  - 3.5 Method of Dealing with Children and Young Person Charged with an Offence
    - 3.5.1 Borstal Training
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
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### **1.0 INTRODUCTION**

Where a child or young person is brought before the High Court or a magistrate's court charged with an offence, the charge shall be inquired into in accordance with the provisions of children and young Persons Act and not in accordance with the provisions of the Criminal Procedure Act. There are special provisions for the treatment and sentencing of juvenile who are found to have committed an offence. The main option for this is that the Young offender must be treated psychologically by counseling and guidance and not treated as an adult. Secondly the Young offender hardly understand the implication of his actions, at least in the long run, so when told the implications he is likely to desist, and adopt a much more profitable way of life. Another, problem is that the young person is easily impressionable, and can quickly follow in the footsteps of their parents and guardian. The possibility of such influence is very great and long before the criminal process, the young person should be given an opportunity to break such negative influence and change his way of life.

The aim is not to punish but to correct, to treat and to guide the young person. In this unit we shall examine the sentencing of young offenders, how it is done, and types of sentence that may be procured.

## 2.0 OBJECTIVES

At the end of this unit you should be able to;

- Understand the procedure for trial of a young offender.
- The type of sentence for young offender.
- Remand homes and Borstal centers. Operations and uses.

## 3.0 MAIN CONTENT

**Trial of Juvenile Offenders:** The law stipulates that the juvenile offender must never be tried in the same court as adults, and where this is not possible, then the juvenile court must not sit the same time as adult court. The law also prohibits the young offender who has not attained the age of 17 years from being conveyed to court together with an adult offender or to sit in the same court with an adult offender, or associate in any way with an adult either convicted or charged with any offence other than an offence with which the person who apparently has not yet attained the age of seventeen years jointly charged or found guilty.

The juvenile court must not use the word 'conviction' or 'sentence' in relation to children and young persons.

Only persons directly interested in the proceeding are allowed to attend the hearing of a juvenile offender, it follows that the hearing is not open to the public. Though the bona fide representatives of a newspaper or news agency may be allowed to attend, unless the judge directs otherwise.

There is restriction on punishment of a juvenile offender;

No child shall be ordered to be imprisoned

No young person shall be ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, fine, corporal punishment or otherwise.

A young person ordered to be imprisoned shall not, so far as the same may be practicable, be allowed to associate with adult prisoners. (S. 419 CRA).

### 3.2 Bail of Children and Young Persons Arrested

The Young person arrested who has not attained the age of seventeen years is apprehended with or without warrant and cannot be brought immediately before a court is entitled to be released on bail unless;

- i. The charge is one of homicide or other grave crime or;
- ii. It is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or

- iii. The officer has reason to believe that the release of such person would defeat the ends of justice.

The police officer may release the young person to his parent or guardian either with or without sureties and for such amount as will in the opinion of the officer, secure the attendance of such person at the hearing of the charge. Where the young person cannot be released on bail, he then must be kept in a suitable place which is not a police station cell for detention of adult prisoners or a prison until he can be brought before the court.

The exceptions are, if the officer certifies that:

It is impracticable to do so, or,

That he is of so unruly a character that he cannot be safely so detained, or

That he is in such state of health mentally or physically that it is not advisable so to detain him.

The officer must produce a certificate to this effect before a court.

### **3.3 Remand**

A court on remanding or committing for trial a child or young person who is not released on bail shall, instead of committing him to prison, order him to be detained in a place deemed by the court to be a place of safe custody to be named in the commitment to be there detained for the period for which he is remanded or until he is thereafter brought for his trial.

The court may commit the young person to prison custody if it is found that the young person is of so unruly a character that he cannot be safely so committed, or he is so deprived a character that he is not a fit person to be so detained, or that no person can be found who will agree to undertake the custody of the child. The latter exception is applicable where the remand home is not available within the jurisdiction of the court.

### **SELF ASSESSMENT EXERCISE 2**

Discuss generally the trial of a young person.

### **3.4 Methods of Dealing with Children and Young Persons Charged with Offence**

Where after the trial, the court is satisfied of the guilt of the child or young person tried, the court may deal with the child or young person in any of the following manner: -

By dismissing the child or,

By discharging the offender on his entering into recognizance, or

By so discharging the offender and placing him under the supervision of a probation officer, or

By committing the offender to the care of a relative or other fit person.

By sending the offender to a Government institution or establishment (Borstal home).

By ordering the offender to be whipped, or

By ordering the parent or guardian of the offender to pay a fine or damages or casts, or

By ordering the parent or guardian of the offender to give security for his good behavior, or

By committing the offender with the approval of the Governor, to custody in a place of detention established under the children and young person law of a state (borstal home)

Where the offender is over 14 years of age, sentence him to imprisonment or

By dealing with the matter in any other manner in which it may be legally dealt with;

A magistrate may not impose more than N4.00 ( four Naira) fine on a child. The court may also order the parent or guardian of the child to pay any fine imposed on the child or young person unless the parent cannot be found or it is found that the parent or guardian has not conducted to the commission of the offence by neglecting to exercise due care of the child or young person.

The court may impose any or combine any two or more of the above measures depending on the circumstances of each case.

## **SELF ASSESSMENT EXERCISE 2**

Assess the methods of dealing with children and young persons charged with an offence.

### **3.5.1 Borstal Training**

A sentence of borstal training may be passed on an offender convicted of an offence punishable with imprisonment and aged under 21 on the day of his conviction, if the court is of opinion, having regard to the circumstances of the offence, and after taking into account the offenders character and prevails conduct, that it is expedient that he should be detained for training in a borstal home. Before passing a sentence of borstal training the court must consider any report made in respect of the offender by the welfare department and other concerned officers like the police officer in charge of the matter.

The sentence of borstal training serves a training function, as a training measure and as a tariff sentence equivalent to a sentence of imprisonment between the limits within which imprisonment is prohibited for young offenders, as different principles apply in each context the propriety of the sentence in a particular case depends on the objects with which it is imposed.

The borstal training may be used to provide the offender with the social vocational or educational training the young person requires. Where this is the object of the sentence 'The real problem is not a question of punishment. It is a question of the courts assessment. On the information before it of what is going to be the best for these young men himself'. The choice of borstal training in preference to other possible measures (usually probation) is based on a prediction of the likely effect of future behavior, and does not reflect the application of detailed principles. Generally, the court tries to balance proportionately the offence and sentence, but in cases of borstal training sentence, this is not the case, the issue here is not punishment, but the sentence is only imposed as a training measure in the offender's best interests.

(see generally Borstal Institutions and Remand Centers Act 2004 LFN)

#### **4.0 CONCLUSION**

The aim of sentencing of a young person or a child is generally never to punish but to treat the child with a singular aim of rehabilitating the young offender. The varieties of methods of sentencing attests to this fact. The court may actually combine two or more methods, all aimed at and for in the best interests of the child.

The court must therefore not be limited in any way in striving to ensure that the child is never lost into the world of crime, and adopt a very palliative sentence. The process right of the part of reception of the young person into the penal process is to ensure that the young person is separated from adults to avoid further negative influence on the young offender by the adult offender. If the measures are followed, the likelihood of the young offender being salvaged is very high.

#### **5.0 SUMMARY**

We have discussed the treatment of the young offender in the penal process. We have discovered that the young offender is classified into (1) Child a person under the age of fourteen years, (2) Young person a person more than fourteen but less than 17 years of age while, (3) A young adult is person aged more than 17 years but less than 21 years old. They are not treated as adult offender, and both at the police level and at the court level, the law specifically empowers the court to treat the young

offender as different from adults, and the method of sentence is quite different and distinct.

## **6.0 TUTOR-MARKED ASSIGNMENT**

1. Examine the methods of sending a young offender.
2. Discuss the use of Borstal training in the treatment of a young offender.

## **7.0 REFERENCES/FURTHER READING**

Thomas, (1979) principles of sentencing Heinemann Books London.

Criminal Procedure Act, S413 – S434.

## **MODULE 5            ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA**

- Unit 1            Administration of Criminal Justice System in Nigeria  
Unit 2            Mode of Criminal Trials

### **UNIT 1            ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA**

#### **CONTENTS**

- 1.0    Introduction
- 2.0    Objectives
- 3.0    Main Content
  - 3.1    Impartiality of court
  - 3.2    Legal Safeguards for fair trial
- 4.0    Conclusion
- 5.0    Summary
- 6.0    Tutor-Marked Assignment
- 7.0    References/Further Reading

#### **1.0    INTRODUCTION**

In this unit we are going to look into the role of the judge in administering justice in the court. The judge though is in control of the proceedings must adhere strictly to the law and procedure guiding the administration of justice. These body of laws are in place to ensure that justice is dispensed accordingly, and any deviating will result in miscarriage of justice. The rules ensure that justice is properly enforced and according to law. The adage is that justice must be seen manifestly to have been done. The rules also assures the judge and administration of justice generally.

#### **2.0    OBJECTIVES**

At the end of this unit you should be able to understand;

- The general duties of the judge in the administration of justice.
- Rules that ensures impartiality of the judge.
- Legal safeguards for fair trial.

### 3.0 MAIN CONTENT

#### Impartiality of the judge

The judge is expected as a matter of law to act as an impartial and neutral arbitrator in the proceedings, before the court, in civil proceedings, the court must ensure his neutrality, he must ensure both words and in action. He must not show that he is biased or supports the case of one party over the other. While in any criminal proceedings, the prosecutor is the entitled to be afforded the opportunity of being heard before convictions.

The court must hear both sides before arriving at the decision of the court. The rule of fair hearing (discussed below) is that no party can be condemned without being heard in his own defence (“Audi alterem partem”) criminal trial therefore cannot be undertaken without the presence of the accused. And trial cannot commence in his absence, neither can it proceed in his absence. The fact that the accused does not preclude trial where, however, the accused makes the trial impossible, we may be removed or the matter adjourned until the accused is ready. Normally, the restraints, like handcuffs must be removed immediately the accused is brought to court, if he misbehaved, the court may order that the accused be handcuffed or otherwise restrained or cause unnecessary disturbance.

The court must ensure that all parties before it have been properly served or summoned before the court can assume jurisdiction. In civil cases any trial or proceedings without proper service is a nullity. While in criminal proceedings, the accused person must be properly summoned, and charged before the court, and trial cannot commence unless this has been satisfactorily done.

The court must dispense even handed justice along the well trodden path of judicial precedent, the proper application of the law, rules of procedure, general directives of courts, and other principles of law to guarantee equality and fair play as much as possible.

In criminal trials, the court is under a duty to adhere strictly to the inquisitional method of trial which lays a duty on the court to intentionally look at the suspect in a case as an innocent of the trial and until his guilt is established or innocence is reaffirmed.

The court is under a duty to allow the accused person the opportunity to defend himself personally or by counsel of his choice, and to cross-examine the accusers and his witnesses. Whenever, the accused person is not given this opportunity, the trial is a nullity.

The court must at the end of trial, painstakingly review the evidence adduced by each party in a trial, provide explanation to justify its validity one way or the other of the entire evidence without bias, dispassionately and according to well laid down legally acceptable principles.

The court is under a duty to terminate the trial with a judgment or ruling on the theory that there must be an end to litigation and at the end of which the court becomes 'functions officio', and the judge is not allowed to re-open the trial, or allowed to be done any other act that may be regarded as re-opening the case.

### **SELF ASSESSMENT EXERCISE 1**

Discuss the duties of the court in the administration of justice.

### **3.2 Legal Safeguards for Fair Trial**

There are certain legal safeguards to guarantee fair trials, those are also enshrined in the constitution, which means they are not only enforceable but may nullify the entire proceedings.

**Fair Hearing:** - In the determination of a citizen's civil rights and obligation he is entitled whenever a person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal. See S36 (1), (4) of the 1999 constitution.

**Presumption of Innocence:** - Every person who is charged with a criminal offence is presumed innocent until proved guilty. It follows that, even in the face of the court and during the entire trial, it is the prosecution that must prove his case before the accused person is called upon to defend himself. Where the prosecution is unable to prove his case against the accused, the trial must be discontinued and the accused discharged and acquitted. See S36(5) 1999 constitution.

**Publicity of Trial:** - S36 (4) of the constitution enjoins that all criminal trials must be in public; every member of the public is entitled freely to attend the proceedings of a criminal trial. The constitution however allows the court to exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the referee of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice. The generally accepted occasions are in cases of

trial of young persons and children under the children and young persons law, and where special circumstances permit in matrimonial matters.

**Right to be Informed of the Offence:** - The accused person is entitled to be informed promptly and in the language he understands and in details the nature of the offence. In general, the suspect is first informed of the nature of the offence by the police at the point of arrest. The accused when charged must be given a copy of the charge sheet before the charge is read to him, subsequently, the charge must be read to him in the open court in the language he understands, and allowed to plea whether he is guilty or not. See S36(6) (a) of 1999 constitution.

**Time to prepare for his trial:** - The accused person must be allowed the opportunity to prepare for his defence. He must be given adequate time and facilities to do so. He is entitled to ask for reasonable time, facilities, and including free access to such facilities. See S36(6) (b) 1999 constitution.

**Right to legal practitioner:** - The accused person is entitled to a legal practitioner of his choice. In capital offences, where the accused do not have a counsel, the court must appoint one for him; under S. 352 of CPR, and & 186 CPC

**Examination of witness:** - The accused person is entitled to examine the witnesses called by the prosecution before any court or tribunal, and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as these applying to the witnesses called by the prosecution. See S.36(6) (d) 1999 constitution.

**Right to interpreter:** - The language of the court in Nigeria is English. In cases where the accused do not understand English, he is entitled to an interpreter at the courts expense. In practice he is first asked whether he wants his trial in English or other language. If he elects another language, then, the court must provide an interpreter for the accused person. See S.36 (6) (e) of 1999 constitution.

**Ante feis Acquit or Convict:** - Where a person had been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted, shall not again be tried for that offence or for a criminal offence having the same ingredients as that offence unless upon the order of a superior court while, a person who has been pardoned for a criminal offence shall not again be tried for that offence.

**Right to silence:** - The person accused for an offence cannot be compelled to give evidence at his trial. See S.36(D) 1999 constitution.

Prohibition of conviction for unwritten offence: - A person cannot be tried or convicted for a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law. See S.36(12) 1999 constitution. This is the constitutional provision that nullifies the entire body of customary criminal law.

#### **4.0 CONCLUSION**

The constitutional provisions are also deliberately enshrined in order to guarantee free and fair criminal trials, and also to ensure that the innocent is not wrongly convicted for an offence he had not committed. The rules also help to guarantee the impartiality of the court in proceedings, and that the accused is never put at any disadvantage whatsoever.

#### **5.0 SUMMARY**

In this unit we have examined the duties of the court in ensuring fair play, and free and fair hearing. The onerous duties of the courts are re-enforced by the constitution, and other relevant laws on procedure like the CRA and CRC.

#### **6.0 TUTOR – MARKED ASSIGNMENT**

1. Discuss the constitutional safeguards for fair trial in Nigeria.
2. Critically examine the role of court in administration of criminal justice in Nigeria.

#### **7.0 REFERENCES/FURTHER READING**

AKANDE (supra)

## **UNIT 2      MODE OF CRIMINAL TRIAL**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Institution of Proceedings
  - 3.2 Compelling Appearance of an Accused Person
  - 3.3 Presence of the Accused
  - 3.4 Recording of Plea
  - 3.5 Opening of Case for the Prosecution
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

An important aspect of the criminal justice system which commence with the police effecting an arrest after a report or investigation, culminates in the arraignment of a suspect before the court. The arraignment is an affirmation that the police representing the state is satisfied that the suspect is guilty of an offence with which he is charged. The innocence or guilt of the suspect is not ascertained until the court hears the evidence, from the prosecutor acting on behalf of the state, and then allows the suspect who is now referred to as “accused”, and “defendant” in Lagos State, to put up his defence with supporting evidence either by himself or through his legal representative. The importance of the trial, the mode of presentation of the case will therefore form an integral part of criminal justice system.

### **2.0 OBJECTIVES**

At the end of this unit you are expected to be able to explain,

- The procedure for arraignment of a suspect.
- The procedure for criminal trials.

### **3.0 MAIN CONTENT**

#### **3.1 Institution of Proceedings**

The mode of commencement of criminal proceedings depends on the court where the criminal proceeding was to be instituted. If it is in the High Court, the proceeding is commenced by information of the

Attorney-General of the State in accordance with the provisions of S72 of the CPA. This is simply by filing information in the High Court on the accused person. While in the magistrate courts, either on a complaint whether or not on oath; or simply file a charge sheet specifying the name and occupation of the person charged, the charge against him and the time and place where the offence is alleged to have been committed, and the charge sheet shall be signed by the Police Officer in charge of the case. (See S.77 and 78 CPA).

In practice, the Police Officer in charge of the case, takes the suspect to the court (magistrate) and present the charge sheet, to the Court Registrar, who in turn forward it to the magistrate, who then asks that the case be called. The suspect at that point becomes the accused person. In the High Court, however, the charge is presented by the State Counsel, and the information with the accompanying proofs of evidence is filed in the Court Registry, and transferred to the court, who will hear the case. The matter is then called on the appointed date, and the matter is duly commenced.

### **3.2 Compelling Appearance of an Accused Person**

As stated above, normally, the accused is taken to the court with the charge sheet, however, where this is not done, or a complaint was made against a suspect, the magistrate may issue a summons directed to the person complained against, stating concisely the substance of such complaint and requiring him to appear at a certain time and place being not less than 48 hours after the service of such summons before the court to answer to the said complaint and to be further dealt with accordingly to law. (See S.83 CPA).

The summons is served by a Police Officer or officer of court on the person complained against. If however he cannot be found, the complaint may be served by pasting on a conspicuous place where the person to be served may see it by the leave of the court.

### **3.3 Presence of the Accused**

Nigerian law generally does not allow an accused to be tried in absentia. Until the accused is found, or prosecute him for trial, the trial cannot proceed. See S.210 CPA and 153 CPC. In the case of *Adeoye Vs State* (1999) 6 NWLR pt. 605 pg 74, the court ruled that trial in absentia is unknown to Nigerian law.

The exception is stated in S.100 CPA and S.154 CPC. Where a person is charged with an offence punishable only by a penalty not exceeding one hundred Naira. (N100.00), the court may dispense with the personal

attendance of the accused provided that the accused pleads guilty in writing or appears and so pleads by a legal practitioner.

The second instance is where the presence of the accused renders trial in his presence impracticable. The third instance is where the court is investigating the mental condition of the accused, whether he is of a sound mind as to be able to stand for his trial. Where the defendant does not appear after a summons has been duly served on him, the magistrate shall order a warrant of arrest to be issued on the defendant; called bench warrant, and upon his arrest, the magistrate may commit him to prison custody. In the event of the non - appearance of the prosecutor on the day of trial, the court shall dismiss the complaint or adjourn the matter to a convenient date. Where both parties do not appear, the court may give appropriate directions (See S.280–282 CPA).

### **3.4 Recording of Plea**

The accused must be placed before the court unfettered unless the court otherwise order.

The information or charge is read over and explained to him to the satisfaction of the court or other officer of the court.

The accused is called upon immediately to take his plea, unless he has any objection to the charge or service. See *Udo Vs State* (2006) 15NWLR pt. 100 pg 179 at 181.

The accused may object to the charge of making technical objection to the charge called preliminary objection, and this must be heard, and dispensed with before the continuation of the trial.

However, where the accused refused to make his plea, the court must ascertain if this was due to malice or otherwise. If it was malicious a plea of not guilty is entered for him, but if not then the court must investigate if this was due to mental condition. If it was found that the accused is of unsound mind, then the trial cannot proceed, and the person is kept in custody pending the pleasure of the Governor.

### **3.5 Plea of Guilty**

Where the accused pleads guilty, the plea is recorded as nearly as possible in the words used by the accused, and the court may proceed to convict the accused on his plea, after observing the following: -

The charge must be within the jurisdiction of the court.

The charge must be one that can be tried summarily by the court. Where the charge is a capital offence, a plea of not guilty will be recorded notwithstanding the plea of guilty entered by the accused.

Opening of case for the Prosecution: After the plea of not guilty by the accused person to the charge or information, the prosecutor may open the case against the accused person and then adduce evidence in support of his charge. The burden of proof in any criminal trial is always on the prosecution. The accused is presumed innocent until the contrary is proved. The standard of proof is beyond reasonable doubt. (See S.138 (i) evidence Act).

The prosecution will open his case by informing the court the nature of the charge, the number of witnesses he wishes to call in proof of his case, the expected length of time within which he can conclude the prosecution case. He is then allowed to proceed immediately, or adjourn to a later date. He then calls all his witness, and the accused person is allowed to cross-examine the witnesses, and he is allowed to re-examine the witnesses if there is any ambiguity to be cleared. At the end of the prosecution case, the accused may make a no-case submission. What this means is that,

The prosecution has failed to prove an essential ingredient of the offence. The evidence and witness of the prosecution has been seriously discredited under cross-examination by the accused person or his legal representative that it is manifestly unreliable for any reasonable tribunal to convict the accused. The court shall discharge the accused immediately. However, where a Prima Facie case has been established against him the court will call upon him to present his case.

Upon the conclusion of the defense, the parties are called upon to address the court. The defense is entitled to address the court at the conclusion of the case. The prosecution is not allowed to reply if only the accused gave evidence on his behalf, but he does not apply to the law officer who always has a right of reply. The court after the addresses, adjourns to consider the evidence, and then gives judgment.

The judgment is a consideration of all the evidence adduced before it and proceeds to convict or to discharge and acquit the accused person.

In a criminal trial, after the conviction, the court calls upon the prosecutor to give details of past criminal records of the convict. While, he is also called upon to make an 'allocutos' that is a plea in mitigation of the sentence. The court after considering all the evidence and pleas, shall then enter the sentence according to law. See S.247 CPA.

#### **4.0 CONCLUSION**

From the above, it is quite clear that a criminal trial being part of the very complex criminal justice administration is very technical and seemingly laboriously long winded. Each step is however designed to

ensure the fairness, of the trial by giving the accused person every conceivable opportunity to defend himself.

The burden of proof is always proof beyond reasonable doubt, and until a prima facie case is established against the accused, he until then is not called to enter his defense, or put up any defense.

## **5.0 SUMMARY**

We have examined the mode of criminal trial in Nigeria. From the point of arraignment up till sentence is passed. The accused is regarded as an innocent person until judgment is passed. He is allowed to be represented by a legal practitioner of his choice, and can cross-examine the witnesses of the prosecution. He can call his witnesses, and establish his defense legally. The procedure adopted as important as the trial, and any derivation may lead to nullity of the proceedings.

## **6.0 TUTOR – MARKED ASSIGNMENT**

1. Discuss critically the mode of criminal trial in Nigeria.
2. Examine the role of the judge in criminal trial.

## **7.0 REFERENCES/FURTHER READING**

CRIMINAL PRODEDURE ACT LFN 2004